



Prevailing Wage *News*



NEW YORK CITY COMPTROLLER
JOHN C. LIU

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Municipal Building, One Centre Street
New York, NY 10007

Signal Restoration Services To Compensate Hundreds Of Workers Who Were Underpaid While Performing Post-Hurricane Sandy Recovery Work At Three Hospitals Owned By NYC Health And Hospitals Corporation

In September 2013 the New York State Attorney General's Office resolved a joint investigation with the Comptroller's Bureau of Labor Law into the labor practices of public-works contractor Signal Restoration Services for underpayments made by its subcontractors during the cleanup and reconstruction of three HHC hospitals following Hurricane Sandy. The Attorney General's agreement requires Signal to pay back wages to hundreds of workers totaling \$512,026 based on violations by its subcontractors, who paid well below the mandated prevailing wage rates and some of whom failed to pay overtime.

In November 2012, Hurricane Sandy caused significant damage to Bellevue Hospital Center, Coney Island Hospital, and Coler-Goldwater Memorial Hospital. Signal was hired

continued on page 3

COMPTROLLER LIU VICTORY ON PREVAILING WAGE FOR PUBLIC SCHOOL CLEANERS

Court Affirms Comptroller's Determination in Temco Suit

Comptroller John C. Liu hailed a June 2013 court judgment upholding his determination that cleaners employed by a private contractor in New York City public schools should earn the same wages and benefits as cleaners of private office buildings, schools, and other commercial buildings in the City.

"This judgment, affirming the Comptroller's role in and methods of setting the prevailing wage, is a victory for all private-sector workers toiling on City property," Comptroller Liu said.

In the June 14 judgment, Justice Manuel Mendez of the Supreme Court of the State of New York, New York County slapped down a lawsuit by Temco Service Industries, Inc. challenging Comptroller Liu's determination that Temco's employees working in public schools must be paid the prevailing wage for private-sector building cleaners.

Justice Mendez dismissed the company's arguments that the Comptroller's determination was irrational, arbitrary, and capricious, and endorsed the Comptroller's reasoning and methodology for determining the prevailing wage in this case. The company argued that its employees working in public schools should be remunerated at the lower rates paid

to cleaners employed by civil service custodians working in the schools. The judge, however, found that the Comptroller had relied on appropriate criteria, including U.S. Department of Labor classifications, the actual work of the cleaners, and collective bargaining agreements, in making his prevailing wage determination.

The court's judgment is a blow to Mayor Bloomberg and the editorial boards of the New York Daily News and the New York Post, who have tried vigorously to undermine the authority of the Comptroller to set prevailing wage rates for work performed by private contractors on City property. The ruling affects some 750 Temco cleaners working in City public schools. About 10 percent of City public schools employ the private contractor for cleaning work.

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— COMPTROLLER LIU

INSIDE...

There is a lot to report since our last newsletter!!!

▶ Prime Contractor On Ferry Terminal Job Pays \$1.15 Million For Subcontractor That Went Out Of Business

▶ Bureau of Labor Law Enforcement Highlights

▶ New York State Court Of Appeals Issues Decision On Caddell Dry Dock Case

PAINTING CONTRACTOR DEBARRED FOR KICKBACK SCHEME

Following a default hearing in July 2013 at the New York City Office of Administrative Trials and Hearings, Comptroller Liu recently determined that Colortech and its owner Peter Tritaris underpaid prevailing wages and supplements to eleven immigrant workers in the total amount of \$244,626.20. Colortech employed these workers to perform painting and plastering at various New York City public schools and public health clinics pursuant to contracts with the NYC Department of Education and NYC Health and Hospitals Corporation. The case was originally referred to the Office of the Comptroller by the Special Commissioner of Investigation for the New York City School District.

Colortech sought to conceal its violations of New York prevailing wage law by issuing payroll checks to the workers reflecting payment of prevailing wages and reporting payment of prevailing wages to the agencies on its certified payroll records. However, Colortech required the workers to either return the endorsed payroll checks to Tritaris or cash the payroll checks at a nearby store and return most of the cash to Tritaris. Ultimately, Colortech paid its workers \$120.00 per day in cash or personal check even though they were entitled to almost fifty dollars per hour under New York prevailing wage law.

The Office of the Comptroller determined that Colortech engaged in a kickback scheme prohibited by New York prevailing wage law. As a result, Colortech and Tritaris are barred from bidding on public works projects in New York for the next five years. In addition to the unpaid wages and supplements, the Office of the Comptroller assessed \$189,105.20 in statutory interest and \$108,432.85 in civil penalty against Colortech. Tritaris was held personally liable for the underpayment of prevailing wages, statutory interest, and civil penalty.

PARKS DEPARTMENT LANDSCAPING CONTRACTOR ACCEPTS DEBARMENT

Ascape Landscape Construction Corporation and its President, Stuart Chaitin, individually, recently agreed to a five-year debarment from public works contracts and to payment of \$76,455.92 in unpaid prevailing wages and civil penalty. Ascape underpaid three workers planting street trees in the Bronx pursuant to a contract with the

NYC Department of Parks and Recreation. Although Ascape was signatory with United Plant and Production Workers Local 175, it also failed to make proper prevailing benefit payments to the union fund for the workers employed on the Parks contract.

