



The FAIR CONTRACTOR

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Zichelle Steel Erectors Debarred by DCPO for Fraud Charges

On August 31, at the FFCM's request, the Division of Capital Planning and Operations imposed a two year debarment from public bidding on Zichelle Steel Erectors, based on Peter Zichelle's federal mail and wire fraud charges.

This debarment possibly highlights a new approach to getting unlawful contractors away from public bidding. Under Chapter 29, Section 29F (c)(1), DCPO can impose a debarment based on the "conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses...a violation of any state or federal laws regulating hours of labor, prevailing wages, minimum wages, overtime pay, equal pay, child labor, or workers compensation."

The law goes on to include in part (2), as grounds for debar-

ment, "substantial evidence, as determined by a secretary or the commissioner, of any of the following acts: (i) willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract; (ii) willful failure to comply with recordkeeping and accounting requirements prescribed by law or regulation...."

This debarment possibly highlights a new approach to getting unlawful contractors away from public bidding.

The Foundation plans on attempting other debarments using this law in the near future. The FFCM has procured a list of workers compensation violators in the past year, and will be requesting that those who have had

severe infractions be debarred from public works projects. In addition, the Foundation will be seeking cases dealing with the failure to pay the prevailing wage, failure to submit payrolls, submitting incorrect payrolls, and overtime violations for submittal to DCPO for action.

FFCM Complaints Get Results For Workers

Globe Drywall Debarred by Attorney General's Office

In a case transmitted by the Foundation for Fair Contracting, Globe Drywall Systems, Inc. of 410 Grove Street, Fall River has plead guilty to one count of failing to pay prevailing wage rates and one count of failing to provide true and accurate payroll records. The corporation had been engaged in the construction of the Weymouth Police Station, a public works project, from May 29, 1995 until January 6, 1996. According to the Attorney General's office, the company paid full restitution to its workers in the amount of \$1,681. In addition, the company was debarred from participating in any state or local public works projects for six months. The case was prosecuted by Assistant Attorney General Bruce Trager with the assistance of Inspector Cecile Byrne and financial investigators Scott Faragi and Ken Craig.

Worker Receives Over \$6,700 from Anchor Contractors

In an out of court settlement, a welder working for Anchor

Contractors, Inc. on the Medfield Town Hall has received \$6,750 in wages owed to him for work on the Town Hall. The settlement was reached with the assistance of both the Foundation for Fair Contracting of Massachusetts and independent counsel.

The individual had worked for over a month on the project without receiving compensation. When he refused to appear at the jobsite until paid for the work which had been performed to date, Anchor threatened by certified letter to release him and backcharge him for any and all costs incurred to complete the work.

At that time, the welder contacted the Foundation. Although out of the jurisdiction of the FFCM, the facts of the case were obtained, and through collaboration with his private attorney, a complaint was filed in the Norfolk District Court. This action ultimately lead to a settlement for full damages from Anchor.

Continued on Page 4

U.S. Dept. Of Labor Fines Two Massachusetts Temp Firms For Violations Of Independent Contractor Laws

The U.S. Department of Labor has announced that two Massachusetts temporary employment agencies have been fined \$150,000 for willful violations of the federal wage and hour law.

The firms, **Baystate Alternative Staffing, Inc. of Fitchburg**, and **Able Temps Referrals, Inc. of Worcester**, were found to have misclassified 619 low-wage workers as independent contractors. According to the Labor Department, the case stems from an investigation of the companies recruitment and placement of workers as temporary day laborers, mostly in light manufacturing industries. The Department found that the firms were trying to avoid paying overtime by claiming the workers were independent contractors. An Administrative law judge agreed with the Labor Department, and on October 24th, the companies lost their appeal before the Massachusetts U.S. District Court.

The courts ruled that since the companies recruited, hired, placed, transported and controlled the 619 day laborers, the workers were not independent contractors.

The companies, which can still appeal to the U.S. Court of Appeals, have been ordered to pay \$150,000 to the U.S. Department of Labor, and the Department has also filed suit to collect \$280,000 owed to the 619 employees in back wages and damages.

