



New York City Comptroller Scott M. Stringer

PREVAILING WAGE NEWS

JUNE 2014

COMPTROLLER DEBARS PARKS DEPARTMENT CONTRACTOR FOR \$700,000 KICKBACK SCHEME

Works with Parks Department's Labor Law Enforcement Unit to uncover fraud

In April 2014, the Comptroller issued an Order on consent with Optimum Construction Inc. and its owner, Eftstratios Benardis, finding that Optimum did not pay the required prevailing hourly wage and benefits to six immigrant workers for their work reconstructing a playground and numerous comfort stations at various NYC parks. Optimum acknowledged that it underpaid its workers to the tune of over \$550,000 and Optimum and its owner agreed to a five-year debarment from New York City and State public works contracts in connection with the settlement.

The violations were initially discovered by the NYC Department of Parks & Recreation Labor Law Investigation Unit which referred the case to the Comptroller. Although Optimum refused to cooperate with the Comptroller's investigation, Parks provided the Bureau of Labor Law with necessary evidence and helped to ensure that contract funds were captured on behalf of the laborers.

In order to conceal the violation, Optimum engaged in a kickback scheme by preparing payroll checks for the workers that matched the figures reported on certified

payroll reports issued to Parks. Benardis required that the workers sign the back of these payroll checks but kept the checks and deposited them into Optimum's bank account. Instead, the immigrant workers received their actual payment in cash, some receiving as little as \$12.50 per hour for work that should have been paid at a rate of over \$70.00 per hour, with wage and benefits.

The Comptroller further assessed a civil penalty of over \$90,000 against Optimum, payable to the City treasury, and with interest, the total violation equaled \$700,000.

COMPTROLLER URGES RAISING THE MINIMUM WAGE IN NEW YORK CITY TO \$13.13 PER HOUR

Over one million New York City residents would see wages rise by \$100 a week

Raising the minimum wage to \$13.13 in New York City would benefit nearly 1.2 million City residents by an average of \$100 a week, according to an analysis released by Comptroller Stringer.

"New York City deserves the ability to set its own minimum wage," Comptroller Stringer said. "We are falling behind other states and cities when it comes to the minimum wage, despite the fact that this is the most expensive city in which to live in the nation. There is no one size fits all when it comes to the minimum wage; raising it to \$13.13 would make an enormous difference for more than one million New York City residents."

Currently, New York State's minimum wage is \$8.00/hour, and is set to rise to \$8.75/hour in 2015 and \$9.00/hour in 2016. These small increases are not sufficient to make a

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substantial impact on the lives of low-wage workers. Comptroller Stringer supports a State bill co-sponsored by Assemblymember Carl Heastie/Assembly Speaker Sheldon Silver and

State Senator Adriano Espaillat/Senate Minority Leader Andrea Stewart-Cousins (A8343A/S6518A) which would raise the minimum wage in New York State to \$10.10/hour by December 31, 2015 and allow cities and counties to establish local minimum wages of up to 30% above the state minimum, or \$13.13.

This local flexibility is particularly important for New York City, where the cost of living is 80% higher than in Buffalo, 70% higher than in Rochester, and 60% higher than in Albany.

Not only is New York City's cost of living the highest in the State, it is also the highest in the country. Because of this, low-wage workers rely on public programs to subsidize their incomes.

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COMPTROLLER URGES RAISING THE MINIMUM WAGE IN NEW YORK CITY TO \$13.13 PER HOUR



The Comptroller’s estimate shows the greatest number of beneficiaries of a raised minimum wage would be in Brooklyn, with 376,000 people seeing a raise in their wages, followed by 348,000 in Queens, 220,000 in the Bronx, 194,000 in Manhattan and 31,000 on Staten Island.

When adjusted for cost-of-living, the City’s current minimum wage is the lowest of any major city in the nation. Many cities across the country have recently increased their municipal minimum wages, helping millions of working families in the process. San Francisco’s is \$10.74; San Jose’s is \$10.15; Santa Fe’s is \$10.51; and Washington D.C.’s is set to rise to \$11.50 by 2016. And just this month, Seattle enacted the nation’s highest minimum wage of \$15.00/hour.

Many states have also hiked their minimum wages in recent months. In March, Connecticut enacted an increase up to \$10.10/hour and in May, Maryland followed suit. In addition, Vermont enacted a \$10.50/hour wage and the Massachusetts Senate voted to raise the Commonwealth’s minimum wage to \$11 by 2017.

