

Prevailing News - NYC

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



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

Before providing you with an update on numerous Labor Law matters, I would first like to note with profound sadness, the passing of Leon Schragar, a great and visionary man who was one of the founders of our Prevailing Wage Council (PWC). Lee passed away this past Labor Day weekend. He was the first Executive Secretary of the Association of Electrical Contractors and served that organization and Local 3/IBEW with distinction for over 30 years. Thomas Van Arsdale, Stanley Smith and Lee were responsible for originating the idea of a Prevailing Wage Council in 1972. Thanks to Lee and Stan, there are now PWC's in Long Island, Westchester, New Jersey and numerous other locations. But Lee never missed a meeting of the original New York City PWC. Lee Schragar was also a friend and mentor to many, and a devoted family man to his late wife Inge, his two children and two grandchildren. He will be greatly missed by all of us.



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

COMPTROLLER RECOVERS \$1.5 MILLION FOR SCHOOL CONSTRUCTION WORKERS

LARGEST LABOR LAW SETTLEMENT DURING THOMPSON'S TENURE

Comptroller Thompson's office recently collected \$1.5 million in restitution for 32 underpaid workers who submitted verified complaints to the Comptroller's Bureau of Labor Law (BLL) as part of settlements reached with Admiral Construction Services Corp. and Admiral Environmental LLC.

The two Admiral companies had contracts to remove old windows and install new windows in New York City public schools throughout the five boroughs over a four-year period. Most of the workers who removed and installed the windows were paid the Asbestos Handlers wage rate set forth in the Labor Law 220 schedule; many were members of Local 78, the Asbestos, Lead and Hazardous Waste Laborers' Union.

A few of the employees who filed complaints with the Comptroller videotaped the removal and

installation process. BLL reviewed the videotapes and other evidence and determined that the majority of the work should have been paid at the Ornamental Ironworker rate, and the balance of the work at the Mason Tender rate, both of which are higher than what the firms paid their employees.

As part of the stipulation of settlement, the two Admiral companies agreed that they will no longer bid on, or accept any award of, any public work contract or subcontract within New York City or New York State.

This prevailing wage settlement is the largest monetary recovery by the Bureau of Labor Law during Comptroller Thompson's tenure in office.



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PREVAILING WAGE PROGRESS ON PARKS PROJECTS

One year ago, Comptroller Thompson met with New York City Department of Parks & Recreation (DPR) Commissioner Adrian Benepe. The Comptroller shared his concerns about an apparent pattern of non-compliance with prevailing wage requirements by contractors performing public work pursuant to construction contracts awarded by the DPR.

At the November 2008 PWC meeting, Commissioner Benepe said that while his agency labor law report-card is still incomplete, DPR has made substantial progress monitoring its projects to ensure compliance with the law since meeting with the Comptroller in 2007.

Currently, many Parks contractors are small entrepreneurs who are often unfamiliar with the complex prevailing wage requirements. One of the challenges confronting Commissioner Benepe's staff is to instruct these contractors regarding compliance protocols and help ensure that they submit bids consistent with such requirements.

Over the past year, DPR has trained its resident engineers to be the first line of defense when it comes to ensuring that contractors obey the labor law. DPR is now providing similar training to its consultant engineers and project managers.

Commissioner Benepe also reported to the PWC that the agency has hired additional prevailing wage investigators. The DPR labor law enforcement unit made more than 200 field visits in the last year and identified nearly 100 violations, 75% of which have already been corrected. In addition, the DPR Engineering Audit Office has improved how it tracks labor law issues. The agency now regularly verifies payroll reports to make sure workers are paid correctly for each job classification and maintains a database of violators. Finally, the DPR has assigned a senior managerial attorney to coordinate all facets of the agency's labor law compliance program.

During the PWC question and answer session, Commissioner Benepe said his agency will consider the use of Project Labor Agreements if they help avoid construction delays, save money and ensure smooth labor relations. He also acknowledged the strong working partnership that the Comptroller's Bureau of Labor Law has developed with his DPR staff regarding prevailing wage enforcement.

At the PWC meeting, Comptroller Thompson thanked the Commissioner for making labor law compliance a high priority and encouraged him to continue DPR's agency-wide focus on this important matter.



LANDSCAPE CONTRACTORS CONCEDE PREVAILING WAGE VIOLATIONS

In September 2008, the Inspector General of the Port Authority of New York and New Jersey announced that Gerard Ippolito, the president of Liberty Tree Service, Inc., and the corporation pleaded guilty to Offering a False Instrument for Filing in the First Degree - a Class E felony - and Failing to Pay Wages in Accordance with the NYS Labor Law - a misdemeanor. The 13 underpaid laborers in this case will receive nearly \$41,000 in restitution from the contractor.

