



New York City Comptroller  
John C. Liu

## COURT STOPS HHC LAYOFFS

DC 37 and several skilled construction trade unions won a state Supreme Court injunction banning layoffs of hundreds of Laborers, Carpenters and Electricians employed by the Health & Hospitals Corporation in three consolidated cases (*Lillian Roberts, et al. v. HHC and Alan Aviles*; *Sean Fitzpatrick, et al. v. HHC and Alan Aviles*; *Honorable Daniel Dromm, et al. v. HHC*). Before the court ruling, Comptroller Liu expressed strong concerns to HHC President Alan Aviles about the proposed job cuts. He also urged President Aviles to hire only responsible contractors who comply with labor laws when the corporation outsources construction work to private firms.

## LAWSUIT CHALLENGES PLA AGREEMENTS

Two electrical contractor associations have filed legal challenges to a series of Project Labor Agreements (PLA's) reached in November 2009 between the Mayor's office and the New York Building & Construction Trades Council. The lawsuits (*Building Industry Electrical Contractors Association et al. v. The City of New York et al.*) allege that the PLAs violate state competitive bidding statutes and the National Labor Relations Act. An attorney for the plaintiffs also argues that the PLAs will increase construction costs, despite an economic analysis completed by the City that showed cost savings.

## CHARTER SCHOOLS WIN PREVAILING PAY FIGHT IN STATE'S TOP COURT

New York's highest court has ruled that contracts to build or renovate charter schools are not subject to Section 220 of the State's Labor Law. In *New York Charter School Association et al. v. M. Patricia Smith, as Commissioner of Labor*, the Court of Appeals voted 5-2 to uphold a lower court decision that rejected the State Labor Department's opinion that charter schools must pay prevailing wages. The court ruled that the labor law statute applies to public works contracts, but not to state charter school authorizing agreements.

## PATERSON VETOES 2010 PREVAILING WAGE BILL

Before leaving office, Governor Paterson vetoed a bill that would have mandated prevailing wages for contract workers who provide cleaning and security services for utility companies in New York State. The legislation was supported by SEIU Local 32B/J but was opposed by Con Edison and other utilities, municipalities, business groups and officials from business improvement districts. The bill also would have allowed the Comptroller's Bureau of Labor Law and the State Labor Department to withhold money from public contractors who refuse to provide books and records needed to investigate allegations of wage underpayments pursuant to Labor Law 230. In addition, the measure would have increased the range of criminal sanctions that prosecutors can use against firms that violate Labor Law 230.

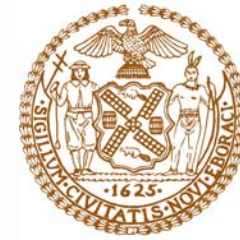
## WAGE DETERMINATION DELAYED

The Mayor's Office of Labor Relations (OLR) has initiated proceedings to review an Order and Determination issued by Comptroller Liu for civil service Laborers, delaying further resolution of a ten-year bargaining dispute between OLR and DC 37.

The Comptroller's ruling had followed an investigation by the Bureau of Labor Law and a series of hearings at the Office of Administrative Trials & Hearings that concluded with a report and recommendation upholding the Bureau's investigative findings. The Comptroller ordered that the City pay the City-employed Laborers wages and benefits commensurate with those of the Mason Tenders affiliated with Laborers Local 79 (*Comptroller, ex rel. Local 924, DC 37, AFSCME, AFL-CIO v. Office of Labor Relations*). The parties will appear in court in April 2011.

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New York City Comptroller  
John C. Liu

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DEAR NEW YORKER:

Throughout the last year, my office has worked closely with labor, contractor associations, law enforcement and other municipal agencies to aggressively enforce and strengthen our labor laws. We continue to work diligently to facilitate a level playing field for honest contractors and ensure a fair, decent wage for New Yorkers employed on public works projects.

Recent developments include securing record settlements on behalf of workers who were cheated out of wages and benefits for work at City sites. This newsletter summarizes other recent victories and provides information on other important developments regarding labor law enforcement.

The Bureau of Labor Law, with General Counsel/Deputy Comptroller Ricardo E. Morales at its helm and a team of talented professionals, are ready, willing and able to help should you have any questions or need assistance. Mr. Morales has served in my administration since Day One and brings with him decades of legal and high-level executive experience from both private and public sectors.

