

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

NEW JERSEY DEPARTMENT OF : SUPERIOR COURT OF NEW JERSEY
LABOR AND WORKFORCE : APPELLATE DIVISION:
DEVELOPMENT : DOCKET NO.: A-000029-24

Plaintiff, : Civil Action

v. : On Appeal From

ALLIED TELECOM CORP., : STATE OF NEW JERSEY
VASILIOS STERGIOU, : DEPARTMENT OF LABOR AND
DIRECTOR AND INDIVIDUALLY, : WORKFORCE DEVELOPMENT
AND DEMETRIO POUBOURIDIS, : FINAL ADMINISTRATIVE ACTION
PRESIDENT AND INDIVIDUALLY: OF THE COMMISSIONER

Defendants. : OAL DOCKET #LID-03765-21

BRIEF ON BEHALF OF DEFENDANTS/APPELLANT

PIRO, ZINNA, CIFELLI,
PARIS & GENITEMPO, LLC
360 Passaic Avenue
Nutley, New Jersey 07110
Ph: (973) 661-0710
Fx: (973) 661-5157
Email: rgrodeck@pirozinnalaw.com
Attorneys for Defendants,
Allied Telecom Corp., Vasilios Stergiou, Director
and Individually, and Demetrio Poubouridis,
President and Individually

Richard A. Grodeck, Esq. (014321981)
On the Brief

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dated August 29, 2024 Pa528

PRELIMINARY STATEMENT

While traditionally entitled to a degree of deference, an administrative agency's decision must be reversed upon a "clear showing that . . . the decision was not supported by substantial evidence". In re Application of Virtua – West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008); In the Matter of Paul Williams, Township of Lakewood, 443, N.J. Super 532, 541 (App. Div. 2016).

As importantly, when an agency must rely on outside sources for its decisions, that agency's decision is no longer entitled to any deference. 2T:39:4-12. The agency which relies on the private sector for its actions cannot be said to have "expertise" worthy of deference.

The stakes are substantial. A six figure penalty and a lengthy debarment from public work has been imposed. Pa503-504. The failure to pay prevailing wages has been found based solely on the interpretation of a handful of words in a section of the website maintained by the New Jersey Department of Labor and Workforce Development, (hereinafter the "Department"), labeled "Prevailing Wage Determinations". Pa436-484.

Allied Telecom Corp., ("Allied") appeals the Final Administrative of the Commissioner of the Department Pa528-532, which accepted and adopted the recommendation of the Honorable Jacob S. Gertsman, ALJ. (hereinafter the "ALJ).

Pa543. The Department had audited a number of Allied projects and concluded that its crews were not properly paid. The ALJ determined that the Department met its burden to prove that those Allied's projects included "fiber optic work" within the meaning of the Department Prevailing Wage Rate Determinations and that Allied's employees must therefore be paid as electricians rather than as "electricians – teledata". Pa487-508. The conclusion that the Allied projects included "fiber optic work" was not based on any credible evidence, let alone evidence that could begin to be described as "substantial".

As more fully explained below, no basis exists to reject the reasoned and experienced analysis by Allied's witness who explained why Allied's projects did not involve "fiber optic work" as that term is understood in the industry. 2T:116:6-25; 117:1-25, 118:1-15. The Department witnesses had no meaningful knowledge of Allied's work and admitted as much. 2T:44:5-25; 45:1-12.

The sole Department employee to testify, Ashleigh Chamberlain, testified that his agency turned to a third party, an electrician and union representative, Wayne DeAngelo, for his opinion on the appropriate wage, which begs the question – how can it be argued that this Court should defer to the agency's supposed expertise when the agency needs assistance from the private sector? 2T:39:4-12.

STATEMENT OF FACTS

Allied Telecom Corp. is in the business of installing and maintaining wireless communication networks. 2T:89:4-22¹. The issue before this Court is whether the ALJ erred in finding that the Department met its burden of proof that Allied violated the Department's Prevailing Wage Rate Determination when it paid its employees as teledata technicians and not as electricians.

A. This Enforcement Action Begins with The Complaint of A Disgruntled Former Allied Employee.

A former Allied employee, Rafael Rios ("Rios"), filed a complaint with the Department and contended he should have been paid the prevailing wage rate for an electrician as opposed to the rate for a teledata technician. Pa7. Rios was hired in December 2018 and was terminated in June 2019. 2T:78:3-13. He filed his complaint less than a month after termination. 2T:78:14-16.

Rios was terminated after he was given three warnings; the first because he was chronically tardy, the second because of insubordination and the third because he used the company cell phone to access both dating apps and pornographic sites. 2T:126:15-25.

¹ The reference is to the transcript of the second day, April 28, 2024, of the hearing before the Hon. Jacob S. Gertsman, ALJ. References to the first day will be designated 1T and the second day 2T.

As a result of the Rios complaint the Department audited ten (10) Allied projects which were performed in five (5) counties. Pa61. All projects were completed in 2019. Pa76, Pa108, Pa143, Pa172, Pa183, Pa211, Pa235, Pa260, Pa276.

B. Prevailing Wage Rate Determinations.

The Department publishes “Prevailing Wage Rate Determinations” on its website for a number of “crafts”. There are slight variations from county to county. Among the crafts on the site are “Electrician” and “Electrician-Teledata (15 voice/data lines or less)”. Each “Determination” is just one to two pages in length and the distinction between “Electrician” and “Electrician – Teledata” is found only in the section entitled “Comments/Notes”.

The notes for “Electrician” for Morris County, Pa436, provide:

THESE RATES ALSO APPLY TO THE FOLLOWING:

- All burglar and fire alarm work.
- All fiber optic work.
- Teledata work in new construction.
- Teledata work involving 16 Voice/Data Lines or more.

The notes for “Electrician – Teledata”, Pa438, state:

-These rates are for service, maintenance, moves, and/or changes affecting 15 Voice/Data (teledata) lines or less. These rates may NOT be used for any teledata work in new construction (including additions) or any fiber optic work.”

The “Electrician-Teledata” and “Electrician” Rate Determination for the other Counties including Passaic, Essex, Bergen and Ocean all contain similar

language. Pa436-484. It is undisputed that Allied's projects involved less than 15 Voice/Data Lines and that the projects were not new construction. Thus, the question for the ALJ was whether Allied's projects included "fiber optic work". Those three words, "fiber optic work", are the issue. The term "fiber optic work" is not defined in the Rate Determination. The Department witnesses did not explain what fiber optic work means in terms of the prevailing wage rate determinations. The only witness who provided detailed testimony on fiber optics was Allied's principle, Vasilios Stergiou.

Three (3) witnesses testified for Department; (1) Wayne DeAngelo, an electrician and member of the International Brotherhood of Electrical Workers ("IBEW"), (2) Ashleigh Chamberlain, a Bureau Chief of the Department and the hearing officer during the investigation, and (3) Rios.

C. Ashley L. Chamberlain.

Ashley L. Chamberlain testified on behalf of the Department. During relevant time periods, he served as a "hearing officer" and was specifically "assigned ten cases on Allied Telecom for ten projects" where assessments made by the Department were contested. 2T:6:1-15. Mr. Chamberlain identified a "spreadsheet", Pa73, which had been provided by Allied and described how that spreadsheet was forwarded to a Department colleague, Ralph Sheffield, for the purposes of determining the appropriate prevailing wage determination. 2T:7:3-9.

Mr. Sheffield did not testify and apparently did nothing other than forward the Allied spreadsheet to Wayne DeAngelo.

D. Wayne DeAngelo.

DeAngelo described his role in advising the Department on the appropriate crafts for prevailing rate determinations. 1T:14:21-25; 15:3-10.

De Angelo testified “[w]hen Ralph [Sheffield] or anyone in the Department has a question as to scope of work and whose craft it would fall under, Ralph usually sends me electronically, via an email, you know, the question on this type of work and then asks me what parameters or what craft that would potentially fall under”, 1T:15:308, and explained that happened “on a monthly basis”. 1T:15:10.

