

**New Jersey Department of Labor
and Workforce Development,
Petitioner,**

v.

**Allied Telcom Corp,
and Vasilios Stergiou, Director and,
Individually, and Demtrio Poubouridis,
President and Individually,
Respondents.**

**STATE OF NEW JERSEY
DEPARTMENT OF LABOR
AND
WORKFORCE DEVELOPMENT**

**FINAL ADMINISTRATIVE ACTION
OF THE
COMMISSIONER**

**OAL DKT. NO. LID 03765-21
LWD DKT. NO. PC-51-0520-KIS, et al.**

Issued: August 29, 2024

The New Jersey Department of Labor and Workforce Development (the Department) served notice upon Allied Telecom Corp., Vasilios Stergiou, Director and Individually, and Demtrio Poubouridis, President and Individually (Allied or respondents), finding violations of N.J.S.A. 34:11-4.2 (unpaid wages/late payment), N.J.S.A. 34:11-56.27 (failure to pay prevailing wage), and N.J.S.A. 34:11-56.51 (failure to register as a public works contractor), in connection with public work performed by employees of Allied on cell phone towers in the following municipalities: Florham Park, Prospect Park, New Milford, Newark, Butler, Chatham, Netcong, Seaside Park, Waretown, and Dover. The work performed by Allied’s employees on the cell phone towers included changing and mounting of antennas, running fiber optic jumpers, and swapping out remote radio heads. For this work, Allied paid its employees the prevailing wage rate for “Electrician-Teledata,” which is lower than the prevailing wage rate for “Electrician Outside Lineman/Technician” (hereafter, “Electrician”). Following its investigation, the Department determined that Allied’s employees should have been paid the higher rate for “Electrician.” On the basis of the violations listed, the Department sought debarment and the collection of wages in the amount of \$107,541.54, an administrative fee in the amount of \$10,754.15, and penalties in the amount of \$40,600.00.

Respondents requested a hearing with regard to the debarment and the assessment for wages, an administrative fee and penalties. The matters were transmitted to the Office of Administrative Law (OAL), where they were consolidated for hearing before Administrative Law Judge Jacob S. Gertsman (ALJ).

Following the hearing, the ALJ concluded that sufficient evidence had been presented by the Department to substantiate the charges brought against respondents.¹ The ALJ explained:

“Based upon due consideration of the testimonial and documentary evidence presented at the hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I FIND that the work done by Allied on the projects involved fiber optic cables and jumpers. (Exhibit P-5). I also FIND that the classification for fiber optic work for the projects is ‘Electrician.’ (Exhibit J-54 through J-63). Accordingly, I FIND that the proper prevailing wage determination for the work done by Allied on the Florham Park, Prospect Park, New Milford, Newark, Butler, Chatham, Netcong, Seaside Park, Waretown, and Dover projects is ‘Electrician.’ I FURTHER FIND that the Department has met its burden to demonstrate that the workers on the projects at issue were improperly paid at the [lower] rate for ‘Electrician-Teledata.’”

With further regard to the credibility of the four witnesses who testified during the hearing: Wayne DeAngelo, Ashleigh Chamberlain and Rafael Rios, for the Department; and Vasilios Stergiou for Allied, the ALJ found the following:

Wayne DeAngelo and Ashleigh Chamberlain

“After having the opportunity to review the evidence and observe the witnesses, I found the Department’s witnesses to be credible. DeAngelo and Chamberlain are both knowledgeable and experienced, and they presented clear, direct, and

