



Feature Story: School Construction Delays - Don't Let Them Happen to You

In the western part of the state, merely mentioning the Greenfield Middle School project is enough to set eyes rolling – and tempers flaring. The renovation of the 81-year-old school, originally slated to cost \$13 million and scheduled to take a year, ended up costing \$4 million more in change orders and dragging on for over four years. The project became so infamous that locals have their own nickname for it: the 'Little Dig.'

Two years into the renovations – and a full year behind schedule – the town's building committee stepped in and terminated its contract with the general contractor, **Interstate Construction Company**. Problems in the building included buckled floors and a 10,000 square-foot, moldy crawl space beneath

the school. "The truth is that we have been mentally, emotionally, and financially desecrated," town councilor Barbara Tillmanns told the *Greenfield Recorder*.

While the situation in Greenfield was an extreme example of a school construction project gone awry, plenty of cities and towns across the state understand all too well the reality of swelling budgets and construction delays. School openings were postponed this year in Holliston, Millbury, Lawrence, and Bellingham, while officials in Norwell and Westborough pushed back the start of their school years until renovations were completed. In Pembroke, students will spend this year attending school in what is essentially an active construction site. Fortunately for them, workers aren't allowed to use jackhammers until after 3:00 pm.

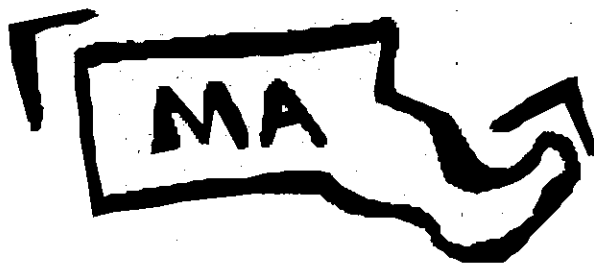
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A note to our readers:

The Foundation for Fair Contracting would like to take this opportunity to express our profound sadness over the events of September 11. Our hearts go out to the friends and family members who lost loved ones in the tragedy. We'd like to send a special message of condolence to the families of the construction workers who lost their lives that day, including one apprentice carpenter who'd been on the job for just two days.

We hope you will join us in commending the thousands of construction workers from New York and elsewhere who rushed to the scene to be part of the rescue effort. The Foundation for Fair Contracting salutes you.



**Inside:
Foundation for Fair Contracting Expands Coverage**

Plus: Meet the monitors who'll be coming to a town near you

School Construction Delays

From front page

Why are there so many school construction delays? Industry experts say that the source of the problem begins with the bidding process, before a single hole has been dug, or nail pounded. Under pressure from town officials and residents, local building committees – whose members often have little or no experience with construction – are under intense pressure to accept the lowest possible bid. The result: school construction projects often go to contractors who've submitted unrealistically low bids, and have little, if any, prospect of finishing the project on time and on budget – if they finish at all.



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Consider this warning from the Attorney General's office in 1994: "The Commonwealth is covered with public works jobs that remain dormant and unfinished because of irresponsible contractors..." The solution, according to the AG, lay in "weeding out irresponsible bids [to] prevent unnecessary and ultimately costly delays."

For towns and building committees, the process of weeding out the 'irresponsible' from the cost-effective can be as simple as checking the history of contractors bidding on the project. After Interstate Construction was fired from the Greenfield project, the company moved on to North Adams where they bid on a high school renovation project. The low bid looked appealing, until representatives of the Foundation for Fair Contracting notified North Adams officials about Interstate's sorry history.

"Look for the warning signs," says Nick Arienti, the FFCM field monitor for Essex and Middlesex counties. "Does the bid seem unrealistically low? Is the contractor coming in at a price that will make it impossible to pay workers the legally required wage? That's going to mean lawsuits down the road. Towns need to understand that the lowest bid can end up being far more expensive for them over time."

Officials and citizens of Greenfield learned their lesson the hard way. Other towns shouldn't have to. Before you accept a bid, make a point of looking into the contractor's history. Has the company worked on school projects in other towns? Call those towns and find out if the project was completed on time and on budget. "Every awarding authority needs to look into the background of the contractors they hire," says Arienti. "If that happened, unscrupulous contractors wouldn't be able to move from town to town, taking advantage of tax payers."

If you have questions about the bidding process in your town, and want to know about the history of a particular public construction contractor, call the Foundation for Fair Contracting at 1-800-224-FAIR.

