STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

PATRICK DEVELOPMENT, INC.
Prime Contractor

and

VALLEY VIEW LANDSCAPING
AND SITE DEVELOPMENT LLC
Subcontractor

And

Wassim Issa, Individually, as the President of Valley View Landscaping and Site Development LLC and one of its five largest shareholders

A proceeding pursuant to Article 8 of the Labor Law to determine whether a contractor paid the rates of wages or provided the supplements prevailing in the locality to workers employed on a public work project.

REPORT
&
RECOMMENDATION

Prevailing Rate Case
06-05913 Niagara County

To: Honorable M. Patricia Smith
Commissioner of Labor
State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on October 28, 2008, in Buffalo, 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 Valley View Landscaping and Site Development LLC (“Valley View”), a subcontractor of Patrick Development, Inc. (“Patrick”), and Wassim Issa (“Issa”) individually, as the President of Valley View and one of its five largest shareholders (*sic*), complied with the

requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of a contract involving a capital improvement project at the Central Building of the Barker Central School ("Project") for the Barker Central School District ("Department of Jurisdiction").

APPEARANCES

The Bureau was represented by Department Counsel Maria Colavito, Richard Cucolo, Senior Attorney, of Counsel.

Patrick appeared, represented by Howard E. Berger. Patrick filed an Answer to the charges incorporated in the Notice of Hearing and included within its Answer a Cross-Claim against Valley View and a Cross-Claim against Issa (HO Ex. 7). In paragraph thirteen of its Answer, Patrick alleges individual liability for any underpayments on the part of Issa.

Valley View and Issa appeared, represented by Ralph C. Lorigo, Esq. Issa submitted an Answer to the Department's Notice of Hearing (HO Ex. 8). Issa also submitted an Answer to the Cross-Claim contained in Patrick's Answer (HO Ex. 9).

ISSUES

1. Did Valley View pay the rate of wages or provide the supplements prevailing in the locality, and, if not, what is the amount of underpayment?
2. Was any failure to pay the prevailing rate of wages or to provide the supplements prevailing in the locality "willful"?
3. Did any willful underpayment involve the falsification of payroll records?
4. Is Issa a shareholder who owns or controls at least ten per cent of the outstanding stock of Valley View, or an officer of Valley View who knowingly participated in a willful violation of Article 8 of the Labor Law?
5. Should a civil penalty be assessed and, if so, in what amount?
6. Is Patrick, as prime contractor, liable for the non-compliance or evasion by Valley View of any obligations to pay prevailing wages or supplements?

7. How should any withheld funds be disposed of?

FINDINGS OF FACT

The hearing concerned an investigation made by the Bureau involving public work performed by Valley View on the Barker Central School District 2006 Capital Improvement Project in Niagara County (DOL Ex. 6). Patrick entered into a contract with the Department of Jurisdiction for the Project on February 26, 2007 (DOL Ex. 6).

Patrick entered into a subcontract with Valley View on March 20, 2007, and Joseph Aquino signed the contract as an officer of "Valleyview Landscaping & Site Development Corp." (DOL Ex. 7).

The Project involved the employment of laborers, workers or mechanics on a public work project, and the Department issued Prevailing Wage Rate Schedules for the Project for the period of time that work was performed by Valley View (DOL Ex. 8 and 9).

The Prevailing Wage Rate Schedules in effect at the time of the Project provided, for the periods July 1, 2006 through June 30, 2007 and July 1, 2007 through June 30, 2008, set forth the appropriate laborer's wages for workers on the Project (DOL Ex. 8, 9).

The workers employed by Valley View were properly classified as laborers (DOL Ex. 4, 8, 9, 15).

Valley View failed to pay workers overtime as required by the relevant Prevailing Wage Rate Schedule on multiple occasions (DOL Ex. 4, 8, 9, 15).

Valley View failed to pay workers any of the supplements required by the relevant Prevailing Wage Rate Schedules (DOL Ex. 4, 8, 9, 15).