Together, we will continue to protect the rights of workers, close the legislative loopholes that make enforcement challenging, promote fair competition and build a better New York. Thank you for this opportunity to serve.

Sincerely,

John C. Liu

## COMPTROLLER LIU RECOUPS \$2.35 MILLION IN BACK PAY FOR CHEATED WORKERS *Contractor Willfully Violated the Labor Law*

Paramount Equipment Rental provided labor to the Department of Environmental Protection (DEP) to operate backhoe loaders for the excavation and removal of debris during repair and replacement of water and sewer systems in public roadways throughout the City of New York between August 2007 and December 2009. An Operating Engineers Local 15 representative alerted DEP that Paramount might be underpaying its engineers. The agency initiated an internal review that substantiated this allegation. Unable to resolve the dispute itself, DEP turned the matter over to the Comptroller's Bureau of Labor Law.

The Bureau audited the contractor's books and records and determined that Paramount

shortchanged 24 operating engineers on overtime, night shift differentials and weekend premiums. Subsequently, the Bureau negotiated a settlement in January 2011 that provided for a willful violation, \$2.35 million in restitution and an \$ 117,674 civil penalty. This is the largest Public Work underpayment award the Comptroller has determined.

## COMPTROLLER LIU RECOVERS OVER \$290K FROM PAVING COMPANY

In a stipulated settlement with the Comptroller's Bureau of Labor Law last month, Cofire Paving Corporation agreed to pay \$264,855 in back wages to workers who performed milling work in preparation for resurfacing public streets pursuant to a contract with the NYC Department of Design and Construction. Cofire also paid \$26,485 as a civil penalty to the City of New York. The principals of the company also agreed not to bid on or be awarded any public work contract or subcontract covered by Labor Law 220 for a period of five years.



## PREVAILING NEWS

Publication about Prevailing  
Wage and Living Wage  
Enforcement

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## AJS COMPENSATES UNDERPAID LABORERS RENOVATING AN HEALTH & HOSPITALS CORPORATION FACILITY

A.J.S. Contract Management had a contract with the NYC Department of Design & Construction to renovate the exterior of the Astoria Health Center, a public health facility operated by the NYC Health & Hospitals Corporation. During the period 2007-2009, the company underpaid many of the Pointers and Mason Tenders it employed on the project. AJS resolved many issues directly with its employees but it took a proceeding at the Office of Administrative Trials and Hearings for the Bureau to collect an additional \$182,960 owed to the workers and a \$9,148 civil penalty for the City of New York.

## SCHOOL CONTRACTOR MAKES \$2.6 MILLION IN RESTITUTION TO 134 STATIONARY ENGINEERS

In October 2010, the Comptroller's Bureau of Labor Law negotiated a settlement with Temco Building Services for \$2,668,369. The agreement provides for full restitution to 134 IUOE Local 94 stationary engineers and helpers who performed building service work for Temco in public schools. Temco is an international facilities management company. This is the largest Building Service investigation that the Comptroller has resolved.

## COMPTROLLER LIU COLLECTS \$617,254 FOR MOVING COMPANY EMPLOYEES

The Comptroller's Bureau of Labor Law has entered into an agreement with Moveway Transfer and Storage, whereby the Brooklyn-based company agreed to pay 18 of its employees \$617,254 in back pay, plus a \$61,725 civil penalty to the City of New York. Moveway had contracts with four city agencies to provide moving services from 2004 to 2008. The settlement came after litigation initiated by the contractor failed to stop the labor law investigation.

## MOCS PARTNERS WITH COMPTROLLER TO ENFORCE LABOR LAW

In recent years, the Mayor's Office of Contract Services (MOCS) has spearheaded efforts to foster labor law compliance by City agencies. To accomplish this, MOCS has partnered with the Comptroller's Bureau of Labor Law, and has promoted a 'team effort' concept on the prevailing wage enforcement battle.