DDC CONTRACTOR PAYS \$325,000 AND ACCEPTS A WILLFUL VIOLATION

In October 2013, North Star Mechanical Inc. agreed to pay \$325,000.00 for five workers who performed sheet metal, insulation, steam fitting, and general labor at various NYC buildings including El Museo del Barrio, Queens Theater, Aaron Davis Hall, the FDNY Recruitment & Training Center, and various Fire Engine Stations. North Star Mechanical was a subcontractor to four prime contractors who were each contracted by the NYC Department of Design and Construction for work at these locations. The workers were paid in cash in amounts much less than the required prevailing wages and supplemental benefits. The violation was deemed to be a willful violation by North Star and Noel Vaz, North Star's president and owner. Of the amount, almost \$30,000.00 was assessed as a civil penalty.

PRIME CONTRACTOR ON FERRY TERMINAL JOB PAYS \$1.15 MILLION IN PREVAILING BENEFITS FOR SUBCONTRACTOR THAT WENT OUT OF BUSINESS

Petric & Associates Inc., signatory with Local 806 of the International Union of Painters and Allied Trades, was a subcontractor to Conti of New York LLC for work renovating the St. George Ferry Terminal on Staten Island pursuant to Conti's contract with the NYC Department of Transportation. Petric encountered financial trouble midway through the project and was unable to pay its union workers their prevailing supplemental benefits. In response to complaints filed by these workers, the Comptroller's Bureau of Labor Law assessed the underpayment of benefits and withheld over one million dollars in payments to the prime contractor, leading to the \$1.15 million settlement between the Local 806 benefit trust fund and Conti in August 2013. As prime contractor, Conti was liable for the underpayment of prevailing benefits by its subcontractor under the Labor Law.



Other Recent Bureau of Labor Law Enforcement Highlights:

- **COVENTRY INTERIORS** agreed to pay \$13,614.39 to a worker who performed drywall taping at Metropolitan Hospital Center pursuant to a contract with the NYC Health and Hospitals Corporation. As part of the settlement, Coventry Interiors acknowledged that it willfully violated prevailing wage law and agreed to pay a \$1,361.44 civil penalty to the City of New York.
- **ANDRITZ SEPARATION INC.** agreed to pay \$225,306.73 to six workers for their work on centrifuges at various wastewater treatment facilities owned and operated by the NYC Department of Environmental Protection. The six workers were misclassified as Heavy Equipment Operating Engineers rather than Millwrights.
- **WARD MECHANICAL CORP.** agreed to pay a total of \$52,794.75 for seven workers who reconstructed boilers and heating systems at various facilities of the NYC Department of Parks and Recreation. Ward incorrectly classified the workers using the title "Plumber MES" rather than "Plumber A" even after Ward was informed by Parks that the incorrect classification was being applied. Ward acknowledged that the violation was willful and of the total amount of the violation, \$4,799.52 was applied as a civil penalty.
- **HI-TECH HEATING** agreed to pay \$1,745.25 to two workers who performed steamfitting at the Louis Armstrong Community Center pursuant to a contract with the Department of Parks and Recreation. Hi-Tech Heating acknowledged that it willfully violated prevailing wage law.
- The Bureau of Labor Law reached a settlement with **MICO COOLING** on behalf of twenty three workers who were underpaid \$63,227.33 in prevailing wages and supplements for changing air filters at Rikers Island pursuant to a contract with the NYC Department of Correction. As part of the settlement, Mico Cooling acknowledged that it willfully violated prevailing wage law and agreed to pay a \$7,240.60 civil penalty to the City of New York.
- **OMNI CONTRACTING** agreed to pay \$70,000.00 to resolve claims of unpaid prevailing wages and supplements on behalf of six workers who performed masonry work at a public school in Queens pursuant to a contract with the NYC School Construction Authority
- **BOBTEK ELECTRICAL** agreed to pay \$41,571.33 to two electricians who worked at two public schools pursuant to contracts with the NYC School Construction Authority. Bobtek Electrical also paid \$10,392.83 to the City of New York as a civil penalty.
- **M.A.2 FLAGS CONTRACTING** and **MIGUEL ACOSTA** agreed to be barred from public works projects in New York for five years for willfully underpaying two insulators working at Coney Island Hospital and submitting falsified certified payroll records to the NYC Health and Hospitals Corporation. As part of the settlement, M.A.2 Flags Contracting paid \$6,867.30 to the two workers and a civil penalty to the City of New York.
- The NYC Economic Development Corporation contracted with **TISHMAN CONSTRUCTION CORPORATION OF NEW YORK** to manage the restoration and stabilization of the Battery Maritime Building. Tishman subcontracted with Remco Maintenance Corporation to perform the painting work at the site and Remco then subcontracted with **BELT PAINTING OF NEW YORK** to perform structural steel lead paint abatement and painting. The contractors alleged that Belt had further subcontracted with O.J. Painting for the lead paint abatement but the Comptroller's investigation indicated that the principal of O.J. was, in fact, a working foreman for Belt who worked alongside a crew of twelve workers. Neither O.J. nor the twelve workers received any pay for their work and, thus, left the project after several weeks. As construction manager on the project, Tishman, along with Belt, agreed to pay \$50,000.00 for the twelve workers, of which \$5,000.00 was assessed as a civil penalty.
- **L.K. COMSTOCK & CO. INC.** subcontracted with **AMERICAN INTERIOR RESOURCES INC.** to install lockers at the Corona Yard pursuant to a contract with the NYC Transit Authority. American Interior agreed that it willfully failed to pay prevailing wages and supplemental benefits to two workers and settled for \$5,783.98, including a civil penalty of \$525.82.

