



The FAIR CONTRACTOR

A Publication of the Foundation for Fair Contracting of Massachusetts

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DECISIONS SUPPORT STATE BID AND WAGE LAWS

MWRA Protest Upheld

The Foundation for Fair Contracting and Millwrights Local 1121 won an important victory for "Fair Contracting" as a result of a protest filed with the Attorney General's office of Fair Labor and Business Practices. The FFCM and Millwrights' protested the decision of Massachusetts Water Resource Authority (MWRA) that the work in question,

a contract for Process Equipment Maintenance Services at the Nut Island Treatment Plant, was not subject to the provisions of Massachusetts General Law C30 section 39M or C149 sections 44A-44J {The Public Bidding Statutes for Construction}. Instead, the MWRA decided that it was a maintenance contract and distributed a Request for Qualifications/Bids (RFQ). **The contract documents did not include the prevailing wage!** The FFCM, the Millwrights and a contractor who has done this kind of work in the past, argued that the work was repair work and should be publicly bid and the prevailing wage rates should be requested and included in the contract.

The Attorney General's office stated in the August 12, 1996 decision:

"The protesters argue, however, that the work included in the RFQ involves in whole or in part, 'repair' of a public work. We agree. We further note that while the contract clearly does include maintenance work (e.g., greasing motor bearings, adding or changing crank case oil, lubricating trolley crank linkage, checking and cleaning main pump packing areas and drains), the RFQ also contains numerous indications that the contract also includes repair of the system. Not only does the MWRA use the repair in several places in the RFQ to characterize the work, it also uses several other words and phrases that are synonymous with repair (i.e. "fix," "unplanned maintenance," "special events," "emergency work," "corrective maintenance." and "tasks necessary to return equipment to full dependable service"). Thus we are constrained to find that the services to be provided under this contract include repair" Therefore, the MWRA is directed to rebid the



Court Rules Paving Repairs Covered by Wage Laws

In a case with major significance for the road building and repair industry, a Suffolk Superior Court Justice has repudiated the position of Felix A. Marino Co., Inc. and held that the prevailing wage law applied to road repair contracts. Justice Richard J. Chin issued his decision on October 2nd, upholding the decision of the state Department of Labor and Industries which denied Marino's original appeal. Justice Chin decided against Marino on all of the issues in the case.

Citing language in the law which clearly defines the work "construction" to include repair and alteration, Chin made short work of the claim that road repair somehow fell outside the law. Reinforcing his interpretation, Justice Chin cited an earlier Supreme Judicial Court case regarding asphalt truck drivers to illustrate the comprehensive coverage the law affords. "In both cases, the employees are an integral part of the roadway construction process," Chin wrote.

The Court also rejected Marino's contention that wage rates had been set improperly by the Department of Labor and Industries. "Here, the DLI Commissioner weighed ample testimony and considered first-hand observations by DLI personnel before accurately determining that the functions performed by Marino's employees are all part of conventional paving operations for which prevailing wage rates already exist." Justice Chin wrote. The decision also rejected Marino's claim that the prevailing wage law is preempted by federal law.

contract pursuant to G.C. c. 30 section 39M. The MWRA is further directed to contact the Department of Labor and WorkForce Development concerning the appropriate wages." (emphasis added)

This is an important decision for contractors and workers on public works projects. There is a tendency for Awarding Authorities to try and characterize construction as maintenance or service to avoid public bidding, advertising, and the inclusion of prevailing wage rates. These requirements are mandated to ensure open competition and access for all contractors to bid and receive public construction contracts!

Attorney General Rules in Favor of Responsible Employer Law

On June 6, the state Attorney General's office issued a landmark judgment, ruling that the city of Cambridge's Responsible Employer Ordinance was legal. The Ordinance was passed by the Cambridge City Council in 1995. Similar language was used in the Malden Public Library project and has been proposed for the City of Boston.

The Ordinance requires all contractors and subcontractors who bid on public projects to:

- pay the prevailing wage;
- provide employees with health insurance;
- offer a state certified apprenticeship program;
- purchase workers compensation coverage;
- and classify workers as employees rather than as "independent contractors."

The Cambridge law was recently put to a test when Charlesgate Construction, a contractor from Rockland, was the apparent low bidder on the Frisoli Youth Center, just \$27,000 below the second low bidder, W.T. Rich. When the City determined Charlesgate could not comply with the Ordinance, the project was awarded to Rich.

