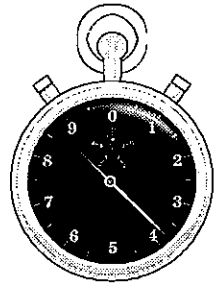




Fighting Back Against Overtime Abuse



The forty-hour workweek was established 60 years ago, as part of the Fair Labor Standards Act; according to the law, hourly employees must receive one and a half times their regular wage if they work more than 40 hours in a week. Yet increasingly, employers are failing to pay overtime wages, simply

paying employees a single rate, or even demanding that employees work off the clock. As overtime abuse becomes what some labor experts have termed 'the workplace conflict of the 1990's,' a growing number of workers are taking their employers to court—and winning.

When Arnold Bizzozero worked for Lyons Insulation Inc. on numerous school construction projects around Massachusetts, his job classification was Mason-Tender, the rate for which is around \$26. Bizzozero, however, wasn't being paid anywhere near that rate. Furthermore, when he worked more than 40 hours a week, Lyons Insulation Inc. failed to pay him time and a half. No matter how many hours he worked, Bizzozero was paid \$10 an hour.

As a long time construction worker, Bizzozero had an idea what the prevailing wage for mason-tenders was. He also knew that he was entitled to one-and-a-half times that wage when he worked more than 40 hours in a single week. Because he knew that his employer was in the wrong, Bizzozero made a point of documenting what was going on. He saved his pay stubs and kept a detailed log book of the kinds of work he was performing.

In January, with the permission of the Attorney General's office and the assistance of the Foundation for Fair Contracting of Massachusetts, Bizzozero and another employee filed a Private Right of Action Claim against Lyons Insulation Inc., suing their employer in civil court for triple damages and attorney's fees. The company opted to settle out of court, agreeing to pay the two workers a total of \$6,700 in back pay.

What happened to Bizzozero and his co-worker is far from unusual. A survey by the Foundation for Fair Contracting of Massachusetts last year found that 1 out of 5 non-union construction

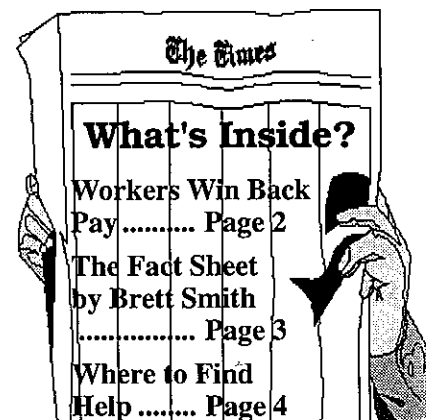
workers has been denied overtime while working on public construction jobs. According to FFCM Field Monitor Janine Yodanis, "one of the ways that shady contractors are able to underbid fair contractors is by breaking the law when it comes to paying the correct rate and overtime."

"A survey by the Foundation for Fair Contracting of Massachusetts last year found that 1 out of 5 non-union construction workers has been denied overtime while working on public construction jobs."

Overtime violations are not limited to the construction industry. Workers in the retail, garment and restaurant industries are increasingly accusing their employers of failing to follow the law when it comes to overtime. The problem, according to industry analysts, is that years of downsizing and cutbacks for the sake of lower labor costs and higher profits, often means that there are too few workers doing too much work. This combination, say analysts, has made overtime the workplace conflict of the 1990's.

As overtime violations have increased, so has the willingness of workers like Bizzozero, to take their employers to court. In the past few years, companies including Southern New England Telephone, Electric Boat, and IBP Inc., have been forced to pay millions of dollars in backwages to shortchanged workers. Wal-Mart, the Albertson's grocery store chain and the brokerage firm, Dean Witter, are among the companies currently facing suits from workers claiming overtime abuse.

