

# Prevailing News - NYC

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



www.comptroller.nyc.gov

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

My Bureau of Labor Law continues to accelerate its important work this year. We are initiating more investigations, completing more cases, and helping more workers recover back wages owed to them from unscrupulous contractors. In the process, we maintain a level playing field for competitive bidding on New York City construction and building service contracts.

As you will see in this edition of the *Prevailing News*, we have been particularly successful at partnering with many City agencies and law enforcement officials to monitor prevailing wage compliance and enforce the labor law. We welcome the opportunity to collaborate with other organizations to protect the rights of workers and ensure that they receive lawful wages and benefits.



WILLIAM C. THOMPSON, JR.  
COMPTROLLER  
CITY OF NEW YORK

## ELECTRICAL CONTRACTOR CHARGED WITH CHEATING EMPLOYEES

### *Labor Law Investigators Lay Groundwork for Prosecution*

Following an 18 month investigation by Comptroller Thompson's Bureau of Labor Law and the Department of Design & Construction (DDC), Queens District Attorney Richard A. Brown *arrested* Arie Bar, the owner of AARCO Electrical Inc., and brought a 391-count indictment against him and his company. Bar is charged with falsifying payroll records to conceal the fact that he defrauded eight workers out of more than \$650,000 by failing to pay them the appropriate prevailing wages and benefits on six New York City public works projects with the DDC, the Department of Parks & Recreation and the Department of Environmental Protection. Comptroller Thompson brought the case to DA Brown for prosecution in 2007 after learning that Bar allegedly fired workers who had filed labor law complaints with the Bureau of Labor Law.

## COMPTROLLER RECOVERS \$100K FOR CUSTODIAL CREW WHO WERE TAKEN TO THE CLEANERS

Comptroller Thompson received a complaint in 2006 from Service Employees International Union (SEIU) Local 32B-J officials stating that Cristi Cleaning Services was not paying prevailing wages to its cleaning staff at a NYC Human Resources Administration (HRA) building in the Bronx. Labor Law investigators visited the site on several occasions, including some weekends and evenings. Through these investigative efforts and subsequent meetings with Cristi, it became apparent that the Saturday cleaning shift was being performed by an unauthorized subcontractor that was paying its employees \$10 an hour with no benefits.

While our case progressed, HRA and the Department of Investigation (DOI) also began investigating Cristi. We were able to coordinate with both agencies and resolve all pending matters through a Stipulation of Settlement with Cristi, which included payment for unpaid wages and benefits with interest to 94 workers, a

(Continued on page 2)



### INSIDE THIS ISSUE:

ELECTRICAL CONTRACTOR CHARGED WITH CHEATING EMPLOYEES	1
COMPTROLLER RECOVERS \$100K FOR CUSTODIAL CREW WHO WERE TAKEN TO THE CLEANERS	1
TRANSIT OFFICIALS CRACK DOWN ON LABOR LAW	2
STRIKE ONE FOR STRUCTURAL STEEL PAINTER	2
PRIMES PAY FOR THEIR SUB'S SINS	2
COURT UPHOLDS DEBARMENT DECISION	3
CITY CAPITAL PROGRAM ONLINE	3
MORE WAGE UNDERPAYMENT PROSECUTIONS & PLEAS	3
DEP JOC PROGRAM NEEDS REPAIR	4
STUDY FINDS PREVAILING WAGE LAWS NOT COSTLY	4
LABOR LAW LEGISLATION STALLS IN ALBANY GRIDLOCK	4
NYC REFORMS CONSTRUCTION CONTRACTING PROCEDURES	4

## COMPTROLLER RECOVERS \$100K FOR CUSTODIAL CREW WHO WERE TAKEN TO THE CLEANERS

*Continued from page 1)*

penalty to be collected as revenue for the City of New York, and a finding of willful failure to pay prevailing wages. The total violation exceeded \$100,000. This is the first willful violation issued to Cristi Cleaning.

## TRANSIT OFFICIALS CRACK DOWN ON LABOR LAW VIOLATORS

*MTA Plumbing Firm in Hot Water*

At the May, 2008 meeting of the Prevailing Wage Council, Metropolitan Transportation Authority (MTA) Executive Director Lee Sander stated that his agency and the MTA Inspector General (IG) will place increased emphasis on enforcing prevailing wage standards on transit contracts. As requested by Comptroller Thompson, the MTA and its affiliates will conduct more regular prevailing wage reviews and random audits to ensure labor law compliance on their construction projects. During the meeting, MTA IG Barry Kluger stated that his office has created a Construction Fraud Unit that will focus on prevailing wage complaints.