Valley View prepared certified payrolls for the Project, certified to by Issa as "owner – president" of "Valley View Landscaping" (DOL Ex. 4).

Issa saw and signed each certified payroll (Tr. pp. 50, 82-85).

Issa visited the Project work site while work was in progress approximately six times (Tr. pp. 68, 86). While at the Project job site, Issa spoke with a representative from Patrick, checked on the progress of the work, communicated with the Barker Central

School District Superintendent, generally discussed the job and tried to expedite the work (Tr. pp. 65-68).

Subsequent to an investigation by the Bureau, the Department issued a detailed calculation of underpayments of wages and supplements due to Valley View's workers for the period weeks ending 3/25/2007 through 7/22/2007 (DOL Ex. 15). The underpayments, not including interest, amounted to $34,955.84, to thirteen workers on the Project (DOL Ex. 15).

On November 27, 2007, the Department issued a Notice to Withhold Payment to the Department of Jurisdiction in the amount of $100,000 (DOL Ex. 14). On April 21, 2008, the Department modified the withholding amount by issuing a Notice to Release Payment to the Department of Jurisdiction releasing $35,819.18, leaving $64,180.82 (DOL Ex. 16).

During the course of the hearing, counsel for Valley View and Issa stipulated with the Department to the amount of underpayment calculated by the Department and to the obligation of Valley View to pay such amount under the Labor Law (Tr. pp. 32, 33).

Counsel for Patrick did not object to the stipulation set forth above (Tr. pp. 33, 37, 39).

On February 8, 2008, Issa, signing as "Pres" of Valley View, entered into a stipulation with the Department in which it agreed that in April, 2007, it willfully failed to pay prevailing supplements on a project other than the one at issue in this hearing, PRC 06-004417, to four workers in the amount of $1,837.05 plus $85.95 in interest (DOL Ex. 17, Tr. p. 22).

Issa submitted a personal check in the amount of $2211.45 as payment in full of the underpaid supplements and interest found in the stipulation described in the above paragraph (DOL Ex. 18, Tr. p. 23).

Articles of Organization for Valley View Landscaping and Site Development LLC, a limited liability company, were subscribed to on March 7, 2007 (Patrick Ex. 8, Tr. p. 59). The Articles of Organization were filed with the New York State Department of State on March 7, 2007 (Patrick Ex. 9, Tr. p. 60).

Issa was the sole owner of Valley View (DOL Ex. 3, Tr. p. 37, 45).

There is no evidence that an entity called Valley View Landscaping and Site Development Corp. ever existed (Tr. p. 79).

Issa is an experienced businessman who currently owns five, and at one time owned as many as seventeen, gas stations (Tr. p. 76).

CONCLUSIONS OF LAW

Jurisdiction of Article 8

Section 17 of Article 1 of the New York State Constitution mandates the payment of prevailing wages and supplements to workers employed on public work. This Constitutional mandate is implemented through Labor Law Article 8. Labor Law §§ 220, *et seq*. "Labor Law § 220 was enacted to ensure that employees on public works projects are paid wages equivalent to the prevailing rate of similarly employed workers in the locality where the contract is to be performed and authorizes the [Commissioner of Labor] to ascertain said prevailing wage rate, as well as the prevailing 'supplements' paid in the locality." *Matter of Beltrone Constr. Co. v McGowan*, 260 A.D.2d 870, 871-872 (3d Dept. 1999). Labor Law §§ 220 (7) and (8), and 220-b (2) (c), authorize an investigation and hearing to determine whether prevailing wages or supplements were paid to workers on a public work project.

The Barker Central School District, a public entity, is a party to the instant public work contract and, therefore, Article 8 of the Labor Law applies. Labor Law § 220 (2); and *see, Matter of Erie County Industrial Development Agency v Roberts*, 94 A.D.2d 532 (4th Dept. 1983), *affd* 63 N.Y.2d 810 (1984).

