

New York City Comptroller
John C. Liu

**PREVAILING PAY HIKE
FOR DC 37 RADIO
REPAIR MECHANICS**

In August, District Council 37 and the City's Office of Labor Relations (OLR) resolved a long-standing wage dispute involving 125 Radio Repair Mechanics after the Comptroller's Bureau of Labor Law convened a series of hearings at the Office of Administrative Trials and Hearings (OATH).

The hearing process concluded with a report and recommendation confirming the Comptroller's view that City-employed Radio Repair Mechanics must be paid wages and supplements commensurate with those earned by Maintenance Engineers employed by ABC and represented by NABET-CWA Local 16. Comptroller Liu adopted OATH's report and recommendation in a final determination issued earlier this year. Thereafter, OLR and DC 37 worked to quantify the hourly value of Local 16's supplemental benefits package. The parties entered into a consent determination last month.

The City of New York is required by Labor Law 220 to pay its skilled craftsman and operative service employees prevailing wages and supplements. If the civil service unions representing these municipal workers are unable to negotiate a collective bargaining agreement with the City of New York, they may file a verified complaint with the Comptroller to determine the prevailing rate of wage for their job titles. Although City employees in these titles are entitled to prevailing wages, only those workers whose unions file a complaint with the Comptroller typically receive them.

**MTA CONTRACTOR
GUILTY OF CHEATING
OVER 300 WORKERS
ON SUBWAY PROJECTS**

Bronx District Attorney Robert T. Johnson announced on June 30th that the owners of M.A. Angeliades, Inc. pled guilty in Manhattan State Supreme Court to charges that they failed to pay prevailing wages at various construction projects performed for the Metropolitan Transportation Authority (MTA). The DA determined that more than 300

workers were underpaid by almost \$600,000 between July 1, 2005 and September 10, 2008. As a result of the plea agreement, Angeliades will establish a \$3 million escrow account to settle wage claims by underpaid workers.

The original indictments which led to the convictions were obtained on May 20, 2009 by former Manhattan District Attorney Robert Morgenthau. The case came out of investigations by the Inspector General's Office of the MTA and the Comptroller's Bureau of Labor Law that were turned over to the Manhattan DA's office.

**MTA PRIME CONTRACTOR
PAYS FOR THE SINS OF ITS
PAINTING SUB**

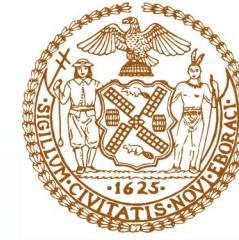
A subcontractor failing to pay prevailing wage on the Metropolitan Transportation Authority's reconstruction of the Times Square subway complex has resulted in the prime contractor on the project being held accountable by the Comptroller's Bureau of Labor Law for \$307,417 in back pay for cheated workers.

The MTA awarded the Schiavone Granite-Halmar Construction Company (SGH) a contract for the reconstruction of the Times Square subway complex; SGH subcontracted the painting work to the OJ Painting Company during 2003 and 2004.

In 2004, a painter filed a verified complaint with the Comptroller's Office alleging that OJ Painting failed to pay him the prevailing rate on the project. SGH settled the matter by stipulated agreement with the Comptroller's Bureau of Labor Law in 2006, resulting in restitution to the worker. The Bureau of Labor Law successfully petitioned the Office of Administrative Trials and Hearings for a finding that OJ Painting willfully violated the law. Subsequently, six additional painters filed similar prevailing-wage complaints against OJ Painting.

Pursuant to NYS Labor Law §223, prime contractors such as SGH are financially responsible for non-compliant subcontractors like OJ Painting. In this case, SGH agreed to pay \$307,417 in restitution to the Comptroller as part of a stipulated agreement for back-wages and interest for the six OJ Painting workers who were cheated. SGH's violation was non-willful.

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New York City Comptroller
John C. Liu

September 2010

DEAR NEW YORKER:

My office is charged with determining prevailing wage rates and enforcing prevailing wage laws for public construction projects and government building service work in New York City. The most recent Prevailing Wage Schedule, published on July 1, is now available online. 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.

