

Prevailing News - NYC

A Publication of the Bureau of Labor Law
about Prevailing Wage and Living Wage Enforcement

From the Desk of Comptroller William C. Thompson, Jr.

President Obama has taken steps to more effectively enforce labor laws throughout the country and to promote the utilization of project labor agreements on federal construction projects.

One of those steps was to nominate New York State Labor Commissioner Patricia Smith to serve as Solicitor of the U.S. Department of Labor. As Solicitor, Ms. Smith will serve as General Counsel to Labor Secretary Hilda Solis. She will help shape policy, oversee litigation and coordinate the activities of the department's wage and hour division.

Ms. Smith has developed a well-deserved reputation as one of the nation's foremost labor commissioners. In New York, she has vigorously enforced the prevailing wage law. My Bureau of Labor Law has been a partner with the State Labor Department and other State agencies on the *Joint Enforcement Strike Force on Employee Misclassification* and participated in the Labor Department's *New York Wage Watch* initiative that has encouraged immigrant and community groups to report labor violations.

President Obama also signed an Executive Order (EO) rescinding a prior ban on project labor agreements (PLA's) for federally funded construction projects. The new EO encourages federal agencies to consider the use of PLA's on large-scale construction projects.

In New York City, the Building Trades Employers Association and the Building & Construction Trades Council have finalized a PLA that is now available on a case-by-case basis to private developers whose projects are at risk of being delayed.

My office will continue to aggressively enforce the prevailing wage law in the five boroughs. We will also continue our efforts to maintain a level playing field for competitive bidding by responsible companies on New York City public work and building service contracts.



WILLIAM C. THOMPSON, JR.
COMPTROLLER
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AAR/CO ELECTRIC FORCED TO PAY \$1 MILLION TO CHEATED WORKERS

COMPTROLLER & QUEENS DA BANS FIRM FROM PUBLIC WORKS



In 2006, Comptroller Thompson's Bureau of Labor Law began an investigation of AAR/Co Electric, Inc. based on a referral from the New York City Department of Design and Construction alleging that electricians working for this firm at the Queens Botanical Garden were being underpaid. The Bureau eventually expanded the probe to include AAR/Co construction projects let by other agencies at the Columbus Library, Fort Greene Park, the Wards Island water treatment plant and the Queens Hospital Center for the time period of April 2004 through August 2007.

Comptroller Thompson brought the case to Queens District Attorney Richard Brown for prosecution in 2007 after allegations surfaced that AAR/Co owner Arie Bar threatened and fired workers who had filed labor law complaints.

As part of a recent plea agreement with the Queens District Attorney and the Comptroller, AAR/Co has now admitted to defrauding ten workers out of more than \$1 million in wages on these New York City public work projects.

Arie Bar, the owner of AAR/Co, agreed to provide back wages with interest to ten of his former employees who were underpaid on these projects. His Brooklyn-based corporation pleaded guilty in Queens Supreme Court in March to six counts of second-degree grand larceny, two counts of third-degree grand larceny, 63 counts of first-degree falsification of business records, 63 counts of first-degree offering a false instrument for filing, 228 counts of making a punishable false statement and 29 counts of failure to pay prevailing wages. In addition, Bar personally admitted to one count of failure to pay prevailing wages. Bar falsified payroll records to conceal the fact that he paid his employees between \$20 and \$30 per hour less than prevailing wages, and provided no benefits.

In addition to making restitution of \$1,019,553, Bar and the corporation are now precluded from submitting bids on or being awarded any public work contracts or subcontracts with the City or State governments for five years.

TWO IBM SUBCONTRACTORS BARRED FROM PUBLIC PROJECTS

In 2002, the New York City Board of Education hired IBM to wire schools in the five boroughs for high-speed internet access as part of a program called *Project Connect*. Several years later, probes conducted by the Special Commissioner of Investigation for the New York City School District (SCI) substantiated complaints that several IBM second-tier subcontractors working on the project failed to pay prevailing wages and supplemental benefits to their employees who performed electrical and cabling work in school buildings.

As a result, the Labor Bureau in Attorney General Andrew Cuomo's office began its own investigation into these allegations.

