



# The FAIR CONTRACTOR

A Publication of the Foundation for Fair Contracting of Massachusetts

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## Employers Ordered to Pay \$16,000 in Back Wages for Federal Wage and Hour Law Violations

SPES COMPANY, INC. of Billerica, Massachusetts, along with two officers of the corporation, have been ordered to pay twenty-six employees over \$16,000 in back wages (plus interest) as the result of a judgement by the U.S. District Court for the District of Massachusetts.

The court order, agreed to by the parties and signed by U.S. District Judge Richard G. Stearns, resolves a suit filed against the defendants by the U.S. Department of Labor alleging violations of the Fair Labor Standards Act (FLSA), including failure to pay employees proper overtime wages, and failure to maintain adequate and accurate payroll records.

According to Corey Surett, Massachusetts District Director

for the Labor Department's Wage and Hour Division (WHD), a total of \$16,432.28 (plus interest) is due twenty-six employees who worked for the construction firm for the period of time between September 11, 1993 and April 1, 1994.

Surett noted that the order also prohibits the defendants, who agreed to entry of the judgment without admitting liability, from future violations of the overtime and recordkeeping provisions of the Fair Labor Standards Act. In addition to SPES COMPANY, INC., the defendants in this case included Robert Allen of Wilmington, Mass., as president of the company, and Theresa Allen of Wilmington, Mass., as clerk of the corporation.

## New Pension Rules Readied

The Department of Labor is readying final rules governing employee benefit plan assets. Labor's proposed regulations would significantly reduce the time an employer has to remit employee contributions to retirement and pension plans. Final rules are due later this summer.

Labor's Pension and Welfare Benefits Administration proposed the changes in December to crack down on companies

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## Steel Construction Company Owner Pleads Guilty to Fraud

The owner and operator of a Leominster based steel construction company has admitted he fraudulently concealed the size of his company's payroll to reduce the firms' workers' compensation premiums. The Fair Contractor reported in March that Peter F. Zichelle had been charged with mail fraud in a joint investigation by the FBI, the US Attorney's Office and the State's Department of Industrial Accidents Fraud Division.

During his District Court change of plea hearing, Zichelle pleaded guilty to six mail fraud counts that could result in a penalty of up to five years in prison and a \$250,000 fine on each count.

According to Assistant District Attorney Paul Levenson, between December 1990 and March 1994, Zichelle provided false information to Liberty Mutual Insurance Co., regarding the payroll of Zichelle Steel Erectors Inc. Liberty Mutual provided Zichelle customers with documentation that the contractors employees were properly insured on projects. Zichelle concealed the true size of his company's payroll by paying a portion of his employees' wages through a separate corporation, Zichelle Corp.

Judge Nathaniel Gorton accepted Zichelle's guilty pleas and scheduled a July 19 sentencing.

## AG's Office Gets New Enforcement Chief...

Helen Moreschi, an Administrative Law Judge with the Department of Industrial Accidents, has been named the Chief of the Fair Labor and Business Practices Division of the Attorney General's Office. Judge Moreschi, a former president of the Labor Guild and a Bricklayers Union member, has a strong background in the construction industry.

## ...SOS Names New Records Supervisor

The Secretary of State's Office has named a new supervisor of its Public Records Division. Carolyn Kelly MacWilliams has been tapped by Secretary William Gatvin to fill the position formally held by Mary Schwind.

## Major Building Contractor Settles With Massachusetts Attorney General

Eastern Contractors, Inc., and its subsidiary entered pleas in Middlesex Superior Court to charges of violating the prevailing wage law and failing to pay overtime wages, workers' compensation premiums, and unemployment taxes, Attorney General Scott Harshbarger announced.

The charge against Eastern Contractors, Inc. and its subsidiary East Coast Construction, stemmed from public construction projects performed at schools in Lowell, West Brookfield, Framingham, and Spencer, as well as a bridge renovation project in Framingham.

Eastern pleaded no contest to a charge of avoiding workers compensation premiums. Eastern was ordered to pay \$300,000 in restitution for back premiums and was fined \$1000. Eastern was also ordered to pay \$102,000 in restitution for back wages, unemployment taxes, and costs. East Coast pled guilty to one count each of failing to pay overtime wages, failing to pay the prevailing wage rate, and failing to maintain true and accurate payroll records. East Coast was fined \$4,000 and debarred from performing public works projects for six months.

Eastern has also become a signatory to the Carpenters' Union collective bargaining agreement, thus minimizing the possibility of violations of this nature occurring in the future the Attorney General said in a press release.

In addition, Eastern was placed on pre-trial probation for charges associated with the Old Connecticut Path bridge project in Framingham. As a condition of the probation, Eastern will be precluded from bidding on any public works projects for three months.