Over the last nine months, my office has worked closely with unions, contractor associations, law enforcement and other municipal agencies to aggressively enforce and strengthen our labor laws. A recent victory as a result of one of the largest building services compliance investigations was reported on July 17, 2010 in the New York Daily News: "FDNY Contractor to Pay Nearly \$1 Million in Wages Owed to Underpaid Cleaning Crews, Says Liu".

The Bureau of Labor Law, with General Counsel and Deputy Comptroller Ricardo Elias Morales at its helm and a team of talented staff, 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 can 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 COLLECTS NEARLY \$1 MILLION
FROM FDNY CONTRACTOR
Subcontractor Debarred**

Comptroller John C. Liu's Bureau of Labor Law recovered nearly \$1 million in back wages, interest and penalties in June from Capital Cleaning Contractors, Inc. on behalf of 33 underpaid workers who were employed as cleaners in New York City Fire Department facilities. The restitution represents the largest-ever building services compliance award negotiated by the Comptroller's Office.

In order to resolve the case, Capital Cleaning agreed to accept financial responsibility for its non-compliant subcontractor, Velox Cleaning

Corp., which failed to pay prevailing wages and benefits to cleaners working in Fire Department offices. *In addition, the owner of Velox accepted a five-year debarment for falsifying payroll records.*

Capital subcontracted with Velox to perform cleaning services at Fire Department facilities, though the Department was unaware of the subcontract until a worker complained to Department that Velox had underpaid the worker's withholding taxes.

(Continued. Inside)



**PREVAILING
NEWS**

Publication about Prevailing Wage and Living Wage Enforcement

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(From Front Page)

This prompted an internal audit by the Fire Department, which raised questions about the company's payroll records and Capital's failure to ensure that Velox paid prevailing wages to its workers as required by New York State Labor Law and the contract.

When the Fire Department could not resolve the issue internally, it forwarded the case to the Comptroller's Bureau of Labor Law for investigation. Soon after, additional workers came forward and filed complaints alleging prevailing wage violations. The Bureau's compliance work ultimately resulted in a stipulated agreement in which Capital agreed to pay \$979,905 in back wages, interest and civil penalties.

MANHATTAN DA CYRUS VANCE ADDRESSES PREVAILING WAGE COUNCIL

In May, Manhattan District Attorney Cyrus R. Vance Jr., as featured speaker of the year's first meeting of the Comptroller's Prevailing Wage Council, outlined his office's long history of vigorously prosecuting contractors who fail to pay prevailing wages.



May 26, 2010 — Manhattan DA Cyrus Vance speaking at the Prevailing Wage Council Meeting

accomplish this because of the ongoing efforts of the Bureau of Labor Law at the Comptroller's Office and a task force involving members of the Bureau of Labor Law, DOI, and the Inspectors General for the SCA, Port Authority, MTA and Dormitory Authority and my office," Vance said.

DA Vance also credited cooperation between his office's Construction Industry Strike Force and the various trade unions that have referred matters to the DA.

During his remarks, DA Vance also called for further reforms to the labor law. Although the legislature increased criminal penalties for prevailing wage violations in 2008, the bill was watered down in committee according to Vance. As originally drafted by Suffolk County DA Thomas Spota, the bill would have allowed prosecutions pinned to the same dollar thresholds in the New York Penal Law larceny statute.

"Every dollar underpaid to a worker on a public work project is a dollar for dollar theft from the trust created for the benefit of the workers," Vance said.

However, the Spota legislation was amended and the dollar amounts were increased and delinked from the penal law amounts for comparable felonies. Thus the Manhattan DA and other prosecutors continue to prosecute labor law offenses on the penal law embezzlement using a constructive trust theory because they can reach higher grade felony offenses at lower dollar thresholds.

For example, an E felony requires merely \$1,000 in underpayments; a D felony requires only \$3,000, and a C felony requires \$50,000. DA Vance feels that the Spota bill should have been enacted as originally drawn and that offenders who pay less than the prevailing wage should be prosecuted similar to anyone who steals property.