“New York City should be a leader, not a follower, when it comes to raising the minimum wage. The time has come for the Big Apple to pay its workers a wage that works for employees and employers,” Stringer said.

ELECTRICAL CONTRACTOR DEBARRED FOR KICKBACKS AT BROOKLYN ACADEMY OF MUSIC AND FORT WASHINGTON ARMORY

Following a two day hearing at the Office of Administrative Trials and Hearings (“OATH”), the Comptroller determined in June 2014 that Mackey Reed Electric, Inc. and its owner Dawn Bechtold willfully underpaid prevailing wages and supplements to two electricians for work performed at the Brooklyn Academy of Music (“BAM”) and the Fort Washington Armory and engaged in the kickback of supplements.

In response to a jurisdictional challenge by Mackey Reed Electric, the Comptroller found that the work performed at BAM and the Fort Washington Armory were public works subject to prevailing wage requirements. Despite the fact that the contracts explicitly required payment of prevailing wages and supplements and Mackey Reed Electric falsely certified to the Department of Design and Construction that it complied with the requirement, Mackey Reed Electric argued that the projects should not be considered public works under New York prevailing wage law. The Administrative Law Judge and the Comptroller disagreed.

The Department of Design and Construction contracted and paid for renovations at BAM and the Fort Washington Armory, both of which are

properties owned by the City of New York and leased to not-for-profit corporations solely for the educational, cultural, and recreational benefit of the general public.

Based upon the credible testimony of one of the workers and his corresponding bank account statements, the Comptroller found that Mackey Reed Electric forced a worker to kickback \$28,500.00 in cash to Bechtold from periodic supplemental benefit checks issued to him for work at BAM. After accounting for the kickbacks, the Comptroller determined that Mackey Reed Electric underpaid the two electricians a total of \$78,317.28 in prevailing wages and supplements, and assessed statutory interest and civil penalty resulting in a total violation of \$150,826.55.

The Comptroller barred Mackey Reed Electric and Bechtold from working on future public work projects for a period of five years based upon multiple willful violations of the law, as well as the falsification of payroll records and kickback of supplemental benefits. Prior to the hearing, Brooklyn Academy of Music, Inc. entered into a stipulation of settlement with the Comptroller for restitution for Mackey Reed Electric’s employees.

MAYOR DROPS LEGAL CHALLENGE TO CITY COUNCIL’S RECENT PREVAILING WAGE LAW

In June 2014, the de Blasio administration asked a state court to take steps to allow implementation of NYC Administrative Code § 6-130, which extends existing prevailing wage protection for building service employees to certain businesses receiving at least \$1 million in financial assistance from the City and certain landlords that lease space to City agencies.

This represents a reversal of the

former administration’s policy, as Mayor Bloomberg had successfully sued to block the new prevailing wage law. The Comptroller’s office is taking steps to obtain information from the Mayor’s office that is necessary to perform its obligations under the new prevailing wage law, and a new living wage law, NYC Administrative Code § 6-134, which the former administration had also sued to block.