## NH Contractor Pleads Guilty to Wage Violations; FFCM Audited Project

A New Hampshire contractor has plead guilty to not paying workers the prevailing state wage while working on the new South Lawrence East School. Wage violations occurred throughout 1994, while R&A Steel was working at the school, according to the Massachusetts Attorney General's office. Employees were entitled to \$27.83 per hour but actually received between \$10 and \$15 per hour. They also were paid up to \$760 per week in untaxed money.

The attorney general's office said R&A Steel and owner Robert Rouleau of Dover, NH broke the state's prevailing wage laws and failed to provide true and accurate payroll records. R&A Steel and Mr. Rouleau plead guilty in March in Lawrence District Court to one count each of failure to pay the prevailing wage rate and one count each of filing false reports, according to the attorney general's office.

## Case Reviews

Lawrence District Court Judge Michael T. Stella, Jr. sentenced them to file amended payroll tax returns with both the state Department of Revenue and the Internal Revenue Service. He also ordered them to pay back

taxes on employee payments that did not include tax withholdings. Judge Stella also barred them from performing any public works contracting for six months and fined them \$3,000.

The school district's payroll records from company were in order and had recently been audited by Massachusetts Foundation for Fair Contracting, a school official said.

## Hyde Park Company Guilty of Prevailing Wage Violations

A Hyde Park insulation company has pleaded guilty to charges that it violated the prevailing wage law while engaged in a public works project at the Attleboro Public Library, Attorney General Scott Harshbarger announced. Martin Metro East Insulation, Inc., pleaded guilty in West Roxbury District Court on May 8 to one count of failure to pay the prevailing wage rate. Kyle Martin, the company president, admitted to sufficient facts on a second count. The work at the library was done between 1993 and 1994.

Martin and his company were barred from bidding on public works projects for a period of six months. In addition, both were placed on one year's probation, fined \$5,000 each, and assessed victim witness fees. Kyle Martin was also ordered to pay restitution in the amount of \$3,500.

## Plumbing Company Charged

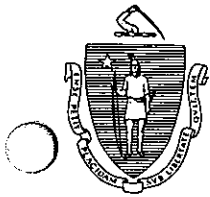
The Millis Plumbing Company and its president, Michael Rogers, have been charged with violating the prevailing wage law, by Attorney General Scott Harshbarger. Criminal complaints have been issued in Wareham District Court against Rogers and his firm for failure to pay the prevailing wage and failure to provide true and accurate payroll records.

The complaints are for violations engaged in during four different public works projects between 1994 and 1995 and are the Agassiz School, the Milford Police Station, the Durfee Courthouse, and the New Bedford landfill. The company is alleged to have underpaid its employees by \$13 per hour.

## Masonry Firm faces Wage Charges

A Saugus masonry company and its owner have been charged with violating the prevailing wage law and with worker's compensation fraud. Complaints have been issued in East Brookfield District Court against E & L Masonry Corp. and its president, Louis J. Maiani, and a second defendant, Ettore Bonfini, who owns a masonry company called Bonfini Brothers.

Maiani and Bonfini have been charged with failure to pay prevailing wage rates and failure to provide true and accurate



## From the Office of the Attorney General

The Foundation for Fair Contracting  
of Massachusetts  
Box 256, State House Station  
Boston, MA. 02133

You have requested information regarding whether or not a G.L. c. 149, Sec. 44F filed sub-bidder may sub-subcontract the work of its sub-trade. A review of prior decisions on this matter by the Department of Labor and Industries (the predecessor authority to this Office in matters of public bidding), as well as recent decisions from this Office, indicates that, for the most part, a filed sub-bidder must perform the work of the filed sub-trade, and cannot sub-subcontract such work.

The filed sub-bid law serves at least two purposes: (i) to ensure that qualified building trades perform the work within the statutory filed sub-trades, and (ii) to prevent bid shopping practices with respect to the statutory filed sub-trades. To allow sub-subcontracting of filed sub-trade work would defeat the purposes of the filed sub-bid law.

The only exception to the requirement that a filed sub-bidder perform all of the filed sub-trade work is for specialty work that is customarily performed in that sub-trade under sub-subcontract.

The requirement that a filed sub-bidder perform all of the filed sub-trade work (subject to the exception discussed above) is evident from a plain reading of the filed sub-bid law (i.e., G.L. c.149, Sec 44F). As such, experienced awarding authorities impose the requirement upon sub-bidders as a matter of routine, thereby ensuring compliance with the statute. For example, both the Executive Office of Communities and Development and the Division of Capital Planning and Operations, two agencies that oversee a significant portion of construction work within the Commonwealth, have a steadfast policy requiring rejection of any sub-bid that sub-subcontracts an integral portion of the sub-trade work. Both agencies treat such a practice as violative of G.L. Chapter 149, Sec. 44 F (the sub-bid law) and, thus, require rejection of any sub-bid that indicates that such a practice will be undertaken.