¹ The ALJ’s Initial Decision contains no findings of fact or conclusions regarding Allied’s failure to register with the Department to perform public work in violation of N.J.S.A. 34:11-56.51. Instead, the Initial Decision focuses exclusively on the failure of Allied to pay its workers the proper prevailing wage rate, with the exception of a single reference within the following sentence on Page 17 of the Initial Decision to the section of the Public Works Contractor Registration Act – N.J.S.A. 34:11-56.51 – that requires the registration of public works contractors: “Based on the foregoing, I CONCLUDE that respondents’ actions in failing to pay its workers the proper prevailing wage violate N.J.S.A. 34:11-4.2, N.J.S.A. 34:11-56.27, and **N.J.S.A. 34:11-56.51**” (emphasis added). Neither does the Stipulation of Facts submitted by petitioner and respondents contain a statement that Allied had failed to register with the Department to perform public work. Nevertheless, among the **Joint** Exhibits submitted to the ALJ by petitioner and respondents are the following, each of which is “Site Report Notes” prepared by Division of Wage and Hour staff in connection with the Division’s investigation of Allied, and each of which contains the following identical statement: “Allied Telecom is not registered with NJDOL for public work. Company’s explanation was they just started recently getting this type [of] cell tower work and it was just an oversight on their part not to register:” Exhibit J-5 (Florham Park), Exhibit J-10 (Dover), Exhibit J-15 (Waretown), Exhibit J-25 (Netcong), Exhibit J-30 (Butler), Exhibit J-35 (Chatham), Exhibit J-40 (New Milford), Exhibit J-45 (Newark), Exhibit J-50 (Prospect Park). Because these are **Joint** Exhibits, submitted to the ALJ by petitioner **and respondents**, I am going to treat the above-quoted statement contained in each regarding Allied’s failure to register with the Department to perform public work as a stipulation of fact. Although it will not be mentioned again within the body of this decision, the foregoing is the basis for my affirming \$5,000 (\$500 x 10 projects) of the total \$40,600 in administrative penalties assessed against Allied by the Department.

professional testimony. Further, their testimony regarding the work done by Allied on the project was consistent with the descriptions provided by Allied. (Exhibit P-5).”

Rafael Rios

“Respondent asserts that Rios is a ‘disgruntled employee’ who only filed his complaint with the Department following his termination. Rios worked on several of the projects at issue (Florham Park Exhibit J-6; Dover Exhibit J-11; Netcong Exhibit J-26; Butler Exhibit J-31; Chatham Exhibit J-36) and his testimony describing the work on those projects was consistent with the descriptions provided by Allied. (Exhibit P-5, Exhibit J-3). Further, he testified that he did similar work on other jobs that he did for Allied and was paid at a higher rate. The circumstances leading to Rios’ termination are not at issue; rather it is the work that he and the other employees performed for Allied [that is at issue]. As his testimony regarding that work was supported by the record, I deem him to be a credible witness.”

Vasilios Stergiou

“Conversely, Stergiou, Allied’s sole witness, while appearing to be well meaning, presented testimony that was not consistent with the evidentiary record.

...

Stergiou was responsible for determining the rate to be paid for the projects. He stated that in order to make that determination, ‘I have to take whatever is given to me on the Department of Labor’s website. That’s the only documentation we get. And I have to go to the County that each project pertains to, when we do the project.’ (T2 108: 1-4). He added:

So, when I read electrician, I’m like okay, my guys are not electricians. When I see underneath it electrician with teledata, I’m like, yeah that’s closer to what we do. We do some low voltage electrical. But we also do a lot of teledata. Teledata meaning voice and data transmissions. And that’s how I determine electrician teledata.

(T2 108: 13-19)

Stergiou therefore made the determination that ‘electrician teledata is the closest to what we do.’ (T2 114: 6-7). However, while he thought that they reached out to the Department ‘at the beginning’ (T2 128: 23-24), the record does not indicate that he made any further attempts to contact the Department to inquire as to the proper classification of the employees on the project. Compared to the credible testimony of DeAngelo and Chamberlain, which detailed the Department’s process for determining the proper prevailing wage for the work done on the projects, I give little weight to Stergiou’s determination.”

Based on the foregoing, the ALJ concluded that respondents should be debarred for the statutorily required period of three years and pay to the Department wages owed in the amount of \$107,541.54, an administrative fee in the amount of \$10,754.15, and penalties in the amount of \$40,600.00. Exceptions to the Initial Decision were filed by respondents. Petitioner filed a reply.