Classification of Work

Labor Law § 220 (3) requires that the wages to be paid and the supplements to be provided to laborers, workers or mechanics working on a public work project be not less than the prevailing rate of wages and supplements for the same trade or occupation in the locality where the work is performed. The trade or occupation is determined in a process

referred to as "classification." *Matter of Armco Drainage & Metal Products, Inc. v State of New York*, 285 App. Div. 236, 241 (1st Dept. 1954). Classification of workers is within the expertise of the Department. *Matter of Lantry v State of New York,* 6 N.Y.3d 49, 55 (2005); *Matter of Nash v New York State Dept of Labor,* 34 A.D.3 905, 906 (3d Dept. 2006), *lv denied,* 8 N.Y.3d 803 (2007); *Matter of CNP Mechanical, Inc. v Angello,* 31 A.D.3d 925, 927 (3d Dept. 2006), *lv denied,* 8 N.Y.3d 802 (2007). The Department's classification will not be disturbed "absent a clear showing that a classification does not reflect 'the nature of the work actually performed.' " *Matter of Nash v New York State Dept of Labor,* 34 A.D.3 905, 906, *quoting Matter of General Electric, Co. v New York State Department of Labor,* 154 A.D.2d 117, 120 (3d Dept. 1990), *affd* 76 N.Y.2d 946 (1990), *quoting Matter of Kelly v Beame,* 15 N.Y. 103, 109 (1965). Workers are to be classified according to the work they perform, not their qualifications and skills. *See, Matter of D. A. Elia Constr. Corp v State of New York,* 289 A.D.2d 665 (3d Dept. 1992), *lv denied,* 80 N.Y.2d 752 (1992).

Valley View classified its workers as laborers and, in a few cases, as supervisors. The Department investigator classified Valley View's workers as laborers as well, and Valley View agreed with the classification and the amount of underpayment found. Accordingly, the Department properly classified the workers on the Project as laborers.

Interest Rate

Labor Law §§ 220 (8) and 220 b (2) (c) require that, after a hearing, interest be paid from the date of underpayment to the date of payment at the rate of 16% per annum as prescribed by section 14-a of the Banking Law. *Matter of CNP Mechanical, Inc. v Angello,* 31 A.D.3d 925, 927 (3d Dept. 2006), *lv denied,* 8 N.Y.3d 802 (2007). Consequently, Valley View is responsible for the interest on the aforesaid underpayments at the 16% per annum rate from the date of underpayment to the date of payment. Valley View should, however, receive credit against interest owed for any interest amount paid by Patrick.

Willfulness of Violation

Pursuant to Labor Law §§ 220 (7-a) and 220-b (2-a), the Commissioner of Labor is required to inquire as to the willfulness of an alleged violation, and in the event of a hearing, must make a final determination as to the willfulness of the violation. This inquiry is significant because Labor Law § 220-b (3) (b) (1) [1] provides, among other things, that when two final determinations of a "willful" failure to pay the prevailing rate have been rendered against a contractor within any consecutive six-year period, such contractor shall be ineligible to submit a bid on or be awarded any public work contract for a period of five years from the second final determination.

For the purpose of Article 8 of the Labor Law, willfulness "does not imply a criminal intent to defraud, but rather requires that [the contractor] acted knowingly, intentionally or deliberately" – it requires something more than an accidental or inadvertent underpayment. *Matter of Cam-Ful Industries, Inc. v Roberts*, 128 A.D.2d 1006, 1006-1007 (3d Dept. 1987). "Moreover, violations are considered willful if the contractor is experienced and 'should have known' that the conduct engaged in is illegal (citations omitted)." *Matter of Fast Trak Structures, Inc. v Hartnett*, 181 A.D.2d 1013,

[1] "When two final determinations have been rendered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor or any successor within any consecutive six-year period determining that such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article has wilfully failed to pay the prevailing rate of wages or to provide supplements in accordance with this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from the second final determination, provided, however, that where any such final determination involves the falsification of payroll records or the kickback of wages or supplements, the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be 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 first final determination." Labor Law § 220-b (3) (b) (1), as amended effective November 1, 2002.

