



The FAIR CONTRACTOR

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AG Wages Crackdown on Labor Law Violators

Sandwich Contractors Indicted For Fraud

A Sandwich contracting company and its officers were indicted in late May on multiple counts of fraud for alleged violations of state labor laws by a Barnstable County Grand Jury. The 30 count indictment resulted from subcontracting work the company was performing on the Willett Elementary School in Attleboro and the Weston Public Library between 1993 - 94, announced Attorney General Scott Harshbarger.

The company, M.E.C. and its President Paul Masaschi were indicted on two counts each of failure to pay prevailing wages to workers. M.E.C. allegedly paid its workers \$5 to \$10 per hour less than the state's prevailing wage.

In addition, Paul Masaschi was indicted on 14 counts and his father, Louis Masaschi was indicted on nine counts of failure to pay unemployment contributions. These charges stem from their alleged failure to pay over \$18,000 in taxes to the Department of Employment & Training from 1990 to 1994. Paul Masaschi was also indicted on one count of workers compensation fraud, one count of larceny and one count of failure to provide workers' compensation insurance to employees.

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Turnpike Contractor Ordered to Post Bond

A Bridgewater contractor has been ordered to post a \$22,000 bond for failure to pay construction workers prevailing wage on a job at the Massachusetts Turnpike interchange in Hopkinton. In addition, workers were not paid for 252 hours of Saturday overtime work.

If John T. Callahan & Sons does not post the bond by July 19, 1995, all the work will be halted, said Attorney General Scott Harshbarger.

The Attorney General's Fair Labor and Business Practices Division conducted an investigatory hearing on May 24, 1995 over allegations of wage violations by John T. Callahan & Sons. The investigation determined that workers were being misclassified and underpaid under the state's prevailing wage law as carpenters and laborers, when they were actually completing iron work at the Turnpike exit. The workers were allegedly being short-changed by about \$7.50 an hour.

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Secretary of State Backs FFCM Access to Payroll Records

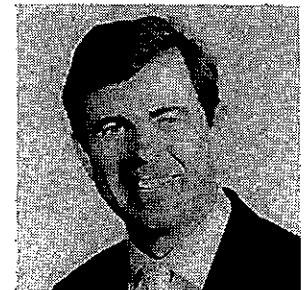
In an important victory for access to records on public construction projects, Secretary of State William Galvin's Office backed a Foundation for Fair Contracting of Massachusetts request for copies of certified payrolls from the Boston Water & Sewer Commission.

The April 13th Advisory Opinion letter to the Boston Water & Sewer Commission, from Acting Supervisor of Public Records Mary E. Schwind, said agencies "may not inquire into the motivation of a requester when complying with a public records request". BWSC had requested the advisory opinion after a construction contractor had demanded his payroll records be kept confidential because of a dispute with a local union. Schwind's decision means the FFCM, which made the payroll request as part of its monitoring program and independent of the union dispute, cannot be denied access to the records, and that motives for the request should not be an issue.

"Additionally, speculation about the actions of others cannot provide a valid basis to withhold records," explained Schwind, citing a 1984 US Circuit Court decision.

The Secretary of State's letter is a boost for contractor accountability on public construction projects," said FFCM Co-Director Karen Courtney. "This opinion leaves in place an important tool in the campaign to enforce the state's prevailing wage and other labor laws".

Schwind concluded by noting "...as the subcontractors are working on a public project, they are subject to a lesser expectation of privacy in matters relating to that project. Moreover [Mass general Laws Chapter 149, Section 27B] effectively puts the subcontractors on notice that their payroll information is subject to inspection. Therefore, information reflecting a Company employee's name, home address and gross salary, are public record".



*Secretary of State
William Galvin*

Case Reviews

Painters Get \$10,000 in Prevailing Wage Back Pay

Four painting trades workers received almost \$10,000 in back pay after filing complaints with the Attorney Generals' Fair Labor and Business Practices Division.

The contractor, Dominic Gentile Painting Co., Inc. of Reading, agreed to pay the four workers amounts that ranged from \$1,000 to \$4,000 in back pay. The workers had been allegedly paid as little as \$15 an hour, or about half the state prevailing wage rate for the work.

Winchendon Violation Results in \$7,500 Claim

A law firm representing a drywall worker has notified General Contractor John T. Callahan that the worker is owed over \$7,500 in back pay for prevailing wage violations. The worker was employed by A Rock Drywall, Inc. on a school renovation project in Winchendon and was allegedly paid significantly below the prevailing wage rate.

Worcester Company Charged with Failing to Pay its Employees

A Worcester-based company that renovated parts of Taunton State Hospital allegedly altered payroll records and failed to pay employees the full prevailing wage according to documents filed in the area's District Court.

Crocker Architecture and Sheet Metal Company Inc., has been charged with seven counts of failing to pay the prevailing wage and 26 counts of filing false payroll records. In addition, Christine Crocker Hubert was charged with 26 counts of filing false payroll records and seven counts of failing to pay prevailing wage. The work took place between August 1992 and February 1993 according to the Attorney General's Office.