(i) DeAngelo’s Background

DeAngelo is a member of the International Brotherhood of Electrical Workers, Local 269, which has “construction jurisdiction in Mercer County, the northern half of Burlington, and parts of Bucks County”, 2T:13:15-17. Mr. DeAngelo serves as president, assistant business manager and “fulltime union representative” of Local 269. 1T:14:15-17. The ten Allied projects in issue were completed in 2019 and were located in Morris County, Ocean County, Passaic County, Essex County and Bergen County. Those projects *did not* fall within the “construction jurisdiction” of Local 269, Mr. DeAngelo’s Union.

Mr. DeAngelo identified two separate collective bargaining agreements (CBAs); (a) The Mercer Division of the Southern New Jersey Chapter, NECA, and Local 269, IBEW (hereinafter the “Mercer Division CBA”) 1T:38:7-16; and (b) the Telecommunications Agreement between the Southern New Jersey chapters of the N.E.C.A. and International Brotherhood of Electrical Workers Local Union Number 269, AFL-CIO (hereinafter the “Telecommunications CBA”). 1T:42:17-25; 43:1-6. The scope of the former is “inside electrical” work, as “defined in Article XXUI of Section 5 of the IBEW Constitution”. 1T:41:8-12. The latter applies to “telecommunication employees classified as journeyman installer technicians who perform new construction installation, maintenance, service and MCA work (moves, adds, changes) of telecommunication interconnect cabling and all associated equipment”.

The Mercer Division CBA applies to portions of Burlington County, Somerset County, Hunterdon County and all of Mercer County. The Telecommunications CBA applies to Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Salem and Mercer Counties in their entirety as well as portions of Somerset and Hunterdon Counties. 1T:42:17-25; 43:1-6. Neither document has application to Ocean, Essex, Morris, Passaic or Bergen Counties; the counties where Defendant’s projects were located. 1T:43:7-22.

When Mr. DeAngelo responded to the Department he admittedly did not know where or when the Defendant's projects were performed and did not know the terms of the collective bargaining agreement that applied to the counties where Defendant's projects were located. 1T:45:17-22, Pa640; 1T:48:11-16.

(ii) DeAngelo is consulted whenever the Department is unsure of the applicable craft

Mr. DeAngelo testified that when Mr. Sheffield has a "question as to scope of work and whose craft it would fall under", 1T:15:4-5, Mr. DeAngelo responds with "the prevailing wage for that jurisdiction in which that Local Union has been granted. . .". 1T:15:20-24. There is no dispute. When the Department is unsure it turns to DeAngelo for guidance.

The spreadsheet, Pa73, provided a very simple description of the work performed by each of Allied's employees who were involved at the ten (10) projects. Allied also submitted a detailed description of the scope of the projects, Pa74, which had been directed to William Kiss, the Department's Senior Field Representative, who performed the site investigations and completed the audits. While the spreadsheet was provided to Mr. DeAngelo, the Allied document Pa74, which detailed the scope of the projects, was not provided to Mr. DeAngelo for his opinion.

(iii) **DeAngelo is asked for his opinion based upon a single document**

Mr. DeAngelo was questioned regarding the spreadsheet and asked whether “this scope of work fall[s] under the parameters of the collective bargaining agreement with Local 269 and by contractor association”. 1T:18:11-15. That’s the extent of effort by the Department to determine the applicable wage. The Department officials have no “expertise” on the issue. DeAngelo is given a simple spreadsheet and asked his opinion. DeAngelo decided that the Allied employees should be paid as “inside wiremen”. 1T:19:12-18. Mr. DeAngelo conceded that the only information he had regarding Allied’s projects was P73, the spreadsheet. 1T:45:1-16. He admitted that he did not know when and where Allied projects were performed, 1T:45:14-22. All he had was the spreadsheet which consists of a total of ten one line entries, Pa73.

Thus, the Department relied upon the opinion of DeAngelo to determine the appropriate craft for the employees on Allied’s projects. DeAngelo had no ‘construction jurisdiction’ over the counties where the ten (10) Allied projects were performed and no actual knowledge of the duties performed by Allied crews besides the limited description in the spreadsheet. In addition, neither Mr. DeAngelo nor any other witness the Department presented at the hearing, provided any testimony whatsoever regarding the definition of “fiber optic work” as that term appears in the Prevailing Rate Determinations.

Vasilios Stergiou

Vasilios Stergiou, a partner and Director of Operations for Allied, testified on behalf of Allied. Mr. Stergiou explained that Allied was first formed in 2010 in the State of New York. 2T:17-24. Operations were extended to New Jersey in 2013. 2T:90:17-20, 2T:92:24-25. The former New York projects and the ten (10) projects in New Jersey at issue in this matter are similar in nature. 2T:91:1-6. New York has a prevailing wage law which Mr. Stergiou described as being like New Jersey's law. 2T:92:21-25. At the outset of operations in New York, Mr. Stergiou communicated with the New York Department of Labor which confirmed he was using the correct rate, that of electrician teledata, for his operations in New York. 2T:92:10-20.

(i) Historical work with fiber optics

Mr. Stergiou explained that working with fiber optics was historically challenging and complicated. 2T:6-25; 2T-117:23-25; 118:1-15 Sterility was essential. A "sterile tent", meaning sterile for wind and dust, and sterile suits had to be utilized. In the past fiber optic work involved the cutting and splicing of fiber. Now prefabricated, pre-terminated fiber is provided by the customer and the Allied crews simply "plug and play". 2T:116:13-19.

(ii) Details of the Allied projects

The ten (10) Allied projects were all completed in 2019. Each of the projects involved replacing the “outdated equipment, antennas, radio heads, coax cables, teleco lines” and installing new technology. 2T:93:15-21. The ten (10) projects differed only in terms of “location, ease of access to the location, height and elevation”, as well as the number of years the equipment had been in use at each site. 2T:94:14-20.

Although the distinctions existed, the crews required for each project were what Mr. Stergiou described as “antenna line”. 2T:94:21-25. The term antenna line is common in the industry and distinguishes crew members who are either certified or non-certified as climbers and have the ability to work with antenna and line work. 2T:95:1-7.

A distinction exists in the teledata industry between what is called top work and what is called bottom work. The bottom work in this case involves Allied’s client’s “proprietary equipment and lines”, which Allie’s crews do not touch and are not allowed to do so unless “certified technicians from the client” are involved in the effort. 2T:99:10-14. The top work involves connections between the antenna and the radio. 2T:99:15-20. Mr. Stergiou explained that connections are made utilizing “plug and play” technology, 2T:100:10, which he described as being “as easy as plugging your phone into the socket”. 2T:100:21-22.

With respect to the ten (10) projects at issue, Mr. Stergiou explained that the scope of work performed by his crew would take anywhere from three (3) to seven (7) days. 2T:102:4-5. The first day is allocated to safety. The project and safety managers go to the site with the foreman and they assess the risk. 2T:102:8-14. The second day is described as staging, bringing material from the warehouse. 2T:102:16-19. Mr. Stergiou explained that “an antenna for each sector, a radio head, a DC wire”, fiberoptics wire, and what he described as a “squid”, if required, was the only material required for each job. 2T:103:1-5.

For each of the ten (10) projects in issue, a single antenna was to be upgraded. 2T:103:18-20. The radio heads were mounted “right by the antenna, right under the antennas so the need for long connection lines has been eliminated”. 2T:104:8-11. The resulting lines are only approximately two (2) feet in length. 2T:104:11-12. A single radio head was needed for each of the ten (10) projects. 2T:104:13-15.

Other than the antenna and radio head the only other equipment that may have been necessary was for the one or two that may have required a squid. 2T:104:18-21. A squid is more properly called a DC 12, 2T:104:25.

Coax lines connect the antenna to the radio and a fiber optics cable is used to connect to the DC 12 or the squid. 2T:105:10-11. “Plug in jumpers” are utilized. 2T:106:8-11. On occasion, if the new antennas footprint is different then the

existing antenna's footprint, metal brackets, which are galvanized steel L brackets, are utilized in order to fit the new antenna. 2T:106:14-18.