Signal Restoration Services to Compensate Hundreds...

continued from front page

to perform cleanup work at the hospitals and in turn brought in subcontractors to assist in the work. Some of Signal's subcontractors transported workers from out of state, put them up in crowded motel rooms and paid them \$10-12 per hour for 12 hour shifts. Upon receiving complaints, investigators from the Comptroller's Bureau of Labor Law immediately conducted site visits at the three HHC hospitals in late November 2012, putting Signal on notice that it was out of compliance with prevailing wage laws and collecting evidence of significant violations. The Bureau of Labor Law referred the case to the Attorney General's Office. Although Signal voluntarily complied with prevailing wage requirements after the Bureau of Labor Law's site visits, the substantial settlement for the more than 500 workers represented prevailing wage underpayments for the month of November 2012 only, but included amounts to be held in escrow for potentially unidentified workers.

According to the Citizens Budget Commission, an organization that tracks government finances, this case reflects a renewed emphasis, particularly from Comptroller Liu, on enforcing wage violations: "This comptroller in particular has made prevailing wage violations a big priority."

According to Comptroller Liu: "The aftermath of Superstorm Sandy was a time when the vast majority of New Yorkers showed their strength by leaning on one another for support and working together to rebuild. Sadly, there were some who attempted to use the crisis to their advantage in hopes of turning a quick buck. Thanks to our Bureau of Labor Law and the Attorney General's office, they were stopped cold. This half-million dollar settlement sends a loud and clear message to contractors seeking to do work with the City that our office will uphold local wage standards. We will not tolerate prevailing wage violations in any form."





PREVAILING WAGE NEWS

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NEW YORK STATE COURT OF APPEALS ISSUES DECISION ON CADDELL DRY DOCK CASE

The Court of Appeals decided *De La Cruz v. Caddell Dry Dock & Repair Co.* in June 2013, finding that dry dock repairs performed on Staten Island Ferry boats (owned by NYC Department of Transportation), NYC Fire Department vessels and NYC Sanitation Department barges constituted covered work. The decision was significant in that it represents a rare instance in which the high court has tackled the issue of prevailing wage coverage itself, rather than adopt the decision of a lower court.

The Court used the following three-part test to determine whether prevailing wage requirements apply to the contracts at issue:

First, a public agency must be a party to a contract involving the employment of laborers, workmen, or mechanics.

Second, the contract must concern a project that primarily involves construction-like labor and is paid for by public funds.

Third, the primary objective or function of the work product must be the use or other benefit of the general public.

The second part of the *Caddell* test is new. The impact of the *Caddell* decision remains to be seen, and the high court recognized that “this test will have to be applied on a case-by-case basis in order for its contours to be fully explored.”

COURT ISSUES DECISION ON AMERICAN WATER RESOURCES CONTRACT

In a decision filed in October 2013, Justice Alice Schlesinger of the New York State Supreme Court disagreed with Comptroller Liu that repair work performed by a City contractor for private homeowners on connections to public water and sewer systems is public works and thus covered by prevailing wage requirements. American Water Resources, selected by the NYC Department of Environmental Protection as the “exclusive provider of the Water and Sewer Service Line Protection Program for DEP customers” entered into a contract with the NYC Water Board, a public benefit corporation, to provide a warranty plan for water and sewer service lines to homeowners who subscribe to the program. The premiums for the warranty plan will be added to homeowners’ quarterly water/sewer bills and will become liens on the property if unpaid.

In determining that the AWR contract was for public works, the Comptroller considered the DEP’s stated objectives to “[p]rovide owners of residential properties affordable protection against the significant, unexpected costs of repairing or replacing leaking water and sewer service lines” and to “[m]inimize damage to surrounding streets and infrastructure, and reduce expense to the property owner and DEP by ensuring repairs are made in a timely manner. . .” in finding that the primary objective of the contract was to benefit the public. Although Judge Schlesinger agreed that the work was performed pursuant to a contract with a public entity, she found that it was not a public works contract, determining its primary objective is to offer private homeowners an affordable plan to cover water and sewer line service repairs, which only incidentally benefits the public.

Comptroller Liu has filed a notice of appeal from the decision.

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