The Comptroller's Bureau of Labor Law often investigates cases with the MTA IG's office. For example, last month the Bureau entered into a stipulation of settlement with Rocco Mechanical, a plumbing company that performed work as a subcontractor to Roadway Contracting on an MTA Police facility in Rockaway, Queens. This case began when officials from Plumber's Local One complained to the MTA IG. The MTA IG substantiated the allegations and brought the case to the Comptroller in 2007 for resolution. We determined that the firm failed to pay prevailing wages and supplements to 13 plumbers and sheet metal workers employed on this project between 2005 and 2007. Rocco agreed to make full restitution to these workers, who had been improperly misclassified as plumber-laborers in order to pay them a lower wage rate. The violation totaled \$94,862 including interest and a civil penalty. Rocco also consented to a willful violation of the Labor Law.

## STRIKE ONE FOR STRUCTURAL STEEL PAINTER

Tower Painting, which performed structural painting on an MTA project, has accepted a willful violation of Labor Law 220 as part of a settlement with Comptroller Thompson. The firm underpaid four of its painters on this contract. Like Cristi Cleaning and Rocco Mechanical, if Tower receives a second willful violation within the next six years, the firm will be debarred from doing work with the City and State of New York for five years.

## PRIMES PAY FOR THEIR SUB'S SINS

*School Masons Will Get \$400,000*

Under New York State law, prime contractors and certain construction managers are financially responsible if their subcontractors fail to pay prevailing wages to their employees.

Comptroller Thompson recently entered into a stipulation of settlement with the URS Corporation-New York and M.H. Kane Construction whereby the companies will pay \$400,000 in back wages and interest to 41 mason tenders and a civil penalty to the City of New York. These firms hired a now-bankrupt masonry subcontractor that underpaid its employees on a Queens public school project. When the workers complained, the subcontractor induced them to sign releases of their Labor Law 220 claims in exchange for minimal financial payments.

Under well-established New York case law, a gross disparity between the amount of a prevailing wage claim and the amount paid in settlement in exchange for a release of a claim can serve as the basis for invalidating the release. Here, the subcontractor paid just pennies on the dollar to have the workers release their claims. The workers also may not have executed the releases voluntarily and knowingly. Many of them neither spoke nor read English and thus may not have fully understood the significance of what they were signing. After court proceedings and an extensive investigation, the Bureau of Labor Law determined that the releases were invalid. We were then able to settle the case with URS and M.H. Kane, and secure the additional back wages for the workers.



In another case, EMB Contracting agreed this summer to pay \$120,000 in back wages, interest, and a civil penalty to the City of New York. The Bureau of Labor Law will pay 11 workers from the monies that EMB remits to the Comptroller's office. The underpaid masons worked in New York City schools for two EMB subcontractors that are no longer in business.

## COURT UPHOLDS DEBARMENT DECISION

In the last edition of the Prevailing News, we wrote about Kelly's Sheet Metal Inc. (KSM), an HVAC contractor that was debarred by the Comptroller for falsifying payroll records on a Bellevue Hospital project. KSM took the Comptroller to court to appeal the debarment determination, arguing that the complaining workers were not legally the firm's employees, even if they did in fact perform work on its job sites at Bellevue. Last month, the Appellate Division, Second Department upheld the Comptroller's determination in full, citing the fact that KSM had originally claimed that the complaining workers had completely fabricated their stories about working on KSM's jobs at Bellevue Hospital.



## CITY CAPITAL PROGRAM ONLINE

The Mayor's Office now has a web page - <http://www.nyc.gov/html/mocs/html/research/pipeline.shtml> - that identifies many of the City's construction projects that agencies expect to bid out during the next 12 months.

In addition, much of the City's capital budget is now on the New York City Council's web site. Go to [http://council.nyc.gov/html/budget/budget\\_FY09.shtml](http://council.nyc.gov/html/budget/budget_FY09.shtml) to view what is available.

## MORE WAGE UNDERPAYMENT PROSECUTIONS & PLEAS

More and more New York law enforcement officials are aggressively working to rein-in unfair labor practices by criminally prosecuting the worst offenders in the five boroughs.

On June 18<sup>th</sup>, Manhattan District Attorney Robert Morgenthau announced that John Mari, Jr., the supervisor of Atlas Electric Contractors had pleaded guilty to Offering a False Instrument for Filing in the First Degree. Mari admitted filing documents from 2005 to 2007 that falsely indicated that Atlas, an electrical subcontractor, paid prevailing wages to six employees on Port Authority (PA) and Metropolitan Transit Authority (MTA) projects such as the Airtrain at JFK Airport and the Chambers Street subway station. Mari is to make full restitution to the workers totaling \$211,092. The Inspector Generals of the PA and the MTA conducted the investigations. Atlas Electric is now debarred from doing business with the City or State for five years.

