



The FAIR CONTRACTOR

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Grand Jury Indicts Mass Contractor for 33 Violations of State Labor and Tax Laws

A Framingham contractor, its subsidiary and its president were indicted by a Middlesex County Grand Jury on March 21 on multiple charges relating to their alleged unlawful practices on public works contracts in Lowell, Spencer, West Brookfield and Framingham.

"This should be a wake-up call to all other contractors out there..."

Eastern Contractors, its president Ramesh Motwane and East Coast Construction, Inc., a subsidiary company, were charged with failing to pay \$1 million in workers compensation and unemployment taxes, prevailing wage violations, failure to pay overtime and failure to provide true and accurate payroll records to the Commonwealth by Attorney General Scott Harshbarger's Office.

"This should be a wake-up call to all the other contractors out there who have been misclassifying their employees, not paying overtime and falsifying payroll records," said Assistant Attorney General Brian Burke of the Fair Labor and Business Practices Division. This action marks the first time a general contractor and his companies have been indicted in the state on such charges noted Burke.

The company and Motwane face debarment from public works projects for up to 12 1/2 years, fines of more than \$164,000 and restitution of the \$1 million if they are convicted. Motwane could be sentenced to up to six years in prison.

According to the indictments, workers hired for five public works projects from July 1992 to November 1994, were not classified as company employees. As a result, the company allegedly did not pay approximately \$1 million in workers compensation and unemployment tax in 1993 and the first quarter of 1994. The Attorney General's Office also alleges that Motwane failed to pay his workers more than \$14,000 in

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Prevailing Wage Violations Shut Down Construction Projects for First Time In State's History



Brian Burke

down construction sites in Boston and Fall River after charging three companies with prevailing wage law violations. The orders came to halt renovation work at the Durfee High School in Fall River and a drawbridge reconstruction on the Fort Point Channel on Febru-

ary 18, 1995. The state prevailing wage law requires contractors who obtain publicly funded contracts to pay wages set by the state for specific job classifications.

"We're going to keep doing it until we see a change in the industry," said Assistant Attorney General Brian Burke, chief of the Fair Labor and Business Practices Division. The three companies were found to be paying wages well below the hourly wage rate set by state standards, Burke said.

The Foundation for Fair Contracting of Massachusetts applauded the work shut-

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AG Orders Contractor Off School Job

A dry-wall contractor was ordered off the Winchendon Middle/High School construction site after the state attorney general's office determined the company violated the state's prevailing wage law.

A Rock Drywall paid six employees up to \$14 below the hourly rate mandated for publicly funded projects according to the findings of a Febru-

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AG Continues Statewide Crackdown on Wage Law Violations

R.J. SANDERS

R.J. Sanders, Inc., 419 Child Street, Warren, Rhode Island was found guilty of failing to pay the prevailing rate while performing heat and ventilation restoration work on the Westport High School. Sanders' was debarred from public works projects for six months, fined \$3,500, and ordered to pay restitution to the employee who reported the violation. David Sanders of Seekonk, vice-president of R.J. Sanders had his case continued without a finding on the condition that he voluntarily accept a two month debarment from public works projects. The violations occurred between June and October of 1992 while Sanders' was performing projects for the Town of Westport School Committee. Five former Sander's employees received up to \$10 per hour less than the State mandated prevailing rate.

MASS INSTALLATIONS

Non-payment of the prevailing rate on the Westfield Meter Installation Project. The main issue centered around improper registration of apprentices. The case continued without a finding by the Westfield District Court. The defendant was ordered to pay \$38,000 in restitution.

A major disagreement existed between the position of the Commonwealth and Mass Installation as to employee classifications on several other meter installer

contracts. Mass Installation claimed that their employees were laborers at the times they performed work on the project while the inspectors from the AG's office concluded that all the work had to be performed by plumbers. The result was a civil agreement whereby Mass Installation and it's owner would pay \$20,000

Case Reviews

and adhere to payment of the prevailing wage in the future.

EASTERN SEABOARD CONCRETE CONSTRUCTION

Eastern Seaboard and its owners, Brad Carpenter & Mike Pivero, were charged with three counts of failing to pay the prevailing wage and one count of filing false payrolls. The complaint was filed in Milford District Court and alleges that Eastern owes over \$8000 to its employees for work done on the Milford Water Pumping Station during the months of September and October 1992. An arraignment was held March 9, 1995.

