

STATE OF NEW YORK DEPARTMENT OF LABOR

-----X

In the Matter of

Key Interiors, LLC; and Alfred D. Torreggiani,
as an officer and/or a managing member of Key Interiors, LLC;

Prime Contractor,

and

RAW Power Electric Corp.; and Romeo Warren, Lavern
Glave, and Reginald Warren, as officers and/or shareholders
of Raw Power Electric Corp.;

Subcontractor,

DEFAULT
REPORT
&
RECOMMENDATION

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 at MTA Police
K-9 Facility, in Stormville, New York, Dutchess County.

Prevailing Wage Rate
Case No. 2012006445
Case ID: PW112015006965
Dutchess County

-----X

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

Pursuant to a Notice of Hearing issued on April 9, 2019, a hearing was held on May 15, 2019 in Albany, New York and by videoconference with White Plains, 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 RAW Power Electric Corp. ("Sub") a subcontractor of Key Interiors, LLC ("Prime") 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, material, and/or services in furtherance of the construction services for the police K-9 training facility located in Stormville, Dutchess County,

State of New York (“Project”) for Metro-North Commuter Railroad Company (“MTA”) (“Department of Jurisdiction”).

HEARING OFFICER

John Scott was designated as Hearing Officer and conducted the hearing in this matter.

APPEARANCES

The Bureau was represented by Department Counsel, Pico Ben-Amotz¹, (Elina Matot, Senior Attorney, of Counsel)

There was no appearance made by, or on behalf of Sub. However, Lavern Glave, an individual identified by Department in the Notice of Hearing as an officer and/or shareholder of Sub, appeared at the hearing as directed by the Notice of Hearing and entered into an off the record discussion with Department Counsel before the hearing commenced. Ms. Glave left the hearing site before the hearing commenced. This conversation between Ms. Glave and Department Counsel, as summarized on the record by Department Counsel, included Ms. Glave’s representations that she has not been an officer or shareholder of Sub since 2013 when Sub became fully-owned by Romeo Warren as evidenced by a Corporate Resolution entered into evidence by Department as DOL Ex. 24 (Tr. Pg. 9). Ms. Glave further indicated to Department Counsel that she caused a copy of the Notice of Hearing to be delivered to Romeo Warren, the person identified in DOL Ex. 24 as the sole officer and shareholder of Sub (Tr. 11). Department Counsel represented to the Hearing Officer that Ms. Glave voluntarily left the designated hearing room after being told by Counsel that she could not represent that the Department would not seek recovery from her. Department Counsel had no expectations that Ms. Glave would return to participate in the hearing (Tr.10).

Department Counsel also received correspondence from Reginald Warren, an individual identified by Department as an officer and/or shareholder of Sub, wherein he represents that he has not been involved with Sub as a shareholder since December 14, 2012, and that Department

¹ Mr. Ben-Amotz has since left employment at the Department; his successor is Jill Archambault, Acting General Counsel.

was listed as a creditor in his Chapter 7 Bankruptcy proceeding and included in the Final Decree issued on March 16, 2018 (HO Ex. 3).

Prime appeared by and through its attorney, Stephen P. O'Hare, Esq.

FINDINGS AND CONCLUSIONS

On April 11, 2019, Department duly served a copy of the Notice of Hearing on Sub, via First Class and certified mail, return receipt requested. One of the First Class mail envelopes sent to Sub was not returned to Department. Also, Lavern Glave, a party who is identified by Department as an officer and/or shareholder of Sub, indicated to Department Counsel that she caused a copy of the Notice of Hearing to be delivered to Romeo Warren.

In addition, Department duly served a copy of the Notice of Hearing on Prime, via First Class and certified mail, return receipt requested. A signed Return Receipt card evidencing receipt of the document by Camille Libonati on behalf of Prime was entered into evidence as Hearing Officer Exhibit 2.

The Notice of Hearing scheduled a May 15, 2019 hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

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

Prime, by and through its attorney, Stephen P. O'Hare, Esq., filed an answer dated April 30, 2019 (HO Ex. 4).