The only tools used by Defendant's crews were a wrench, a torque wrench, a screwdriver, phillips or flathead, and "occasionally the impact gun", if placement of the steel brackets was necessary. 2T:106:22-25.

(iii) Allied rate determination

In order to determine the prevailing rate to be paid on one of Defendant's projects, Mr. Stergiou visits the Department's website. He first looks to the County in which the project is situated because every county has different rates. 2T:108:1-4; 2T:109:16-19. He reviews the list of trades and determines which best describes the functions and services his company provides. 2T:108:6-12.

In regard to the projects at issue in this matter, based upon his experience, Mr. Stergiou selected the craft "Electrician-Teledata" as being "closer to what we do", 2T:108:15-16. While his crews do some "low voltage electrical work", the work is largely teledata, meaning voice and data transmission. 2T:108:15-19.

Mr. Stergiou reviewed one of the documents, Pa480-483, which identified the prevailing rates for Morris County and explained his understanding of the entry: "Electrician-Teledata (15 voice data lines or less)". A teledata line is the medium by which voice and data is transmitted. The reference to 15 voice data lines or less means "that up to 15 mediums of teledata" can be worked upon by the

craft “Electrician-Teledata”. 2T:111:3-18. Mr. Stergiou explained that for each project a total of only six (6) teledata lines were utilized. 2T:112:6-8.

The Notes in the Prevailing Wage Rate Determination for “Electrician-Teledata”, “service, maintenance moves, and/or changes”, describe the work that Allied’s crews performed. 2T:115:-11. The Allied projects were “not new site builds”, 2T:115:9, nor did they involve additions, 2T:115:22-24, or fiber optic work. 2T:116:1-5. Stergiou carefully explained that fiber optic work does not involve the cutting and splicing of fiber. Instead prefabricated, pre-terminated fiber, is provided by the customer. Allied crews simply “plug and play”. 2T:116:13-19. Thus, based upon this analysis and his experience and understanding of the specific duties of his employees on the projects at issue, Mr. Stergiou determined that “Electrician-Teledata” was the appropriate craft under the Prevailing Wage Rate.

(iv) The ALJ rejects Allied’s evidence

After the hearing, The Honorable Jacob S. Gertsman, ALJ, issued his decision recommending that the enforcement action by the Department against Allied be accepted. Pa487-508. The Department was authorized to collect from Defendant a total of \$158,895.69, consisting of \$107,541.54 in wages, \$10,754.15 in administrative fees and \$40,600 in penalties. It was further ordered that Defendant, and its principals, Vasilios Stergiou and Demtrio Poubouridis, be

placed on the List of Debarred Contractors.

Although Mr. Stergiou was described as meaning “well”, the ALJ determined the Allied position was not “consistent with the evidentiary record”. He then proceeded to “FIND that the work done by Allied on the projects involved fiber optics cables and jumpers”. That is the sole basis for his determination. Although neither DeAngelo nor Chamberlain provided a definition of fiber optic work, and in spite of the fact Stergiou explained in detail why “plug and play” was not “fiber optic work”, the ALJ concluded the projects did involve fiber optics.

PROCEDURAL HISTORY

On October 2, 2020, Allied was advised that it was in violation of the New Jersey Wage & Hour Law by the New Jersey Department of Labor and Workforce Development. Pa10-50. Final Orders were then issued on February 23, 2021 and Allied exercised its right to contest the assessments. Pa51-64.

On April 27, 2023 and April 28, 2023 a hearing was held before The Honorable Jacob Gertsman, A.L.J., who delivered his initial decision on May 29, 2024. Pa487-508. On June 10, 2024 Allied filed exceptions with the Commissioner. Pa509-521. The Final Administrative Action of the Commissioner of the Department of Labor and Workforce Development, Robert Asaro-Angelo, was issued on August 29, 2024. Pa528-532.

Allied filed its Notice of Appeal on September 20, 2024. Pa533.

LEGAL ARGUMENT

POINT I

THE CONCLUSIONS OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT WERE ARBITRARY, UNREASONABLE AND CAPRICIOUS (Raised below at Pa510-511, 520-521)

Deference to an administrative agency is not required where the decision is arbitrary, capricious, or unreasonable or is not supported by substantial credible evidence in the record as a whole. *Dennery v. Board of Educ.*, 131 N.J. 626, 641 (1993). When an agency's decision is “manifestly mistaken” then “the interests of justice authorize a reviewing court to shed its traditional deference to agency decisions.” *L.M. v. State, Div. of Med. Assistance & Servs.*, 140 N.J. 480, 490 (1995)(citing *P.F. v. New Jersey Div. of Developmental Disabilities*, 139 N.J. 522, 530, 656 A.2d 1 (1995)) As the Appellate Division has consistently stated, its role is to determine:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

Mazza v. Bd. of Trustees, 143 N.J. 22, 25 (1995) (citing Campbell v. Dept. of Civil Service, 39 N.J. 556, 562 (1963)). The court “may not simply ‘rubber stamp’ an agency’s decision.” Id. (citing In re Taylor, 158 N.J. 644, 657 (1999)). Thus, if upon review the court finds the agency’s ruling “clearly mistaken or erroneous, the decision is not entitled to judicial deference and must be set aside.” In re Williams, 443 N.J. Super. 532, 541 (App. Div. 2016)(citations omitted).

In the matter before this Court, the question is whether the decision was arbitrary and unreasonable or not supported by substantial credible evidence. In support of his ruling, Judge Gertsman stated:

[T]he record, including the job descriptions provided by Allied and the credible testimony of Rios, supports the Department’s argument that the work done by Allied ‘involves fiber optic cables and jumpers.’... The record further supports the Department’s argument that the ‘Prevailing Wage Rates for the Projects specifically note that the ‘Electrician-teledata’ rate does not apply to work that involves ‘any fiber optic work’.’ ... And because Allied’s work on the Projects included fiber optic work, the ‘Electrician-teledata’ rate was not the appropriate rate.

Pa556. Therefore, the basis for the ALJ’s finding was that the written job descriptions set forth in the spreadsheet by Allied and Rios’ testimony were enough to prove that Allied’s projects involved “fiber optic cables and jumpers” and that, in and of itself, the ALJ found was sufficient credible evidence to find that Allied’s projects included ‘fiber optic work’. The decision must be reversed.

Nowhere in the testimony of the DOL's witnesses or in the ALJ's decision, is the meaning of "fiber optic work" defined. It was unreasonable and arbitrary for the ALJ to conclude fiber optic work was involved when the Department did not define fiber optic work. The use of plug and play was not sufficient for the Department to conclude that "fiber optic work" was performed.

Mr. Stergiou, as Allied's Director of Operations with over 25 years in the telecommunications industry, provided a detailed explanation as to why Allied's projects did not involve "fiber optic work".

The ALJ found Mr. Stergiou's testimony not credible because it:

was not consistent with the evidentiary report. Stergiou stated that Allied used a fiber optic, prefabricated wire which was given to them by the client to use and that plugging in the wire was 'as easy as plugging in your phone to the socket'. This description of Allied's work is not consistent with the job descriptions Allied provided to the Department."

Pa553-554.

The ALJ then listed the contents of spreadsheet, Pa75, without any further explanation. Pa554.

The spreadsheet refers to fiber in only three places:

- "test fiber connectivity",
- "furnish and install telco wire (new technology is fiber/older was 25 pair)", and
- "test fiber connectivity".

The ALJ did not explain why he concluded that Stergiou's testimony was not consistent with these three entries. That is the sole basis for the decision. The word "fiber" appears three times on the spreadsheet and therefore, according to the ALJ, the projects involved "fiber optic work".

The Court reportedly found the testimony of DeAngelo and Chamberlain was credible "in reference to these job descriptions and the process that led the Department to its conclusion on the prevailing wage to be applied to these projects". Pa554. These findings do not survive close scrutiny. Chamberlain admittedly knew practically nothing about Allied's projects. There is no even arguable support anywhere in the record that Chamberlain had any knowledge of the Allied "job descriptions". The Court's conclusion in this regard is beyond arbitrary, capricious and unreasonable.