In Massachusetts a growing number of construction workers who've been denied prevailing wages or overtime on public jobs are taking advantage of a new law that allows them to sue their employer in civil court for triple damages and attorney's fees (see page 2 for details). One such suit involves more than 200 current and former employees of a major Massachusetts paving contractor. It is believed to be the first class-action lawsuit under the state prevailing wage law. According to Yodanis, "going to court to fight back against unscrupulous contractors is one of the ways that we can level the playing field to benefit employers who respect the law."



Workers Take Contractors to Court . . . And Win

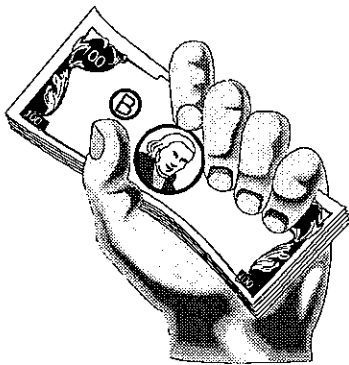
Private Right of Action Update

If you are working on a public construction job but aren't being paid prevailing wages, Massachusetts law gives you the right to sue your employer in civil court for *triple damages and attorneys' fees*, after filing a com-

plaint with the Attorney General's Office. Once you have the written permission of the Attorney General, or after 90 days passes, you are free to pursue what's called a "Private Right of Action" claim against your employer.

The Foundation for Fair Contracting of Massachusetts has been helping workers like you bring Private Right of Action claims against public works contractors who don't pay prevailing wages.

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.

Class-Action Suit Filed Against Paving Contractor

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.

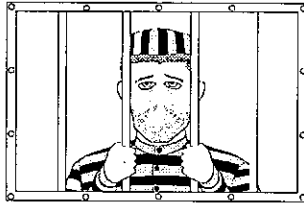
The alleged violations occurred on major public works projects throughout Massachusetts including work done on Route 93, Route 24, and Route 2A. The employees named in the lawsuit include equipment operators and laborers who performed bridgework and road work for the Roads Companies. **Roads Corp.** 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.

If you are being paid less than the prevailing wage on a public works job, make sure you save your pay stubs, keep a log of the job, and call the Foundation for Fair Contracting at 1-800-224-FAIR

CASE STUDIES

Contractor Sentenced to Jail

Raymond Miazga, owner of a Belchertown landscaping company, **Miazga Inc.**, has been sentenced to 80 days in jail after he pled guilty to 16 counts of failing to pay overtime wages to employees and failing to pay more than \$6,000 in unemployment taxes. The charges against Miazga arose when one of his former employees filed a complaint with the Attorney General's office accusing his former boss of refusing to pay him the time-and-a-half wage rate for working over 40 hours a week. When investigators looked at the payroll records of the company, they found that between June 1, 1995 and April 30, 1996, Miazga had failed to pay the proper overtime compensation to up to 16 of his former employees. Miazga's sentencing comes just months after the expiration of his three-year debarment from bidding on public works projects.



Bouchard Painting Repays Workers

A New Hampshire company that was alleged to have failed to pay prevailing wages on a number of public works projects, recently settled with the Attorney General's office, repaying the workers in the amount of \$9,000. **Bouchard Painting** of Derry, New Hampshire worked on the following public works projects: Newburyport Police Station, Norwell Pump Station, Dracut High School and Fitchburg Waste Water Treatment Facility. In addition to the money paid back to the workers, **Bouchard** also paid a penalty of \$3,000. That money is being donated by the Office of the Attorney General to SCORE, a program that teaches alternatives to violence to teens in the public schools.

Criminal Complaint Filed Against Springfield Construction Company

The Attorney General's office recently announced that the owner of a Springfield construction company has been arraigned on charges of failing to pay his employees prevailing wages, neglecting to provide workers' compensation insurance, and failing to pay the required unemployment tax contributions to the Department of Employment and Training. Roy Lee, owner of **Lee's Rebar and Steel**, was arraigned in Springfield District Court on charges of nonpayment of wages, failure to keep proper records, and failure to supply his employees with workers' compensation coverage. According to investigators, the alleged violations took place between July and September

of 1996 when Lee neglected to pay wages to employees for their contracting work involved in the Center School project in Longmeadow and the Plainfield St. Middle School Job in Springfield.

