

FCF Presents: Identifying Gaps in Prevailing Wage Enforcement



FCF Investigator Jacob Shawback
Credit: FCF-Vince Muzik

In July FCF presented again at the Minnesota Building Trades annual convention. FCF's presentation this year focused on identifying gaps in prevailing wage enforcement. While the state has a strong prevailing wage statute and active enforcement agencies, current and discrete gaps make enforcement on some state funded construction projects exceptionally difficult. With no proposed changes to the state's prevailing wage law, there may be an opportunity to correct these gaps in order to ensure more robust prevailing wage compliance.

The primary gap has been the inconsistent application of prevailing wage requirements on construction projects that receive economic development funding. Under the economic development statute concerning prevailing wages, there is no requirement for a project owner to collect certified payroll reports (Minn. Stat. § 116J.871, subd. 2). This means if an owner of a project that receives economic developing funds decides not to collect payroll, it is unlikely anyone can verify if contractors and subcontractors working on that project are paying their employees prevailing wages. FCF has encountered this problem with projects financed by the MN Department of Employment

and Economic Development and the MN Housing Finance Agency. While some project owners have voluntarily collected payroll reports from contractors and subcontractors, the lack of a uniform requirement has meant many projects have been completed off the books and beyond enforcement.

State investment in economic development and housing has the potential to create thousands of good-paying construction jobs across Minnesota. However, persistent gaps make it exceedingly difficult to ensure prevailing wage compliance. Possible solutions can be legislative or even administrative in nature. The good news is that with no immediate challenge to Minnesota's prevailing law, the time for action to strengthen prevailing wage is now.

New Prevailing Wage Rates for 2018-2019

The Minnesota Department of Labor and Industry (MnDLI) will certify prevailing wage rates for **highway and heavy work in October or November** and for **commercial work in December or January**. These rates will be based on surveys submitted from April 2018 through May 2019.

Get on the MnDLI email list for prevailing wage notifications. Details can be found at: https://public.govdelivery.com/accounts/MNDLI/subscriber/new?topic_id=MNDLI_25

Certified prevailing wage rates can be found at: <http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>

Prevailing Wage Surveys for 2019-2020

As of Sept. 1, 2019, we are through the first **five months** of the next prevailing wage survey year, which will include projects active between April 2019 and May 2020. You may submit surveys **all year long**. You do not have to wait until March or April of 2020 to submit. Avoid the stress of trying to enter all the surveys during the last two months of the survey year and **enter some every week**.

CONTRACTORS

If you are a contractor who is entering surveys and have questions or are in need of some training related to the survey process, please contact FCF at 651-797-2726.

If you need tracking forms to tally surveys by county, please contact Gary at 651-797-2726 or gjohnson@fcfmn.org.



Jennifer Allshouse with her instructor, Steve Stocker
Credit: FCF-Vince Muzik

Jennifer Allshouse: A Second Chance

For many the building trades offer an opportunity to earn a great living, build structures that stand the test of time and retire with dignity. For Jennifer Allshouse, they have been more than that. They have been a second chance at life.

Allshouse's route to the trades was a rather circuitous one. She studied both English and computer science at St. Mary's College in Winona, MN. After a stint in the U.S. Army as a combat medic, she wound up embarking on a career in sales. A career in the wrong business: She sold drugs. She got caught, got convicted and spent five years in prison.

When she got out of prison as part of her release she was required to participate in the Goodwill-Easter Seals ReEntry Program. Instead of the auto mechanics class, her counselor suggested she try the construction class. He thought there was more opportunity. Allshouse gave it a try.

Continued below



©September 2019

Allshouse *Continued from above*

Within 16 weeks, she earned her OSHA 10-Hour card, an orientation and workplace safety program for anyone involved in the construction industry.

Allshouse dedicated herself to her craft and made it to the journey worker level. For more than a year, she's been working as a foreman, driving pile and welding, while building lagging walls along the Minnesota River near the Highway 101 bridge in Eden Prairie.

At one point, she was one of only five female pile

drivers in the state of Minnesota. Now there are an estimated 25-30 in the state. It's not a job for the dainty, however. It's dangerous and physically intensive. "I was really big into sports when I grew up," she said, "so the physical aspect works well for me."

With a six figure salary, she's doing quite well as a single mother. "There's absolutely no place else because of my background that would pay me what I make. I know people who have a four-year degree

who are still paying off their loans and aren't making the money I do," Allshouse said.

She regularly visits the jail on behalf of Goodwill-Easter Seals to tell the inmates of her good fortune. "I don't necessarily recommend pile driving," she joked, "but I do recommend the trades."

To learn more about Allshouse log on to www.goodwilleasterseals.org.

LIUNA! MINNESOTA & NORTH DAKOTA *Feel the Power*

Open House

The 8th Annual LIUNA (Laborers' International Union of North America) Training Center Open House is scheduled for Friday, October 11.

LIUNA's state-of-the-art 44,000 square foot facility in Lino Lakes, MN., will again be on display as the laborers host their open house. Learn about the training program, construction opportunities and the industry's hot topics.

Please RSVP by calling the LIUNA Training Center at 651-653-6710.