The finding that Chamberlain's testimony was "clear, direct and professional" is belied by the actual testimony. Chamberlain's admitted lack of knowledge was astonishing. He did not understand that Allied's work involved teledata lines, 2T:44:3-11, did not know whether the work qualified as new construction, 2T:44:18-19, and expressed confusion over material terms contained within the Department rating documents; "service, maintenance, moves and/or changes", as those terms apply to rate determinations.

- Q. Those rates apply for service, maintenance, moves and/or changes, correct?
- A. Correct.
- Q. Changes would imply replacing the old with the new, would you agree?
- A. I suppose it could be interpreted that way.
- Q. Well, those words are written by the Department, so what does the Department mean?
- A. I didn't personally write these so . . .
- Q. Understood.
- A. As I said, I guess it could be interpreted that way.
- Q. Your role is to enforce these words, correct? Withdrawn. Your role is to enforce the application, the prevailing wage to the craft, correct?
- A. Yes.
- Q. Its important for you to understand what these words mean, right?
- A. Yes.
- Q. But your not sure what the word changes mean?
- A. Not entirely, no.

2T:45:7-25, 46:1-12.

In spite of the record which lacks all basis for the finding that Department testimony was “clear, direct and professional”, of which the foregoing excerpt was just one of many examples serving to contradict that finding, the Commissioner proceeded to describe the ALJ’s decision as “thorough and convincing ... wherein the credibility of each witness and the nature and quality of the evidence presented at the OAL hearing was carefully weighed”. Pa532. There is no support for the conclusion the ALJ decision was “thorough and convincing” and not a shred of support for the statement that credibility and evidence was “carefully weighed”.

If the prohibition of “rubber stamping” ALJ decisions has any meaning the Final Administrative Action of the Commissioner must be reversed.

As for the “process that led the Department to its conclusion on the prevailing wage”, that “process” was to provide the one page spreadsheet to DeAngelo and to then to rely on DeAngelo’s opinion.

The Court’s finding that Stergiou’s testimony, while “well meaning”, was inconsistent with the record, meaning the spreadsheet, likewise cannot survive even casual scrutiny.

Stergiou described in detail the complicated and challenging features of “fiber optic work”, which required sterility and the cutting and splicing of fiber. He explained that his crews, and in fact the entirety teledata industry, now simply use prefabricated, pre-terminated fiber which is supplied by the customer and is simply plugged in. The Court somehow found this detailed testimony to be inconsistent with the job descriptions. The word “fiber” appears three times in the job descriptions with regard to Brian Garrahan and Michael Dorman they “test[ed] fiber connectivity”, while Alexander Mateo “instal[led] telco wire” which was “fiber”. There is absolutely nothing in those descriptions which even remotely contradict Stergiou’s description of “plug and play” technology and nothing to suggest that cutting and splicing of fiber in sterile conditions takes place.

The ALJ also based its decision heavily upon Mr. Rios' testimony and gave no consideration to Mr. Rios' negative employment history with Allied and his motive to provide false testimony against Allied in retaliation for his termination.

Allied terminated Mr. Rios for tardiness, insubordination and violating the business cell phone usage policy which, in and of itself, calls into question Mr. Rios' motive and credibility. Mr. Rios also did not complain about the wage he received for the job until after he was terminated when he filed a complaint with the Department. According to the ALJ, "[t]he circumstances leading to Rios' termination are not at issue; rather it is the work that he and the other employees performed for Allied. As his testimony regarding that work was supported by the record, I deem him to be a credible witness."

In sum, the evidence that the ALJ relied upon was the testimony of a disgruntled employee, Mr. Rios, who testified that he used "fiber optic cables and jumpers" on the projects and Mr. DeAngelo, a Union Representative, who had no jurisdiction over the counties where the projects were located, nor personal knowledge about the specifics of the work performed by Allied and instead relied solely on a very limited spreadsheet.

POINT II

THE LIMITED RATING INFORMATION PROVIDED TO CONTRACTORS VIA THE DEPARTMENTS WEBSITE IS UNCONSCIONABLY VAGUE AND THE PUNITIVE SANCTIONS WHICH RESULTED ARE INTOLERABLE (Raised below at Pa510, 520)

The only guidance the Department provides for wage rate determinations are the one to two pages devoted to each craft. However most of the entries on those one to two pages describe the rates to be paid and how those rates are calculated. The only distinction between “Electrician” and “Electrician teledata” is found in the section for each craft entitled “Comments/Notes”.

Chamberlain who is responsible for enforcing prevailing wage rates admittedly was not “entirely sure” what some of the terminology meant. 2T:45:7-25; 46:1-2. Chamberlain is responsible for enforcement, but he is not sure about meaning, and yet Allied is required to pay a six figure sanction and endure crippling debarment.

The Department needed DeAngelo to determine which rate applied, but withheld material evidence, and offered no testimony, whatsoever, on what constitutes “fiber optic work” within the meaning of the wage rate determinations and yet, according to the ALJ, it is Stergiou who lacked credibility. Neither Chamberlain nor DeAngelo defined fiber optic work. In fact the phrase “fiber optic” was not used by either witness.

It bears emphasis that it is only “fiber optic work” that must be performed by electricians. The Craft Determinations do not make reference to “plug and play” and do not describe what is meant by “fiber optic work”. Does plugging in a length of pre-determined fiber really require a licensed electrician?

The Commissioner ignored Allied’s argument that the language of the Craft Determinations was “so vague that ‘persons of common intelligence must necessarily guess at its meaning and [may] differ as to its application’, [citing *Hamilton Amusement Center v. Venero*, 156 N.J. 254, 279-80 (1998)], the matter takes on a constitutional dimension and, when property is at risk, due process is implicated”. Pa520.

The Commissioner also ignored Allied’s proposed proper conclusion of law:

The prevailing Wage Rate Determinations are the only publicly available documents which define the work to which each apply. They are impermissibly vague and cannot fairly be relied upon to charge employers with tens of thousands in fees and costs as well as punitive debarment. To conclude otherwise would be to endorse a violation of fundamental rights of due process.

While it is recognized that challenges to a statute require “different levels of ‘definitional clarity’... depending on the type of statute under scrutiny”, *Comm. Workers of Am. v. State of New Jersey, Dept. of Treasury*, 421 N.J. Super 75 (L. Div. 2011), and that regulations giving rise to civil penalties are “subject to a less strict vagueness test”, *Heyert v. Taddese*, 431 N.J. Super 388, 424 (App. Div.

2013), here the consequences are not only substantial monetary sanctions but also debarment.

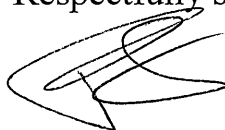
It is beyond ironic that the actions of the Department, designed to make certain that prevailing wages are paid, imposes a penalty, debarment, which affects Allied's ability to do business, and therefore threatens the livelihood of the very Allied employees whose wages are in issue. IF Allied does not have work, those employees do not have a job.

It is because of the impact of debarment that the burden of proof in some settings has been clear and convincing. See, e.g., Keyes Martin & Co. v. Director, Div. of Purchase, 99 N.J. 244 (1985). Although the "New Jersey Prevailing Wage Act", N.J.S.A. 34:11 – 56.25 et. seq. is not a criminal statute, it is submitted that greater scrutiny is required when debarment, and not just monetary sanctions, are at stake. In the context of the Division of Purchase and Property the Department of the Treasury has promulgated regulations setting conditions for debarment, which require, *inter alia*, the consideration of "[a]ll mitigating factors" including the "seriousness of the offense, failure or inadequacy of performance" to determine whether "debarment is warranted". N.J.A.C. 17:12-6.4. Vague statutes and vague regulations which fail to provide adequate notice can lead to arbitrary and discriminatory enforcement. Town Tobacconist v. Kimmelman, 94 N.J. 85 (1983).