R&A STEEL

A New Hampshire contracting company and its owner, Mr. Robert Rouleau of Dover, NH pled guilty to violating the state's prevailing wage laws and for fail-

ure to provide true and accurate payroll records. R&A Steel was barred from any form of public works contracting for six months, fined \$3000 and was ordered to pay back taxes to both the Massachusetts Department of Revenue and the Internal Revenue Service. The wage violations occurred throughout 1994 while R&A Steel was working on the South Lawrence East School.

STANLEY ROOFING

Stanley Roofing Company, Inc., of Magnolia was charged with one count of failing to pay the prevailing wage rate and one count of failing to provide true and accurate payroll records to the Commonwealth. The complaint was filed in Lowell District Court and alleges that Stanley owes more than \$9000 in back pay to its workers for work done on the Tyngsborough High School project that ran from February 1991 to February 1992. Arraignment is scheduled for April 4, 1995. Further action is forthcoming.

ARTHUR URGENT CONSTRUCTION

Urgent Construction was charged with one count of failing to pay the prevailing wage rate and one count of failing to provide true and accurate payroll records. The court continued the case without a finding for one year and ordered restitution for \$2600. If restitution is not paid, Arthur Urgent, owner of Urgent Construction, must perform 50 hours of community service.

Construction Projects Shut Down

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down. "This order clearly tells contractors that making additional profits by illegally skimming wages from their employees' paychecks will not be accepted," said FFCM Co-Director Karen Courtney.

Best Walls Co, of Charlestown, which is renovating the Durfee School into a courthouse, was ordered to post a \$42,000 bond to guarantee that carpenters working for the firm would be paid the proper wage rate. The Attorney General's office charged that the company listed six carpenters on the payroll at the prevailing wage rate of \$24.82 per hour, but was actually paying them \$6 to \$9 per hour less.

A company working on four Boston drawbridges, Balfour

Engineering, was ordered to post a \$36,000 bond to guarantee its employees' wages, which should have been \$30.08 per hour, but were \$15 to \$25 per hour instead, prosecutors charged.

A third company, Duarte and Perry Plumbing and Heating of Cotuit, was given two weeks to come up with an \$80,000 bond, but was not shut down, Burke said. The firm is repairing the heating, ventilation, and air-conditioning systems at Roosevelt Towers, a Cambridge Housing Authority Development. Duarte and Perry allegedly paid workers who should have been making \$34.70 per hour only \$7.50 and \$16 per hour and listed their wage rate on the company payroll as \$24.45 per hour.

Belchertown Contractor Banned From Public Works Projects for Three Years

A Belchertown contractor and its owner pled guilty on February 10, 1995 to violating the state's prevailing wage laws and have been barred from public works projects for three years, Attorney General Scott Harshbarger announced.

Miazga Incorporated of Belchertown pled guilty in Ware District Court to 12 counts of violating the prevailing wage laws, 25 counts of filing perjured reports with the state Highway Department and two counts of filing false reports with the Attorney General's office.

Judge Ann Gibbons debarred Miazga from public works projects for three years beginning March 1, and fined the company \$15,000.

Raymond Miazga, the president of the company, pled guilty to 12 counts of violating the prevailing wage laws, 25 counts of filing perjured reports with the Highway Department and two counts of filing false reports with the Attorney General's office. Miazga was also barred from working on public works projects for three years and fined \$15,000.

The most recent wage violations were in 1992 and 1993 while Miazga was a subcontractor for the Middlesex Corporation on the Essex County Highway Project. Other violations occurred in 1989, 1990, and 1991 while Miazga was performing construction and sweeping projects in cities and towns including Amherst, Greenfield, Gill, Bernardstown, Sunderland, Hadley, Adams and Holyoke.

While some workers were supposed to be receiving \$17.65 an hour in wages, Miazga was actually paying the employees between \$7 and \$10 less than required.

"The message must be clear that we are serious about enforcing the prevailing wage laws," said Attorney General Harshbarger. "Employers must know that criminal prosecution awaits them if they fail to comply with the law."

AG Orders Contractor Off Job

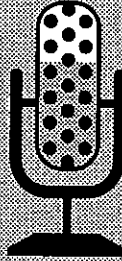
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ary 27, 1995 hearing by the Fair Labor and Practices Division of the attorney general's office.

The Mashpee company, one of several subcontractors for the \$21 million project, owes the employees a total of \$26,600 in back wages, according to the attorney general's office. The pay range for drywall workers is between \$22 and \$26 per hour.

A-Rock must post a \$30,000 bond to cover the back wages before it can return to the site, according to the attorney general's office. The project's general contractor, John T. Callahan & Sons of Randolph, is required to post the bond or pay back wages of A-Rock employees before it can hire another drywall subcontractor.