- Under MOCS Mayoral Executive Order 102 (EO 102), an agency must examine bid responses for compliance with the labor law. Additional review by the agency and MOCS is triggered where there is a wide difference between the apparent low bidder and the next bidder. For example, MOCS forwarded a case involving the Sound Beyond Electrical Corp. to the Comptroller after an EO 102 bid review. The Bureau of Labor Law investigated this referral and as a result, this firm agreed to pay 11 of its alarm technicians over \$238,000 in back wages and interest in 2009.
- As an outcome of EO 102 and other EOs, winning vendors must now acknowledge City requirements before commencing work as to: paying benefits as well as appropriate wages; maintaining certified payrolls; State apprenticeship registration; apprentice ratio compliance, and correct trade classifications of workers.
- In addition, winning vendors must use standard sign-in and sign-out logs; follow rules regarding worker ID badges; use written subcontracts that include prevailing wage and living wage; pay all workers by check; and must agree to pay the cost of enforcement if they violate labor laws.
- MOCS provides specialized training seminars for City contract/procurement administrators, project managers and resident engineers on all contracts subject to prevailing wage or living wage requirements. Bureau of Labor Law staff has made presentations at many of these seminars.
- MOCS holds regular meetings with City agency labor law investigators and engineering audit officers.
- MOCS assists the Department of Small Business Services with vendor education for small, women and minority-owned firms.

Contracting agencies are the first and most critical line of defense when it comes to ensuring that contractors and subcontractors abide by prevailing wage mandates. MOCS has worked diligently with the agencies and the Bureau to improve labor law compliance.

## U.S. LABOR DEPARTMENT RECOVERS BACK WAGES FROM HPD SUBCONTRACTORS

An investigation by the New York City office of the U.S. Department of Labor's Wage & Hour Division revealed that three companies cheated their workers out of prevailing wages on federally funded housing projects in the Bronx and upper Manhattan, including the first such development built with federal stimulus funds. Sant-Tec Electric, a subcontractor to Lettire Construction Corporation, agreed to pay \$339,000 in back pay to 27 electricians, and accepted a three-year debarment from working on federally funded projects. The Department is also seeking to debar two other Lettire subcontractors, Gladiators Contracting and Enviro & Demo Masters, and recover \$829,000 in back wages for 32 demolition laborers. These firms performed work on projects subject to the federal Davis-Bacon Act. Officials from the Mason Tenders Local 79 brought allegations of wage underpayments to the Labor Department.

## START ELEVATOR STOPPED AGAIN: U.S. PROSECUTORS CHARGE OWNER CHEATS MORE WORKERS

The owner of a New York City elevator company has been arrested in connection with a scheme to cheat employees. John O'Shea, the owner of Start Elevator, allegedly underpaid workers on New York City Housing Authority (NYCHA) projects by more than \$1.1 million. Manhattan U.S. Attorney Preet Bharara charged that O'Shea submitted fraudulent certified payroll records to cover up his wrongdoing on federally funded NYCHA contracts that were subject to the Davis-Bacon Act. Investigators from the Housing Authority and the New York City Department of Investigation brought this case to federal prosecutors.

In a 2008 stipulation of settlement with the Comptroller's office, Start Elevator agreed not to bid on or be awarded any City or State public works contract for five years. The case involved the company's subcontract to replace elevators in the MTA's West 4th Street subway station.



September 22, 2010 — Prevailing Wage Council Meeting

## NEW STATE LABOR PROTECTIONS GO INTO EFFECT

In 2010, two state bills were enacted that will help workers starting this year. A new law makes construction companies subject to additional criminal and civil penalties if they pay employees off-the-books or misclassify employees as independent contractors in order to underpay them or dodge taxes. The Construction Industry Fair Play Act creates a clearer litmus test to distinguish the difference between a worker and an independent contractor. Construction industry employers must post a notice about the Fair Play Act on job sites; the State Department of Labor is responsible for enforcement of this law and has information posted on its web site, [www.labor.ny.gov](http://www.labor.ny.gov).

The Fair Play Act is the product of the *Joint Enforcement Task Force on Employee Misclassification* created by former Governor Spitzer in 2007. The Task Force is made up of various government agencies that work together to prosecute unscrupulous contractors that underpay workers, or do not provide unemployment insurance or workers compensation as required by law. The Task Force issued a report in 2008 that took aim at specific abuses found in the state's construction industry. The Comptroller's Bureau of Labor Law represents New York City on this Task Force.

The Wage Theft Protection Act, which takes effect on April 12, 2011, increases criminal and civil penalties for failure to pay minimum wages or overtime; fines of up to \$5,000 can be levied and prosecutors can seek a one-year jail sentence for violators. The bill also enacts more stringent record-keeping requirements, whistleblower protections, and stronger collection tools for the State Department of Labor.