1013 (4th Dept. 1992). *See also, Matter of Otis Eastern Services, Inc. v Hudacs*, 185 A.D.2d 483, 485 (3d Dept. 1992). The violator's knowledge may be actual or, where he should have known of the violation, implied. *Matter of Roze Assocs. v Department of Labor*, 143 A.D.2d 510; *Matter of Cam-Ful Industries, supra.* An inadvertent violation may be insufficient to support a finding of willfulness; the mere presence of an underpayment does not establish willfulness even in the case of a contractor who has performed 50 or so public works projects and is admittedly familiar with the prevailing wage law requirement. *Matter of Scharf Plumbing & Heating, Inc. v Hartnett*, 175 A.D.2d 421.

Issa admits to having signed each of the certified payrolls prepared for Valley View's workers on the Project. He also admits to having visited the work site of the Project approximately six times while the Project was ongoing, talked to representatives from Patrick and the Department of Jurisdiction, and tried to expedite the work on the Project. In his defense, Issa claims that he never read any of the certifications on the payroll records he signed. However, Issa also testified that he is an experienced businessman who has owned as many as seventeen gasoline stations at one time. Given his involvement in the Project and his prior experience as a successful businessman, I find Issa's protestations that he never read the certifications attached to the weekly payroll documents, that he did not know what he was signing on behalf of Valley View, and that he was unaware of the applicability of Labor Law Article 8 not credible. I further find that, as a result of Issa's actions, Valley View willfully violated Labor Law § 220. I note that, even if I were to accept Issa's statements at face value, the case law set forth above clearly supports a finding of willfulness in that Issa and Valley View knew or should have known that the Labor Law required workers on the Project to be paid the prevailing rate of wages and supplements as set forth in a prevailing wage rate schedule issued by the Department.

Partners, Shareholders or Officers

Based upon the record of this proceeding it appears that, although the name Valley View Landscaping and Site Development Corp., or some variation thereof, was

placed on contract documents and elsewhere, no such legal entity ever existed. Instead, the business that performed work on the Project was Valley View Landscaping and Site Development LLC, a limited liability company owned solely by Wassim Issa who, although the law does not provide for such a title in limited liability companies, labeled himself as Valley View's "president" on multiple occasions.

Patrick makes clear in its post-hearing submittals that it is looking to this administrative proceeding to establish personal liability on the part of Issa for any underpayments found, pursuant to Labor Law §220-b(2)(g), which is a post-hearing collection remedy. Labor Law §220-b(2)(g) is not the subject of this proceeding, but a discussion of it is relevant because many of the underlying facts relevant to Labor law §220-b(2)(g) are similar to those which must be established for the purposes of §220-b(3)(b)(1), which is an issue which must be addressed in this proceeding.

Labor Law § 220-b(2)(g) states, in part, that "When a final determination has been made in favor of a complainant and the contractor or subcontractor found violating this article has failed to make payment as required by the order of the fiscal officer and provided that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the fiscal officer may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of any of the following:

(i) any substantially-owned affiliated entity or any successor of the contractor or subcontractor;

(ii) any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer; or

(iii) any officer of the contractor or subcontractor who knowingly participated in the violation of this article…"

Unlike §220-b(3)(b)(1), this subdivision goes on to provide a mechanism by which the an affected party must be notified of a filing with a county clerk's office and

establishes a process by which such party may contest the finding of liability made by the Commissioner.

A separate section of Labor Law §220 authorizes the fiscal officer - here, the Commissioner of Labor - to issue an order subsequent to a hearing in which the Commissioner decides the issue of, among other things, the willfulness of any violations committed. The determination is important because two determinations of willful violations result in the five-year debarment of the willful violator. Specifically, Labor Law §220-b(3)(b)(1) states, in part, "When two final determinations have been rendered against a contractor, subcontractor, successor or any substantially-owned affiliated entity of the contractor or subcontractor, and if the partners if the contractor or subcontractor is a partnership, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor…" such entities shall be debarred from bidding on or being awarded public work projects for a period of five years from the date of the second willful determination. Insofar as the Commissioner must determine the issue of willfulness when a hearing is held, it is appropriate to determine, to the extent possible, the facts concerning the entities listed in §220-b(3)(b)(1).

