



NEW YORK CITY COMPTROLLER SCOTT M. STRINGER



PREVAILING WAGE NEWS

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Comptroller Stringer Wins Appeal On Asphalt Paving Rates

In November 2016, the New York State Appellate Division overturned a lower court order that had annulled the Comptroller's prevailing wage rates for asphalt and concrete paving for years 2010 through 2013. The Comptroller's prevailing rates for the Paver and Roadbuilder trade classification had historically been based on the collective bargaining agreements of the Pavers and Roadbuilders District Council, comprised of Laborers International Union of North America Locals 1010 and 1018. When Local 1018 merged into Local 1010 in 2010, the Comptroller continued to use the wage and benefit rates of the newly expanded Local 1010.

The New York Independent Contractors Association ("NYICA"), whose member employers collectively bargain with United Plant and Production Workers Local 175, sued the Comptroller to challenge the rates. NYICA argued that the wage and benefit rates in their collective bargaining agreement with Local 175 should be the prevailing rates for asphalt paving work. NYICA claimed that Local 175 was the true successor to Local 1018. Although it was undisputed that Local 1010 had many more members than Local 175, NYICA claimed that Local

175 had more members that performed asphalt, as opposed to concrete, paving work.

The trial court found that the Comptroller failed to prove that Local 1010 had more members doing asphalt paving work than Local 175. However, on appeal, the Appellate Division found that the burden of proof was on the party challenging the prevailing wage rates, not on the Comptroller. Since the Comptroller demonstrated

that he relied upon a bona-fide collective bargaining agreement (Local 1010) that covered concrete and asphalt paving work in New York City, NYICA had to prove that fewer than 30 percent of the paving workers in New York City earned the Local 1010 wage and benefit rates. Since NYICA failed to prove that, the Comptroller's prevailing wage rates for the Paver and Roadbuilder trade classification were upheld by the Appellate Division.



DID YOU KNOW?

Since taking office in 2014, Comptroller Stringer has debarred 40 contractors for prevailing wage violations.

HHC Security Contractor Willfully Underpaid Its Guards by Over One Million Dollars

In February 2016, after a hearing at the NYC Office of Administrative Trials and Hearings (OATH), Comptroller Stringer determined that Paramount Security Group, Inc. willfully underpaid \$1.1 million in prevailing wages and benefits to twenty-eight employees who worked as unarmed security guards at the central offices of the NYC Health and Hospitals Corporation (HHC) from December 2010 through 2013. The Comptroller's Bureau of Labor Law started the investigation after its Director of Outreach asked one of the guards about his pay while on her way to a meeting at HHC's offices.

The Comptroller determined that Paramount generally paid its workers \$11.50 per hour for both regular and overtime hours worked on the HHC contract and did not provide its workers with any benefits. Paramount entered into the contract with HHC in 2005 and paid the same \$11.50 wage rate to its employees since 2007. Although this rate was compliant in 2007, Paramount did not keep pace

with the annual increases in the Comptroller's prevailing wage schedules—and neither did the 2005 HHC contract, which was extended several times. However, the Comptroller found that the obligation to pay the prevailing rates in effect at the time the work was being performed was clear to Paramount's president and owner, Solomon Edobor, from the contract language and therefore determined that Paramount and Edobor willfully underpaid their employees.

The Comptroller nonetheless noted that HHC's conduct was troubling in light of the fact that HHC extended Paramount's contract without amending its contractual reimbursement rate to account for the increases in prevailing wages and benefits due to Paramount's employees. The Comptroller reminded HHC that it is expected to be aware of the applicable prevailing wage rates and should avoid entering into or extending contracts that will obviously and inevitably lead to prevailing wage violations.

Brooklyn Roofing Contractor Debarred For Cheating 24 Immigrant Workers Out Of Over \$327,000 in Wages

In April 2016, Comptroller Stringer reached a settlement with Beacon Restoration, Inc. and its president and owner Sabir Muhammed for over \$327,000 in unpaid prevailing wages and benefits, close to \$20,000 in interest and \$17,000 in civil penalties. The settlement included a five-year debarment from New York City and State public works contracts. The company cheated twenty-four immigrant workers out of rightfully-earned prevailing wages and benefits for their work installing a new roof at the Port Richmond Water Pollution Control Plant on Staten Island in 2010 and 2011.

The case was referred to the Comptroller's Bureau of Labor Law by the Department of Environmental Protection (DEP) which started its own

investigation in June 2011 following a worker complaint and irregularities in Beacon's payroll records. In September 2011, Volmar Construction, Inc., one of the prime contractors on the project, and Beacon had the workers, many of whom did not speak English, sign releases falsely claiming that they had been paid in full. Despite this, the Comptroller continued the investigation and found that Beacon paid workers a daily salary of \$140 to \$180. The investigation revealed that Beacon attempted to conceal its violation by showing an hourly rate of \$64 on its weekly certified payrolls and providing paychecks that matched the payrolls, but delaying payments until a reconciliation at the daily rate was performed at the end of the project.

New 421-A Prevailing Wage Regulations for Building Service Employees

The New York City Department of Housing, Preservation and Development (HPD) promulgated new regulations that took effect on October 23, 2016 concerning prevailing wage compliance and penalties under Real Property Tax Law (RPTL) section 421-a for building service work. The regulations are published in Title 28 of the Rules of the City of New York, Chapter 50. Landlords that receive 421-a tax exemption benefits for buildings with 50 or more dwelling units on which construction commenced after December 27, 2007 must pay prevailing wages and benefits to their building service employees unless they meet the affordable housing exemption. Although RPTL section 421-a expired in January 2016, the terms of the law (including building service prevailing wage requirements) still apply to buildings that were already approved for tax exemption benefits and meet the relevant criteria.