A message to city and town officials, building committee members and awarding authority representatives:

The not-for-profit Foundation for Fair Contracting of Massachusetts is here to help you. If you have questions about state laws governing public construction, the bidding process, or want the lowdown on specific contractors, we can help.

Call us at our toll-free number: 1-800-224-FAIR

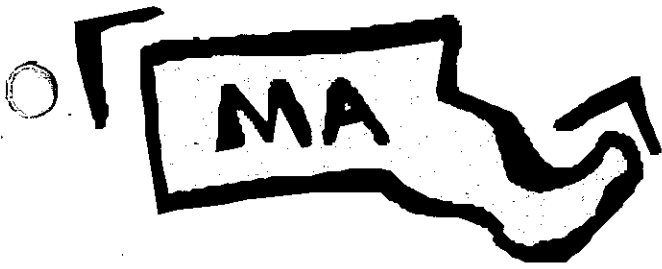
Visit our web site: www.ffcm.org

Or contact us by mail: The Foundation for Fair Contracting, P.O. Box 256, State House Station, Boston, MA 02133

All inquiries are confidential



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FFCM Expands Coverage

When the Foundation for Fair Contracting opened its doors nearly a decade ago, it was a small operation, limited to monitoring public construction projects in Eastern Massachusetts. Times have changed. Today, the FFCM has field monitors in every part of the state. They inspect certified payroll records from on-going public projects and keep an eye on bidding for new construction. The goal: to make sure that employees receive the pay and training they deserve, and to insure that honest contractors have a level playing field when it comes to competing for public construction projects.

“Having a statewide presence has definitely made a difference,” says Karen Courtney, Director of the FFCM. “We’re hearing from construction workers from literally every part of the state. They want to know about their rights, and they understand that someone is looking out for them.”

In addition to aiding construction workers – assisting them in filing complaints with the Attorney General’s office, for example – the Foundation for Fair Contracting also plays an important role in advising cities and towns about their rights and responsibilities when it comes to public construction. “From Responsible Employer Ordinances to the new Whistle-blower legislation, there are a number of legal developments that towns need to know about. Sometimes legal language and bidding procedure can be complicated, arcane stuff,” says Courtney. “We try to make it a little more understandable.”

Coming to a Town Near You

Here’s a look at the folks who are monitoring public construction sites in your area:

Chris Burger: City of Boston, South Shore, Southeastern MA, Cape Cod.

Chris has been with the Foundation since 1997, and has gradually worked his way east, starting out in the western part of the state, before spending a year monitoring construction in the Worcester area. Burger says that he’s seen a considerable improvement in the enforcement climate during his five years. “We have a much deeper reach statewide than we did in the past. People indeed know who we are, what we do, what we can and can’t do for them.”

Nick Arienti: Middlesex and Essex counties. Nick joined the Foundation last spring, after spending several years at an architectural firm that specializes in public construction. His experience in drafting and design, as well as construction administration, has given him a unique perspective on the public construction sites that he now monitors. “I definitely understand the relationships and roles each party plays during construction,” says Arienti.

Michael Burns: Worcester County. Michael is the most recent addition to the Foundation staff, coming on board late this summer. After completing a master’s degree at UMass Amherst, Burns decided to become a field monitor because, as he puts it: “there are contractors out there who know the law but blatantly flout it. It’s as simple as that.”

Art Butler: Western Massachusetts. When it comes to monitoring public construction, Art Butler has plenty of experience. Before joining the FFCM a year ago, he spent more than 20 years working for the state Department of Labor and the Attorney General’s office. These days, Butler keeps busy going by going to bid openings, visiting job sites and communicating with awarding authorities. Butler says that in recent years, he’s noticed a disturbing new trend: contractors who hire immigrant workers, often undocumented, in order to avoid paying the prevailing wage. “It’s an egregious development,” says Butler. “These are contractors who are taking advantage of immigrant workers who speak little if any English. We need to make sure that these workers understand their rights and that they’re not being taken advantage of.”

From the Legal Department:

New Whistle-Blower Law Encourages Fair Contracting

A new Massachusetts law encourages workers to 'blow the whistle' on contractors engaged in fraudulent practices. By guaranteeing protection to workers who come forward to report fraud, the government hopes to significantly increase fraud detection and prevention in the state. In the past, employees could only disclose taxpayer fraud within their own companies - a requirement that was seen as discouraging many potential whistle-blowers from coming forward.