Recently, two IBM subcontractors entered into stipulations of settlement with the Attorney General. Active Cabling, Inc. is paying \$178,000 and OT&T, Inc. is paying \$84,582 in restitution and interest to their workers, as well as civil penalties. Both firms are now debarred from doing business with the City or State for five years.

CONTRACTOR TOSSED FROM LAGUARDIA AIRPORT MANHATTAN DA DEBARS ROOFING COMPANY

In 2005, the Port Authority ("PA") awarded a contract to Empire Restoration Corporation ("Empire") to perform roofing work at LaGuardia Airport. The PA's Office of Inspector General ("OIG") conducted an investigation of Empire to determine whether prevailing wages were being paid to its employees. After discovering some discrepancies on the certified payrolls, the OIG conducted field interviews of several Empire workers.

Working with the Manhattan District Attorney's Office, the OIG executed search warrants at Empire's Queens office in March 2007, and at the residence of Peter Giampilis, the owner of Empire.

The OIG's investigation determined that:

- Empire was actually being run by Peter Giampilis, although his girlfriend, Debra Sehn, was listed as the President;
- Empire paid its workers approximately

\$22/hour with no benefits, instead of the prevailing rate which was approximately \$55/hour, including benefits;

- Empire kept two sets of records related to its payroll; one set they called "on the books," the other was called "off the books."

Peter Giampilis and Debra Sehn pleaded guilty to one count of Grand Larceny in the Fourth Degree and a Class E felony, and were sentenced to 5 years probation. Empire Restoration also pleaded guilty to two counts of Offering a False Instrument for Filing in the First Degree and a Class E felony, and was sentenced to a conditional discharge. Empire was required to reimburse its employees \$213,275 in underpayments. Empire was also required to forfeit more than \$50,000 to the District Attorney and PA OIG for the cost of the investigation. The company is now debarred from bidding on public work contracts.



COURT SAYS NEW YORK CHARTER SCHOOLS NOT SUBJECT TO PREVAILING WAGE LAWS

A New York appeals court has decided that Charter school construction projects are not subject to state prevailing wage laws. The ruling reverses a trial court's decision to the contrary and the state Labor Department's 2007 opinion that followed an amendment to the law.

According to the appellate court decision, Labor Law 220 provisions apply only to contracts let by public agencies or third parties either acting on their behalf or as beneficiaries. The five justices ruled that the law limits application of the wage rule and does not specifically apply to private educational corporations such as charter schools.



HHC PLEDGES TO STEP UP LABOR LAW ENFORCEMENT

After Comptroller Thompson's Bureau of Labor Law met with New York City Health & Hospitals Corp. ("HHC") officials to discuss labor law compliance, HHC Senior Vice-President Richard Levy sent a memo to all HHC facility managers and contracting officers stressing the importance of prevailing wage enforcement and emphasizing certain requirements of the Labor Law. The agency is also scheduling more training seminars for their staff regarding labor law compliance.

We are encouraged by the steps HHC is taking and we will report on its progress in future editions of the *Prevailing News*.



FULL SOCIAL SECURITY NUMBERS NO LONGER REQUIRED ON CERTIFIED PAYROLL FORMS

Comptroller Thompson is sensitive to concerns regarding the potential for inadvertent disclosure and misuse of social security numbers. Identity theft is a growing problem and the Comptroller is sympathetic to agency, contractor and worker concerns with regard to inclusion of this information on certified payroll records.

For this reason, the Comptroller's Bureau of Labor Law will now accept the last four digits of social security numbers on certified payrolls submitted to contracting agencies on City public work projects. This policy is consistent with new policies recently adopted by the U.S. Department of Labor and the New York State Department of Labor.

Please note, however, that this change does not affect the Bureau's ability to request and receive entire social security numbers from employers during the course of its labor law investigations. Therefore, both contractors and subcontractors must maintain on file the full social security number for each of their covered workers.

A revised certified payroll form is posted on the Bureau of Labor Law's website, located at www.comptroller.nyc.gov. Contractors may now complete this form on-line before printing.



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