



The FAIR CONTRACTOR

A Publication of the Foundation for Fair Contracting of Massachusetts

March 1997



Volume 4 Issue 2

FFCM Springs Two Worker Education Programs

Spring 1997 will see the Foundation for Fair Contracting of Massachusetts (FFCM) kick-off two education programs to better inform construction workers of their rights on public works projects.



Wage Watch, a new FFCM quarterly publication mailed directly to construction workers' homes, will debut this April. The newsletter will provide detailed information on public works projects' prevailing wage rates, overtime requirements and instructions on how to file wage law violation complaints. Several thousand men and women employed on Massachusetts public works projects will receive *Wage Watch* free of charge.

"Our recently completed construction workers survey shows that more employees on public projects get their information about wage laws from the Foundation than from any other source," explained FFCM Research Director Brett Smith. "*Wage Watch* will be an important tool to inform workers about how to successfully file prevailing wage and overtime

violations, either with the Foundations' help or directly with the Attorney General's Office".

For the third year in a row, the FFCM is sponsoring a radio advertising campaign warning construction workers about abuses of the Internal Revenue Services' "independent contractor" status. A sixty second ad titled "Tax Time" will be heard on WAAF - FM, WWTM - AM (Framingham); WBCN - FM, WKLB - FM, WEEI - AM, WZLX - FM, WRKO - AM and WJMN - FM (Boston); WAQY (East Longmeadow); WBEC - AM (Pittsfield); WPXK - FM (Springfield); and WXKS - FM (North Shore). The ad will be featured on the highly rated *Imus in the Morning* and *Howard Stern* shows as well as sports programs and talk shows. The ad will run through April 15.

"By misclassifying construction trades employees as "independent contractors", companies force their workers to pay more in self-employment taxes," said FFCM Co-Director Karen Courtney. "These same companies also avoid payments for workers' compensation and unemployment insurance as well as other state and federal taxes. This gives them an unfair

Continued on Page 3

Attorney General Releases Year-End Report on Wage Enforcement: \$2.9 Million in Back Wages Recovered for Workers

Massachusetts Attorney General Scott Harshbarger has released his annual report on wage law enforcement for 1996. His office, especially the division of Fair Labor and Business Practices, which enforces the prevailing wage and overtime law, handled a record number of successful enforcement actions. A total of 1737 restitution checks were received on behalf of employees who had been cheated out of wages by their employers. The money recovered in back wages totaled \$2,808,520.68. Even more impressive was the fact that 4,589 new complaints were processed during 1996.

Prevailing wage complaints were significant as part of the year-end numbers. A total of 25 contractors were debarred for violations of the prevailing wage law. Debarment is often regarded as the most severe penalty for prevailing wage

violations since it means that the contractor may not perform public work for a period of time. Among the notable cases were Eastern Contractors, Inc., Ouellet Drywall, Inc., McLean Painting, Pittsburgh Tank and Tower, DiGregorio Construction, and Smith Architectural.

An expanded effort by the Attorney General to conduct full financial audits on contractors in prevailing wage cases is also underway. In 1996, the financial investigation unit went wall to wall to inspect the books of 61 suspected violators. An additional 40 audits were conducted on suspected overtime violations. The comprehensive investigations frequently extended into areas beyond wage laws, with workers compensation and unemployment insurance violations frequently being uncovered.

Continued on Page 3

Criminal Complaint Issued Against Anchor Tank

On March 20, Boston District Court issued a criminal complaint against Anchor Tank Lining, and company president Bennie Woodie. The complaint is in response to Anchor Tank's work on the Boston Common Restoration Project. Anchor painted the metal fences lining the Common on Beacon Street but allegedly failed to submit payrolls to the awarding authority. This case was submitted to the Attorney General by the FFCM in October. A review of the payrolls for the project showed no workers classified as painters on the job.

