

# 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.

One of my most important responsibilities as Comptroller is enforcing state prevailing wage and local living wage laws regarding New York City contracts. It is gratifying when we help workers recover back wages owed to them by contractors who disregarded these laws. Frequently, we bar such employers from performing City work for a five-year period.

My Bureau of Labor Law cannot do this enormous job alone. Effectively enforcing fair labor standards is a collaborative process requiring cooperation and involvement from all prevailing wage stakeholders. Fortunately, we have developed successful partnerships with many government agencies, law enforcement officials, unions, contractor associations, and immigrant advocates that help us monitor prevailing wage compliance and enforce the labor law.

For example, we recognize that contracting agencies are the first and most critical line of defense when it comes to ensuring that contractors and subcontractors remain honest. To assist, we recently offered all City agencies wage & benefit schedules that we had translated into Spanish, wage-rate flyers in seven languages and opportunities to participate in new City-sponsored Labor Law compliance seminars. Over 100 government officials were trained at the last workshop.

We have been working directly with contracting agencies such as the NYC Department of Housing Preservation & Development (HPD) and the NYC Department of Parks & Recreation to help ensure that their public works contractors pay prevailing wages. I had a productive meeting with HPD Commissioner Shaun Donovan about prevailing wage projects in 2007 and my staff continues to monitor such HPD projects.

We are also collaborating with the Mayor's Office of Contract Services (MOCS) to ensure that City agencies are appropriately bidding out their construction and building service projects. In the last year, MOCS has become a very effective partner in educating City agencies about the Labor Law and working with our office on enforcement.

We are also representing New York City on Governor Spitzer's *Joint Enforcement Task Force on Employee Misclassification*. This Task Force is addressing the problem of employers who pay their workers off the books or inappropriately classify their employees as independent contractors. This is an unprecedented situation where such a large number of government agencies have joined forces to coordinate enforcement efforts against violators of New York State laws related to the employment of workers.

Finally, I have reached out to the District Attorneys in all five boroughs to help them prosecute those who would violate the Labor Law. We already routinely work with the offices of Manhattan District Attorney Robert Morgenthau and Brooklyn District Attorney Charles J. Hynes on cases where criminal prosecution is appropriate. Combining the imposition of civil penalties with criminal prosecutions against egregious violators of labor laws has proven to be the most effective legal weapon against dishonest contractors.

I am proud of what we have accomplished, but we can do more with your help. Please contact Jeffrey Elmer, Assistant Comptroller for Labor Law at 212 669-3622 or email [Jelmer@comptroller.nyc.gov](mailto:Jelmer@comptroller.nyc.gov) for more information.



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



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## CAN YOU HEAR ME NOW? BROADBAND GIANT MUST PAY PREVAILING WAGES

Verizon Services Corp. is bringing its new Fiber Optic Service to New York City. Installation has already started in Staten Island. To install fiber optic cabling under City streets, the company must first obtain street-opening permits from the New York City Department of Transportation. Workers who perform the necessary street excavation and restoration work pursuant to such permits must be paid the prevailing rate of wage and benefits.

Organizers from Local 731 of the Laborers Union discovered, and labor law investigators confirmed, that two of the contractors Verizon hired to do the work paid their employees less than the prevailing rate of wages and benefits. After extensive negotiations, Verizon agreed to institute a process to ensure that their contractors pay their excavation workers the applicable prevailing rate when installing the fiber optic network in City streets. Verizon also paid **\$516,131** for back wages and interest owed to the two contractors' workers as well as a civil penalty.

## PARKS PREVAILING WAGE PROGRESS

Labor Law investigators visited ten Parks' construction projects this past summer and found a disturbing pattern of prevailing wage violations. As a result, the Bureau opened five new cases, bringing our total to 19 open cases involving Parks contractors.

Parks has responded with appropriate action, by increasing enforcement staff and reviewing internal compliance protocols.

Comptroller Thompson met with Parks Commissioner Adrian Benepe last month to encourage DPR to continue its focus on this important issue.

## COMPTROLLER DEBARS MULTINATIONAL WATER & SEWER CORPORATION

In October 2007, the Bureau of Labor Law entered into a settlement with Severn Trent Environmental Services. This company is the U.S. subsidiary of Severn Trent Services, an international corporation that is based in England and operates in 20 states.