CONCLUSION

For the above stated reasons, Allied respectfully requests that the decision of the Commissioner of the Department of Labor and Workforce Development be vacated, and the matter be remanded for an entry of Judgment in favor of Allied Telecom, Corp.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'R. Grodeck', written over a horizontal line.

RICHARD A. GRODECK, ESQ.

Dated: February 7, 2025



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO BOX 112
TRENTON, NJ 08625-0112

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

MATTHEW J. PLATKIN
Attorney General

MICHAEL C. WALTERS
Acting Director

April 14, 2025

Via eCourts

Marie C. Hanley, Clerk
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
25 Market Street – P.O. Box 006
Trenton, New Jersey 08625-0006

Re: New Jersey Department of Labor and Workforce
Development v. Allied Telecom Corp., Vasilios Stergiou,
Director and Individually and Demetri Poubouridis,
President and Individually
Docket No.: A-0029-24T2

Civil Action: On Appeal from a Final Agency Decision of
the Department of Labor and Workforce Development
OAL Docket No. LID 03765-21

Letter Brief of Respondent, Department of Labor and
Workforce Development

Dear Ms. Hanley:

Please accept this letter brief on behalf of Respondent, Department of
Labor and Workforce Development (“Labor”) in opposition to the appeal of
Appellant, Allied Telecom Corp. (“Allied”).



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RESPONDENT’S APPENDIX

Prevailing Wage Rate Determination for Morris County dated May 10, 2019
..... Ra001

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

This appeal arises from Labor’s final decision, dated August 29, 2024, which held that Allied violated the Prevailing Wage Act, N.J.S.A. 34:11-56.25 to -56.98, ordered Allied to pay certain sums in wages, administrative fees and administrative penalties, and debarred Allied for a period of three (3) years.

A. Regulatory Background

The Act establishes prevailing wage levels to protect workers and employers from the effects of serious and unfair competition. N.J.S.A. 34:11-56.25. The Act mandates that workers performing under a public works contract above the threshold amount be paid at or above a minimum prevailing wage rate. N.J.S.A. 34:11-56.27. Labor is charged with enforcing the Act and has full authority to inspect the records of contractors working on public works projects which specifically includes, “books, registers, payrolls, and other records of any such employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any such workmen.” N.J.S.A. 34:11-56.31(b). N.J.S.A. 34:11-56.29 requires contractors to keep accurate records along with employee names, crafts or trades, and hourly rate

¹ Because they are closely related, the procedural and factual histories are combined to avoid repetition and for the court’s convenience.

paid to each employee for public works projects for a period of two (2) years. A violation of the Act may result in a contractor being barred from public works projects for a period of three years. N.J.S.A. 34:11-56.38.

B. Audit and Investigation

Allied is a company that services cell phone towers throughout New Jersey. (Pa67).² In 2019, Allied performed work on towers for the following ten public works projects in the: Borough of Florham Park, Morris County; Borough of Prospect Park, Passaic County; Borough of New Milford, Bergen County; City of Newark, Essex County; Borough of Butler, Morris County; Borough of Chatham, Morris County; Borough of Netcong, Morris County; Borough of Seaside Park, Ocean County; Township of Waretown, Ocean County; and the Borough of Dover, Morris County (collectively the “projects”). (Pa67).

In June and July 2019, Allied employees filed complaints with Respondent, alleging that Allied failed to pay them the correct prevailing wage for their work on the projects. (Pa1; Pa4; Pa7). More specifically, the employees claimed that instead of paying them the correct prevailing wage rate

² “Pa” Refers to Appellant’s Appendix. “Ra” Refers to Respondent’s Appendix. “Ab” refers to Appellant’s Brief. “1T” refers to the Transcript of the OAL hearing dated April 27, 2023. “2T” refers to the Transcript of the OAL hearing dated April 28, 2023.

for an “electrician,” Allied paid them a lower, incorrect rate for “electrician – teledata.” Ibid.

Labor publishes Prevailing Wage Rate Determinations for a number of crafts for each county in New Jersey. There was testimony at the OAL hearing that the Prevailing Wage Rate Determination dated May 10, 2019, applicable to Morris County included all fiber optic work within the craft of “electrician.” (2T26:6-24). Conversely, the Prevailing Wage Rate Determination for “electrician – teledata” explicitly stated it was not to be used for any fiber optic work. (2T26:6 - 27:1-23; Ra003; Ra005).

Labor audited Allied and during its investigation, reviewed Allied’s certified payroll records, time records and cancelled checks for the period of February 2019 to August 2019. (Pa68). Allied also provided Labor with a letter dated October 28, 2019, describing the scope of the work on the projects, which included changing and mounting antennas, running fiber optic jumpers and swapping out remote radio heads. (Pa74). Allied also drafted and provided through counsel a spreadsheet further outlining Allied’s employees’ job duties with respect to the projects, including fiber optic work. (Pa73).

After completing its investigation, Labor determined that Allied failed to pay the correct prevailing wage rate on the projects because it paid its employees the “electrician - teledata” rate instead of the higher “electrician” rate. (Pa69).

Labor issued Allied ten assessment letters (one for each project) on October 2, 2020, for violations of N.J.S.A. 34:11-4.2, unpaid wages or late payment; N.J.S.A. 34:11-56.27, failure to prevailing wage; and N.J.S.A. 34:11-56.51, failure to register, totaling \$158,895.69 for wages due, administrative fees and administrative penalties. (Pa10 - 46). Allied contested Labor's assessments and requested a departmental hearing. (1T10:19-20; 2T6:12-25).

Labor issued ten final orders, dated February 23, 2021, related to the projects and ordered Allied to pay approximately \$107,542 in wages due, \$10,754 in statutory fees, and \$40,600 in penalties. (Pa51-Pa60; Pa69). It also debarred Allied for a term of three years. (Pa61). After Allied appealed those, the matter was transferred to the Office of Administrative Law ("OAL") as a contested case.

C. The OAL Hearing

During the hearing, Allied did not dispute the accuracy of Labor's audit findings regarding the employees that worked on the projects, the dates of work, and the regular and overtime work of the employees. (Pa69). Rather, the limited issue was whether Allied paid its employees the correct prevailing wage rate.

During the hearings on April 27, 2023, and April 28, 2023, ALJ Jacob Gertsman heard from three witnesses on behalf of Labor—Wayne DeAngelo,

Ashleigh Chamberlain and Rafael Rios—and one witness on behalf of Allied, Vasilios Stergiou.

DeAngelo is an electrician and member of the International Brotherhood of Electrical Workers (“IBEW”). He is the assistant business manager and president of the Local Union 269 of the IBEW whose duties include administering collective bargaining agreements during disputes. (1T13:13-14:25). Throughout his career as an electrician, DeAngelo has specialized in voice and data systems, fiber optic work, and has been involved in the apprentice training program. (1T21:7-14). Labor consults with DeAngelo about which crafts certain scope of work fall under and the prevailing wage rates for work covered under IBEW contracts. (1T15:1-25). As part of its investigation, Labor provided DeAngelo with the spreadsheet drafted by Allied, outlining its employees’ job duties with respect to the projects at issue. Based on his review of the spreadsheet and his knowledge of collective bargaining agreements, DeAngelo confirmed that the work described was subject to the electrician wage rate. (1T22:18-22).

Chamberlain has worked for Labor for twenty years and is currently a Bureau Chief. (2T5:13-23). Chamberlain was assigned the hearing officer after Allied contested Labor’s assessments. (2T6:9-18). In that role, Chamberlain had several conversations with Allied’s counsel and was provided a spreadsheet

of job descriptions prepared by Allied. (2T7:1-9). Chamberlain sent this document to a colleague who confirmed that the applicable craft and wage should be “electrician” not “electrician – teledata.” (2T7:1-9; 2T39:4-12).

Chamberlain testified that the Prevailing Wage Rate Determination that Labor issued on May 10, 2019, and applicable to Morris County included all fiber optic work within the craft “electrician.” (2T26:6-27:23; Ra003). Chamberlain confirmed that the May 10, 2019 Rate Determination further stated that the craft “electrician – teledata” should not be used for any teledata work in new construction, including additions or any fiber optic work. (2T27:23-28:16; Ra005).

