



The FAIR CONTRACTOR

A Publication of the Foundation for Fair Contracting of Massachusetts

December 1995



Volume 2 Issue 4

Local Officials Join FFCM's Wage Compliance Efforts

A variety of local elected and appointed officials, from School Superintendents to Mayors, are publicly supporting the Foundation for Fair Contracting of Massachusetts' wage law compliance efforts. The support came in local newspaper articles reporting on increased FFCM activities to monitor prevailing wage, overtime and other wage law violations on publicly-funded construction projects.

When FFCM Officials notified local awarding authorities and elected officials of the Foundation's intention to target specific school construction projects in their communities, the response was overwhelmingly positive. The FFCM routinely monitors hundreds of projects statewide each year.

"I would welcome this kind of scrutiny. I have supported the Prevailing Wage Law for many years. In effect, it's the minimum wage for quality work," said Springfield Mayor-elect Michael J. Albano. The FFCM will be monitoring the city's \$36.8 million

middle school project and has offered to serve as the compliance agency for the project.

FFCM officials are also targeting the \$14.9 million Ashland School project. "If the contractor is not paying (the prevailing wage), we want to know as well as they do," Ashland School Superintendent Barry Ruthfield told the Middlesex News when asked about the FFCM's announcement. Ruthfield told the newspaper that if he found out that any of the contractors working on the projects weren't paying the state's required wages, he would call the attorney general's office, saying, "It's illegal."

Attorney General Scott Harshbarger's office said they are currently investigating more than 800 cases of alleged abuse of the state's prevailing wage law. In addition to shortchanging workers, prevailing wage violations hurt the Commonwealth, noted Jonathan Ginsberg, Director of Outreach for the Fair Labor and

Continued on Page 4

Trained Accountants Join AG's Investigative Staff

The Attorney General's Business and Labor Protection Bureau has had two trained accountants join its staff to assist with financial investigations targeting fraud and wage violations in public construction projects. These professionals analyze spreadsheets, financial records and tax filings of businesses and individuals under investigation by the bureau. Prosecutions and investigations undertaken are greatly enhanced by this new capacity.

The Office's recent financial investigations have helped to identify common trends among unscrupulous contractors in the construction industry. Typically, the investigations start with a simple complaint that an individual worker was not paid overtime, not paid at all, or was not paid the prevailing wage on a public job. After procuring and analyzing the payroll records, it is often revealed that the original complaint is merely the tip of the iceberg. Investigations of companies avoiding the prevailing wage often lead to disclosures that the employer is paying wages

See AG Page 3

DOL Hunting 401(k) Fraud

Employers Given Less Time To Transfer Worker Contributions to Retirement Plans

The U.S. Department of Labor's Pension and Welfare Benefits Administration is cracking down on firms that use employee contributions to 401(k) pension plans for their own purpose. According to Engineering Record-News (12/11/95) the crack-down has already snagged a few construction industry firms.

The USDOL began its enforcement program earlier this year after receiving employee complaints. Over 300 companies are currently under investigation. Another 100 cases have been closed, resulting in recovery of more than \$3.2 million for 2800 workers. Investigators say most problems occur in small businesses facing financial difficulties.

Under new rules recently released by US Labor Secretary Robert Reich most large companies will have to deposit 401(k) contributions within one day after they are received. Smaller companies will have a longer period of time depending on their size, but almost all will have to deposit employee contributions within 30

See 401 Page 3

Taunton Contractor Debarred for Wage Violations

G. Lopes Construction of Taunton admitted in September to sufficient facts for a guilty finding for alleged violations of the state's prevailing wage laws. The contractor allegedly paid as much as \$10-an-hour less than the state mandated rates while working on the Dighton sewer line project from December 1992 through December 1993.

Lopes has paid nearly \$40,000 in back wages to 24 employees involved in the Dighton project.

Everett Contractor Faces Fines of \$132,000

The president of an Everett contracting company was arraigned at the end of October on 27 charges of underpaying employees by \$80,000. Pasquale Guarracino, president of P & H General Contractors, pleaded not guilty to charges of violating the prevailing wage law. The Attorney General's Office said that in 1992 and 1993, while P&H General Contractors was working on the Westminster Elementary School, the Reading Senior Center and the North Shore Regional Vocational School, Guarracino allegedly underpaid construction employees by up to \$13-an-hour on the projects.

If convicted, Guarracino and P & H face a fine of up to \$132,000 and exclusion from public works projects for six and one-half years.

RI Labor Dept. Requires Cianbro Corp. to Pay \$20,000

Under a Consent Order dated October 3, 1995, Cianbro Corporation and its President, Peter G. Vigue, have agreed to pay back wages to 29 workers totaling over \$20,000. Under the Consent Order, the Rhode Island Department of Labor and Peter G. Vigue agree that Mr. Vigue "had knowledge of the Rhode Island Prevailing Wage Law and failed to pay the prevailing wage rate with respect to overtime".