Individuals with questions about their independent contractor status may call the Foundation for Fair Contracting at 1-800-224-FAIR.

AG Files Criminal Complaints Against Two Contractors For Non-payment Of Wages

A Brighton construction company is facing criminal charges for non-payment of wages. According to Massachusetts Attorney General Scott Harshbarger, complaints have been issued in Brighton District Court against Eli Azulay and Eli's Glass & Mirror Services, Incorporated. The complaints allege non-payment of wages, failure to obtain workers' compensation insurance, failure to pay unemployment contributions and making false statements to avoid paying unemployment contributions.

The Attorney General's office alleges that the non-payment of

wages took place from September of 1996 to March of 1997, and that the company also owes more than \$6,000 in back taxes to the Department of Employment and Training.

A Malden Company is also facing criminal charges. Criminal complaints have been issued in Malden District Court against Kingsberry Building Technologies, Incorporated and its president, Charles J. Martin for violations of the prevailing wage, misclassification of employees to reduce unemployment contributions, and workers' compensation fraud. According to the Attorney General's office, the violations occurred during work on the restoration of the Woburn Department of Public Works, and at least one employee is owed back wages.

Haverhill Company Debarred For Prevailing Wage Violations

W.G. Burns & Sons, and its President, William G. Burns, have been debarred for three years from public works, after admitting to sufficient facts for a guilty finding on charges of failure to pay the prevailing wage.

The Massachusetts Attorney Generals office filed criminal complaints against the Haverhill company after finding that three employees

were owed over \$7,000 in back wages. According to the Attorney Generals office, the wage violations occurred during painting and carpentry work on several Haverhill high schools between July and September of 1995.

William Burns was also found guilty of failing to have workers compensation coverage, giving a false certificate of insurance to the City of Haverhill and of failure to pay unemployment taxes. According to the Attorney Generals office, he was sentenced to one year in the House of Corrections, suspended for one year.

Company Debarred Following Work On Monarch School In Springfield

A Connecticut-based company, Quality Assurance Sheet Metal, has been debarred for six months from working on public construction projects in Massachusetts. According to the Attorney Generals office, the firms president, Bruce Poresky, pled guilty in Springfield District Court to failing to pay the prevailing wage. Poresky also pled guilty to failing to provide true and accurate records of employees working on the Monarch School project, and the money paid to the employees.

In addition to being debarred for six months, Poresky was also fined \$5,500.



CASE STUDIES

Attorney General Returns Nearly \$8 Million In Back Pay To Mass Workers

The efforts of workers in Massachusetts who pursue their rights under the prevailing wage laws seem to be paying off. Massachusetts Attorney General Scott Harshbarger recently released figures showing that, since his office began enforcing the prevailing wage laws, he has recovered nearly 8 million dollars in unpaid wages due to workers across the state.

So far, over \$7,845,000 has been returned to thousands of workers through successful enforcement of cases involving failure to pay wages, prevailing wages and the minimum wage. Harshbarger's office began enforcing the state's wage laws in 1993, when the Legislature gave him the responsibilities of the former Division of Labor and Industries.

Harshbarger said, "I'm proud of the wage enforcement record compiled by my office after overcoming the tremendous bureaucratic hurdles that we inherited." He said, "We are sending a clear message that the rights of the working men and women of this Commonwealth will be protected. We are making sure they get the money they have earned."

Harshbarger said he expects the Legislature to enact his proposed new wage law that would strengthen his authority for enforcing wage laws. The proposed law would create a civil enforcement alternative to the present criminal sanctions, which would decrease the current backlog of criminal cases. The law would also increase criminal penalties for the most egregious violations of wage law.

For information about filing a wage complaint — if, for example, you did not receive the prevailing wage on a public construction job, or you were not paid time-and-a-half for overtime or were misclassified as an "independent contractor" — please call the Foundation For Fair Contracting at 1-800-224-FAIR. If your complaint is found to be valid, the Foundation will assist you in filing a complaint with the Attorney General's office.