At the conclusion of his presentation, DA Vance promised to remain vigilant and continue to partner with the Comptroller to prosecute the most egregious violators of the labor law.

DEBARRED: ENEL ELECTRICAL CORPORATION In a Second School Case, Office Collects \$267K from an Electrical Contractor

The owner of ENEL Electrical Corporation has accepted a five-year debarment from performing public work pursuant to a Bureau of Labor Law settlement conference at the Office of Administrative Trials & Hearings (OATH). ENEL owner John Dituri also agreed to make \$96,638 in restitution to his employees and pay \$9,663 in civil penalties to the City of New York. ENEL had contracts with the Department of Education (DOE) to replace ballasts in light fixtures, repair emergency exit lighting systems and install electrical feeders to kitchen equipment in various public schools between June 2008 and November 2009. ENEL falsified the payroll records it submitted to the DOE as part of the agency's

payment requisition process. A DOE investigator referred the underpayment allegations to the Bureau and worked closely with labor law investigators to gather evidence for the July 2010 OATH proceeding.

In another case of a contractor taking advantage of workers at school sites, Telephone Sales and Service Co. (TSS) agreed to pay \$242,688 to the Comptroller's Office in back wages and interest for six of its employees as well as \$24,268 in civil penalties to the City of New York.

TSS performed wiring work in schools pursuant to several subcontracts with construction managers of the New York City School Construction Authority. After hearing complaints from workers, the Joint Industry Board of the Electrical Industry asked the Comptroller to investigate the allegations, which resulted in the recovery of back wages. The violation was non-willful.

DEBARRED: BOSPHORUS

In June, the Bureau of Labor Law and Bosphorus Construction Corporation entered into a stipulated agreement debaring Bosphorus from bidding on or performing public work for a 5-year period. Bosphorus was a subcontractor on a Parks & Recreation project concerning the reconstruction of Pomonock playground.

FAILURE TO DISCLOSE PREVAILING WAGE CASE DOOMS CONTRACTOR CLAIM

Omni Contracting Company, soon after completing its contract to construct a Parks Department playground, filed a lawsuit claiming delays caused by the City cost them \$319,386 in additional unanticipated expenses.

However, the City argued that it was fraudulently induced to enter into the contract with Omni because the firm did not disclose past prevailing wage investigations and violations in its VENDEX form. As a result, the court dismissed the contractor's delay claim and determined that Omni was not a "responsible contractor."

What this case showcases is how important it is for contractors to accurately complete and update VENDEX forms. Failure to do so may lead to a non-responsibility determination and may be grounds for non-payment for work already performed.



May 26, 2010 — Prevailing Wage Council Meeting

COMPTROLLER LIU OPENS UP THE CITY'S CHECKBOOK

On July 1st, the beginning of Fiscal Year 2011, Comptroller Liu launched "Checkbook NYC," a powerful new online tool that provides unprecedented access to view and track how New York City government spends its money. All City expenditures since January 1st are now accessible at the public's fingertips at www.checkbooknyc.com.

One of the most comprehensive initiatives of its kind in the nation, "Checkbook NYC" is an easy-to-use online database of the City's expenditures, allowing users to search and download by agency, vendor/payee name, purpose and amount.

Checkbook NYC is updated daily and uses the City's Financial Management System (FMS) to identify and chronicle all City expenditures. It is part of Comptroller Liu's broader "My Money NYC" transparency initiative, which gives New Yorkers unparalleled access to information about the City's finances, encourages community-government collaboration on fiscal matters and provides user-friendly performance measures. "My Money NYC" includes:

- ClearView - An initiative started by former Comptroller William C. Thompson, Jr. which lets users to search City contracts registered with the Comptroller's Office. Status: Live
- Open Audit - An interactive webpage allowing the public to submit ideas for audits to save money, increase revenue, and improve the efficiency of agencies. Status: Live
- MWBE Report Card - Measures the performance of City agencies in achieving their MWBE goals, especially in light of Local Law 129 of 2005, which set out hard targets, agency-by-agency, of government contracting opportunities for minority- and women-owned business enterprises. Status: TBA December 2010