If you require any further assistance in this matter, please contact me.

Sincerely,

*Francis X. Flaherty, Jr.*  
Assistant Attorney General

## State Suspends Contractor's Apprenticeship Program for Severe Violation

The Massachusetts Department of Labor & Industries has suspended the apprenticeship program of K & E Maintenance Co. due to a violation of the state's apprenticeship laws and standards.

In a letter to the contractor, Gayann Wilkinson, Director of the Division of Apprenticeship Training notified K & E of the action saying "Due to the severity of the violation we are suspending your program as of June 28, 1996." The letter advised the company that the suspension means the Commonwealth will not recognize any of K & E's employees as having the status of "apprentice" for the purposes of the state's prevailing wage law.

"Verbal confirmation from apprentices employed by K & E Maintenance indicate that K & E Maintenance's apprentices have not been provided with the required classroom instruction in violation of Mass General Laws Chapter 23, Section 111 (4)," Wilkinson explained in the letter.

## Case Reviews

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payroll records. E & L Masonry and Maiani were additionally charged with worker's compensation fraud. The alleged violations took place in 1994 and 1995 when E & L Masonry was awarded the Spencer Water Department contract. The company, in turn, sub-contracted to Bonfini Brothers.

Workers at the site were paid about \$15 an hour less than the prevailing wage for mason tenders. E & L Masonry also submitted an insurance certificate listing Bonfini Brothers as the insured and E & L Masonry as holder of the certificate.

Upon review, the insurance company notified the state attorney general's office that the certificate had not been issued by the company listed on it and that it was fraudulent.



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The *Fair Contractor* accepts Letters-to-the-Editor. For information call 1-800-224-FAIR.

# State Targets 11 Business Owners Who Owe \$492,000 in Unemployment Fees

Eleven Massachusetts executives have been charged with failing to pay a combined total of \$492,000 in unemployment taxes, the attorney general's office announced.

The corporate officers, who represent 10 different companies, each face up to one year in jail and a \$10,000 fine in addition to the tax money they owe the state Department of Employment and Training. Those charged were:

• *Joseph Scannelli*, owner of **M.S. Coil Co.** in Revere, who allegedly owes \$47,849;

• *Marcia A. Bogue*, president of **BGR Corp.**, which operates On The Square Watertown in Newton, charged with refusing to pay \$40,548;

• *Anthony Forte*, president and treasurer of **Northeast Granite and Grouting Corp.** in Everett, charged with refusing to pay \$151,274;

• *John F. Isherwood*, president and treasurer of **Salvo Machinery Corp.** in Fall River, charged with refusing to pay \$22,418;

• *Peter A. Erkkinen*, president and treasurer of **Teachman-Perry Inc.** in Providence, RI, charged with refusing to pay \$15,804;

• *Warren A. Bren*, owner of **Warren's Xtra Service Station** in Palmer, charged with refusing to pay \$21,238;

• *Henry T. Cook*, vice president of **Colonial Health Care** in Falmouth, who allegedly failed to pay \$72,950;

• *William F. Rizzi*, president and treasurer of **City Crane Co.** in Norwood, who allegedly owes \$40,588;

• *David J. Depson*, owner of **Master Coating and Painting** in Pittsfield, who allegedly owes \$6,240;

• *James F. Cobbs*, president and treasurer, and *Nancy J. Ferraguto*, vice president, of **New England Electrical Service Inc.**, in Brockton, who allegedly owes \$73,778.

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## New Pension Rules

*Continued from Page 1*

that held off remitting pension contributions or used them for their own purposes. Under current law, firms have between 60 and 90 days to deposit employee contributions into benefit plans. The proposed rules would sharply reduce that time, requiring larger companies to make next-day deposits and giving smaller companies two weeks.

More construction firms are offering employee retirement benefits. In 1994, the most recent year for which data is available, some 40% of Associated General Contractors (AGC) member firms said they offered 401(k) plans for their workers. That's an 8% increase over the number of firms that offered such plans in 1992, according to AGC. The group also says about 30% of its members offered pension plans in 1994. Another 8% said they expected to offer pension plans in the

future. The Mechanical Contractors Association of America says about 82% of its members offer pension plans.

Those figures are in line with a trend in other industries: A rise in the number of companies that offer 401(k) plans and in the number of workers who use them. With this in mind, the Labor Department also released guidelines for employers on providing investment advice to their workers. Federal officials have been concerned that "participants may not have a sufficient understanding of investment principles and strategies to make their own informed investment decisions," according to the guidelines. The guidelines also carve out protection for employers so they would not have to register as an investment advisor under federal laws.

*Information compiled ENR and USDOL Press Releases*

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