



# The FAIR CONTRACTOR

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## *FFCM Scores Big Wins on Two Major Complaints*

### **Woburn Contractor Indicted For Wage & Tax Violations**

A Woburn company and its president were indicted by a Middlesex Cty. grand jury for allegedly failing to pay workers' and unemployment compensation taxes and failing to pay the prevailing wage, Atty General Harshbarger announced. Seaver Construction Co., Inc., and president Scott Seaver, were indicted on one count each of failure to pay the prevailing wage, failure to pay unemployment compensation, and workers' compensation premium avoidance. Seaver was also indicted on one count of misclassification of employees.

Seaver and his company allegedly underpaid workers' compensation taxes from April 1992 to April 1994, and unemployment taxes from January 1993 to December 1994. He also allegedly failed to pay the prevailing wage to one employee from August to November 1993. If convicted, Seaver and his company face maximum fines totalling \$91,000 plus at least \$71,000 in restitution. The company may also be prohibited from bidding on public works projects for six months.

The case is a result of a joint investigation by the AG's Office and the Insurance Fraud Bureau of Massachusetts. The Seaver case was one of the first cases referred to the AG and Insurance Fraud Division by the FFCM.

### **Protest Results in Prevailing Wage Coverage of Hazardous Waste Work**

A three year effort by the Foundation for Fair Contracting of Massachusetts (FFCM) to persuade state authorities that the prevailing wage law should be applied to state funded hazardous waste cleanup work has resulted in a victory.

Traditionally, the state Department of Environmental Protection (DEP) has awarded emergency response and site support services contracts without requiring prevailing wage rate compliance. Saying the work was "service" and not "Construction", DEP omitted wage rate protections for workers on untold millions of dollars in cleanup contracts. The FFCM began protesting the DEP policy in October 1994.

In an October 20, 1994 letter to the DEP, FFCM Co-Director Karen Courtney requested information of the agency's bidding policy and adherence to Prevailing Wage rates. "Are these projects competitively bid under the Massachusetts Public Bidding Statutes (MGL Ch. 149 Sections 44A - J and C30 Section 39M) and do you include the Massachusetts Minimum Wage Law in your specifications for construction (MGL Ch. 149, Sections 26 and 27)?" wrote Courtney.

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## **Five Contractors Indicted on Brookline Project**

Attorney General Scott Harshbarger announced July 28 that 45 indictments were returned by grand juries in Suffolk and Norfolk Counties against five companies and seven corporate officers involved in the construction of the Lincoln Elementary School in Brookline. The indictments allege fraud between 1992 and 1994, including unemployment tax fraud, workers' compensation fraud and prevailing wage violations.

**Quinn Construction Company** of Brockton was charged with one count each of failure to pay the prevailing wage and failure to provide true and accurate payroll records. Quinn Company President Lawrence Craffey and his daughter Dorothy Lirosi were charged with six counts of failure to pay unemployment taxes and one count of failure to file a quarterly contribution report. Craffey was also charged with one count each of failure to pay prevailing wages, failure to provide payroll records and workers' compensation fraud and three

counts of making false statements to the Division of Employment and Training.

**Jeffrey Construction, Inc.** of Walpole was charged with one count each of failure to pay the prevailing wage and failure to provide true and accurate payroll records. Company president Perry Jeffrey was charged with one count each of failure to pay the prevailing wage, failure to provide payroll records and workers' compensation fraud.

**Davidson Form Construction Company** of Rowley was charged with one count each of failure to pay the prevailing wage and failure to provide true and accurate payroll records. Company President Peter Davidson and VP Wayne Kimball were charged with one count each of failure to pay the prevailing wage, failure to provide true and accurate payroll

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## Sunbelt Again Hit with Federal Labor Violation

*INS arrests 9 workers, launches criminal investigation*

For the second time, a major subcontractor on a luxury apartment project in Waltham that is partly financed with endowment money from Harvard University, has been slapped with a federal labor violation.

A team of special agents from the US Immigration and Naturalization Service arrested nine workers at the project, employees of Sunbelt Contractors who allegedly are illegal immigrants. INS has also begun a criminal investigation into how the laborers were hired, said Paula Grenier, INS public affairs officer.

The raid came a day after the US Occupational Safety and Health Administration fined Sunbelt \$106,000 for unsafe conditions.

Sunbelt, a Houston-based firm doing carpentry work on the \$40 million construction job, declined to comment on the arrests. But Jack R. Meyer, president of Harvard Management Co., which manages the university's \$9 billion endowment fund, said he was concerned about the arrests and the alleged labor violations.

"We are investigating and have asked for explanations" from Sunbelt and Tocci Builders of Woburn, prime contractors on the project, Meyer said. "We do take matters like this seriously and have sympathy for workers who may be poorly treated."