As part of the settlement, Severn Trent paid \$136,000 in back wages, interest and a civil penalty and agreed to a determination by the Comptroller that its violation was willful. Since Severn Trent had already accepted one willful violation by the New York State Department of Labor in connection with a settlement concerning four prior state contracts, the Comptroller's willful determination resulted in Severn Trent being debarred from bidding on or being awarded any new public works contracts subject to Labor Law Section 220 for five years.

Severn Trent misclassified employees performing work on a contract involving the reconstruction of eight tanks at the DEP 26<sup>th</sup> Ward Water Pollution Control Plant in Brooklyn. The firm misclassified Millwrights as Laborers and paid them at the lower Laborer wage rate, with a difference of approximately \$20 per hour. Several workers and the Carpenters Union brought this matter to labor law investigators.

A wrongful classification claim is one of the more complex issues that arise under the Labor Law. This claim typically involves contractors who pay a prevailing wage rate, but who base their choice of rate on an often incorrect claim that some of their workers are performing less skilled tasks that warrant lower wage rates under the Comptroller's prevailing wage schedule. The Severn Trent investigation and settlement represented a true team effort on the part of the Bureau of Labor Law, as it involved analyzing voluminous contract, payroll, benefits and payment requisition records. The case required the combined expertise of the Investigation, Classification, Audit and Legal divisions of the Bureau of Labor Law.

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## PARADISE LOST: PARKS CONTRACTOR DEBARRED FROM PUBLIC WORKS

Last month, Paradise Construction officials pleaded guilty to a class E felony for submitting false payroll documents to the New York City Department of Parks and Recreation (DPR). The prevailing wage violations occurred in 2004 and 2005 on two playground reconstruction projects, one in the Bronx and one in Brooklyn. The felony results in an automatic five-year debarment. Paradise will also pay the workers \$236,542 in back wages and interest and will pay the City \$23,654 in civil penalties. The guilty plea was the culmination of a joint investigation conducted by Comptroller Thompson's Bureau of Labor Law, the Office of the Kings County District Attorney, the Department of Investigation (DOI) Inspector General's Office for the Department of Parks and Recreation, and DPR.

The investigation began after DPR's Labor Law Unit alerted DOI and the Comptroller's Office that it had received complaints from several Paradise employees who were not receiving prevailing wages for renovation work at Harry Maze Memorial Park in Brooklyn and Patterson Playground in the Bronx. According to the criminal complaint and the plea agreement, Paradise submitted certified payroll reports to DPR indicating that it had paid at least four workers prevailing wages and supplemental benefits in amounts ranging from \$48 to \$59 per hour. In fact, investigators found that the company had instead only paid the workers between \$10 and \$15 per hour in cash off the books. The Bureau withheld over \$260,000 in contractor monies to ensure that funds were available to pay the workers as well as the civil penalty.

As part of the agreement, Paradise will be ineligible to submit a bid on, or be awarded, any public works contract with the City or State for five years.

For more than a decade, the Bureau of Labor Law has worked with the office of Brooklyn District Attorney Charles J. Hynes on cases like this one to address serious prevailing wage violations in Brooklyn. Together, we have debarred 20 contractors, including Paradise, and assessed over \$4.5 million in restitution for workers.

## SURETY PAYS FOR THE SINS OF THE SUB

In the last edition of the Prevailing News, we reported that the Comptroller's Bureau of Labor Law entered into a settlement agreement with Apple Builders & Renovators whereby the company accepted a willful violation of the labor law and agreed to make payments of over \$331,000 to the City to cover the firm's underpayments to 18 of its workers, statutory interest and a 10% civil penalty.

Unfortunately, Apple failed to make the restitution payments required by the terms of the settlement agreement with the Comptroller's Office. Thus began the process of looking to the construction manager and its surety to collect the balance.

Anyone who has dealt with an insurance company knows firsthand how difficult it can often be to receive payment for a claim. Sureties, who issue payment and performance bonds to contractors and subcontractors on major construction projects, are no different: all the more so, when trying to receive the funds from the surety because the insured party has reneged on a post-construction settlement agreement.

Centennial Insurance Company was the surety of URS Grenier (formerly O'Brien-Kreitzberg), the construction manager, who had hired Apple Builders & Renovators to perform renovation work on public schools. When it became apparent to us that Apple was not going to fulfill its obligations under the terms of the Stipulation, we turned to Centennial and URS for the balance. After extensive negotiations, both parties contributed to the outstanding underpayment fund: Centennial paid nearly \$100,000.