U.S. Supreme Court Upholds State Prevailing Wage Laws

The Supreme Court ruled February 18, 1997 that states may enforce their own prevailing wage laws. The Court, by a unanimous vote, said California's prevailing wage law was not pre-empted by the Federal Employee Retirement Income Security Act (ERISA). The closely watched case is a major victory for construction trade unions.

The case began in 1987 when Sonoma County awarded a construction contract for a jail to Dillingham Construction. The project required state, but not federal, prevailing wages. Dillingham subcontracted work to Sound Systems Media, which paid apprentice wages to some employees who were not registered in any state-approved program. The California Department of Industrial Relations withheld money from Dillingham based on Sound Systems failure to pay the prevailing journeyman's wages. Dillingham sued, saying the wage law was pre-empted by ERISA.

"It is no different from the myriad state laws in areas traditionally subject to local regulation, which Congress could not possibly have intended to eliminate," wrote Justice Clarence Thomas. The Court's decision was a major victory for unions in states with prevailing wage laws.

Contractor Faces Trial Over Wages On City Job

William J. Burns, Jr. will be charged with not paying employees prevailing wages for painting they did at city schools. A clerk-magistrate at the Haverhill District court decided there was enough evidence to try the case, but did not set a trial date.

Three of Mr. Burns' former employees are suing him, saying they were paid \$10 an hour when they should have been paid \$29, the prevailing wage.

Mr. Burns maintains that, although the painting was being done at city-owned schools, it was not a public works project,

not covered under prevailing wage law.

The workers want the difference between the two wages, which would total more than \$5,000 for each worker.

Florida Court Upholds County Prevailing Wage

A Florida Court Judge has fired a slap shot at billionaire Wayne Huizenga, requiring he pay prevailing wage to construction workers building a new arena for his Florida Panthers hockey team. Huizenga claimed it is a private-sector project not covered by Broward County's prevailing wage law, but the court noted he borrowed \$185 million from the county to finance it.

Huizenga's arena development company sued the county in state court to block enforcement of the ordinance. Huizenga had argued that the county's prevailing wage ordinance shouldn't apply to the arena because it is not mentioned in the arena finance contract. His attorneys also claimed that the ordinance applies only when the county is party to an actual construction agreement.

Lawyers for the workers and the county replied that the contract required Huizenga to conform to all ordinances, including the one requiring prevailing wages.

The judge agreed. Both parties depend on each other to achieve a mutual goal and the contract states that the arena must be built in accordance with all applicable laws, said Circuit Court

Judge Leroy H. Moe. "Therefore, on its face, the contract meets the legal definition of a construction contract," Moe explained. "To find that this is not a construction project in excess of \$250,000 to which Broward County is a party would be the death of common sense and legal principles."

Reprinted from ENR (3/10/97)

Seaver Construction Debarred By Boston Employment Commission

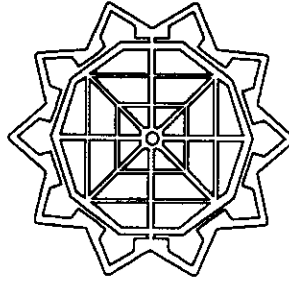
On October 30, 1996 the Boston Employment Commission voted to debar the Seaver Construction Company for six months from that date. The debarment was based on the Commission's finding that Seaver failed to comply with the Boston Residents Jobs Policy during renovations to the East Boston High School.

"This action was taken because of Seaver Construction Company's failure to comply with the City of Boston Residents Jobs Policy, and for failing to show significant Good Faith Efforts in making an effort to achieve the policy's goals," wrote Boston Employment Commission Counsel John L. LaCroix in a letter to the City's Public Facilities Department.

Foundation Reps Attend Mass Municipal Association Event

The Foundation for Fair Contracting of Massachusetts continued its outreach and education efforts with a information booth at the Massachusetts Municipal Association's Annual Trade Show in January.

The MMA trade show is designed to provide an information forum for Mayors, Purchasing Agents, Public Works Directors, Town Managers and other local elected officials. The FFCM used the opportunity to update local officials about public construction as well as their role and responsibilities in the process.