Between October 2004 and December 2005, employees of Liberty Tree Service worked on a Port Authority landscaping project along the Van Wyck Expressway on the path of the JFK AirTrain. The contract was subject to the state's prevailing wage law. The Port Authority Inspector General's

Office conducted an investigation and substantiated allegations that the contractor falsified payroll records to conceal underpayments to the workers. The New York State Attorney General's Office prosecuted the case in Queens County Criminal Court. Ippolito and the company are now debarred from bidding on New York public works projects for five years.

In October 2008, Comptroller Thompson's Office of Contract Administration (OCA) asked the NYC Department of Parks & Recreation (DPR) to review information indicating that X-Treme Construction Corporation appeared to be an alter-ego of Liberty Tree Service, the debarred company. Such information included OCA uncovering that X-Treme and Liberty shared office space, and that Ippolito's wife owned



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X-Treme. The DPR had awarded a \$985,000 contract to X-Treme for tree planting in September and submitted it to the Comptroller's office for registration. As a result of this review, DPR found X-Treme to be a non-responsible vendor and cancelled the contract. The contract has now been awarded to another vendor.

In another case, Sal-Ton Landscaping Corp. accepted a willful violation as part of a settlement with Comptroller Thompson's Bureau of Labor Law. The firm also agreed to pay nearly \$134,000 to the workers and the City of New York in restitution, interest and civil penalty. This company had contracts for landscaping and park renovations with DPR and the Department of Design & Construction. Earlier in 2008, United Metro, a Sal-Ton subcontractor, accepted a willful violation of Labor Law 220 and made restitution to its workers; this firm installed artificial turf on a Staten Island ball-field.

If either Sal-Ton or United Metro receives a second willful violation within six years of these stipulations, they will be barred from submitting a bid on or being awarded any New York public works contract or subcontract for five years. The District Council of Carpenters initially referred these allegations of underpayments to the Bureau of Labor Law.

SECURITY GUARDS RECOVER BACK PAY

254 security officers who were employed by Tristar Patrol Services to guard New York City government buildings will receive nearly \$139,000 in back pay and benefits as part of a settlement that the Bureau of Labor Law negotiated with Tristar and Allied International Union, the union that represented the guards. 224 of these guards will receive \$123,546 from Allied from an arbitration award that the union won with Tristar in 2007 as payment for vacation, holiday, sick and personal time owed to these workers. 27 security guards who filed verified complaints with the Comptroller's office will receive \$15,168 in unpaid benefits owed to them by Tristar.

As part of the stipulation of settlement, Tristar also agreed not to submit bids on any public building service contracts with any government agency in New York for five years.

In another settlement with the Bureau of Labor Law, Securitas Security Services USA agreed to pay nearly \$50,000 in back wages with interest to 59 guards that it employed at Manhattan Community College of the City University of New York.



NYS APPRENTICESHIP PROGRAM REGISTRATION MORATORIUM LIFTED

The New York State Department of Labor (DOL) has lifted the moratorium that the agency placed on the registration of new apprenticeship training programs beginning in 2007. During the suspension period, the DOL conducted two reviews of its Office of Apprentice Training; these reviews were undertaken, among other reasons, because of allegations that some non-union programs were not graduating apprentices in order to retain them as a cheaper form of construction labor. Both reviews generated reports, which may be found in the Apprenticeship section of the NYS Department of Labor's web site at:

<http://www.labor.state.ny.us/apprenticeship/appindex.shtml>.

The Apprenticeship Training Program moratorium was lifted with the enactment of Emergency Regulations, which include the following:

- Two-year probationary periods for new sponsor applications.
- Three-year re-certifications of all Apprenticeship Training programs.
- Establishment of a written public comment period for all new trades and program applications.
- Sponsors' responsibilities for employer signatories.
- Job rotation requirements and acceptable documentation.

Go to the aforementioned web page and click on "Apprentice Moratorium Lifted" for more information about these draft regulations and how to comment on them.

Utility Contractors Must Pay Prevailing Wages to Excavation Workers

New Laws Close Enforcement Loopholes



Governor Patterson has approved legislation to ensure that workers who perform street excavation and restoration work are paid prevailing wages as required by law when employed by contractors retained by utility companies in the five boroughs.

Pursuant to §19-142 of the NYC Administrative Code, companies that apply for a permit to use or open a street must agree to pay their excavation workers the “prevailing scale of union wages.” The law specifies that when such permits are issued to utility companies or their contractors, the power to enforce this provision is vested with the City Comptroller consistent with §220 of the State Labor Law.

In September, the Governor signed a

bill proposed by the District Council of Carpenters that will require utility companies and their contractors who hold these street cut permits to keep and maintain certified payroll records. This measure will help ensure that certified payroll records of companies being investigated for possible prevailing wage violations on street excavation projects are available for the Bureau of Labor Law’s review.

Governor Patterson also approved legislation proposed by the New York State Laborers’ Union that will require payment bonds on City street utility excavation projects performed by contractors. This law is intended to ensure payment to workers by contractors, material suppliers and subcontractors on such projects.

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