



# The FAIR CONTRACTOR

*A Publication of the Foundation for Fair Contracting of Massachusetts*

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## FFCM LEGAL ACTION UPDATE

### **FFCM Files Class-Action Suit Against Massachusetts Paving Contractor; Two other FFCM Complaints Settled for Backpay and Attorney's Fees**

Employees of a major Massachusetts paving contractor filed a class action lawsuit on March 24, alleging violations of the state prevailing wage and overtime laws. Employees of **Roads Paving, Inc.** and **Roads Corporation** allege that the companies did not pay them the full hourly wage mandated by state law for the public projects they worked on, particularly when they worked overtime. The employees are asking for back pay and triple damages.

According to Mary Jeanne Tufano, the plaintiffs' attorney, the class action is being filed on behalf of several former employees and a class believed to number more than 200 current and former employees. The plaintiffs are asking the Court to prohibit continued violations by the Roads companies and award triple damages, which, according to Tufano, could amount to a recovery of more than \$1 million for the class of employees.

The alleged violations occurred on major public works projects throughout Massachusetts including work done on Route 93, Route 24, and Route 2A. The employees named in the lawsuit include equipment operators and laborers who performed bridgework and road work for the Roads Companies. **Roads Corp.** is one of the largest paving contractors in Massachusetts. Between 1996 and 1997, The Roads companies won contracts on public works projects worth an estimated \$200 million.

The lawsuit against the companies is being funded by the Foundation for Fair Contracting of Massachusetts. According to Karen Courtney, Director of the FFCM, the alleged violations that gave rise to the lawsuit prevent fair bidding from taking place on public construction projects. Explains Courtney: "In the low-bid public construction system mandated by Massachusetts state law, companies that don't pay the full prevailing wage rate receive an unfair advantage over those companies who comply with the law, because they have lower costs and can submit lower bids."

### **K and E Maintenance Inc. Pays Backpay and FFCM Attorney's Fees**

Painting and flooring contractor **K and E Maintenance, Inc.** has agreed to pay \$2700 in back wages and \$1300 in attorney's fees to settle litigation brought by a former employee and supported by the FFCM. The complaint alleged that **K and E** improperly paid the worker the brush repaint rate instead of the spray rate in the painting of the new UMass Dartmouth Marine Science Laboratory in New Bedford in 1996. The alleged conduct allowed **K and E** to pocket the difference in rates of \$2.94 per hour until the FFCM agreed to provide legal representation to the painter.

This is a typical prevailing wage rip-off," said Karen Courtney, Director of the FFCM. "When you add up the money that should be going to workers, you can easily see how it contributes to the lowballing of these contracts. We're glad the painter got his money, and we hope this case brings attention to the cheating that goes on with respect to the different painters' rates," she said.

### **Lyons Insulation Inc. Case Settled**

The FFCM supported a suit filed in January by two workers against **Lyons Insulation Inc.**, based in Quincy, MA. One of the workers was employed by **Lyons** over a period of 3 months on the Mansfield High School Energy Management Project and was not paid overtime. The second worker worked for **Lyons** on numerous school construction projects over a period of 4 months and was paid only \$10 per hour, for most hours, with no overtime.

An out of court settlement was reached between **Lyons** and the two employees last month. The company agreed to pay a total of \$6,700 to the two workers as well as \$2,200 to go towards the legal costs incurred by the Foundation for Fair Contracting.

*For more information about Private Right  
of Action Claims, call 1-800-224-FAIR*

## **Felix Marino Company Agrees to Pay \$200,000 in Back Wages; Supreme Judicial Court Rules that Marino Employees are Subject to Prevailing Wage Rates—Upholds Validity of State Prevailing Wage Law.**

The Felix Marino Company of Peabody has agreed to a settlement for payment of back wages to present and former employees, Attorney General Scott Harshbarger announced last month. The settlement calls for payment of nearly \$200,000 in back wages, benefits and interest owed by Marino to approximately 40 present and former employees. Several workers will receive in excess of \$10,000 each.

The company worked on road repair projects throughout Massachusetts, but did not pay workers the prevailing wage. Marino specializes in road repair for municipalities, and had argued that the work, which includes pot-hole patching, is 'reparation' and maintenance, and should not, therefore, be subject to prevailing wage rates.

The Marino Company had also argued that the prevailing wage law is preempted by the Employee Retirement Income Security Act (ERISA), a federal statute which deals with the regulation of employee benefit plans.

The Supreme Judicial Court issued a ruling on both matters this past January. The Court found that the Attorney General along with the state's Department of Labor and Workforce Development (DLWD) has the authority to determine when work is public "construction" work, and when the prevailing wage should apply to such work. The court also held that ERISA does not preempt the prevailing wage.