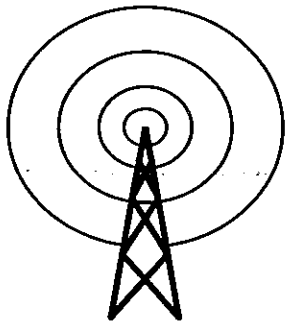


FFCM representatives answered questions regarding the prevailing wage law, bid laws, payroll submittal and review, the awarding authorities' responsibilities and a number of related issues. Of particular concern to municipal officials was Section 28 of the state prevailing wage law that permits employee to sue the city or town in which the project took place.

"That provision is a strong incentive for local officials to closely monitor contractors' payrolls and activities when working on municipal projects," commented FFCM Co-Director Karen Courtney.

Worker Education Programs

Continued From Page 1



FFCM Hits the Airways

12,983 worker classification-related audits. The audits recommended \$830 million in back taxes and reclassified 527,000 workers as employees.

economic advantage over responsible contractors who comply with the law".

"Tax Time" closes with one worker advising a second construction worker to call the IRS for more information about the "independent contractor scam".

According to the Boston Business Journal, between 1988 and 1995, the IRS completed

Attorney General's Report

Continued From Page 1

The actions reported by the Attorney General are encouraging news for workers, especially those involved in prevailing wage work. A survey conducted by the Foundation for Fair Contracting indicates that more effective prevailing wage enforcement is a high priority for most construction workers. The Attorney General's report also indicates that workers are coming forward in increasing numbers to file claims for back pay.

State Attorney General Supports Wage Law Change

Massachusetts Attorney General Scott Harshbarger wants his office to be able to take civil, as well as criminal, action against businesses that violate the state's wage laws.

Harshbarger testified at a hearing of the Legislature's Commerce and Labor Committee on February 10, as lawmakers consider a wage enforcement bill that would give the AG the power to take civil action. Under the current system, Harshbarger can bring criminal charges but sometimes those are "too heavy" given the offense, he said.

The bill would improve enforcement of the laws affecting non-payment of wages, overtime, minimum wage and the prevailing wage, Harshbarger told the Commerce and Labor Committee. "I personally believe this is a bill that strikes an appropriate balance," he said.

Man Sentenced for Comp Fraud

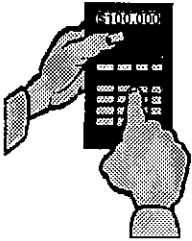
A Quincy man who provided fake workers' compensation insurance certificates to courier companies has been sentenced to five months in a federal halfway house followed by five months home detention.

Thomas M. McGrath, head of the National Independent Contractors Association Inc., told courier companies they could avoid paying workers' comp insurance if employees joined the association and its workers paid dues.



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.

Contractor Hit With Trebled Damages of \$100G



In a decision issued in December 1996, a judge of the Middlesex Superior Court ordered Boston Pipecovering, Inc. to pay close to \$100,000 in trebled damages and attorney's fees to

two former employees for failing to pay them the prevailing wage on a Logan Airport project.

The judge found that Boston Pipecovering committed a willful and knowing violation of the law when it failed to keep true and accurate payroll records for the work done install-

FFCM Plans Litigation

The FFCM has recently hired an attorney to represent workers on private right of action claims for non-payment of wages against their employers. Workers are permitted to sue their employers under MGL Chapter 149 after filing a complaint with the Attorney General's Office. The employee must receive permission from the AG to take the case to court independently.

ing insulation at Logan Airport's heating plant. The judge also found that Boston Pipecovering violated the law when it failed to pay Ronald Rosati and Robert Croteau the prevailing wage for each of the hours they worked on the airport job, and ordered the contractor to pay Rosati and Croteau their lost wages, trebled, with interest, plus their costs and attorney's fees.

The judge rejected Boston Pipecoverings' defense, that some of the employees' work was done offsite and therefore not subject to the prevailing wage. The case is currently on appeal.

The Foundation for Fair Contracting
P.O. Box 256
State House Station
Boston, MA. 02133

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