Charlesgate promptly protested the City's action to the Attorney General's office, arguing that the Ordinance was illegal. However, Assistance Attorney General Jean O'Brien ruled that cities and towns have a right to insist that bidders meet certain qualifications, such as health insurance and apprentice programs for employees.

CASE REVIEWS

Company Admits Paying Too Little

A construction company has admitted that it failed to pay the prevailing wage on a number of road projects in 1992, according to Fitchburg District Court records.

ROU Construction Co., then of 4 Weymouth St., Fitchburg, but now of 744 Main St., Leominster, admitted to sufficient facts and the case was continued without a finding for one year by Judge Elliott Zide, according to court records.

Also, company officials agreed to voluntarily disassociate themselves from similar projects for four months beginning Sept. 16, according to court records.

The company also will make restitution of \$1,900 to workers who did not receive the prevailing wage, according to court records. The low pay was over a period from Aug. 30 to Oct. 10, 1992, records show.

Marsha Hunter, an assistant attorney general who prosecuted the case, said a worker complained about low pay and the state attorney general's office began investigating the situation.

She said the roads worked on were Route 2 in Westminster,

Route 202 in Winchendon, Rte. 70 at the Clinton and Boylston line, Rte. 140 near the Boylston and Shrewsbury line and some city streets in Boston. Hunter said the company was putting in sewer manholes and storm grates on those roads.

Three counts of failing to keep public works records were filed without a plea or finding.

Springfield Contractor Pleads Guilty to Employer Tax Charges

A Springfield man pleaded guilty in the Boston Municipal Court to charges of failing to pay employer taxes to the state Department of Employment and Training, Attorney General Scott Harshbarger announced.

Denis W. Letendre, 45, pleaded guilty to four counts of failure to pay employer taxes. Judge Herbert H. Hershfang sentenced Letendre to two years of probation. He also was ordered to make full restitution in the amount of \$12,000 to the Department of Employment and Training.

Letendre was the president and treasurer of Denis Letendre, Inc., a painting and decorating business located in Springfield. The taxes went unpaid during four non-consecutive quarters between July 1, 1991 and December 31, 1993.

Rhode Island Company Guilty of Violating Prevailing Wage Law

A Rhode Island cooperation pleaded guilty yesterday to violating the prevailing wage law while performing work at a public works project at the Lincoln School in Brookline, Attorney General Scott Harshbarger announced.

Ajax Construction Company, Inc., of Harrisville, Rhode Island, pleaded guilty in Brookline District Court to one count of failure to pay the prevailing wage. For the duration of the project, from September 1992 to July 1993, Ajax ran a scheme whereby employees would be paid but then were required to pay back a percentage of their wages with a money order.

In exchange for the guilty plea, Ajax agreed to pay full restitution in the amount of \$9,476 and was debarred from engaging in and bidding on public works projects for six months.

The company's president, Benjamin Watkins, and the treasurer, Alphonse Morel, admitted to sufficient facts on the charge of failing to pay the prevailing wage. Watkins also admitted to sufficient facts on a charge of failing to keep and provide true and accurate payroll records. Watkins and Morel, both Rhode Island residents, have been debarred from engaging in and bidding on public works projects for six months, and each will pay \$5,000 to Harshbarger's Student Conflict Resolution Experts (SCORE) program.

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STATE: ROOFER CHEATED WORKERS

The state attorney general's office has ruled that William G. Burns gypped his workers and the city by not paying prevailing wages.

The attorney general's office will make sure Mr. Burns' employees receive the pay they are entitled to, City Solicitor Ashod N. Amirian said and handle any legal action against Mr. Burns.

Mr. Burns, owner of William G. Burns & Sons, was the city's roofing vendor until he was fired by Mayor James A. Rurak. After an uproar at the City Council meeting, Mr. Burns promised he would pay back wages to his employees if the Attorney General's office ruled against him.

Mr. Burns said he was paying his workers between \$10 and \$20 per hour. The state requires a wage of \$34 per hour. Mr. Burns said the service contract he had with the city did not require him to pay prevailing wages.

City Councilor George Dekeon said the city is done with Mr. Burns and will leave the matter in the hands of the state.

Mr. Burns admitted to City Council that he was not paying his workers the state-set minimum for the numerous roofing and painting jobs he did for the city, violating a contract he signed with the city.

He contends he did not have to pay prevailing wages because his company was not doing work on public works projects but was providing a service.

City Councilor William C. Pike said other companies who bid for the roofing vendor's job were put at an unfair disadvantage when Mr. Burns did not pay prevailing wages. He said most companies build in other costs of employees such as benefits, workman's compensation, profit and other insurance on top of the prevailing wage minimum when presenting its bid.