OTHER BUREAU OF LABOR LAW ENFORCEMENT HIGHLIGHTS IN 2014

- Hill International, Inc., as prime contractor, agreed to pay \$11,344.01 to one sheet metal worker employed by **Metro Duct Systems, Inc.** who performed work on HVAC systems at a Brooklyn Public Library location and at City Hall, and \$1,134.40 as a civil penalty to the City of New York. As part of the agreement, Metro Duct Systems and its owner, Orson Arroyo, agreed to a five year debarment for multiple willful violations with falsified payrolls.
- After the Bureau of Labor Law filed a petition for a hearing at OATH, **TM Mechanical Corp.** agreed to pay \$97,619.18 to six workers who demolished and installed boilers and hot water heaters at Bridges Juvenile Facility pursuant to a contract with the Department of Design and Construction. As part of the settlement, TM Mechanical and its owner Thomas Scarinci were barred from public works for five years for the falsification of payroll records and paid \$4,880.96 as a civil penalty to the City of New York.
- The Bureau of Labor Law reached a \$44,484.27 settlement with Cisco General Construction, Gridspan Corporation, and Vickram Mangru, who does business as **Vick Construction**, on behalf of 13 workers who performed carpentry and painting on Department of Education and Health and Hospitals Corporation projects. Pursuant to the settlement, Cisco General Construction and Gridspan Corporation made restitution to the workers employed by Mangru and Mangru was barred from public works for five years for the falsification of payroll records.
- After the Bureau of Labor Law filed a petition for a hearing at OATH, **KZ&V Construction, Inc.**, its owner Kamenko Antonic, and prime contractor EMB Contracting agreed to pay \$21,904.76 to six workers who performed asbestos abatement at New York City public schools. As part of the settlement, KZ&V Construction and Antonic acknowledged that they willfully violated prevailing wage law.
- Following an unsuccessful motion to dismiss and a week-long hearing at OATH, the Bureau of Labor Law reached a \$100,000.00 settlement with **Colonial Roofing Company, Inc.** on behalf of 37 workers who made roof repairs at various bus depots for the New York City Transit Authority. As part of the settlement, Colonial Roofing and its owners, Veap, Adriana and Kathleen Sela were barred from public works for five years for the falsification of payroll records.
- **EF Pro Contracting, Inc.** agreed to pay \$31,247.33 to four employees who performed HVAC work pursuant to contracts with the Department of Design and Construction and the New York City Transit Authority. As part of the settlement, EF Pro Contracting and its owner Nicholas Provenzano were barred from public works for five years for the falsification of payroll records and paid \$3,124.73 as a civil penalty to the City of New York.
- Following a referral from the Department of Investigation, the Bureau of Labor Law reached a \$16,391.01 settlement with **V&R Contracting** and prime contractor Pav-Lak Contracting on behalf of two workers who performed carpentry work at various Human Resource Administration facilities. Pursuant to the settlement, Pav-Lak Contracting made restitution to the workers employed by V&R Contracting, and V&R Contracting and its owners Raymond Pearson and Vincent Pizzitola were barred from public works for five years for the falsification of payroll records.
- The Bureau of Labor Law reached settlements with **Sphinx Construction, Inc.** Biltmore General Contractors and Volmar Construction, Inc. on behalf of one worker employed by Sphinx Construction. As prime contractors responsible for the underpayment, Biltmore General Contractors and Volmar Construction agreed to pay a total of \$140,006.32. As part of the settlement, Sphinx Construction acknowledged that it willfully violated prevailing wage law.
- Following a referral from the Department of Investigations, the Bureau of Labor Law reached a \$8,608.99 settlement with **Aqua Jet Painting Corp.** and prime contractor Pav-Lak Contracting, Inc. on behalf of three painters who worked at various Human Resource Administration facilities. Pursuant to the settlement, Pav-Lak Contracting made restitution to the workers employed by Aqua Jet Painting, and Aqua Jet Painting and its owner Edward Menken were barred from public works for five years for the falsification of payroll records.
- **Cassidy Excavating, Inc.** agreed to pay \$99,925.65 to four Latino immigrant workers who constructed storm water remediation projects in the watershed for the Department of Environmental Protection. The Bureau of Labor Law enforced the prevailing wage and supplement rates for laborers in Putnam County, the locality where the work was performed. As part of the settlement, Cassidy Excavating and its owners Jeffrey Cassidy and Charles Cassidy Jr. were barred from public works for five years for the falsification of payroll records and paid \$4,996.28 as a civil penalty to the City of New York.
- The Bureau of Labor Law reached a \$42,207.40 settlement with **M&L Steel and Ornamental Iron Corp.** on behalf of one worker who installed lintels on a School Construction Authority project in Staten Island. M&L Steel and Ornamental Iron worked on the project as an unauthorized subcontractor to M.A. Angeliades. As part of the settlement, M&L Steel and Ornamental Iron acknowledged that it willfully violated prevailing wage law.



HHC CONTRACTOR DEBARRED FOR FALSIFIED PAYROLLS

After a default hearing at OATH, the Comptroller determined that Decoma Building Corporation and its owner Everton Carless underpaid four workers performing carpentry work on two public works projects for the NYC Health and Hospitals Corporation at Bellevue Hospital Center, awarding \$148,428.45 in underpayments and interest to the workers and \$29,685.69 in civil penalty to the City of New York. The Comptroller found that the workers were paid between \$15 and \$22 per hour instead of prevailing wages and benefits, and were not listed on the certified payroll reports submitted to HHC. Although the employer claimed that the employees in question did not work at Bellevue, there was evidence from Bellevue's Hospital Police linking them to the hospital. The Comptroller debarred both Decoma Building Corporation and owner Everton Carless for five years for multiple willful violations with falsified payrolls.

DID YOU KNOW?

COMPTROLLER DEBARS 11 CONTRACTORS IN 2014

In his first six months in office, Comptroller Stringer has debarred eleven contractors for willful violations of prevailing wage law involving the falsification of payroll records. This represents a record high for the Comptroller's Office.



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