

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

CORTLAND GLASS COMPANY, INC., and
GERALD A. POLLOCK, individually, and as
Owner, Officer and Shareholder of CORTLAND
GLASS COMPANY, INC.

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 Webster Central
School District in Webster, New York.

Prevailing Rate Case
PRC No. 99-05277B
Case ID: PW05-020001
Monroe County

IN THE MATTER OF

CORTLAND GLASS COMPANY, INC., and
GERALD A. POLLOCK, individually, and as
Owner, Officer and Shareholder of CORTLAND
GLASS COMPANY, INC.

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 Sodus Central
School District in Sodus, New York.

**DEFAULT
REPORT
&
RECOMMENDATION**

Prevailing Rate Case
PRC No. 00-02800A
Case ID: PW05-010043
Wayne County

To: Honorable Colleen Gardner
 Commissioner of Labor
 State of New York

Pursuant to a Notice of Hearing issued in this matter, a hearing was held on June 24, 2011. 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 Cortland Glass Company, Inc. ("Cortland") and Gerald A. Pollock complied with the requirements of Article 8 of the Labor Law (§§ 220 *et seq.*) in the performance of two public work contracts involving, *inter alia*, preglazed metal window installation in school buildings for the Webster Central School District (PRC 99-05277B) ("Project 1") and the Sodus Central School District (PRC 00-02800A) ("Project 2").

APPEARANCES

The Bureau was represented by Department Counsel, Maria Colavito (Marshall H. Day, Senior Attorney, of Counsel). There was no appearance made by, or on behalf of Cortland or Gerald A. Pollock, although they did file a verified Answer through their attorney, David B. Cotter, Esq.

FINDINGS AND CONCLUSIONS

On May 5, 2011, the Department duly served a copy of the Notice of Hearing on Cortland and Gerald A. Pollock, via regular and certified mail, return receipt requested. A second copy was served on Cortland by service upon the Department of State on May 13, 2011. The Notice of Hearing scheduled a June 24, 2011 hearing and required that the Respondents serve an Answer at least 14 days in advance of the scheduled hearing. Cortland and Gerald A. Pollock filed a verified Answer but failed to appear at the hearing. As a consequence, they are in default in this proceeding.

The Notice of Hearing alleges that Cortland underpaid wages and supplements to its workers. At the hearing, the Department produced substantial and credible evidence, including the sworn testimony of the Bureau investigator and documents describing the underpayments, supporting the Bureau's charges that Cortland willfully underpaid its workers \$11,318.02 on Project 1 for the audit period weeks ending November 4, 2000 to October 27, 2001 and \$13,463.41 on Project 2 for the audit period weeks ending April 1, 2011 to July 27, 2002; that Cortland falsified its payroll records in connection with the willful underpayments; that, at all relevant times, Gerald A. Pollock was the president of Cortland; that as an officer of the corporation Gerald A. Pollock knowingly participated

in the violation of Article 8 of the Labor Law by certifying on its payrolls that all supplemental benefits required to be paid were paid when in fact they were not; and that at all relevant times Gerald A. Pollock was one of the five largest shareholders of Cortland.

On or about February 4, 2005, the Department issued a Notice to Withhold Payment on Project 1 to the Webster Central School District seeking to withhold money on the contract. The Bureau was advised that no money was withheld on Project 1 as a result of that notice. On Project 2, on or about February 10, 2005, the Department issued a Notice to Cross-Withhold Payment on a contract Cortland had with the Office of General Services in the amount of \$21,947.24. The Office of the State Comptroller has confirmed that \$21,579.00 has been withheld on that contract.

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

RECOMMENDATIONS

Based upon the default of the Respondents in 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 Cortland underpaid its workers \$11,318.02 on Project 1;

DETERMINE that Cortland underpaid its workers \$13,463.41 on Project 2;

DETERMINE that Cortland is responsible for interest on the total underpayment at the statutorily mandated rate of 16% per annum from the date of underpayment to the June 30, 2008, which time period abates interest for three years on account of Departmental delay in bringing this matter to hearing;

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

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

DETERMINE that the willful violation of Cortland involved the falsification of payroll records under Article 8 of the Labor Law;

DETERMINE that Gerald A. Pollock is an officer of Cortland, to wit: its president;

DETERMINE that as an officer of the corporation Gerald A. Pollock knowingly participated in the violation of Article 8 of the Labor Law;

DETERMINE that Gerald A. Pollock is one of the five largest shareholders of Cortland; and

ORDER that the Bureau compute the total amount due (underpayment determined due, interest at 16% from date of underpayment through June 30, 2008, and 25% civil penalty on Projects 1 and 2);

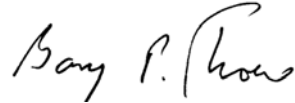
ORDER that Office of The State Comptroller remit payment of any withheld funds to the Commissioner of Labor, up to the amount directed by the Bureau consistent with its computation of the total amount due, by forwarding the same to the Bureau at 109 South Union Street Room 312, Rochester, NY 14607;

ORDER that if the withheld amount is insufficient to satisfy the total amount due, Cortland, 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: June 27, 2011
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary P. Troue".

Gary P. Troue, Hearing Officer