Located on 65 acres off Route 128, the 325-unit apartment project, named the Village at Bear Hill, is one of the largest private construction jobs in the Boston area, Waltham officials said. Construction began in April and, a few weeks later, U.S. Labor Department agents visited the site because of complaints about pay and work conditions. After investigating, the Labor Department directed Sunbelt to pay \$15,000 in back wages to 10 workers.

Then, OSHA fined Sunbelt \$106,500 for alleged "willful, serious, and repeated" safety violations at the site. In particular, OSHA said Sunbelt failed to institute a program to prevent falls by workers, despite warnings from the agency. Sunbelt can appeal or try to negotiate a smaller fine.

INS agents made a surprise visit to the site to determine whether laborers had proper work papers. The New England Regional Council of Carpenters had complained that many workers, natives of Mexico and Cuba, had been lured to the project with false promises of free lodging, meals, and high pay. The men arrested are being held pending deportation hearings.

*Story includes material from The Boston Globe, 7/25/97*

## Builders Face Fines for Few City Workers

Lawrence Mayor James Rurak is ready to fine TLT Construction and subcontractors building the new schools if 30 % of their workers do not live in Haverhill. The condition is stipulated in TLT's contract. The fine is \$300 per day.

City Councilor Betsy A. Conte went to the mayor with the information. "If the written statements confirms what she is telling me, I believe we have the basis to impose those penalties," Mayor Rurak said. Mrs. Conte said only 19 % of

the contractor's workers are from Haverhill. "The ordinance is there for a purpose," Mayor Rurak said. "We want local people to get the jobs." Some of the smaller companies subcontracting for TLT received waivers because they have only family members working.

Mayor Rurak will meet with the city lawyer to review TLT's contract, he said, and determine if penalties would be directed at TLT only, or at the subcontractors.

*Reprinted from Lawrence Eagle Tribune*

## Case Studies

## Five Contractors Indicted

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records and two counts of making false statements to the DET. Kimball was also charged with one count of failure to pay unemployment taxes to the DET.

**LaFazia Concrete Floors and Plumbing Company** of Cranston, RI was charged with one count each of failure to pay the prevailing wage and failure to provide true and accurate payroll records. June LaFazia was charged with one count each of failure to pay the prevailing wage and failure to provide payroll records.

**H.M. Horton Company** of Wellesley and David Horton, president, were charged with one count of failure to provide true and accurate payrolls. Horton was also charged with three counts of making false statements to the DET and one count of workers' compensation fraud.

"Fraud cases such as these increase the cost of doing business in Massachusetts and that cost is passed on to consumers," said Harshbarger. "While most companies play by the rules, a few choose to seek an unfair competitive advantage by breaking the law".

"Theft of coverage from workers' compensation insurers by unscrupulous employers who seek a leg up on the competition is inexcusable and will be actively investigated by the IFB," said Laura Krauss, VP and General Counsel of the Insurance Fraud Bureau.

# City of Brockton Passes "Responsible Contractor" Ordinance

The Brockton City Council passed a "Responsible Employer" Ordinance amending Chapter 13 (Procurement) regulations to include prevailing wage, health insurance and apprenticeship training as part of the bidding process. Cambridge passed a similar ordinance two years ago and that ordinance survived a legal challenge from non-union contractors.

The new Brockton ordinance, passed on December 23 of last year, includes the following provisions:

13 (a). The bidder and all subcontractors under the bidder shall comply with the Brockton Employment Plan.

13 (b). The bidder and all subcontractors under the bidder must comply with the obligations established under MGL Chapter 149 to pay the lawful prevailing wage rates to their employees.

13 (c). The bidder and all subcontractors under the bidder must maintain or participate in a bona fide apprentice training program as defined by Chapter 23, subsection 11H and 11I for each apprentice trade or occupation represented in their workforce that is approved by the Division of Apprentice Training of the Department of Labor and Industries and must abide by the apprentice to journeymen ratio for each trade prescribed therein in the performance of the contract.

13 (d). The bidder and all subcontractors under the bidder must furnish, at their expense, hospitalization and medical benefits for all their employees employed on the project and / or coverage at least comparable in value to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft recognized by MGL Chapter 149, sec. 26 in establishing minimum wage rates.

13 (e). The bidder . . . must maintain appropriate industrial accident insurance on all employees.

13 (f). The bidder . . . must classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation, unemployment taxes, social security taxes and income tax withholding.

Sanctions for violating the Ordinance include: (1) cessation of work on the project until compliance is obtained; (2) withholding payment due under any contract or subcontract; (3) permanent removal from further work on the project; (4) liquidated damages payable to the City in the amount of 5% of the value of the contract.