While it remains to be seen just how many workers come forward under the new legislation, legal experts are already heralding the Massachusetts Act as among the strongest pro-whistle-blower laws to date. The Act applies to any company that does business with the state of Massachusetts, including construction contractors, defense contractors, environmental services and health care providers.

"This measure provides an important protection to workers who have information about false claims," said Karen Courtney, Director of the Foundation for Fair Contracting. Courtney noted that the FFCM plans



to educate contractors, cities and towns, as well as public construction workers about the False Claims Act. "Contractor fraud potentially harms all of us. By making sure that workers are fully cognizant of their rights under the law, we can help to create a climate in which no fraud goes unreported."

Before the whistle-blowing measure was signed into law, workers in Massachusetts who exposed fraud by their employers risked losing their jobs. And even if they went unpunished for coming forward, they were not entitled to damages from the government for revealing the wrongdoing. Now, however, whistle blowers who shine a light on fraud can receive from 15-25% of the civil penalty assessed against the company. In the event that the government opts not to pursue a particular case, the whistleblower has the option of filing a lawsuit on his or her own.

Legal experts and compliance specialists say that the new law will significantly enhance their ability to fight fraud in the public construction world. The Attorney General's office already has the power to pursue contractors who fail to submit true and accurate payroll records verifying compliance with state and federal prevailing wage laws. But while employees have only 3 years to pursue wage and hour violation claim with the state, the False Claims Act allows them 6 years.

Responsible Employer Ordinances Have Teeth

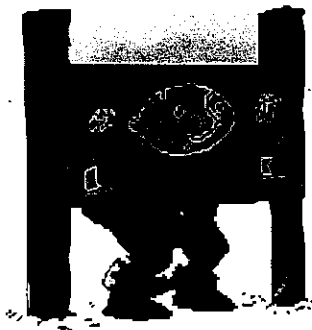
Responsible Employer Ordinances are now on the books in cities and towns in every part of the state, from Amherst and Springfield in the west, Cambridge and Boston in the east, Brockton and New Bedford in the southeast and Worcester in the central part of the state. In recent years, the ordinances have begun to play an increasingly important role in weeding out unscrupulous contractors. Take Amherst where a contractor was recently booted off of a downtown parking garage project after the company failed to meet criteria laid out in the town's Responsible Employer Ordinance.

Amherst recently enacted the ordinance, requiring that contractors who do public construction work meet certain standards. Contractors must, for example, pay the legally-mandated wage to construction workers; provide health insurance and industrial accident insurance coverage; and maintain a bona fide apprentice training program for each trade represented in their workforce. Employees of a given contractor must be classified as just that - employees - not as independent contractors. As a condition of bidding for jobs in Amherst, contractors must now sign a 'certificate of compliance,' indicating that they comply with each of these requirements. **Palladium Construction** signed the form - even though the company failed to meet at least two requirements set by the town ordinance: an apprenticeship training program and health insurance for employees.

Foundation for Fair Contracting monitor Art Butler, who covers Western Massachusetts for the FFCM, says that the ordinances are playing an increasingly significant role in determining who is the lowest - and fairest - bidder on many public works projects. He should know; it was Butler who reviewed the bid documents on the Amherst parking garage project and notified officials that **Palladium** had fallen short of the town's new ordinance. "These ordinances definitely have teeth," says Butler. "When they are used the way they were intended, it levels the playing field for contractors who play by the rules."

Contractor Hall of Shame

The following contractors were recently cited by the Massachusetts Attorney General's Office for violating the state's wage and hour laws. The Foundation for Fair Contracting was involved in each citation, from assisting in filing complaints, to providing information, and or meeting with workers.



Pat Foley Painting, Inc. of Hingham, MA and its president, **Patrick A. Foley**, must pay a total of \$6,330 after the company failed to pay 2 employees overtime on a public works project. The contractor was fined an additional \$2000 on top of the overtime violation for failing to keep true and accurate payroll records for three months last year. Inspector Robert Lamarre investigated the case.

James H. Zenone, and his company, **Zenone, Inc.** of Franklin, MA have been fined \$3,100.69 in back wages and penalties after failing to pay prevailing wages on a public works project in Southeastern Massachusetts. After an investigation by Inspector Cecile Byrne, the Attorney General's office found that Zenone had intentionally failed to pay the state mandated wage to an employee who worked on the Wastewater Pump Station in New Bedford.