Contractor Must Pay \$188,000 for Wage Violations

Albanese Brothers, Inc. and Marco Construction Corp., both located in Malden, as well as Marco Albanese, Marcella Albanese and Maria Albanese as officers of the corporations, have agreed to pay 49 employees \$188,000 in back pay due to federal wage and hour law violations.

The judgement resolves a suit filed against the defendants by the U.S. Department of Labor alleging failure to pay proper overtime and failure to maintain adequate and accurate payroll records. Workers received back pay awards ranging from \$320 to \$19,200 as well as damages.

Grafton Officials Alert AG to Violations

Grafton Town Officials alerted the Attorney Generals Office on March 22, to possible violations of the state's payroll reporting law by a subcontractor on the High School renovation project.

According to the Worcester Telegram & Gazette, School Building Committee Chairman George Prunier, notified the Grafton Board of Selectmen on March 21, that a tile worker who was arrested earlier in the month on drug charges, had signed certified payroll reports for K & E Maintenance Inc., a subcontractor responsible for the floor and wall tile work. Prunier explained town officials were told after the arrest that the worker was not an actual employee but was a subcontractor. Only employees can sign certified payrolls.

According to Grafton Town Administrator Daniel J. Morgado, the arrested worker was listed on at least one certified payroll report as a foreman for K & E on the project.

Cambridge Passes "Responsible Employer" Ordinance

On February 13, the Cambridge City Council passed a "Responsible Employer" ordinance by a 9-0 vote, culminating a two-year lobbying campaign by area building trades unions.

The ordinance is a response to severe abuses of state laws on publicly funded construction projects. According to supporters, the "Responsible Employer" ordinance is designed to screen out unscrupulous and unfair contractors before they bid, rather than chasing them after they have committed violations.

The Ordinance requires all contractors and subcontractors who want to bid on jobs over \$100,000 in Cambridge to prove that they:

- pay the prevailing wage
- provide health insurance for employees
- have a certified apprenticeship program
- pay appropriate Workers Comp. Insurance
- treat workers as employees, not "independent contractors"
- follow the Cambridge Employment Plan

While a few other municipalities have included pieces of this language on specific projects, this is the first time any city or town has passed such a comprehensive ordinance.

Sandwich Contractors

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Paul Masaschi faces a maximum of 5 years in prison and a \$50,000 fine and restitution for each count of failure to pay unemployment taxes, 5 years and \$25,000 in fines for each of the larceny and workers comp. fraud counts and one year and a \$1,500 fine for failure to provide workers compensation. Louis faces up to one year and a \$10,000 fine and restitution for each count of failure to pay unemployment taxes. M.E.C. and Paul Masaschi face a \$10,000 fine for each count of failure to pay prevailing wages and debarment for bidding for six months.

Unfairness in Construction Contracting

by Jim Snow

This article appeared in the Berkshire Business Journal and has been widely circulated by the FFCM.

Peter is a construction laborer. He is a proud young man with an earnest demeanor and a strong back. He is polite to a fault, a former Marine with a reflexive "Yes, sir" or No, sir" response to every question. He is explaining why it was necessary for him to file for food stamps after being laid-off by his employer.

Unfortunately, Peter was one of the thousands of "invisible workers" who have been declared "independent contractors" by their employers. He had come to the offices of the Foundation for Fair Contracting of Massachusetts to explain his plight.

The Foundation for Fair Contracting of Massachusetts (FFCM) was formed two years ago by several unions and employer groups in the construction industry. Its purpose was to be a watchdog group for those in construction who were increasingly disgusted at the depths to which some employers were stooping to win public construction contracts. Chief among these distasteful practices is cheating in the area of prevailing wages, which are community-based rates established by the state labor department under Massachusetts law.

As the FFCM's name implies, to a great extent there is unfairness in awarding of public construction contracts in Massachusetts today. That unfairness favors those who pay less than prevailing wages as required by law, and penalizes those who comply. It favors those who avoid unemployment insurance and workers' compensation premiums, and penalizes those who pay their fair share. And it penalizes those who pay for benefits and training for their employees, and favors those who do not. In a bid process in which the lowest bidder must be

selected as a matter of law, breaking the law leads directly to success in winning jobs.

Magic Buildings

Peter is one of hundreds of construction workers who have received information about their rights from the FFCM. He worked on a number of projects we refer to as "magic buildings" - that is they were built by companies with no employees on the payroll, almost magically it seems! Not only did Peter's employer pay him less than the required prevailing wage, but there were no federal or state employment taxes paid, no unemployment or workers compensation premiums paid, and no benefits in connection with Peter's work. In the construction industry, workers' compensation insurance payments alone can be dollar-for-dollar as expensive as wages. Imagine the advantage Peter's employer enjoyed by evading these legal responsibilities.

And what about Peter? He filed for unemployment benefits and was denied because no unemployment contributions were received in connection with his work. An appeal is still pending. Because his employer treated him as an independent contractor, Peter owes self-employment taxes. That is almost double what Peter would have paid if he were a "real" employee. It is also a cost his employer avoided by passing it along to him. Peter has filed a claim for unpaid prevailing wages with the federal government and will do so shortly with the state attorney general.