The 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 (HO Ex. 5) wherein it agreed to make restitution of the full amount of underpaid wages and supplements to Sub's workers, together with interest in the amount of ten (10) percent per annum and a ten (10) percent civil penalty, which payment the Bureau deemed sufficient to resolve Prime's Article 8 liability.

At the hearing, 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:

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 4/1/2013 for work on the Project.

Sub willfully underpaid \$97,369.53 to its workers for the audit period weeks ending 10/13/2013 to 12/13/2015.

Sub falsified its payroll records in connection with that willful underpayment; and

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.

The record 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 (DOL Ex. 24).

Subsequent to the referenced Corporation Resolution and Board of Directors' consent, and during the relevant week ending periods of the within audit, Reginald Warren signed Stipulations with the Department on behalf of Sub as its Secretary on June 17, 2014 and June 24, 2014. Also, during the relevant week ending periods of the within audit, Lavern Glave signed Stipulations with the Department on behalf of Sub as its President on June 17, 2014 (DOL Ex. 21).

The record supports a finding that Lavern Glave was an officer of Sub during the audit period as alleged by the Department.

The record does not support a finding that Lavern Glave was a shareholder of Sub who owned or controlled at least ten per centum of its outstanding stock during the audit period as alleged by the Department.

The record does not support a finding that Lavern Glave knowingly participated in the violation of Labor Law article 8.

The record supports a finding that Reginald Warren was an officer of Sub during the audit period as alleged by the Department.

The record does not support a finding that Reginald Warren was a shareholder of Sub who owned or controlled at least ten per centum of its outstanding stock during the audit period as alleged by the Department.

The record does not support a finding that Reginald Warren knowingly participated in the violation of Labor Law article 8.

On December 15, 2015, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in the amount of \$125,881.10.

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 Notice of Hearing, and upon the sworn and credible testimonial and documentary evidence adduced at hearing in support of those charges, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Sub underpaid its workers \$97,369.53 on Project No. PW11 2015006965, PRC No. 2012006445 for the audit period weeks ending October 13, 2013 to December 13, 2015; and

DETERMINE that Sub is responsible for interest on the total underpayment at the statutorily mandated rate of 16% per annum from the date of underpayment to the date of payment; and

DETERMINE that the failure of Sub to pay the prevailing wage or supplement rate was a “willful” violation of Labor Law article 8; and

DETERMINE that the willful violation of Sub involved the falsification of payroll records under Labor Law article 8; and

DETERMINE that Romeo Warren is an officer of Sub; and

DETERMINE that Lavern Glave was an officer of Sub during the audit period, and

DETERMINE that Reginald Warren was an officer of Sub during the audit period, and

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

DETERMINE that Lavern Glave was not a shareholder of Sub during the audit period, and

DETERMINE that Reginald Warren was not a shareholder of Sub during the audit period, and

DETERMINE that Romeo Warren knowingly participated in the violation of Labor Law article 8; and

DETERMINE that Lavern Glave did not knowingly participated in the violation of Labor Law article 8; and

DETERMINE that Reginald Warren did not knowingly participated in the violation of Labor Law article 8; and

DETERMINE that Sub be assessed a civil penalty in Department's requested amount of 25% of the underpayment and interest due; and

DETERMINE that Prime stipulated to pay the total sum of \$145,929.94 through the release of funds currently withheld from Prime by the Department of Jurisdiction, which sum represents total wages and supplements, interest at a rate of ten percent per annum, and civil penalty in the amount of ten percent, in complete satisfaction of its liability under Labor Law article 8; and

ORDER that the Bureau compute the total amount due (underpayment of \$97,369.53, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that, upon payment of \$145,929.94 and complete performance of the stipulation entered into between the Prime and Department, Prime will have fully satisfied its liability under Labor Law article 8;

ORDER that Sub shall receive a credit for the \$145,929.94 paid by Prime; and

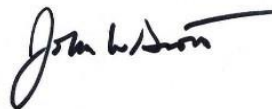
ORDER that Department of Jurisdiction remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau at: 120 Bloomingdale Road, Room 204, White Plains, NY 10605; and

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: February 25, 2021
Albany, New York

Respectfully submitted,



John Scott, Hearing Officer