The violations occurred on the Mount Hope Bridge Project in Bristol Rhode Island. Workers will receive amounts ranging from \$30 to \$1,500 and that include a 6% interest penalty. The Rhode Island Foundation for Fair Contracting filed the initial complaint on behalf of the workers.

District Court Orders Federal Agency to Disclose Contractor's Payroll Data

A federal agency's disclosure of a construction contractor's payroll data, including workers' names, addresses, and pay rates, to an investigating union enhances enforcement of the Davis-Bacon Act, the U.S. District Court for the Eastern Division of Pennsylvania determined on September 14, 1995.

Such disclosure does not constitute a clearly unwarranted invasion of personal privacy as provided under Exemption 6 of the

Case Reviews

Freedom of Information Act (FOIA), the court said.

A union's monitoring of a federal agency's enforcement of the Davis-Bacon Act on federally funded construction projects is "exactly the kind of public interest Congress intended FOIA to facilitate," the

court said, citing the U.S. Court of Appeals for the Third Circuit's 1988 decision in *IBEW Local 5 v. U.S. Department of Housing and Urban Development*.

The court ordered the U.S. Department of Veteran's Affairs to disclose to Sheet Metal Workers Local 19 the identities, addresses, and rates of pay for employees of Tri-State Design Construction Company on a 1994 roof renovation project at the Veterans Affairs Nursing Home in Wilmington, Del.,

Compliance Effort

SMW Local 19 filed a FOIA request with the agency in March 1994 for pay information on the contractor's employees after a Local 19 organizer visited the Wilmington jobsite and reportedly observed several workers classified as roofers performing sheet metal work, the court said. The union requested weekly certified payroll records, apprentice registration forms, and a copy of prevailing wage rates. The agency denied the request, contending that certified payroll records were not public information and could not be disclosed under FOIA. The union appealed and the agency again rejected disclosure, saying that the contractor's workers had a substantial privacy interest in their names, addresses and wage and benefit information - all of which could be withheld.

The union subsequently filed suit under FOIA, seeking a declaratory judgment that the agency is not entitled to withhold certified payroll records and seeking an injunction to compel disclosure.

Public Interest

Local 19's receipt of the requested information would shed significant light on whether the government agency is enforcing Davis-Bacon properly, the court said. Moreover, the agency has admitted to a discrepancy in a payroll record submitted by Tri-State and has acknowledged that some employees apparently classified as roofers performed sheet metal work on the project, the court noted in a reasoning that the public interest in disclosure is strong in this case. Examination of payroll records could result in other mistakes being uncovered, the court said.

Also, the union in this situation had no alternative to contacting employees at home to ensure compliance with Davis-Bacon, the court said, noting the transience of construction work.

The substantial privacy interest of employees in their names and addresses is outweighed by the "strong" value that release of the employees' home addresses would serve in ensuring that the agency properly enforce the Davis Bacon Act, the court said.

Judge Louis C. Bechtle issued the opinion.

Boston City Council to Consider "Responsible Employer" Ordinance

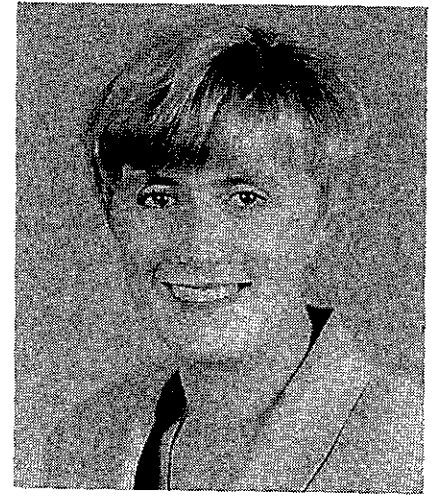
Boston City Councilor At-Large Peggy Davis Mullen has introduced a city ordinance that would set standards for contractors and subcontractors bidding on publicly-funded Boston construction projects. The guidelines, popularly known as the "Responsible Employer" ordinance, are similar to legislation passed by the Cambridge City Council this year.

According to Mullen, the ordinance sets the following standards for bidding:

- The bidder and all subcontractors must pay lawful prevailing rates to their employees.
- Contractors must maintain and participate in a bona fide apprentice training program approved by the State Division of Apprenticeship Training and must abide by the apprentice to journeymen ratio for each trade prescribed therein.
- Contractors must furnish, at its expense, hospitalization and medical benefits for all their employees employed on the project and/or coverage at least comparable to the hospitalization and/or medical benefits provided by the health & welfare plans in the applicable trade.
- The contractor must maintain appropriate industrial accident insurance coverage for all employees on the project.
- The contractor must properly classify employees as employees

rather than as independent contractors and treat them accordingly for purposes of workers compensation coverage, unemployment taxes, social security taxes and income tax withholding.

- Any contractor who fails to maintain throughout the entire duration of the construction project compliance with any of the conditions set forth about as qualifications to bid shall be subject to one or more of the following sanctions - cessation of work until compliance; removal from the project; withholding of payment until compliance is obtained; liquidated damages based on the value of the contract.
- The General Contractor shall be liable for any violations by its subcontractors. Contractors who have been determined to have violated any of the qualifications shall be barred from city-owned projects for three years.