As can be seen from the language of the two subdivisions discussed above, Section 220-b(3)(b)(1) deals with the parties to which a Commissioner's finding of willfulness, made pursuant to a hearing, will attach. Section 220-b(2)(g) describes a post-hearing procedure for collecting unpaid wages, supplements, interest and penalty after the completion of a hearing and the issuance of an order, and sets forth the manner in which an aggrieved party may contest the Commissioner's actions.

None of the parties' arguments during the course of the hearing or in their submissions concern whether, under Labor Law §220-b(3)(b)(1), Issa can be found to have willfully violated the Labor Law. Instead, the parties reference Labor Law §220-b(2)(g), and the possible financial liability that could be found with regard to Issa in the event that, after issuance of a Commissioner's order, Patrick or Valley View fails to make payment as required. Such a determination is outside of the scope of this proceeding.

Nevertheless, the positions of the parties have relevance to the question of whether Issa may be found to have willfully violated the Labor Law under §220-b(3)(b)(1), and will be discussed, below, in relation to that legal issue.

The Department argues that the term "officer" as used in Labor Law should be read broadly and in its generic sense, as one who holds a position of authority of trust in any organization. The Department points to Labor Law §220-b(2)(g)(iii) and notes the fact that the language of this section does not reference a corporate officer but instead merely says "*any officer* of the contractor or subcontractor…" (emphasis added).

Respondent Patrick takes the position that the terms "officer" and "shareholder" as used in Article 8 of the Labor Law should be read broadly, agreeing with the Department with regard to the term "officer" and expanding the argument for "shareholders" to mean not only shareholders of corporate stock, but members of limited liability companies as well. Patrick further argues, in the alternative, that Issa should be estopped from asserting the protections allegedly conferred by the Limited Liability Company Law because he held himself out as the president of a corporate entity throughout his involvement in the Project.

Finally, Respondent Valley View argues for a strict interpretation of the Limited Liability Company Law, which it says would result in absolute immunity for Issa from any financial liability incurred by Valley View as a result of its violations of Article 8.

At the outset, it is important to note that the term "limited liability company" is not found in Article 8. But the analysis of this issue does not end there. As set forth earlier, Article 8 of the Labor Law is the statutory implementation of a New York State Constitutional mandate for the payment of prevailing wages on public work projects. Contrary to Valley View's assertion, Article 8 is remedial in nature. *Matter of Mid Hudson Pam Corporation et al. v Thomas F. Hartnett*, 156 A.D.2d 818, 821 (3d Dept. 1989) "The public policy of providing protection to workers is embodied in the statute which is remedial and militates against creating an impossible hurdle for the employee (citations omitted). *See also, Matter of Armco, supra.*.

Given its remedial nature, §220 should be construed liberally. *Austin v City of New York*, 258 N.Y. 113, 117. "[§220] is to be interpreted with the degree of liberality essential to the attainment of the end in view." (citations omitted). *See also, Bucci v*

Village of Port Chester, 22 N.Y.2d 195, 201. "This court has more than once noted that *section 220* must be construed with the liberality needed to carry out its beneficent purposes." (citations omitted).

As set forth above, §220-b(3)(b)(1) concerns the parties to which a finding of willfulness may attach, including "the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, *any officer of the contractor or subcontractor* who knowingly participated in the violation of this article, any of the shareholders who own or control at least 10% of the outstanding stock of the contractor or subcontractor or any successor…" (emphasis added). The statute does not require that an officer must be an officer of a corporation. The dictionary definition of the term "officer" is: "one who holds an office of trust, authority, or command." *Merriam-Webster Online* (2009). As the sole owner and member of Valley View, Issa held the one and only position of trust, authority and command in Valley View. Evidence that Issa signed certified payrolls and contract documents, visited the Project worksite on multiple occasions, held himself out as president of Valley View and conferred with representatives of Patrick and the Department of Jurisdiction, show that he controlled Valley View and that his actions were knowing. Accordingly, Issa is personally subject to a finding of willfulness by the Commissioner.[2]