The new HPD regulations define which landlords are eligible for the affordable housing exemption, how prevailing benefits may be provided and how interest is calculated on underpayments. The regulations also provide for responsibility of property owners for building service workers employed by managing agents. In addition, the regulations provide for revocation of tax exemption benefits for landlords that fail to pay prevailing wage and interest awards within 120 days of receiving an order, and for landlords with multiple willful violations or violations involving falsified payrolls or kickbacks.

Under RTPL § 421-a, HPD determines the penalties for prevailing wage violations but the Comptroller's Office investigates alleged violations, and has enforcement authority, which includes the power to issue subpoenas and hold hearings.

Bureau of Labor Law Enforcement Highlights in 2016

Debarments

Contractor	Total Violation	Workers	Agency
East Port Excavation & Utilities Contractors, Inc.	\$287,986.21	11	SCA, DDC, DPR, DCAS
MZM Corp.	\$105,033.26	5	DPR
New York Rigging Corp.	\$11,485.23	5	SCA
PMJ Electrical Corp.	\$163,715.83	40	DOE
C F M Service Corp.	\$81,328.21	7	FDNY
A.J.S. Project Management, Inc.	\$250,310.47	9	EDC
One Ten Restoration, Inc.	\$22,676.51	4	SCA
Pelium Construction, Inc.	\$7,804.50	2	DOE
Dosanjh Construction Corp.	\$7,497.28	5	DCAS
Beacon Restoration, Inc.	\$363,994.20	24	DEP

Willful Violations

Contractor	Total Violation	Workers	Agency
Danco Electrical Contractor, Inc.	\$9,733.48	1	HHC
Marko Specialty, Inc.	\$46,846.59	4	NYCTA
A.S.C. Contracting Corp.	\$58,718.54	7	DOS, SCA
J.R. Contracting & Environmental Consulting, Inc.	\$25,593.82	10	DCAS
Paramount Security Group, Inc.	\$1,873,173.73	28	HHC

Non-Willful Violations

Contractor	Total Violation	Workers	Agency
Structural Preservation Systems LLC	\$303,288.36	45	NYCTA
AlliedBarton Security Services, LLC	\$87,940.93	108	NYCTA

NEW BILLS ON CONSTRUCTION WAGES AND APPRENTICESHIP REQUIREMENTS

Construction Minimum Average Wage on 421-a Projects

The New York State Legislature is currently considering legislation that would reinstate RPTL section 421-a with a new requirement to pay a minimum average hourly wage rate for construction work on projects with 300 or more rental dwelling units in Manhattan south of 96th Street and in Brooklyn and Queens near the East River waterfront. Instead of requiring prevailing wages, the law would require a minimum average compensation of \$60 per hour in Manhattan and a minimum average compensation of \$45 per hour in Brooklyn and Queens.

Covered contractors would have to submit certified payroll reports to an independent monitor hired by the project developer, who would submit a project-wide certified payroll report to HPD. If the total wages and benefits paid to all construction workers on site divided by all hours worked is less than the average required wage as reported in

the project-wide certified payroll report, then payment of the deficiency would have to be made by the project developer to a third-party fund administrator. If the deficiency was the result of fraud or falsified certified payroll reports on the part of a contractor, as determined by HPD, then the contractor would be required to pay the deficiency. The third-party fund administrator would create a plan

to distribute the payment to the affected workers, which must be approved by HPD. The proposed law also provides for penalties based on the size of the deficiency and for delays in submitting certified payroll reports and paying deficiencies. The New York City Comptroller would not have a role in investigation or enforcement of the minimum average hourly wage rate under the proposal.



Prevailing Wage for Projects Receiving Financial Assistance from NYC

The New York City Council is currently considering legislation to require payment of prevailing wages and benefits for construction or alteration work on certain projects that receive financial assistance of \$1 million or more from the City of New York, either directly or through certain non-profit organizations. Covered projects would include developments larger than 50,000 square feet or 50 dwelling units performed by employers with an annual gross income of \$3 million or more. The financial assistance may take the form of grants, bond financing, tax abatements or exemptions or other subsidies

and may be paid in whole or in part by the City.

The legislation would create a new section 6-139 of the NYC Administrative Code, and follows the passage of section 6-130, which requires payment of building service prevailing wages on certain projects that receive financial assistance from the City of New York and certain buildings that rent space to City agencies. Like section 6-130, the proposed section 6-139 authorizes the New York City Comptroller to investigate violations of the law, but authorizes the Mayor to handle enforcement and to resolve cases by settlement or hearing.

Apprenticeship and Safety Training Programs

The New York City Council is also currently considering legislation that would amend the NYC Building Code to require all workers on construction of buildings ten stories or taller or demolition of buildings four stories or taller to have attended an apprenticeship program registered with the Department of Labor (DOL) or to have undergone equivalent training in their trade. The same bill would require

workers on all construction sites in New York City to undergo a safety training program approved by the DOL.

Under the current NYC Building Code, a ten hour safety training program approved by the United States Department of Labor Occupational Safety and Health Administration (OSHA) is required only on buildings ten stories or taller.