The Felix Marino Company agreed to settle the case after the Supreme Judicial Court handed down its decision.

## **Woburn Construction Company Agrees to Pay \$75,000 for Wage Violations; Debarred for 3 Months**

In one of the first cases to be transmitted by the Foundation for Fair Contracting of Massachusetts, Attorney General Scott Harshbarger recently announced that Seaver Construction Company of Woburn has agreed to pay \$75,000 in restitution for back wages, unemployment taxes, and reimbursement to the unemployment insurance pool. In addition, the company has agreed to submit to a three-month voluntary debarment from bidding on state or local public works projects, effective May 1, 1998. Seaver pled guilty back in January to failing to pay prevailing wages on public works projects, workers' compensation premiums, and unemployment taxes during 1993 and 1994.

Seaver made headlines last year when the company was indicted while serving as the general contractor for the Frog Pond renovation project on the Boston Common. In 1993 and 1994, Seaver Construction Company worked on the following public works projects: Braintree Electric; Brookline High; Marlboro Fire Station; Middlesex Community College, Lowell; Newton Fire Station; and Truro Fire Station.

At the January hearing, Scott Seaver, owner of Seaver Construction Company, was placed on pre-trial probation. As a condition of the probation, Seaver will regularly

submit weekly certified payroll records so that the Attorney General's office can monitor his compliance. In addition, Seaver agreed that he could not bid individually on any state or local public works job from May 1, 1998 through July 31, 1998, and to ensure that restitution is paid by the company.

### ***FFC Mail Box***

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*Your tactics are outrageous. Organizations like yours make the U.S. product hyperinflated in global markets. Shame on you. Prevailing wages and Davis-Bacon, for that matter, are unconstitutional!*

*Name and address withheld.*

## Springfield Construction Company Charged with Failure to Pay Prevailing Wage

A Springfield woman and her construction company, Creative Construction and Improvements, have pled guilty to charges that they failed to pay employees more than \$25,000 they owed them for construction work done on the Amherst Town Hall. Vicki Malone-Wright and CCI pled guilty to 14 counts of failing to pay the prevailing wage from June to August of 1996, and eight counts of failing to pay unemployment taxes for eight quarters from January 1995 to January 1997. The defendants were ordered to pay up to \$25,737 in back wages to the employees and \$19,388.32 to the Commonwealth in back unemployment taxes. Malone-Wright and CCI were also placed on three years probation and debarred from public works construction for six months.

## Complaint Filed Against Lynnfield Company for Alleged Prevailing Wage Violations

A Lynnfield electrical contracting business and its president allegedly failed to pay employees more than \$19,000 for work on various public works jobs. According to Attorney General Scott Harshbarger, criminal complaints have been issued against J&G Electric and its president, Joseph O. Gauthier for allegedly failing to pay the correct prevailing wage, failing to pay overtime and failing to provide complete payroll records for jobs on the Cunniff School in Watertown, Ayer Library, the Fuller Meadow School in Middleton, the Tewksbury Police Station and the Waltham 911 Communications Center, from August 1996 to June 1997.

J&G Electric and Gauthier allegedly failed to pay the correct prevailing wage rate to an employee who was not properly registered as an apprentice with the company, and failed to pay the correct overtime rate to five employees. The company allegedly owes the employees \$19,842.24 in back wages. In addition, J&G Electric allegedly did not list on its records the daily and weekly hours worked by each employee or the amount paid each pay period, as required by state law.

## Taunton Company Debarred for One Year

Mark Wilton, President of Phoenix Building and Contracting and Joseph McKeown, its Operations Manager, have been charged with failure to keep true and accurate payroll records while working on the Brooks Free Library project in Harwich. The violations took place between January and June of 1997 while the company was working on renovations and an addition to the Brooks Free Library. Wilton and McKeown have been debarred from public works for one year and were ordered to pay \$10,000 in restitution. Wilton was also placed on probation for one year for his failure to pay prevailing wage while on the same project.

# CASE STUDIES

## Western Mass. Landscaping Firm Faces Debarment

Complaints have been issued against a Cheshire landscaping firm for prevailing wage and overtime violations. Francis A. Waterman Jr. was charged in Northern Berkshire District Court with three counts of failure to pay prevailing wages for a public works job, and one count each of failure to keep true and accurate wage records and failure to pay proper overtime.

The alleged violations occurred in 1997 when Waterman, doing business under the name of Waterman Excavating and Landscaping, was engaged in a sidewalk reconstruction project in Cheshire. The attorney general's office issued the charges against the company after three people who had worked for Waterman complained about wage issues. A partial audit by the Business and Labor Protection Bureau revealed that Waterman owed employees over \$5,000 in back wages for the Cheshire job. If convicted, Waterman will be prohibited from doing public public works projects for six months and could face fines up to \$10,000.