Since Peter and his fellow construction workers were "invisible workers" building "magic buildings," they were not insured for-on-the-job injuries. A co-worker who nearly severed his hand lost two months off the job with no pay. He paid his medical bills, which ordinarily would have been paid by a workers compensation insurer but his employer did not pay for the required coverage. In many cases workers cannot afford medical care, and the bills are sent onto taxpayers.

What happened to Peter is illegal. Failing to pay prevailing wages is illegal. Failing to provide workers' compensation coverage is illegal. Failure to make unemployment insurance contributions is illegal, as is failing to withhold employment taxes and failing to make corresponding employer tax payments. A construction worker is highly unlikely to be an independent contractor in business for himself.

The Foundation for Fair Contracting of Massachusetts will continue to stick up for men and women like Peter, and for responsible contractors, to help take the "un" out of the unfairness in public construction contracting.



FFCM co-director Jim Snow is former commissioner of the state Department of Labor & Industries

Davis-Bacon Protected in Senate Bill for Road Funds

The U.S. Senate has ended a gridlock that threatened to hold up billions of dollars for 160,000 miles of road by putting off debate over federal Davis-Bacon wage rules for construction workers. Aides to Sen. Edward M. Kennedy (D-Mass) characterized the move as a victory for their side - an indication that Republicans would have been unable to gain the 60 votes needed to cut off debate on the issue.



The money - \$6.5 billion a year for work on roads to be designated the National Highway System - is already on hand and no senator wants to deny his state the dollars. But Democrats had balked at a proposal to end a requirement that contractors working on federally financed road jobs pay prevailing wages in the area where the work is being done. Sen. John Warner (R-VA) announced the provision would be dropped from the bill after Democrats spent much of the day attacking it. A separate labor bill will deal with the issue later, he said.

Kennedy had called the effort to end the prevailing wage rule, an "attempt to deny American families income to put bread on the table."

The law's supporters insist ending it will drive down wages.

Reprinted from the Associated Press

General Prevailing Wage Rate Information

Prepared by the Attorney General's Office

The Prevailing Wage Rate must be paid on projects funded by the Commonwealth of Massachusetts or any political subdivision (i.e., county, city or town).

- A project funded by federal money may be subject to the Federal Prevailing Wage Rate law (Davis Bacon Act). Projects in this category are monitored by the U.S. Dept. of Labor's Wage & Hour Division, P.O. Box 8668, Boston, MA 02114 (617) 424-4925.

- The Prevailing Wage Rate for public works is established by collective bargaining agreements in private industry for the job classification and the town where the public works are to be performed. The Prevailing Wage Rate generally includes the following: Hourly Wage + Health & Welfare + Pension + Supplementary Unemployment = Prevailing Wage Rate.

- Any employer who does not make payments to such plans must pay the total Prevailing Wage Rate to the employee.

- The cost of providing Workers' Compensation and Unemployment Compensation Insurance cannot be deducted from the Wage Rates. It is the employer's responsibility to ensure that all employees are covered by workers' compensation insurance as provided by law.

- The employer's contribution to Social Security (FICA) cannot be deducted from the Prevailing Wage Rate.

- The employer is statutorily required to record hours worked and proper job classification for all employees. If an employee works in different job classification during the same day or week, he or she may be paid at different rates of pay provided the employer details the number of hours spent in each job classification.

- When an employer makes deductions, the employer shall furnish each employee a suitable payslip, check stub, or envelope notifying them of the amount of the deductions.

- Overtime at the rate of time and one half the regular Hourly

Wage Rate (as defined above) is due after an individual works over 40 hours in one week.

- Apprentice Rates are permitted only when there is an Apprentice Agreement registered with the Division of Apprentice Training in accordance with Massachusetts General Law C.23, Sec. 11E-11L.

Private Right of Action

- MGL C.149, Section 27 establishes a private right of action for victims of violations of the state prevailing wage laws. This statute allows an individual to sue in civil court for treble damages and attorneys' fees following a ninety-day waiting period after filing a complaint with the Attorney General's Office. Permission to proceed civilly prior to the ninety-day waiting period must be granted in writing by the Attorney General.

MGL C.149, S. 27 authorizes the Attorney General, after a hearing, to stop work on a public construction project if the contractor or sub-contractor violated the prevailing wage law. Work on the project remains halted until the contractor or sub-contractor posts a bond in the amount of a penal sum determined by the Attorney General.

General Contractor Debarred- Agent Aware of Subcontractor Violations

Debarment of a general contractor was appropriate where its agent acted as the on-site supervisor of a subcontractor that failed to pay the prevailing wages due to its employees. In this instance, it was determined that the agent's knowledge of the subcontractor's violations of the Davis-Bacon Act could be imputed to the general contractor. As project supervisor, the agent knew what the subcontractor's employees were doing, and therefore, knew by reference to the certified payrolls, that they were not being classified appropriately, nor paid at the prevailing wage rate (Matter of Structural Concepts, Inc., Law Judge).

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