Last month, the New York State Attorney General (AG) negotiated a settlement that secured \$1.23 million in unpaid overtime wages owed to 284 construction workers who renovated private apartment buildings in the Bronx between 2002 and 2006. The workers were employed by J. Siebold Construction Company in buildings owned or managed by Finkelstein Morgan LLC.

In Manhattan Criminal court last month, the AG and the NYC Department of Investigation charged officials from the May Construction Company with falsifying payroll records submitted to the Department of Citywide Administrative Services. The 84 workers employed by this contractor, who renovated courthouses and other government buildings, were allegedly underpaid by nearly \$500,000.

The AG also announced the arrest of the owner of a Bronx nursing home for failure to provide workers' compensation insurance to several hundred employees. Under changes in the law made in April 2007, an employer with more than five workers that fails to provide workers' compensation coverage is committing a Class E felony, punishable by up to four years in prison. Previously, such a crime was a misdemeanor.

NEW YORK LAW  
ENFORCEMENT  
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## DEP JOC PROGRAM NEEDS REPAIR

In an audit issued last month, Comptroller Thompson criticized the Department of Environmental Protection (DEP) for failing to timely complete nearly two-thirds of job orders – including asbestos remediation and lead paint abatement. “*The DEP’s insufficient planning and the inability to complete projects in a timely manner calls into question its administration of the Job Order Contracting (JOC) program,*” Thompson said. The DEP JOC audit can be viewed at [www.comptroller.nyc.gov](http://www.comptroller.nyc.gov)

JOC is a competitively bid, indefinite quantity contract under which a contractor performs work orders as needed. JOC contracts are based upon previously established unit prices for specific work items. Two years ago, Comptroller Thompson audited the JOC program at the Department of Education and faulted the agency for failing to manage the program adequately.

## STUDY FINDS PREVAILING WAGE LAWS NOT COSTLY

According to a recent report by the [Economic Policy Institute](http://www.epi.org), prevailing wage laws do not necessarily increase government contracting costs. The study points out that labor costs add up to about one-quarter of construction costs, and thus a wage raise of 10 percent for example, would only affect overall costs by about 2.5 percent, making its impact relatively small. The report also states that the superior productivity of a better paid, more highly skilled workforce often offsets the higher required wages. The study is available at <http://www.epi.org/content.cfm/bp215>.

## LABOR LAW LEGISLATION STALLS IN ALBANY GRIDLOCK

Several important measures that Comptroller Thompson, the building trades and many contractor associations promoted to reform the labor law appeared ready for passage but fell victim to the last minute chaos that occurred during the 2008 Albany legislative session.

The legislature did pass a bill that will require public utilities such as Con Edison and their contractors to maintain certified payroll records on projects when they are required to pay prevailing wages pursuant to street excavation permits issued by the City of New York. This bill has not yet been delivered to the Governor for his consideration.

The state also extended the City’s primary tax break for commercial projects, but only for only two and a half years instead of the five years requested by Mayor Bloomberg. According to a report in the *Crain’s Insider*, this compromise was reached because the building trades objected to the lack of prevailing wage requirements in the newly renamed Industrial and Commercial Abatement Program.

## NYC REFORMS CONSTRUCTION CONTRACTING PROCEDURES

Comptroller Thompson joined with Mayor Bloomberg last month to announce major reforms designed to make it easier for contractors to do business with City agencies, increase competition on City projects and lower the cost of City construction. The reforms include: allowing contractors to collect damages on certain construction projects for delays caused by City agencies; cutting the time it takes the City to process certain change orders; dedicating resources to develop accurate project scopes and cost estimates before capital dollars are committed; and putting into place Wicks Law reforms enacted by the State. These measures are designed to encourage more construction contractors to bid on the City’s projects and drive down construction costs, which by some estimates, are rising one percent per month. For more information regarding these reforms, go to [http://www.comptroller.nyc.gov/press/pdfs/07-28-08\\_mayor-release.pdf](http://www.comptroller.nyc.gov/press/pdfs/07-28-08_mayor-release.pdf).



**Comptroller William C. Thompson, Jr.**

**Bureau of Labor Law**

One Centre Street, 11th Floor, Room 1120

New York, NY 10007

(212) 669-4443

[www.comptroller.nyc.gov](http://www.comptroller.nyc.gov)