*Parts of this story were taken from the North Adams Transcript*



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.

## Worker Fired for Complaining About Overtime Policies May get Punitive Damages

According to a recent ruling by a US District Court judge, a worker who claimed to have been fired for complaining about his employer's overtime policies may be entitled to punitive damages under the federal Fair Labor Standards Act. The ruling is believed to be the first in the 1<sup>st</sup> Circuit to deal with the questions of punitive damages and retaliatory discharge under the FLSA.

The plaintiff in the case, Timothy K. Travis, was employed by Investors Bank and Trust Co. from April 1989 until January 1997 and is alleged to have repeatedly complained about his employer's failure to pay overtime. After being terminated, the plaintiff filed an FLSA claim, claiming that he had been fired in retaliation for complaining about the overtime policies of his employer.

According to Travis' lawyer, Daniel J. Driscoll of Boston, by allowing for the possibility of punitive

damages, "the court has sent out a message to employers that they could really get whacked if they discharge an employee in retaliation for complaining about a wage-and-hour violation."



The availability of punitive damages in claims brought under the Fair Labor Standards Act will likely encourage lawyers to take such cases. Notes Boston employment lawyer Mary Sullivan, "It can be difficult to get representation in cases involving enforcing wage-and-hour laws. The amount of the claims tends to be low because the amount of the wages tends to be low."

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*Parts of this story were reprinted with permission from Massachusetts Lawyers Weekly, February 23, 1998 p. 1.*

## Responsible Employer Ordinances Implemented Around Massachusetts

"Responsible Employer" ordinances that set standards for contractors and subcontracts bidding on publicly-funded construction projects are being implemented in cities across the state. Ordinances are currently on the books in the cities of Fall River, New Bedford, Cambridge, Brockton, Springfield, Worcester, Lawrence, Lowell, Lynn, Malden and Peabody. Similar measures are currently before the Boston and Somerville city councils.

The "Responsible Employer" Ordinances are designed to screen out unscrupulous and unfair contractors before they bid, rather than waiting until they have committed violations. Ordinances passed in Springfield, Cambridge, and Brockton, for example, have required that contractors:

- Pay the prevailing wage
- Provide health insurance for employees
- Have a certified apprenticeship program
- Obtain appropriate Workers' Compensation Insurance

- Treat workers as employees, not 'independent contractors'
- Hire local workers first.

According to Brett Smith, Research Director for the Foundation for Fair Contracting, "by requiring that bidders do what's right and legal the first time around, we ensure that workers get treated fairly and that only fair contractors are rewarded with public projects."

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

In **RHODE ISLAND** call **401-331-5454**.

In **CONNECTICUT** call **860-667-6210**

# Massachusetts Company Debarred for Davis-Bacon Violations, Falsifying Payrolls

ynn-based T & M Engineering, Inc. along with its president, Dennis Tobin, and its vice president, Nelson Marino, has been debarred from bidding on federally funded projects until September 30, 2000. The Department of Labor launched an investigation of T & M after three employees of the firm alleged that they had not been paid prevailing wages on three federal contracts during the period 2/95 to 5/97, including the Fort Devens renovation project.

The DOL found that back wages in the amount of \$31,705 were due to three employees. Following its investigation, the DOL recommended that T & M be debarred from federal contracts, noting that the firm had falsified all certified payrolls, created false payroll information for the investigation, as well as providing false information to the investigator. "The firm at no time attempted to pay prevailing wages," concluded the DOL's report.

During an initial interview, the firm's vice president, Nelson Marino had stated that T & M did pay prevailing wages and provided payrolls to verify his statement. When the DOL investigator requested canceled checks as proof of payment, Marino then stated that the firm never paid prevailing wages, that all information given to the investigator was false and all certified payrolls submitted to the prime contractors were falsified.

Working with the employees as well as other contractors involved in the 3 federal contracts, the DOL was able to reconstruct the number of hours of worked and the amount of back wages owed. Sub-tier and prime contractors on the projects agreed to pay all back wages on behalf of T & M due to the company's financial inability to make the necessary payments, as well as their refusal to cooperate during the investigation. T & M is no longer working on any of the three federal contracts.