Public Datacommunications Bidding Process Changed

The Attorney General's Fair Labor and Business Practices Division has issued a decision requiring that all contracts for datacommunication installation be bid pursuant to MGL C149 Section 44A-J. Until this decision, cities and towns have used "blanket contracts" to obtain contractors to perform generic wiring, equipment, parts and services for datacommunication. Because of this decision, that practice must be ended.

In his opinion, Anthony Penski, Assistant Attorney General and Chief Legal Counsel for the Business and Labor Protection Bureau stated that he "found no authority that would exempt BITA from the requirements of the bidding statutes." He goes on to state, "In fact, when questioned by the undersigned, BITA could point to no statutory exemption, but instead opined that the installation work was merely a service and thus, exempt. In addition, we note that 802 CMR 1.01 (f) requires that a procurement of Information Technology Resources be obtained in a matter consistent with the laws of general application."

The protest was brought by a contractor who felt that, while a city or town may procure goods and services in a blanket fashion, BITA cannot procure installation work called for in a project without utilizing the statutory bidding procedure set forth by G.L.C.149 section 44A-J.

Private Right of Action Cases Moving Forward

The FFCM is continuing to assist employees with Private Right of Action claims against three different public works contractors. In a case dealing with overtime pay and benefits against a major paving contractor, more than 35 former employees have contacted the FFCM to be included in the lawsuit. The additional cases are against a mechanical insulation contractor and painting contractor and are nearing the completion stage of document collection.

During the past several months, representatives from the Foundation have been laying the groundwork for these cases by obtaining certified payroll records, meeting with the workers and obtaining their personal documentation, as well as receiving copies of the contracts with the awarding agencies. The cases are nearing the filing stage and should be in the courts within the next couple of months. According to Mary Jeanne Tufano, the attorney retained by the FFCM who will represent the employees in court, the actions will seek the full amount of back pay, with treble damages, as well as an injunction where appropriate to prohibit continued violations by the contractors.



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.

What Is The Responsibility Of Cities And Towns When Reviewing Bids?

Recently, the Attorney General's office issued an advisory explaining the responsibilities of cities and towns when reviewing bids that either do not contain provisions to pay prevailing wage rates, or are "significantly below the average bid price submitted on a project."

The advisory states, "When a bidder submits a bid that, on its face, indicates that the applicable prevailing wage will not be paid, inferences must be made that; (i) the prevailing wage is not incorporated into the bidder's bid price, and, thus, will not be paid during the performance of the contract, and (ii) the offending bidder did not prepare its bid in the same manner ... as the other

bidders. ... Such a bidder, absent a showing of circumstances to rebut the above inferences, ... should not be rewarded with the award of a public contract."

The advisory also encourages cities and towns to examine bids closely that are markedly lower than other bids. In the advisory, the Attorney General's office suggests that, "Awarding authorities should also prevent potential prevailing wage violations by conducting hearings on bids that are significantly below the average bid price submitted on a project."

Copies of this advisory are available from the FFCM at 1-800-224-FAIR.

• FFCM Complaints get Results for Workers

Continued from front page

JSI Employees Awarded Backpay

In October, two workers employed by JSI, a subcontractor to T.L.T. Construction, contacted the FFCM with complaints of not receiving pay for two days worked on the Old South Meeting House Project in Boston. The FFCM filed a complaint with the U.S. Department of Labor, which later informed the FFCM that a settlement had been reached with T.L.T. to pay the workers for the 16 hours they had each worked on the days in question.

**For information about prevailing wages
on public construction jobs,
call the FFCM at 1-800-224-FAIR.**

Coming Soon...

News From New England

Some of you may not be aware that Massachusetts is not the only state that has the assistance of a Foundation for Fair Contracting. In New England, there are actually three Foundations for Fair Contracting — The Massachusetts FFC that produces this newsletter, The Rhode Island FFC, and The Connecticut FFC. Throughout the United States, there are roughly 40 similar Foundations. In future issues, *The Fair Contractor* will provide our readers with New England FFC news that might be of interest to Massachusetts Contractors.

For more information about Rhode Island programs, call Director John Orobona at 401-331-5454. In Connecticut, call Director Richard Raposa at 860-667-6210.

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