Edited and reprinted from the Lawrence Eagle Tribune

CASE STUDIES

(Continued from p. 2)

North Andover Company Charged With Failure To Pay

A North Andover firm and its president have been charged with failing to pay more than \$21,000 to six workers on a highway resurfacing project on Route 495 last summer.

Roy J. Brandano, the president of Just Grind It, appeared in Newburyport District Court to answer to six counts each of failing to pay overtime, non-payment of wages, failure to pay the prevailing wage, and failure to produce records. The firm itself is being charged with six counts each of failure to pay

LETTERS TO THE EDITOR

July 26, 1996

The Foundation for Fair Contracting

To whom it may concern:

I'm sure the bloated union coffers make it possible to send out these threats, and supplies these publishers with handsome salaries and benefits.

This thing raises my blood pressure to the point of physical impairment.

Please remove this company from your mailing list. The intimidation it presents does not impress me at all.

I consider the prevailing wage to be a form of welfare and an insult to the vast majority of employees and private industries whose taxes pay for it.

Sincerely,

Frederick T. Skalski, President
Deerfield Valley Re-Fab, Inc.

August 2, 1996

The Foundation for Fair Contracting

Attention: Letter to the Editor

To Whom It May Concern:

Enclosed you will find our contribution to help defray the expense of your continued vigilance in preventing fraud and corruption within public works contracting.

Encourage all contractors, both union and open shop like ourselves, to recognize that honest business practices are in everyone's best interest.

Let's no longer contribute to the problem, but let us contribute against it! Please write a check to demonstrate your support today!

Sincerely,

TRI-STATE FIRE PROTECTION CO., Inc.

Laurence F. Rose

prevailing wage and overtime, and failing to provide records.

The attorney general's office brought the charges against the firm after apparently making efforts to get the firm to pay six workers during the past year. The complaint was filed June 12.

According to the complaint, the firm owes a total of \$21,176 to six workers, show worked on Route 495 in Amesbury from July 10 to Aug. 19 last summer.



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.

And the Survey Says

FFCM Mails Prevailing Wage Questionnaire to 5,000 Trades Workers

The Foundation for Fair Contracting of Massachusetts is conducting a written survey of over 5,000 construction workers who have been employed in Massachusetts. The FFCM's "Prevailing Wage" questionnaire was mailed to workers who names appeared on publicly funded construction projects certified payrolls and trades workers who have contacted the Foundation for information on their rights.

The FFCM survey asks employees for information on the types of projects they have been working on, if employers provide access to health insurance, pensions and other ben-

efits, and if the state's prevailing wage law was followed.

Construction workers were asked if they were paid overtime or if they have ever been fired for standing up for their rights. In addition, the survey allows workers to describe situations where they have been cheated on prevailing wage jobs and to name contractors that have treated them unfairly.

Results of the FFCM survey will be released in January 1997 as part of an increasing campaign to educate trades workers on their rights as employees.

CONSTRUCTOR SENTENCED FOR INSURANCE FRAUD SCHEME

A Leominster man was sentenced in July to a term of imprisonment and a fine for concocting a fraudulent scheme to reduce workers' compensation insurance premiums for his construction company.

United States Attorney Donald K. Stern; Special Agent-In-Charge of the Boston Field Office of the Federal Bureau of Investigation Richard S. Swensen; and Chief of Investigations, Insurance Fraud Bureau of Massachusetts Daniel L. Skelly announced that Peter F. Zichelle of Leominster was sentenced to a term of five months in prison, plus five months of home detention with electronic monitoring. He was also ordered to pay a fine of \$30,000 and a special assessment of \$200, along with \$82,000 in restitution to the Liberty Mutual Insurance Company.

United States District Judge Nathaniel M. Gorton pronounced sentence after adopting the findings of a Presentence Report that outlined Zichelle's fraudulent scheme. Between 1990 and 1994, Zichelle falsely understated the payroll of his construction company, Zichelle Steel Erectors, Inc., in order to reduce the price of his workers' compensation insurance. Zichelle concealed the size of his operation by paying a portion of his employees' wages through a separate corporation and concealing those records from the insurance company.

United States Attorney Donald K. Stern commented, "When employers cheat on the workers' compensation system, the extra burden falls on the honest employers, who pay their fair share. Zichelle's sentence makes it clear, it's cheaper in the long run to abide by the law."

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