## OFFICE OF THE ATTORNEY GENERAL DEBARMENT LIST AS OF 1/22/98

1. **Miazaga, Inc., and Raymond Miazaga as President**, 1082 Federal Street, Belchertown, MA 01067—debarred for a period of three years beginning March 1, 1995 through **March 1, 1998**.
2. **Raymond Miazaga**, 28 North Maple Street, Hadley, MA 01035—debarred for a period of three years beginning March 1, 1995 through **March 1, 1998**.
3. **Lawrence M. Hamel, d/b/a L.M. Hamel Builders**, 24 Barker St., Newton, NH 03858—debarred for a period of two years beginning March 28, 1996 through **March 28, 1998**.
4. **E & L Masonry Corporation, and Louis J. Maiani as President**, 98 Madison Ave., Everett, MA—debarred for a period of six months as follows: March, June, August, October, December of 1997 and **February of 1998**.
5. **Spray on Systems, Inc. d/b/a Construction Coatings, Charles Scott, President**, 10 Hawthorne Street, Newton, MA 02158—debarred for a period of six months beginning July 29, 1997 through **January 29, 1998**.
6. **W.G. Burns and Sons, Inc. and William G. Burns, President**, 476 Kenoza Street, Haverhill, MA 01850—debarred for a period of three years beginning August 26, 1997 through **August 26, 2000**.
7. **Roosevelt Building Products, Roosevelt Morin, President**, P.O. Box 1779, Bristol, CT 06010—debarred for a period of three years beginning September 27, 1997 through **September 27, 2000**.
8. **New England Landscaping, AKA New England Landscape and Irrigation, Inc. and Paul Santucci, President**, P.O. Box 533, Palmer, MA 01069 and 10 Washington Road, Brimfield, MA 01008—debarred for a period of four months beginning October 8, 1997 through **February 8, 1998**.
9. **Globe Drywall Systems, Inc., Fatima Senra, President**, 194 McGowan Street, Fall River, MA 02720—debarred for a period of six months beginning October 15, 1997 through **April 15, 1998**.
10. **Amaral Excavating, Daniel Amaral, President**, 17 Hammond Street, Somerville, MA 02143—debarred for a period of six months beginning October 7, 1997 through **April 7, 1998**.
11. **Robert Hodges, Owner of Hodges Masonry Contracting**, 23 Tully Road, Orange, MA 01364—9 Chapin St., Winchester, MA 01890—debarred for a period of six months from November 10, 1997 through **May 10, 1998**.
12. **Bruce Poresky, President, Quality Assurance Sheet Metal**, 55 John Downey Drive, New Britain, CT 06051—debarred for a period of six months from November 17, 1997 through **May 7, 1998**.
13. **Williams Quality Air, Inc.** 7 Leblanc Lane, South Hadley, MA 01075—debarred for a period of six months beginning December 15, 1997 through **June 15, 1998**.
14. **Hawkins Structural Systems, Inc., Steve Hawkins, President**, 1 Master Drive, Franklin, MA 02038—debarred for a period of six months beginning October 9, 1997 through **April 9, 1998**.

# FFCM Annual Report

In the last year, the Foundation for Fair Contracting of Massachusetts has continued to carry out its mission of promoting 'fair contracting' and prevailing-wage compliance. The FFCM's advocacy includes both highly visible efforts to pursue wage enforcement efforts against violators, and the less visible but equally important role of creating an industry-wide presence to educate workers and contractors, government agencies, and awarding authorities about the importance of compliance.

- **FFCM Complaints Get Results for Workers**

In the last year, the Foundation for Fair Contracting has transmitted more than 42 cases of violations on public works projects involving more than 30 contractors. 25 of the violations were reported to the Attorney General. The remaining cases were reported to agencies including the US Department of Labor, The National Park Service, and the Department of Education and Training. The most common violations included misclassification of workers, failure to pay overtime, and failure to pay the prevailing wage.

- **Private Right of Action Cases**

The FFCM has been pursuing multiple cases invoking the 'private right of action' now available to Massachusetts workers. Suits against **Lyons Insulation, Inc.** and **K and E Maintenance, Inc.** were recently resolved, with both companies agreeing to pay the workers involved the compensation that was owed them, as well as to compensate the FFCM for legal costs.

- **The Wage Watch – a Newsletter for Employees**

Following the success of the Fair Contractor, the FFCM created the Wage Watch, a quarterly newsletter which is published for and sent to construction workers who have appeared on prevailing wage project payrolls in the past 4 years. The FFCM has a working database of over 5,000 workers who receive this publication which includes information on contractors who have recently been fined or debarred, tips on record keeping, as well as telephone numbers for the FFCM and other enforcement agencies. A large volume of phone responses—including many complaints about prevailing wage violations—has been recorded with each issue of the Wage Watch.

- **FFCM Survey Hits the Presses**

Last spring, the FFCM released the results of its survey 3,500 workers about conditions in the construction industry. The results were featured in the Boston Globe, The Patriot-Ledger and The Boston Business Journal.

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