

## Recent Enforcement Successes:

- The U.S. DOL has completed an investigation against Jamek Engineering and found significant Davis-Bacon violations. The case has been referred to litigation where the U.S. government will seek full back pay and debarment of this Minnesota contractor who has a history of illicit pay practices.
- An investigation by FCF and the Insulators' Union uncovered an apparent failure to comply with prevailing wage requirements on a school project. This investigation led to private litigation, which resulted in a \$31,000 settlement.
- Under general contractor Salonek Concrete & Construction, Inc., four subcontractors underpaid workers who performed electrical, plumbing, iron and sheet metal work on the Renwood/Renville Recycling Center. The subcontractors were ordered to pay an aggregated \$16,139 in restitution for violations of the prevailing wage law.
- Overtime and wage violations on the Verizon Wireless project in Mankato led to \$9,053 in recovery against Rehnelt Excavating.
- The glaziers working on the Minneapolis Convention Center were shorted \$6,013 when they were paid as laborers in violation of the city ordinance. The city required the subcontractor, JPK, Inc., to pay full restitution.
- Working with the Painters' Union led to finding an apprenticeship violation on a job in Minneapolis, recovering \$5,778 from Integrated Painting Solutions, LLC for one worker.

## A Federal Residential Prevailing Wage Survey is Under Consideration

Based on a March 2016 memo from the U.S. Department of Labor, a **residential** prevailing wage survey is under consideration for 2017. If so, it may include work that is currently being done. Given that many Minnesota state commercial projects will qualify as federal residential projects, FCF trustees endorse our participation in the federal residential survey. Please contact FCF if you have any questions. Otherwise, we will track the DOL's plans and notify you of details as they become available.



### Fair Contracting Foundation

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## Trifecta of Trouble

Underpayment-Misclassification-Kickbacks. All three of these were present when FCF and IUPAT 82 investigated the contractor 5Way Contractors, Inc., on the new north Minneapolis WorkForce Center (shown at left). We learned that 5Way employees were not being paid the prevailing wage, and then they were being classified as laborers instead of painters so they were still being underpaid. The Minneapolis Department of Civil Rights enforced the Minneapolis CPED's ordinance to ensure that the employees were finally getting the correct wages. But, unfortunately, their boss at 5Way later forced at least one employee to pay back the difference between what they should have been earning and what they had been earning in a classic kickback scheme. In the end, 5Way was required to pay out \$32,970.58 to its employees and may still face sanctions. In addition 5Way was removed from the project. The general contractor who hired this subcontractor is believed to have paid much of the recovery for these illegal practices, but none of that will trigger the RCL because this is a *city* violation. If you ever see this contractor working on a public project, please contact FCF immediately.



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# Independent Contractor Misclassification

Misclassifying employees as independent contractors is an increasingly common way to obtain a cost advantage at the cost of workers and law-abiding competitors. Misclassifying lets unscrupulous employers shift more tax burden onto their employees and avoid paying for other costs such as worker's compensation, unemployment insurance and employee benefits. Independent contractor misclassification is particularly, and increasingly, common in the construction industry. Minnesota Law, however, sets standards that must be met for someone in the construction industry to truly qualify as an independent contractor. These standards, along with robust enforcement, help to ensure that contractors do not obtain unlawful competitive advantages by misclassifying their employees as independent contractors. Further, misclassifying construction workers as independent contractors in Minnesota can lead to administrative and licensing orders. These orders can trigger the RCL, preventing violating contractors from pursuing future public work.

FCF is part of a working group including industry stakeholders, employee advocacy groups, and numerous state and federal agencies that is aimed at preventing misclassification of workers as independent contractors. FCF's outreach efforts recently resulted in a cold-call from a worker who, along with his co-workers, was being misclassified as an independent contractor by his construction industry employer. With the help of information provided by FCF this employee and his co-workers are now properly being classified and treated as employees.



## Education Update

The **18th Annual NAFC Conference** held in San Diego, CA, was the organization's largest such event bringing contractors, building trades and enforcement agencies together to cooperate in maintaining construction standards. Experts from around the country shared information related to the surge in construction's underground economy. Others discussed opportunities to secure projects for union contractors and their trained workforce. Some points of interest were:

- Less than 10 percent of state legislators know what prevailing wages mean so we need to educate....get the economic issue on the table, not Democrat versus Republican.

—Ed Soliday, Republican, Indiana House of Reps.

- Since 2011 there have been 12 attempts to repeal the Davis-Bacon Act.
- We create value for project owners when contractors and trade unions work together. Communication is critical.

—Sean McGarvey, President of North America Building Trades Union

- Before November's presidential election, roughly 59 House Republicans supported Davis-Bacon, which is important considering probable infrastructure work.

—LiUNA Legislative Update

- The country will need an estimated \$3.6 trillion in surface transportation infrastructures by the year 2020.

—American Society of Civil Engineers



## Newly Published Highway Heavy and Commercial Rates

The highway heavy prevailing wage rates were certified as of Nov. 7, 2016, and the commercial rates were certified on December 27, 2016. Organizations and contractors have 30 days from the date of certification to file protests related to these rates. Current rates may be checked on the MnDLI website at <http://www.doli.state.mn.us/LS/PrevWage.asp>. In addition, upcoming CBA rate changes should be reflected on the website when the rate is a union rate. FCF does maintain the list of old rates for reference.

## A Project with a Future Avoids a Contractor with a History

During the past summer [www.responsiblemn.org](http://www.responsiblemn.org) was launched. This website provides a thorough overview of Minnesota's Responsible Contractor Law (RCL), including a summary of what is required of project owners. It also contains a list of contractors who do not meet the law's minimum criteria and relevant public documents, i.e. orders, judgments, etc. The RCL itself is most effective when project owners and general contractors understand the law's requirements and can verify that subcontractors are not deemed ineligible under the law. ResponsibleMN.org seeks to provide available public information for project owners and contractors. We encourage you to visit this website and determine whether this is a resource that will keep your project in compliance and free of bad "history."



## WELCOME!

This newsletter will reach several hundred contractors who were not previously on our mailing list. The Fair Contracting Foundation (FCF) is a labor-management cooperation committee that is jointly funded and operated under the non-profit laws of Minnesota. Since 2011, our goal has been to level the playing field in public construction bidding. We strive to ensure that compliance and fair enforcement of applicable laws eliminate advantages to those contractors willing to cheat. We investigate and educate primarily on matters of prevailing wage laws and employee misclassification. If you have any questions, don't hesitate to call us at 612-797-2726.

“Minnesota Statute 16C.285 Responsible Contractor Law (RCL) built upon and formalized work that Minnesota State had in place for establishing minimum standards and expectations for construction contractors on college and university campuses. The RCL, coupled with the data made available by the Fair Contracting Foundation of Minnesota at <http://responsiblemn.org/>, clearly lays out our expectations and makes our project managers' jobs easier, allowing them to focus on delivering quality projects on time and on budget. ”

— Heidi M Myers, AIA, LEED AP, System Director, Design and Construction, Minnesota State

## Our Mission

The Fair Contracting Foundation promotes prevailing wage law education, compliance and enforcement. It advocates for practices, policies and laws that ensure fair government contracts, a strong local industry and protection of the public interest. We're here to help. Give us a call at 651-797-2726.