**Boston City Councilor
Peggy Davis-Mullen**

Awarding Agency of the Year

The FFCM Awarding Agency of 1995 is the Lynn Housing Authority for its monitoring of a Lead-Based Paint Abatement project.

At the end of this summer, while responding to a payroll request for the Curwin Circle abatement project, the Lynn Housing Authority not only provided the information, but added a bonus. LHA Modernization Coordinator Ron Dupuis attached a letter from the contractor on the project, Environmental Restorations, Inc., indicating that the company's request for a state deleaders rate had been denied by HUD.

Environmental Restorations Vice President Robert Mazalewski's letter included a commitment to pay the prevailing rate for trades involved on future projects and to provide "back pay to all employees as required, where we used the state deleaders rate." A tip of the hat and our Awarding Agency of 1995 recognition to the Lynn Housing Authority for its excellent work and quick action on this project.

AG Investigative Staff

Continued from Page 1

under the table, underpaying workers' compensation, paying employees as independent contractors (1099 IRS forms), and underpaying unemployment taxes and other payroll taxes.

The underpayment of taxes and premiums does not save money for the municipality or its taxpayers, but instead diverts these public funds right into the contractors' pockets. The fraud committed drives up insurance premiums and taxes for the vast majority of legitimate firms who play by the rules.

401(K) Fraud

Continued From Page 1

days. Under the old rules, companies had 90 days to deposit employee funds. Reich said under the old rule, some companies saw it as "providing a 90-day loophole that allows them to hold the funds as a kind of permanent interest-free loan amounting to three months of employee contributions."

The new rule gives employers the same amount of time as they currently have to transfer Social Security payments and income tax withholdings.



The Fair Contractor is published quarterly by the non-profit Foundation for Fair Contracting of Massachusetts. The FFCM mailing address is Box 256, State House Station, Boston, MA. 02133. The Fair Contractor accepts Letters-to-the-Editor. For information call 1-800-224-FAIR.

Prevailing Wage Law Advisory

The prevailing wage law applies not only to public buildings and public works projects (e.g. new construction, renovation, repair, road or highway work, maintenance, the rental of equipment, moving office furniture, cleaning state office buildings, trash hauling and school bus transportation) but also to certain work done preliminary to the construction of public works. Such work includes, but is not limited to, soil explorations, test borings and demolition of structures incidental to site clearance and right of way clearance, and the demolition of any building or other structure ordered by a public authority for the preservation of public health or public safety. {G.L. c. 149, sec. 27D}

The prevailing wage law applies to all public works and public building projects, regardless of the cost or size of the project. There exists no monetary threshold.

Wage Compliance Efforts

Continued from Page 1

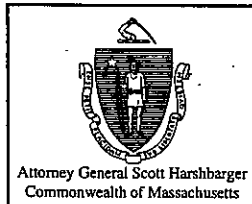
Business Practices Division of the Attorney General's office, in a recent Worcester Telegram and Gazette story.

Contractors who purposely violate the wage law "are almost 100% of the time underpaying the unemployment insurance, underpaying the workers' compensation, and this type of behavior drives up the cost of doing business in the state," said Ginsberg.

FFCM Co-Director Karen Courtney said that local officials' support was a welcome addition to efforts to prevent wage and tax fraud on public projects. "A commitment on the local level makes monitoring and compliance efforts that much easier," explained Courtney. "Every Mayor, City Councilor, or Selectman that encourages wage law enforcement is really supporting responsible, law-abiding contractors as well as protecting taxpayers' interests."

The Foundation for Fair Contracting

P.O. Box 256
State House Station
Boston, MA 02133



The minimum prevailing wage must be paid to regular employees of the Commonwealth or of a county, town or district, when such employees are employed in the construction, addition to or alteration of public buildings for which special appropriations of more than one thousand dollars are provided. {G.L. c. 149, sec. 26.}

Although enforcement authority with respect to violations of the prevailing wage laws has been legislatively transferred to the office of the Attorney General, the Department of Labor and Industries remains charged with issuing wage schedules and job classifications, and making determination on the applicability of the prevailing wage. Appeals of wage determinations or classifications should be made to the department.

Reprinted from The AGenda (10/95)

Dodge To Note Prevailing Wage on Bid Reports

CIG/Dodge Inter-Office Memo:
Enhancement of Massachusetts Product

Effective immediately, at the request of the Foundation for Fair Contracting of Massachusetts, we will enhance all publicly owned bidding reports in Massachusetts by adding a statement indicating that the prevailing wage rates apply to the project.

Notify reporters that on all state and local government owned projects and all valuations that the following statement is to be added to the notes field (Screen 0150):

*"Massachusetts Prevailing Wage Rates
Apply to This Project"*

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
BOSTON, MA
PERMIT NO.52213