In its exceptions, respondents take issue with the ALJ's credibility determinations and the conclusions of the ALJ that stemmed from those credibility determinations, including "the ALJ's rejection of Mr. Stergiou's explanation of how he determines the rate to be paid on Allied projects." Respondents also characterize as "impermissibly vague" the Department's published wage determinations; that is, those wage determinations that are posted on the Department's website and by which contractors are bound when determining the appropriate prevailing wage rate to pay its employees on a public works project.

In its reply, petitioner defends the ALJ's credibility determinations and the conclusions of the ALJ that stemmed from those credibility determinations, explaining, "the ALJ's credibility determinations were supported by credible evidence and consistent testimony regarding Labor's processes for review and evaluation of complaints based on the competent evidence provided by Allied in the course of the investigation." Petitioner also states the following:

"Employers have a duty under the Prevailing Wage Act to ensure that their employees are paid the correct rate. Based on the ALJ's review of the testimony and competent evidence, Allied clearly failed to do so. The Prevailing Wage Rate Determinations specifically note that the 'Electrician-Teledata' rate does not apply to work that involves 'any fiber optic work,' and the credible testimony and the evidence produced by Allied [indicate that the work performed on the relevant public works projects] include[d] fiber optic work. Allied's own witness verified that the projects involved fiber optic wire which was provided by their client. The only correct conclusion based on the testimony, Wage Rate Determinations, and evidence is that the 'Electrician-Teledata' rate was not the appropriate rate, and the correct rate was 'Electrician.'" The ALJ properly weighted Labor's explanations and the competent evidence in determining that the Electrician prevailing wage rate applied to Allied's work."

(internal citations omitted).

CONCLUSION

An agency head need not defer to the findings of an ALJ. In re Kallen, 92 N.J. 14, 20 (1983). Indeed, he need not adopt any of the findings reached by an ALJ in his Initial Decision. Application of the County of Bergen, 268 N.J. Super. 403, 414 (App. Div. 1993). However, the agency head may not ignore an ALJ's abundantly supported conclusions. P.F. v. New Jersey Division of Disability, 139 N.J. 522, 530 (1995); Department of Health v. Tegnaxzian, 194 N.J. Super. 435, 450 (App. Div. 1984). Rather, where there is substantial evidence on all sides of the issues addressed, no findings made or conclusions reached that are based on that evidence and are otherwise within the ALJ's discretionary authority will be seen to be arbitrary, capricious or

unreasonable. Application of the County of Bergen, supra, at 411; Application of N.J. Bell Telephone Co., 219 N.J. Super. 77, 89 (App. Div. 1996).

In the present case, the ALJ has produced a thorough and convincing decision wherein the credibility of each witness and the nature and quality of the evidence presented at the OAL hearing was carefully weighed. I will, therefore, accord to the ALJ the deference due him as the trier of fact and the person who directly observed the witnesses, their demeanor and deportment, as well as the quality of their individual testimony and evidence produced in support of their testimony. In addition, having considered the entire case record and the ALJ's Initial Decision, as well as having considered the exceptions filed by respondents to the ALJ's Initial Decision and petitioner's response to respondents' exceptions, and having conducted an independent evaluation of the record, I have accepted and adopted the findings of fact, conclusions, and recommendation of the ALJ.

ORDER

Therefore, it is hereby ordered that respondents pay to the Department \$107,541.54 for wages owed, plus \$10,754.15 in an administrative fee and \$40,600.00 in penalties. It is also ordered that Allied Telcom Corp., Vasilios Stergiou, and Demtrio Poubouridis, be placed on the debarment list pursuant to N.J.S.A. 34:11-56.37.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
COMMISSIONER, DEPARTMENT OF
LABOR AND WORKFORCE DEVELOPMENT



Robert Asaro-Angelo, Commissioner
Department of Labor and Workforce Development

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