Environmental Enterprises Associates, Inc. of Norwell, and its president, **John E. Brodie**, have been charged a total of \$5,673 after an investigation by the Attorney General's office revealed that the company had failed to pay the prevailing wage to a worker employed on the Greenfield Community College public works project. In addition to back wages totaling \$4,823.21, the company was also assessed an \$850 penalty. Inspector Steven Spencer investigated the case.

J.D. Rivet & Co., Inc., of Indian Orchard, MA and its president, **James L. Trask**, recently paid a total of \$5,457.87 after failing to pay the prevailing wage to multiple employees last year. The employees worked on the Nessacus Middle School public works project from June through August of 2000. The case was investigated by Inspector Steven Spencer.

Asbestos Removal Contractors, Inc. in Chelmsford, MA must pay a total of \$8,621.70 for underpaying five workers employed on an asbestos removal project at a Foxboro middle school. Between June and August of last year, the contractor

paid the five workers as much as \$9 per hour less than the state's prevailing wage. The contractor was also cited for failing to turn over certified payroll records for state inspection. Assistant Attorney General Jenifer Bosco, and Inspectors Greg Reutlinger and Mario Rosado investigated the case.

George Anderson Electrical Co., Inc., and its president, **George Anderson**, have been charged \$2273.83 by the Attorney General's office after failing to pay prevailing wages on the Monterey Town Hall public works project last spring. Steven Spencer served as the Inspector on the case.

Leonel R. Garcia and **Atlantic Construction and Restoration, Inc.** must pay a total of \$3,346.44 in fines and restitution after the company failed to pay the prevailing wage on the UMass/Amherst public works project last summer. In addition to the wage violation, Inspector Steven Spencer cited the contractor for failing to furnish true and accurate payroll records for the project.

Other Citations:

Brian Fisher, President, and **Fisher Landscapes, Inc.** of Rockport, MA - \$4,000 for failure to make timely payments to employees.

Gilmar Reis Dos Santos and **Reis Painting** of Allston, MA - \$2,296.00 for failing to make timely payment of wages due to workers.

Roy McKinnon and **McKinnon Tree and Landscape**, Jamaica Plain, MA - \$4,000 for failure to furnish true and accurate payroll records, and \$1,636 for failing to pay the prevailing wage to an employee on the MBTA Green Line public works project.

W.D. Fowler, Inc., of Wellesley, has been fined \$100 for failure to submit records while employed on the Winthrop Fort Banks Elementary School project. State law requires that contractors engaged in public works projects must submit true and accurate records to the awarding authority on a weekly basis.

Richard A. Valente and **Valente Electric Company**, Easton, MA - \$1,114.56 for failing to make timely payment of wages owed.

Contractors Rapped for Misclassifying Workers

In recent months, the Massachusetts Attorney General's office has levied fines totaling more than \$130,000 against three contractors, each of whom misclassified workers as apprentices in order to skirt the state's prevailing wage law. Belmont-based **Tinker Electrical Corporation**, Rhode Island based **Midland Fire Protection**, and **Kneeland Plumbing and Heating, Inc. of Rowland**, have each paid tens of thousands of dollars to settle charges that they failed to pay the prevailing wage to a total of 30 employees.

All three contractors classified workers as apprentices, but failed to properly register them with the state's Division of Apprentice Training. In each case, the workers were paid just a fraction of the prevailing wage. Employees of **Kneeland Plumbing**, for example, who worked on projects including the Menemsha School on Martha's Vineyard, Newton South High School, and the Wilmington Middle School, were paid as much as \$25 below the prevailing wage. **Tinker Electric** employees, who worked on nine Massachusetts public works projects including Boston City Hall, the Norfolk Senior Center and the Topsfield Library, received as


The contractors had been classifying employees as apprentices - to circumvent the state's prevailing wage law. **Tinker Electrical Corp.**, **Midland Fire Protection**, and **Kneeland Plumbing** have paid more than \$130,000 for breaking the law.

much as \$29 below the prevailing wage. Sprinkler fitters employed by **Midland Fire Protection** worked on a dozen public works projects across the state, and were often paid as much as \$20 per hour less than the state mandated wage.

"Employees who work on taxpayer-funded construction projects are legally entitled to be paid the prevailing wage," said Attorney General Reilly, announcing the finding against Midland Fire Protection. "My office will continue to enforce the law so employees get the pay they deserve and honest contractors have a fair chance to compete on public construction projects."

The Massachusetts Division of Apprentice Training requires that contractors who offer apprenticeship programs must meet certain state standards. For a complete list of contractors with suspended programs, please visit the Foundation for Fair Contracting's online information site: www.ffcm.org.

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