Rios was a former Allied employee and a foreman on the projects at issue. (Pa73). Rios was terminated by Allied for alleged insubordination and chronic tardiness. (2T79:16-80:21). His work included adding radios, fiber optic cables and the installation of antennas. (2T73:11-19). Rios explained that when installing a radio, the work involved fiber jumpers and that the term “fiber” meant fiber optics. (2T74:3-9). Rios said the process involved equipment called a “squid” that fiber goes through. (2T74:17-25). He testified that he participated in this area of work for about twelve years and that he had been paid a higher prevailing rate from other companies for similar work. (2T75:16:76:8).

Stergiou, Allied's sole witness, testified multiple times that the projects involved "fiber optic work." Stergiou testified that Teledata and telecommunication lines are now all "fiber." (2T92:4-7). He later testified that the term "fiber" meant "fiber optics." (2T130:12-24), and further confirmed that the projects involved the use of "fiber optic wire." (2T100:15-22). Stergiou testified that the projects involved connecting one fiber to the fiber box. (2T105:6-13). He concluded by saying that the work on the projects involved replacing old wire with new wire provided by the client, which was "fiber optic" wire. (2T107:7-17; 2T100:15-22). Stergiou also testified that the only way he determined the prevailing wage rates for his employees was by looking at Labor's website. (2T107:22-108:12).

The ALJ issued an initial decision dated May 29, 2024. The ALJ found the testimony of Labor's witnesses to be credible, stating that DeAngelo and Chamberlain were "both knowledgeable and experienced, and they presented clear, direct, and professional testimony. Further, their testimony regarding the work done by Allied on the projects was consistent with the descriptions provided by Allied." (Pa497).

The ALJ credited DeAngelo and Chamberlain testimonies about the job descriptions and the process that informed Labor's conclusion regarding the correct prevailing rate for the projects. (Pa498). The ALJ agreed with

Chamberlain that prevailing wages are based on the collective bargaining agreements of the prevailing construction unions, (Pa499), and found it proper for Chamberlain to rely upon the May 10, 2019 Rate Determination and Allied's spreadsheet in concluding that Allied should have paid its employees the prevailing rate for "electrician." (Pa493; 2T23:17-18).

The ALJ also found that Rios's testimony regarding the work on the Florham Park, Dover, Netcong, Butler and Chatham projects was consistent with the Allied's descriptions. (Pa497). The ALJ pointed out that Rios did similar work for other employers and was paid a higher rate. (Pa497). As to the circumstances of his termination from Allied, the ALJ concluded that these were not at issue. (Pa497). Ultimately, the ALJ deemed Rios to be a credible witness. (Pa497).

Conversely, the ALJ found that Stergiou, Allied's sole witness, "while appearing to be well meaning, presented testimony that was not consistent with the evidentiary record." (Pa497). Specifically, Stergiou testified that Allied used fiber optic, prefabricated wire provided by the client and that plugging in the wire was as easy as plugging a phone into a socket. (Pa498). However, the ALJ found that description was not consistent with the written job descriptions provide by Allied to Labor. (Pa498).

While Stergiou testified that he reviewed information on Labor’s website and determined that “electrician - teledata” was the “closest to what we do,” the ALJ found that Stergiou made no other efforts to contact Labor to confirm the correct classification. (Pa499; 2T108-1-4; 2T114:6-7; 2T128:23-24). As the ALJ stated, “[c]ompared to the credible testimony of DeAngelo and Chamberlain, which detailed the Department’s process in determining the correct prevailing wage for the work done on the projects, I give little weight to Stergiou’s determination.” (Pa499).

The ALJ concluded that “the record, including the job descriptions provided by Allied and the credible testimony of Rios, supports the Department’s argument that the work done by Allied ‘involves fiber optic cables and jumpers.’” (Pa500). The ALJ further concluded that the “electrician – teledata” rate did not apply to any fiber optic work. (Pa500). And because Allied’s work on the projects included fiber optic work, the “electrician - teledata” rate was not the appropriate rate. (Pa500). Accordingly, the ALJ found that Allied improperly paid its employees at an “electrician – teledata” rate, rather than the correct rate of “electrician,” in violation of the Prevailing Wage Act. (Pa500). The ALJ upheld Labor’s Final Orders with an amount owed of \$107,541.54 for wages due, \$10,754.15 in administrative fees, and \$40,600.00 in administrative penalties. The ALJ also held that Labor’s decision

to debar Allied for three (3) years was appropriate under the Prevailing Wage Act. (Pa503).

D. The Final Administrative Action

In a Final Administrative Action dated August 29, 2024, the Commissioner affirmed the ALJ's decision and ordered Allied to pay \$107,541.54 for wages due, \$10,754.15 in administrative fees, and \$40,600.00 in administrative penalties. The Commissioner further found that Allied failed to register as a public contractor, and also upheld Allied's debarment. (Pa528).³ This appeal followed.

³ The Commissioner also noted that while the ALJ's Initial Decision did not state findings of fact or conclusions of law regarding Allied's failure to register with the Department to perform public work in violation of N.J.S.A. 34:11-56.51, the evidence adduced at the OAL hearing supported the Commissioner's finding that Allied had in fact violated the aforementioned statute. (Pa528).

ARGUMENT**POINT I****LABOR’S DECISION SHOULD BE AFFIRMED
BECAUSE THERE IS SUBSTANTIAL,
CREDIBLE EVIDENCE IN THE RECORD THAT
ALLIED VIOLATED THE PREVAILING WAGE
ACT.**

“Courts have only a limited role to play in reviewing the actions of other branches of government. In light of the executive function of administrative agencies, judicial capacity to review administrative actions is severely limited.” In re Musick, 143 N.J. 206, 216 (1996) (citing Gloucester County Welfare Bd. v. New Jersey Civil Serv. Comm’n, 93 N.J. 384, 390 (1993)). Provided the decision is supported by substantial credible evidence, is not “arbitrary, capricious or unreasonable,” does not lack “fair support in the evidence,” and does not violate the “legislative policies expressed or implicit in the act governing the agency[,]” this Court should affirm. Renan Realty Corp. v. Dep’t of Cmty. Affairs, 182 N.J.Super. 415, 419 (App.Div.1981) (citing Campbell v. Dep’t of Civil Serv., 39 N.J. 556, 562 (1963)). “Courts can intervene only in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or other state policy.” In re Musick, 143 N.J. 206, 216 (1996) (citing Gloucester County Welfare Bd. V. New Jersey Civil Serv. Comm’n, 93 N.J. 384, 390 (1993)). Substantial credible evidence is defined as

“whether the findings made could have been reasonably reached . . . considering the proofs as a whole . . . with due regard also to the agency’s expertise where such expertise is a pertinent factor.” Close v. Kordulak Bros., 44 N.J. 589, 599 (1965).

The burden of proof rests upon the appellant. Dep’t of Ins. v. Universal Brokerage Corp., 303 N.J. Super. 405, 409-10 (App. Div. 1997). The Supreme Court has held that “an appellate court does not substitute its judgment of the facts for that of an administrative agency.” Campbell v. N.J. Racing Comm’n, 169 N.J. 579, 587 (2001) (citing Clowes v. Terminix Int’l, Inc., 109 N.J. 575, 587 (1988)). “If the Appellate Division is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head’s decision, then it must affirm even if the court feels that it would have reached a different result.” Clowes, 109 N.J. at 588.

Here, there was sufficient, credible evidence in the record to conclude that Allied failed to pay the correct wages to its employees, in violation of the Act. It is undisputed, based on Allied’s own records, that Allied paid its employees at the “electrician-teledata” rate. (2T107:22-108:19). However, Allied provided Labor with job descriptions for the employees on the projects at issue, and those descriptions and communication with Labor’s investigator confirm that Allied’s work involved fiber optic cables and jumpers. (2T7:1-9). In addition, both Rios

and Stergiou testified that Allied used fiber optic cable in its projects. (2T74:3-9; 2T74 -75:7; 2T130:16-24).