Although Article 8 Section 220-g of the Labor Law provides that workers may bring an action to recover monies due for unpaid wages and benefits under the payment bond or authorize the Comptroller to do so on their behalf, the likelihood of recovering monies from the surety is a challenging prospect at best. Here the Comptroller's Office was able to negotiate a terrific solution without the need for protracted litigation.

A great result for workers!

FOR MORE THAN A  
DECADE, THE BUREAU  
OF LABOR LAW HAS  
WORKED WITH THE  
OFFICE OF BROOKLYN  
DISTRICT ATTORNEY  
CHARLES J. HYNES  
TO ADDRESS SERIOUS  
PREVAILING WAGE  
VIOLATIONS IN  
BROOKLYN.

## STATE TAKES ACTION TO PROTECT WORKERS' RIGHTS

Governor Spitzer has undertaken several bold new initiatives to more comprehensively enforce the labor law and protect New York State workers.

Governor Spitzer has signed an Executive Order that creates a Joint Enforcement Task Force to address the problem of employee misclassification. Labor Commissioner Patricia Smith spoke about this at a recent meeting of Comptroller Thompson's Prevailing Wage Council. Our office is an active member of this Task Force along with the Department of Labor, the Workers' Compensation Board, the Attorney General, the Department of Taxation & Finance and other State agencies.

Misclassification of workers occurs when an employer improperly labels an individual as an independent contractor rather than as an employee, or pays workers off the books. Some businesses misclassify their workers to avoid complying with laws governing prevailing wage, minimum wage, unemployment insurance, workers' compensation, tax withholding and overtime. A study released last month by the Fiscal Policy Institute states that off the books payments will cost New York City's tax base over \$550 million in 2008.

If a contractor is cheating its workers out of prevailing wages, it is probably not paying workers' compensation, unemployment insurance premiums or taxes. The Strike Force has already conducted sweeps of several New York City construction sites. This working partnership will help all the involved agencies more effectively share information and enforce laws that protect workers.

A moratorium has also been placed on the registration of new apprenticeship programs until the State's Department of Labor completes a comprehensive review of the agency's Office of Apprentice Training. This action has been taken because of allegations that many non-union programs were not graduating apprentices, in order to retain them as a cheaper form of labor.

## ROAD RAGE: UNION, OLR BATTLE OVER BACK BENEFITS

Supervisor Highway Repairers - members of District Council 37's Local 1157 employed by the City of New York - are entitled to pay increases dating back to 2000. The anticipated pay adjustments, which are retroactive, follow an Appellate Court's decision affirming an earlier determination of Comptroller Thompson in 2005 that the Supervisors earned significantly less than similar road workers in the private sector.

However, implementation of this Final Order and Determination hit a major roadblock when the Office of Labor Relations (OLR) reduced the annual, sick and other

## LABOR LAW REFORMS SIGNED INTO LAW

Governor Spitzer has signed three important bills that amend the New York State labor law.

The Governor signed into law legislation that explicitly states that contracts for public work entered into by a third party are subject to prevailing wage requirements. The legislation addresses a significant loophole in the law created by the Pyramid case, in which the New York State Appellate Division ruled that the Department of Labor could not enforce the prevailing wage law because a private developer, not a government agency, was the party to the public works contract.

A second bill that was approved will require public works contractors and subcontractors to simultaneously distribute notices of current prevailing wage rates for each worker's particular job classification (Carpenter, Steamfitter, Laborer, etc.) with employee pay checks. This law takes effect on February 24, 2008.

An amendment to the labor law that goes into effect in July 2008 will require government agencies to include provisions in public works contracts and specifications providing that all laborers, workers and mechanics must complete an OSHA-approved, ten-hour construction safety course in order to be employed on public projects exceeding the cost of \$250,000.

Legislation highlighted in the last edition of the "*Prevailing News*" that would make certain prevailing wage violations a felony rather than a misdemeanor (the "Spota" bill) was amended and passed by the State Senate and Assembly in December of 2007. It has now been delivered to the Governor for his consideration.

leave days for these highway workers retroactively to match the predetermined hourly cost of prevailing benefits. OLR officials stated that, based on the lower fringe benefit rates received by the members of the prevailing union - the Sheet Asphalt Workers Local 1018 - the City may recoup the value of the disputed leave accruals over the 62 months covered by the determination and reduce future leave accruals as well. DC 37 has now filed an improper practice charge with the Office of Collective Bargaining in an effort to resolve this dispute.

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