[2] As for the issue of Issa's protection from liability by the Limited Liability Company Law, assuming for the moment that such protection exists in this case, the courts of New York have shown that the doctrine of piercing the corporate veil applies to limited liability companies as well as corporations. *Retropolis, Inc. v 14th Street Development LLC et al.*, 17 A.D.3d 209 (1st Dept. 2005); *Williams Oil Co. v Randy Luce E-Z Mart One*, 302 AD2d 736 (3d Dept. 2003). While there is a heavy burden attached to finding liability in these circumstances, the facts in this matter show that Issa had knowledge of the relevant facts and complete control or "domination" of Valley View to the point that he alone was responsible and liable for its actions, and therefore may be found liable – in this case to have willfully violated Article 8. *TNS Holdings, Inc. v. MKI Securities Corp.*, 92 N.Y.2d 335 (1998); *Matter of Morris v New York State Dept. of Taxation & Finance*, 82 N.Y.2d 135 (1993). More to the point, Labor Law §220-b specifically provides for the liability of a corporate shareholders and officers under certain circumstances set forth above.

Civil Penalty

Labor Law §§ 220 (8) and 220-b (2) (d) provide for the imposition of a civil penalty in an amount not to exceed twenty-five percent (25%) of the total amount due (underpayment and interest). In assessing the penalty amount, consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations, and the failure to comply with record-keeping and other non-wage requirements. Valley View failed to pay any supplements to any of its employees. It also failed to properly pay overtime wages on several occasions. Given the broad nature of the violations I find that a penalty of twenty-five per cent should be imposed.

Liability under Labor Law § 223

Under Article 8 of the Labor Law, a prime contractor is responsible for its subcontractor's failure to comply with or evasion of the provisions of this article. Labor Law § 223. *Konski Engineers PC v Commissioner of Labor,* 229 A.D.2d 950 (1996), *lv denied* 89 N.Y.2d 802 (1996). Such contractor's responsibility not only includes the underpayment and interest thereon, but also includes liability for any civil penalty assessed against the subcontractor, regardless of whether the contractor knew of the subcontractor's violation. *Canarsie Plumbing and Heating Corp. v Goldin,* 151 A.D.2d 331 (1989). Valley View performed work on the Project as a subcontractor of Patrick. Consequently, Patrick, in its capacity as the prime contractor, is responsible for the total amount found due from its subcontractor on this Project.

RECOMMENDATIONS

I RECOMMEND that the Commissioner of Labor adopt the within findings of fact and conclusions of law as the Commissioner's determination of the issues raised in this case, and based on those findings and conclusions, the Commissioner should:

DETERMINE that Valley View underpaid wages and supplements due the identified employees in the amount of $34,955.84; and

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

DETERMINE that the failure of Valley View to pay the prevailing wage or supplement rate was a "willful" violation of article 8 of the Labor Law; and

DETERMINE that Wassim Issa is an officer of Valley View; and

DETERMINE that Wassim Issa knowingly participated in the violation of Article 8 of the Labor Law; and

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

DETERMINE that Patrick is responsible for the underpayment, interest and civil penalty due pursuant to its liability under Article 8 of the Labor Law; and

ORDER that the Bureau compute the total amount due (underpayment, interest and civil penalty); and

ORDER that Valley View shall receive a credit for the amounts paid by Patrick; and

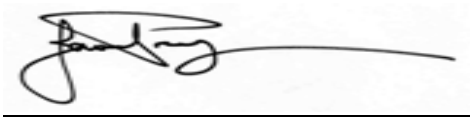
ORDER that the Barker Central School District remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau at its offices at SOB 65 Court Street Room 201, Buffalo, NY 14202; and

ORDER that if any withheld amount is insufficient to satisfy the total amount due, Valley View, 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: October 29, 2009
Albany, New York

Respectfully submitted,



Jerome Tracy, Hearing Officer