The Prevailing Wage Rates for the projects specifically note that the “electrician-teledata” rate does not apply to work that involves “any fiber optic work.” (Pa438, Pa443, Pa448, Pa453, Pa458, Pa463, Pa468, Pa473, Pa478, Pa483). And because Allied’s work on the projects undisputedly included fiber optic work, the “electrician-teledata” rate was not the appropriate rate. Based on the job descriptions provided by Allied, the employees’ work was subject to the prevailing wage craft of electrician, not electrician-teledata. (2T23:9-18; 1T19:14-22). Labor therefore correctly determined that Allied failed to pay its employees properly and violated the PWA.

To the extent Allied takes issue with the ALJ’s credibility determinations, Allied’s contentions provide no grounds to disturb the decision on appeal. It is well-established that an Administrative Law Judge hearing a matter has the benefit of hearing and seeing the witnesses and is generally in a better position to determine the credibility and veracity of the witnesses. See Matter of J.W.D., 149 N.J. 108 (1997). “[T]rial courts’ credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record.” In re Taylor, 158 N.J. 644 (1999). Additionally, such credibility findings need not be

explicitly enunciated if the record as a whole makes the findings clear. Id. at 659.

Here, the ALJ determined that Labor's witnesses were credible. Conversely, the ALJ did not find Stergiou to be a credible witness. Allied presented no evidence in its appeal that establishes that the ALJ's determinations with regard to witness credibility were incorrect. Allied attempts to dismiss the testimony of all the witnesses that confirmed the projects involved "fiber optic work" by arguing that plugging in fiber optic wire was not "fiber optic work." (Ab21; 2T115:25 – 116:19). The ALJ dismissed this reasoning by finding that Allied's description "of Allied's work is not consistent with the job descriptions Allied provided to the Department." (Pa498). Allied provided no evidence that established that this determination was incorrect. Therefore, this court should not disturb the ALJ's findings.

Importantly, Allied provided no credible evidence that the projects did not involve fiber optic work. To the contrary, the evidentiary record clearly established that the projects involved fiber optic work. Thus, Allied has failed to establish that the Final Administrative Action was "arbitrary, capricious or unreasonable," not supported by the evidence, and violates the legislative policies and intent of the Prevailing Wage Act. Renan Realty Corp., 182 N.J. Super. at 419. Accordingly, this court should not disturb Labor's determination.

POINT II

**LABOR’S PREVAILING WAGE RATE
DETERMINATIONS ARE NOT
“UNCONSCIONABLY VAGUE.”**

Allied also argues that Labor’s guidance for wage determinations is “unconscionably” vague, and that it cannot be reasonably followed. (Ab24). The court should reject these arguments.

The Appellate Division in In Re Raymour and Flanigan Furniture addressed whether a statute was “unconstitutionally vague” and could not be reasonably followed. 405 N.J. Super. 367, 385 (App. Div. 2009). Even though Flanigan dealt with the alleged unconstitutional vagueness of an overtime pay statute, it set forth guidance with regard to when a statute and economic regulation are considered “unconstitutionally vague.” Id. at 385. Generally, civil statutes, and economic regulations in particular, are subject to less stringent scrutiny under the vagueness doctrine than are criminal statutes. Id. at 385. The court went on to add, that “a commercial regulatory statute can be held unconstitutionally vague only if it is “substantially incomprehensible.” Id. at 385 (citing In re Loans of N.J. Property Liab. Ins. Guar. Ass’n, 124 NJ. 69, 78 (1991) (quoting Exxon Corp. v. Busbee, 644 F.2d 1030, 1033 (5th Cir. 1981)).

Here, the Prevailing Wage Rate Determinations are not so “substantially incomprehensible” as to render them “unconscionably vague.” The May 10,

2019 Prevailing Wage Rate Determinations clearly set forth that the trade of “electrician” applies to all fiber optic work. (Ra003). Conversely, the Prevailing Wage Rate Determinations for the trade “electrician-teledata” explicitly exclude any fiber optic work. (Ra005). As the ALJ stated, “[t]he Prevailing Wage Rates for the projects specifically note that the ‘Electrician-teledata’ rate does not apply to work that involves ‘any fiber optic work.’” (Pa500).

Stergiou, Allied’s own witness, acknowledged that Teledata and telecommunication lines are now all “fiber” and that the term “fiber” referred to fiber optic wire. (2T92:4-7; 2T:130-12-24). He further admitted that the projects involved the use of “fiber optic wire” and connecting one fiber to a fiber box. (2T100:15-22; 2T105:6-13). He testified that the work on the projects involved replacing old wire with new wire provided by the client (2T107:7-17), and the new wire provided by the client for the projects was “fiber optic” wire. (2T100:15-22).

Moreover, employers have a duty under the Prevailing Wage Act to ensure that their employees are paid the correct rate. N.J.S.A. 34:11-56.25-.27; Dep’t of Labor v. Titan Constr. Co., 102 N.J. 1, 6 (1985). Stergiou testified that he took “whatever is given to me on the Department of Labor’s website” but made no other attempts to contact Labor to confirm the correct rate. (Pa499). Instead,

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Stergiou made the determination that “electrician teledata is the closest to what we do” (2T114:6-7). The record does not indicate that Stergiou made any further attempts to contact the Department to inquire as to the correct rate for the employees. (Pa499). In short, Allied’s failure to pay its employees the correct prevailing wage rate was the result of Allied’s lack of due diligence and was not attributable to any purported vagueness of the Prevailing Wage Rate Determinations.

CONCLUSION

For these reasons, the Commissioner’s Final Decision should be affirmed.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/Christopher Chiacchio
Christopher Chiacchio
Deputy Attorney General
Attorney ID No.: 015042001

Sookie Bae-Park
Assistant Attorney General
Of Counsel

cc: Richard A. Groderick, Esquire

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

NEW JERSEY DEPARTMENT OF : SUPERIOR COURT OF NEW JERSEY
LABOR AND WORKFORCE : APPELLATE DIVISION:
DEVELOPMENT : DOCKET NO.: A-000029-24

Plaintiff, : Civil Action

v. : On Appeal From

ALLIED TELECOM CORP., : STATE OF NEW JERSEY
VASILIOS STERGIU, : DEPARTMENT OF LABOR AND
DIRECTOR AND INDIVIDUALLY, : WORKFORCE DEVELOPMENT
AND DEMETRIO POUBOURIDIS, : FINAL ADMINISTRATIVE ACTION
PRESIDENT AND INDIVIDUALLY : OF THE COMMISSIONER

Defendants. : OAL DOCKET #LID-03765-21

REPLY BRIEF ON BEHALF OF DEFENDANTS/APPELLANT

PIRO, ZINNA, CIFELLI,
PARIS & GENITEMPO, LLC
360 Passaic Avenue
Nutley, New Jersey 07110
Ph: (973) 661-0710
Fx: (973) 661-5157
Email: rgrodeck@pirozinnalaw.com
Attorneys for Defendants,
Allied Telecom Corp., Vasilios Stergiou, Director
and Individually, and Demetrio Poubouridis,
President and Individually

Richard A. Grodeck, Esq. (014321981)
On the Brief

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PRELIMINARY STATEMENT

The Department of Labor and Workforce Development (“Department”) conflates the use of prefabricated, pre-terminated fiber cable which utilizes plug and play technology with “fiber optic *work*”.