In addition, a general bidder or contractor shall be liable for the violations of its subcontractor with the exception of violations arising from work performed pursuant to subcontracts subject to MGL Chapter 149, section 44F. Any bidder or subcontractor determined to have violated the obligations set forth shall be debarred from performing work on future projects for six months for a first violation, three years for a second violation and permanently for a third violation.

FFCM Research Director Brett Smith called the Brockton Ordinance "an important tool to protect responsible contractors and construction workers".

## New Field Monitor Joins Foundation

Ms. Janine Yodanis has joined the Foundation for Fair Contracting of Massachusetts as a Field Monitor. Ms. Yodanis earned a Masters Degree in Labor Studies from the University of Massachusetts and a Bachelors Degree from Penn State. Before joining the FFCM, she worked for the Service Employees Union in upstate New York.

Ms. Yodanis will cover wage and labor law enforcement in Eastern Massachusetts for the FFCM. She joins FFCM Western Mass Monitor Ron Baran on the field staff.

## National News

### Contractors, Unions Oppose Changes in "Independent" Classification

A Congressional move to broaden the definition of independent contractors for tax purposes is generating debate in the construction industry. A provision in the House GOP tax package would give more options to classify employees as "independent contractors" and allow companies to avoid employment taxes. That would make it harder for traditional employers to compete with independents who avoid paying federal payroll taxes. Frederick S. Oyer, Vice President of International Piping Systems, Inc. was quoted as saying in the June 23 issue of ENR.

The proposed new definition could "lead to greater abuses," insists John McNeerney, government relations director of the Mechanical Contractors Association of America. The National AFL-CIO has joined contractors in opposing the proposed loosening of "independent contractor" tax status. Unions are concerned that workers would not be protected by wage and overtime laws under the GOP plan.



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

VICTIMS OF CONSTRUCTION WAGE RIP-OFFS. If you're a construction worker and you've been ripped-off by a contractor on prevailing wage work in Massachusetts maybe we can help. Call for free assistance on wage abuses (bogus apprenticeship, 1099's, overtime, hourly rate scams). All calls strictly confidential. **Foundation for Fair Contracting of Massachusetts.** Toll free 1 - 800 - 224 - FAIR

## FFCM Want Ads Offer Help

The FFCM took its message of help for construction workers that have been victims of Wage and Labor Law violations directly to the "Help Wanted" pages of daily newspapers in Central and Western Massachusetts in June.

The FFCM ads informed construction workers on Massachusetts public works projects how to contact the Foundation for assistance in filing wage, overtime, apprenticeship and other labor law complaints.

Similar ads will appear in different Massachusetts daily newspaper periodically in the help wanted and job openings sections of the papers. The ads are designed to reach workers who are laid-off or are near the end of a current job.

### FFCM Wins Protest. . . *Continued from Page 1*

In March 1995, after receiving notice that DEP did not bid cleanup projects as construction, the FFCM requested the assistance of the Attorney General. Courtney asked the AG's Division of Fair Labor Standards and Business Practices to review the issue noting "these contracts are given to a few contractors who are placed on a list and called when an "emergency" exists".

The AG's Office requested assistance from the State Inspector General's Office and the State Office of Labor and Workforce Development in March 1997. On June 6, 1997, Helen Moreschi of the AG's Fair Labor and Business Practices Division notified the FFCM that the state's prevailing wage law applied to DEP emergency projects. "... Prevailing Wage applies to the following:

The Emergency Response Services section of the DEP Proposal contains the following categories of work: emergency oil spill cleanup and containment; hazardous materials emergency response; and asbestos containment and removal. Each of these categories of work involves the "construction of public works: (MGL CH. 149, sec. 26) as defined by MGL Ch.

149, Sec. 27D which reads, in relevant part, "construction ... shall include additions to and alterations of public works." Therefore, all persons employed on a project which falls within the Emergency Response Services section of the DEP proposal must be paid prevailing wage rates.

The Site Support Services section of the DEP Proposal contains several categories of work that clearly involve "construction of public works" and would thus require payment of prevailing wage rates to all persons employed thereon. Those categories include: soil removal; tank removal; fence installation and repairs; and the installation and repair of groundwater recovery and treatment systems, soil vapor recovery systems, air sparge systems, and landfill cap systems. Furthermore, any work performed incidental to the installation of a treatment system, such as test borings or demolition of structures, would require payment of prevailing wage rates," wrote Moreschi.

"The FFCM believed the prevailing rate applied to these projects and we were willing to take the time necessary for this decision to protect responsible contractors and employees," said Courtney. A separate case involving the question of the state's public bidding laws is pending.

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