

STATE OF NEW YORK: DEPARTMENT OF LABOR

-----X

In the Matter of

PIAZZA, INC., and JOHN PIAZZA, JOE PIAZZA,
and NICK PIAZZA, as officers and/or shareholders of
PIAZZA, INC.; and its successors or substantially
owned-affiliated entities PIAZZA BROTHERS
CONTRACTING, INC., and PIAZZA BROTHERS, INC.;

DEFAULT REPORT
&
RECOMMENDATION

Prime Contractor,

and

RAW POWER ELECTRIC CORP.; and ROMEO WARREN,
as officer and/or shareholder of RAW POWER ELECTRIC
CORP.;

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 the Metro North
Railroad, in Croton-on-Hudson, New York, Westchester
County.

Prevailing Wage Rate
Case No. 2013000087
Case ID: PW112015007002
Westchester County

-----X

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

Pursuant to an Amended Notice of Hearing issued by the Commissioner of Labor on April 4, 2022, a videoconference hearing was held on May 17, 2022 in Albany, New York, with participating parties and witnesses located at various other sites. The purpose of the hearing was to provide all parties an opportunity to be heard on the issues raised in the Amended 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. ("Sub") a subcontractor of Piazza Inc. ("Prime"), (all "Respondents") complied with the requirements of Labor Law Article 8 (§§ 220 *et seq.*) in the performance of a

public work contract involving the provision of labor, materials, and/or services in furtherance of the Metro North Railroad Harmon Yard construction, including, but not limited to, new communications upgrade, new modular trailers, office relocations, roof replacements, lead and asbestos abatement, building façade repairs, rehabilitating catwalks and asphalt replacement located in Croton-on-Hudson, Westchester County, State of New York (“Project”) for Metro-North Commuter Railroad Company (“MTA”) (“Department of Jurisdiction”).

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, (Elina Matot, Senior Attorney, of Counsel)

Prime appeared by and through its attorney, Zabell & Collotta, P.C. (Saul D. Zabell, Esq., of counsel).

There was no appearance made by, or on behalf of Sub.

FINDINGS AND CONCLUSIONS

On January 20, 2021, Department duly served a copy of the Notice of Hearing on all Respondents, via First Class and certified mail, return receipt requested. (Hearing Officer Exs. 1 and 2). The Notice of Hearing scheduled a hearing on March 23, 2021 and required all Respondents to serve an Answer at least fourteen days in advance of the scheduled hearing.

Prime, filed a notice of appearance and blanket denial to the charges contained in the Notice of Hearing. (Hearing Officer Ex. 3)

Sub failed to file an Answer to the charges contained in the Notice of Hearing, however the Adjudication and Administration Unit did receive correspondence from Reginald Warren and Lavern Glave, individuals originally identified by Department as officers and/or shareholders of

Sub, wherein they represent that they have zero percent ownership interest in the Sub and no official position with the Sub since June 26, 2013. (Hearing Officer Exs. 4 and 5)¹.

Based on this information and other additional pleadings² which caused further delay in proceeding with the hearing, on April 8, 2022, Department duly served a copy of an Amended Notice of Hearing on Respondents, via First Class and certified mail, return receipt requested. Sub, through Romeo Warren, certified receipt of the Amended Notice of Hearing. (Hearing Officer Exs. 13 and 14)

The Amended Notice of Hearing scheduled a May 17, 2022 hearing, and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

Prime, by and through its attorney, Saul Zabell, Esq., filed an answer dated April 15, 2022 in response to the Amended Notice of Hearing (Hearing Officer Ex. 15).

Sub failed to file an Answer to the charges contained in the Amended Notice of Hearing or to appear and/or participate in the hearing. As a consequence, Sub is in default in this proceeding.

The Amended Notice of Hearing alleges that Sub underpaid wages and supplements to its workers and that Prime is responsible for Sub's underpayment pursuant to Labor Law § 223.

Prior to the hearing, Prime entered into a stipulation with the Department wherein it agreed to make restitution on behalf of the Sub in the full amount of underpaid wages and supplements to Sub's workers in the amount of \$18,392.68, together with interest in the amount of \$3,359.14, for a total amount of \$21,751.82, which payment the Bureau deemed sufficient to resolve Prime's Article 8 liability in this matter. (Hearing Officer Ex. 16)

¹ The correspondence contains a Raw Power Electric Corp. Resolution dated June 26, 2013, wherein it was resolved that 100% of the shares in the corporation were redistributed to Romeo Warren and that Romeo Warren was the sole officer of Sub. Lavern Glave and Reginald Warren were listed in the Resolution as having 0% of the shares after the redistribution of shares to Romeo Warren. This resolution became effective as of the first date of filing with the IRS for tax year 2012. The Board of Directors of Raw Power Electric Corp. unanimously consented to the election of Romeo Warren as president by a document signed by Romeo Warren on December 10, 2013, effective June 6, 2013.

² The additional pleadings were entered into evidence as Hearing Officer Exs: 6 through 12.

At the hearing, 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:

The Project was subject to Labor Law article 8.

Prime entered into a contract for the Project with the Department of Jurisdiction.

Romeo Warren entered into a contract on behalf of Sub with Prime on or about May 17, 2013 for work on the Project.

Sub willfully underpaid \$18,392.68 to its workers for the audit period weeks ending June 30, 2013 through weeks ending June 29, 2014.

Sub falsified its payroll records in connection with that willful underpayment.

Romeo Warren is an officer of Sub.

Romeo Warren is a shareholder of Sub 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 the Project.

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

RECOMMENDATIONS

Based upon the default of Sub in answering or contesting the charges contained in the Department's Amended 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 Sub underpaid prevailing wages and supplemental benefits to its workers in the amount of \$18,392.68 on the Project for the audit period weeks ending June 30, 2013 through weeks ending June 29, 2014; and

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

DETERMINE that Romeo Warren is an owner and officer of Sub who knowingly participated in the violation of Labor Law Article 8 on the Project; and

DETERMINE that the failure of Sub to pay the prevailing wages and supplement rates on the Project was a “willful” violation of Labor Law Article 8; and

DETERMINE, that as a result of the Sub’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 Project, both the entity and the individual 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 Sub is 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 8, Sub is 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 8, Sub is assessed a civil penalty in the amount of 25% of the underpayment and interest due on this Project; and

DETERMINE that Prime stipulated to, and has fully paid, the total sum of \$21,752.82, which sum represents total prevailing wages, supplements and interest calculated by the Bureau, to be due by Prime, in complete satisfaction of Prime’s liability under Labor Law Section 223; and

ORDER that the Bureau compute the total amount due (underpayment of \$18,392.68) with interest at 16% from date of underpayment to the date of payment and 25% civil penalty; and

ORDER that Sub shall receive a credit for the \$21,751.82 paid by Prime, however is responsible for the balance due as recalculated by the Bureau in the prior Ordered paragraph; and

ORDER that if the Department of Jurisdiction is withholding any additional funds against the Sub, 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, Sub, 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 the Project, and that any balance of the total amount due shall be forwarded for deposit to the New York State Treasury.

Dated: July 11, 2022
Albany, New York

Respectfully submitted,

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

Marshall H. Day, Hearing Officer