

IN THE MATTER OF

ASTRO AIR CORPORATION; and  
BEN BECKER and ROSEMARY BECKER  
as shareholders of ASTRO AIR CORPORATION,

Prime Contractor,

and

STRIPER MECHANICAL SERVICES INC.; and  
JOHN PETITO as an officer and/or shareholder of  
STRIPER MECHANICAL SERVICES INC.; and  
its substantially owned-affiliated entity  
STRIPER MECHANICAL SERVICES II, LLC.,

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 Town of  
Hempstead in Nassau County, New York.

**DEFAULT  
REPORT  
&  
RECOMMENDATION**

Prevailing Rate Case  
PRC No. 2011008760  
Case ID: PW04  
2012004296  
Nassau County

To: Honorable Peter M. Rivera  
Commissioner of Labor  
State of New York

Pursuant to a Notice of Hearing issued on February 3, 2014, a videoconference hearing was held on April 14, 2014 between Albany and Garden City, 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 Striper Mechanical Services Inc. ("Striper") and its officer and /or shareholder, John

Petito, a subcontractor of Astro Air Corporation (“Astro”) complied with the requirements of Labor Law article 8 (§§ 220 *et seq.*) in the performance of a public work contract involving a heating, ventilation and air conditioning (“HVAC”) improvement project (“Project”) for Town of Hempstead (“Hempstead”).

### **APPEARANCES**

The Bureau was represented by Acting Department Counsel, Pico Ben-Amotz (Elina Matot, Senior Attorney, of Counsel). There was no appearance made by, or on behalf of, Striper, Striper Mechanical Services II, LLC, or John Petito. Astro paid the amount of the underpayment the Bureau had determined Striper owed with interest in advance of the hearing, which payment the Bureau deemed sufficient to resolve Astro’s Article 8 liability.

### **FINDINGS AND CONCLUSIONS**

On or about February 7, 2014, the Department duly served a copy of the Notice of Hearing on Striper, Striper Mechanical Services II, LLC, and John Petito, via regular and certified mail, return receipt requested, to the parties’ last known addresses (HO Ex. 3). The Notice of Hearing scheduled an April 14, 2014 hearing and required the Respondents to serve an Answer at least 14 days in advance of the scheduled hearing.

In addition, the Department duly served a copy of the Notice of Hearing on Astro and its shareholders Ben and Rosemary Becker, via regular and certified mail, return receipt requested. A signed Return Receipt evidencing receipt of the document by Astro and Ben and Rosemary Becker was entered into evidence as Hearing Officer Exhibit 2.

Neither Striper, Striper Mechanical Services II, LLC, nor John Petito served an Answer to the charges contained in the Notice of Hearing or appeared at the hearing. As a consequence, they are in default in this proceeding.

The Notice of Hearing alleges that Striper underpaid wages and supplements to its workers and that Astro is responsible for Striper’s underpayment pursuant to Labor Law § 223.

Prior to the hearing, Astro paid \$4,459.06 to the Department, representing the

amount alleged by the Department to be owed by Striper as an underpayment with interest at a rate of 6% per annum, which sum the Bureau accepted in full satisfaction of Prime's liability under Labor Law article 8.

At the hearing, the 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; and

Astro entered into a contract for the Project with Hempstead; and

Striper entered into a contract with Astro for work on the Project; and

Striper willfully underpaid \$4,325.64 to its workers for the audit period weeks ending March 20, 2012 through March 27, 2012; and

John Petito is an officer of Striper who knowingly participated in the willful violation of Labor Law article 8.

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, I recommend that the Commissioner of Labor make the following determinations and orders in connection with the issues raised in this case:

DETERMINE that Striper underpaid its workers \$4,325.64 on the Project; and

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

DETERMINE that Striper Mechanical Services II, LLC, is a “substantially owned-affiliated entity” of Striper; and

DETERMINE that John Petito is an officer of Striper who knowingly participated in the willful violation of Labor Law article 8; and

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

DETERMINE that Astro has paid \$4,459.06 in underpayment and interest to satisfy its vicarious liability under Labor Law article 8; and

ORDER that the Bureau compute the total amount due (underpayment of \$4,325.64, interest at 16% from date of underpayment and 25% civil penalty); and

ORDER that by the payment of \$4,459.06, Astro has fully satisfied its liability under Labor Law article 8;

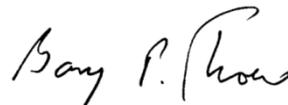
ORDER that Striper shall receive a credit for the \$4,459.06 paid by Astro; and

ORDER that upon the Bureau’s notification, Striper shall immediately remit payment of the total amount due, made payable to the Commissioner of Labor, to the Bureau at 400 Oak Street, Suite 101, Garden City, New York 11530-6551; 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: April 15, 2014  
Albany, New York

Respectfully submitted,



Gary P. Troue, Hearing Officer