The Department misstates the record, not intentionally, but as a result of its own misunderstanding of the evidence. The Department claims Vasilios Stergiou (“Stergiou”) “testified multiple times that the [Allied] projects involved ‘fiber optic *work*’.” “Db9. That was not Stergiou’s testimony. Instead Stergiou described his company’s use of prefabricated pre-terminated fiber cable which simply requires “plug and play”. 2T:116:13-19. There is absolutely no dispute in this regard. The Department implies there was some material concession of significance. There was not. Stergiou did actually describe fiber optic *work*, which historically required actual effort, *i.e.* actual work, the cutting and splicing of fiber which was conducted under sterile conditions to insure that the fiber was not damaged by environmental factors. 2T:118:6-13. That was a technical effort and was what was historically necessary. That effort is also now an anachronism. 2T:118:14-18. The industry uniformly now uses simple prefabricated lengths of wire which requires that the wire be plugged in, as Stergiou explained, just like plugging in a phone. 2T:100:21-22. Stergiou brought a prefabricated fiber optic wire to the hearing to demonstrate how its simply plugged in, 2T:15-22, but both the Court

and counsel agreed the demonstration was unnecessary as both were able to “grasp” how it worked from Stergiou’s description. 2T:101:8-17. The ALJ repeated the testimony, “you plug it in just like you plug in your phone”. T:101:8-10.

What could possibly be the rationale behind a requirement that expensive electricians be used to plug in a wire, a task no more demanding than plugging in a phone?

The Department’s Counterstatement of Facts Misstates the Record

The only detailed description of fiber optic *work* that was presented during the hearing was that which was presented by Vasilios Stergiou who described, in detail, the challenging fiber optic *work*, which was historically required in the teledata industry. Handling fiber optics in the past required specialized skills and equipment to ensure sterility. Wind and dust presented threats to fiber optic threads, which are thin strands of glass and light, 2T:92:1-3, as they were cut and spliced. 2T:118:8-10. However, as Stergiou explained, that effort, involving actual “fiber optic work”, has been largely replaced as the teledata industry now utilizes prefabricated pre-terminated cable. 2T:117:3-14. Neither of the Department’s witnesses, neither Wayne DeAngelo nor certainly Ashley Chamberlain, presented any technical information regarding the handling of fiber

optic threads. The contention of the Department that the ALJ's finding that both witnesses were "knowledgeable and experienced" lacks anything in the record which can be said to be even remotely supportive of that conclusion. Chamberlain was charged with enforcing the regulation, but clearly did not even understand it. Chamberlain admitted that he did not "entirely" understand what the word "changes" means as utilized in the Prevailing Wage Rate Determination. 2T:46:11-12. With regard to the Allied projects Chamberlain testified that the work "did not appear" to involve teledata lines, 2T:44:3-4, but did not review the Allied contracts that he understood were in place with "Overland". 2T:44:10-19. Stergiou confirmed the Allied projects all involved teledata lines. 2T:111:3-24. The Department's support of the ALJ's determination that Chamberlain was "knowledgeable and experienced" is absurd. The characterization of Chamberlain's testimony as being "clear, direct and professional . . ." is equally absurd. Db9. Chamberlain's sole function was to serve as a conduit. He conveyed the Allied spreadsheet to his colleague, Ralph Sheffield, and then delivered the spreadsheet to Wayne DeAngelo for his opinion, as clearly Chamberlain had no idea. Chamberlain acknowledged that it is his job to enforce the regulations, and it is important for him to understand what the language of the regulation means, but, once again, he was not "entirely" sure what the simple word, "changes", means. 2:T:46:6-12. Decisions must have a basis. The ALJ's

conclusion that the Chamberlain testimony was knowledgeable and professional must have a basis. This Court is invited to scrutinize the Chamberlain testimony. There is no basis, whatsoever, to support that conclusion.

While the Department's brief is littered with references to fiber optics the Department offers no analysis to support the shallow contention that the mere use of the words "fiber optics" is somehow dispositive. If the Department intended to require electricians to perform the task of plugging in prefabricated fiber optic cables they could have stated as such, but instead the Department continues to rely on the term "fiber optic work". The word "work" in this context implies handling – the handling of fiber optic threads *i.e.*, the cutting and splicing that Stergiou described as historically being the work performed by the teledata industry.

LEGAL ARGUMENT

POINT I

THERE WAS NO EVIDENCE, LET ALONE WHAT COULD SERIOUSLY BE CALLED SUBSTANTIAL CREDIBLE EVIDENCE, IN THE RECORD TO SUPPORT THE ALJ'S CONCLUSIONS.

Deference does not mean abdication. The judicial obligation of critical review remains vital. *Substantial credible evidence* is necessary. The definition of substantial credible evidence provided by the Department is accurate. The question for this Court is whether the ALJ's conclusions "could have been

reasonably reached” considering the proofs “as a whole . . . with due regard to the agency’s expertise when such expertise is a **pertinent factor**.” Close v. Kordulak Bros., 44 NJ 589, 599 (1965). [emphasis supplied]. The Supreme Court’s qualifying language, where expertise is a “pertinent factor”, bears emphasis. As has been developed, there is no indication in this record that agency expertise played any role, let alone a pertinent role, in this matter. The determination of the Prevailing Wage Rate was farmed out to Wayne DeAngelo. The agency’s sole witness, Ashley Chamberlain, had no knowledge of the details of Allied’s projects let alone something that could be credibly called an “expertise”.

The Department’s repeated unthinking reference to Allied’s use of “fiber optic cables and jumpers”, Db14, for all of the reasons stated above belies their complete and utter failure to understand the actual tasks of Allied’s employees.

The ALJ’s description of Stergiou’s testimony as “appearing to be well meaning”, but being in conflict with the “evidentiary record”, Pa497, is unsupported. Simply calling the testimony inconsistent with the record does not make it so. The ALJ found that Sergiou’s description of his crew’s use of prefabricated wire as being as easy as plugging in a phone was “not consistent with the job descriptions provided by Allied”. How was it not consistent? The ALJ does not explain. Nor is a rational explanation possible. The Allied spreadsheet twice refers to the need to “test fiber connectivity”, as well as the installation of

“teleco wire”, which is described as “new technology, fiber”. That’s the extent of the references in the document to fiber. Stergiou was not cross examined on this alleged inconsistency and the handful of terms used in the Allied spreadsheet are by no means inconsistent with Stergiou’s well developed explanation regarding the use of prefabricated pre-terminated cable. That was the sole basis for the rejection of Stergiou’s testimony, the proposition that somehow his description of plug and play technology was inconsistent with the handful of words appearing in the spreadsheet.

The requirement for “substantial credible evidence” is not meaningless. The caselaw requires both substantial and credible evidence to support an administrative conclusion. While the Courts are to defer to agency expertise, where it *exists*, the Court’s role remains meaningful and always vital. Whether the decision under review is that of a lower Court or of an administrative agency, the imperative remains – a just result is to be reached. To imply that less than full attention is warranted because its an administrative decision is demeaning.

POINT II

**THE DEPARTMENT'S FAILURE TO EVEN
ACKNOWLEDGE THAT THE TERM UTILIZED IN THE
PREVAILING WAGE RATE DETERMINATION IS FIBER
OPTIC WORK PROVES THE REGULATION'S
UNCONSTITUTIONALLY VAGUE FORMAT**

According to the Department three (3) words, fiber optic work, are designed to inform the teledata industry that plugging in a prefabricated, pre-terminated wire requires an electrician. The failure to interpret those three (3) words as the Department, or more to the point, Wayne DeAngelo, the Union President, believes they should be interpreted exposes the unwitting contractor to a six figure sanction and crippling debarment.

The words of the Prevailing Wage Determination are so vague that even Ashley Chamberlain, as knowledgeable and professional as he is supposed to be, admittedly does not “entirely” understand what a simple word like “changes” means in the context of the determination. Chamberlain was also unsure whether the teledata regulation applies to replacing old with new equipment indicating only that he “suppose[d] it could be interpreted that way”. 2T:4510-12. How can it intellectually honestly be said that a regulation is not vague when an official with twenty-three years of experience who is charged with enforcing that regulation is unsure of definitions or interpretation?

The consequences of misinterpretation are severe; in this case a six figure sanction and debarment.

CONCLUSION

For the above stated reasons, Allied respectfully requests that the decision of the Commissioner of the Department of Labor and Workforce Development be vacated, and the matter be remanded for entry of Judgment in favor of Allied Telecom, Corp.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Grodeck', written over a horizontal line.

RICHARD A. GRODECK, ESQ.

Dated: April 28, 2025