The Fact Sheet

By Brett Smith

In this issue I would like to review some of the most common questions we receive at the Foundation for Fair Contracting to clarify what services the Foundation provides and issues regarding public construction.

What is a Prevailing Wage Job?

A prevailing wage project includes any construction or alteration which is funded by the federal government, state government, or city and municipal governments. This includes, but is not limited to, schools, libraries, government offices, police & fire stations, roads, bridges, public housing, and landfills. All work performed on these projects, including site preparation, test borings, and demolition are covered by the Prevailing Wage Law.

How much should I be paid on a project?

The Department of Occupational Safety determines the appropriate wage scale on each project individually. The awarding agency is required by law to notify this office of a public works project when assembling the bid specifications. A wage determination is then issued which specifies the appropriate minimum wage rates for each job classification for that project. Therefore, the prevailing wage a worker should receive on a given project are influenced by what type of work they are doing and when the wage determination was created. The Prevailing Wage Law requires that these wage rates be posted at the job site in a conspicuous location.

What if I do more than one type of work?

Many employees perform more than one type of work on a given project, such as operating a backhoe and performing laborer's work. The Prevailing Wage Law requires that the employee must be paid the minimum wage rate for each classification. Using the above example, even if the employee is primarily a laborer, he must be paid the higher operator rate for the time spent on the machine.

Continued on back page



The Wage Watch 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 Wage Watch* accepts Letters-to-the-Editor. For information call 1-800-224-FAIR.

• *The Fact Sheet*

Continued from page 3

When does overtime begin?

Overtime pay begins after the fortieth hour worked during a pay week. Overtime must be paid at time and one half the regular rate of pay.

Can the Foundation get me my money?

The FFCM has no enforcement powers. However, we communicate often with the Attorney General's Office, U.S. Department of Labor, Department of Industrial Accidents, Insurance Fraud Bureau, Div. of Apprentice Training, and other government agencies responsible for the enforcement of the numerous laws governing public construction. The FFCM's primary objective is to communicate with the workers, inform them of their rights, help them determine what the best course of action is to resolve their dispute, and assist the agency with any information available to us.

What if I don't have any records, can I still file a complaint?

Even if you do not have a logbook or pay stubs, you can still file a complaint against a contractor. However, as mentioned before in this column, it is strongly recommended that you keep a detailed logbook and save all of your pay-stubs. These steps increase the probability that your complaint will be successful.

How long can I wait to file a complaint?

You can file a complaint with the Attorney General's Office for up to three years after working on a project. This question usually comes from people who are still working for a contractor, but know they are being cheated. My usual recommendation is to keep working for them while looking for another job, keeping excellent documentation of what the contractor is doing. Once you are no longer working for them, call the Foundation and we will help begin the complaint process.

Where To Find Help

FFCM Hotline

1-800-224-FAIR (3247)

The Industrial Accident Board

1-617-727-4900

(Workers' Compensation Claims)

National Labor Relations Board

1-617-565-6700

Occupational Health & Safety Administration

1-617-565-7164 (OSHA)

Mass. Dept. of Labor & Industries

1-617-727-3492

The Attorney General Wage Complaints

1-617-727-3477

AG's Springfield Office

165 Liberty St., Springfield, MA

1-413-784-1128

AG's Pittsfield Office

46 Summer St., Pittsfield

(Open Tuesday) 1-413-447-7324

AG's Worcester Office

340 Main St., 2nd Fl., Worcester

(Open Mon. & Tues.) 1-508-792-9404

AG's Fall River Office

(Open Tuesday) 1-508-672-9026

Wage Watch

The Foundation for Fair Contracting

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