FFCM Plans Ads on "Independent Contractor" Classification During Tax Season



The Foundation For Fair Contracting of Massachusetts (FFCM) has scheduled a radio ad campaign warning workers about abuses of the IRS "Independent Contractor" statute for the beginning of April. The 60 second ad, timed to coincide with the last two weeks leading up to the April 15 tax filing deadline, is designed to educate construction workers who received 1099 forms about their rights as well as IRS penalties on both employers and employees.

"By misclassifying construction trades employees as "independent contractors", companies not only force their workers to pay more in self-employment income taxes but also leave workers holding the bill for federal employer taxes as well," explained FFCM Co-Director James F. Snow.

"This tax dodge by unscrupulous contractors can leave workers with a big headache and an even bigger tax bill on April 15, but there are ways that employees can fight back. The FFCM radio ad will give workers enough information to take the first step against an employer who abuses the system," said Snow.

According to IRS documents the two usual characteristics of an employer-employee relationship are that the employer has the right to discharge the employee and the employer supplies the employee with tools and a place to work.

If you have an employer-employee relationship, it makes no difference how it is described. It does not matter if the employee is called an employee, partner, co-adventurer, agent or independent contractor says the IRS. To help employers determine if a worker is an employee, the company can file a Form SS-8 with the IRS District Director.

Mass Contractor Indicted

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overtime.

"The allegations contained in this indictment, if proven, will send shock waves through an increasingly lawless construction industry," predicted FFCM Co-Director James F. Snow. "With the results of the grand jury's actions a lot of people will feel discomfort about what amounts to 'standard operating procedure' on public construction projects. Many people in the industry will follow the trial very closely."

Snow praised the Attorney General's office for launching the investigation saying the indictments send a message to all contractors. "Employers in construction who try to comply with the law will hopefully see some signs in this case that compliance with state law in this very competitive industry is a virtue."

**OFFICE OF THE
ATTORNEY GENERAL
FAIR LABOR AND BUSINESS
PRACTICES DIVISION**

1. **ETI, Inc. Earl Thompson, President**, 14 Balsam Drive, Chelmsford, MA - Debarred for a period of six years, beginning May 12, 1989 through May 12, 1995.
2. **David J. Depson d/b/a Mastercoating & Painting, David J. Depson, President**, 61 Bernard Avenue, Pittsfield, MA 01201 - Debarred for a period of three years, beginning Jan. 8, 1992 through Jan. 7, 1995.
3. **Meola Steel Company, Vito Meola, President, Aka Meola Steel Fabricators**, 1 Marie Avenue, Everett, MA 02149 - Debarred for a period of three years, beginning May 1, 1992 through April 30, 1995.
4. **Renovations Unlimited, Robert Compagnone, President**, 103 Sandwich Street, Plymouth, MA 02360 - Debarred for a period of three years, beginning December 14, 1992 through December 13, 1995.
5. **Zichelle Steel Erectors, Inc., Peter Zichelle, President**, 235 Vischoloid Avenue, Leominster, MA 01453 - debarred for a period of three years, beginning April 7, 1993 through April 6, 1996.
6. **R.J. Sanders, Inc., David Sanders, V.P.**, 410 Child Street, Warren, RI - debarred for a period of six months beginning January 18, 1995 through July 18, 1995. David Sanders to March 18, 1995.
7. **Accurate Paving, John Trainor, President**, 74 Acton Street, Watertown, MA 02172 - debarred for a period of six months beginning November 1, 1994 through May 1, 1995.
8. **A.F.B. Forms, Inc., Al Barbaro, President**, 292 Salem St., #105, Revere, MA 02151 - debarred for a period of six months beginning October 25, 1994 through April 25, 1995.

Bourne Selectmen Tighten Reporting Requirements

Bourne selectmen will ask for detailed payroll information from contractors working on town construction projects after learning that MK Contractors of Rhode Island, which did the drainage improvements at Chester Park, did not pay proper wages.

"The burden of proof rests with the town," Selectman Haydon S. Coggeshall said. "If the contractor is paying his workers less, the town could be liable for triple damages."

The contractor was giving a list of wages it was paying, but Dept. of Public Works director Cornelius W. Andres performed a spot check on a laborer working on the project and found that the list was incorrect.

"He was asked how much money he was being paid and the response was ten dollars an hour," Selectman Coggeshall said. "The certified payroll said he was being paid \$24.45 an hour."

Selectmen demanded that MK Contractors pay the proper wages and withheld payments until restitution was made. "They had no choice to comply," Coggeshall said.

Bourne now requires a photocopy of paychecks before they're given out and a photocopy of cancelled paychecks after they are returned from the bank. The contractor must also submit a certified payroll list.

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