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Tradeswomen, It's Your Time!

What started out as a grass roots gathering in California more than a decade ago has turned into an international event. And it's coming to Minnesota! The Minneapolis Hilton will host the **9th National Trades Women Build Nations Conference**, October 4-6.

The conference begins at 7 a.m. Friday with two days of service volunteer opportunities. One is painting at Ascension Place, a women's shelter in Minneapolis, and the other is food packing at Second Harvest Heartland, a local food shelf. On Friday evening a welcome reception sponsored by the building trades and Union Bank & Trust runs from 6-9 p.m. at the Hilton with Chase & Ovation, a Prince cover band, performing.

Saturday and Sunday will feature workshops on topics ranging from recruiting, apprenticeships, health and opioid problems, government policy, retirement and financial planning.

According to the U.S. Department of Labor, women make up 47 percent of the workforce but less than 10 percent in the building trades. The trades offer great career paths and the number of women in the trades are growing. The conference allows women to garner support among each other, develop ideas

to recruit more women, and navigate unique on-the-job challenges.

With an estimated attendance of 2,300 at last year's conference in Seattle, the women's conference has exceeded the attendance of the North American Building Trades Union's (NABTU) Legislative Conference, the yearly gathering in Washington, D.C. where congressional leaders mingle with labor leaders. The women's conference became international in scope when a group of women from Ireland arrived. The conference has even attracted the attention of *Teen Vogue* magazine.

"The career message is pretty straightforward: This is one industry where the pay is equal among the genders," said Betsy Barnett, NABTU's communications director. "The career opportunity is very viable for women."

More volunteers are needed for the conference. Anyone interested can sign up at the official page of the Trades Women Build Nations Conference at the NABTU web site www.nabtu.org/twbn. Or call Jenny Winklaar, director of marketing and public relations, at the Minneapolis Building Trades, at 612-817-2930.



What Have You Done for Me Lately? / FCF Update

During the past few months, FCF's compliance and education work has resulted in the following:



- Approximately \$4,000 in back wages was assessed by the Department of Labor and Industry (DLI) for work performed on the Giant Welcome Center and Museum in Blue Earth, MN. The underpayment occurred because the wage determination included in the project documents was incorrect.

- DLI assessed \$4,520 in back wages from Gerit Hanson Contracting, Inc., for paying the laborer rate for several types of work, including carpenter, painter, pile driver, and operator work on the Novak bridge replacement in St. Louis County. In addition, according to DLI Gerit Hanson voluntarily corrected prevailing wage problems on a subsequent project.
- Based on a MNDOT investigation for work performed some time ago, Green Nature-Cycle LLC was suspended by the state of Minnesota in July. Suspension usually precedes full debarment.
- On July 12, FCF met with representatives from the city of Rochester and the Building Trades to discuss what the city can do to better combat wage theft and payroll fraud. The city has made some initial changes to enhance contracting requirements on publicly subsidized projects, and seeks to address the issue across the broader economy, not only in construction.
- Minnesota's Attorney General Keith Ellison invited FCF's Mike Wilde and Frank Manzo IV, policy director



Policy Director Frank Manzo IV,
Illinois Economic Policy Institute
Credit: FCF-Vince Muzik



Executive Director Mike Wilde, Fair Contracting Foundation of MN
Credit: FCF-Vince Muzik

Minnesota Passes Strong Wage Theft Legislation

Minnesota's new wage theft law, one of the strongest in the nation, is now in effect. The law contains numerous provisions impacting employment in Minnesota, with some being of particular interest to the construction industry. Notably the legislation strengthens the ability of employees to collect wages owed by prevailing wage *policies* and project *contracts* that require payment of prevailing wages even if there is no state funds on the project. Employees now have a "substantive right" to these wages, and the Department of Labor and Industry (DLI) may charge and collect wages due to employees from various sources. The law also expands DLI's investigative powers and the enforcement authority of the state attorney general with respect to employment matters.



Perhaps most significantly, the new legislation amended the Minnesota criminal statutes to define wage theft as a crime, finally treating employers who steal from their employees similarly to those who engage in more traditional theft. Depending on the amount of wages stolen, those convicted may face up to 20 years in prison. Additionally, convictions under the criminal wage theft provisions will trigger Minnesota's Responsible Contractor Law, rendering contractors ineligible for public contracts for three years following a conviction.

Wages Get Protection Nationwide

Minnesota isn't the only state making strides in tackling wage theft and other labor violations. Several states including New Jersey, Michigan, and Colorado have created or strengthened wage theft penalties up to and including jail time.

Criminal enforcement for labor violations:

- In California, contractor Job Torres Hernandez was sentenced to 8.5 years in prison and ordered to pay \$920,000 in restitution for labor trafficking, wage theft, and retaliating against workers who spoke out against his abuses.
- In New York, a subcontractor was sentenced to 30 days in jail and ordered to pay \$280,000 in restitution for systematic underpayment of prevailing wages on public school construction.

Prevailing Wage Advocates Make Gains in 2019

While the Building Trades and their allies have spent the last 40 years defending prevailing wage laws, 2019 represents a turning point in the fight to protect area wage and benefit standards. Colorado, which repealed its prevailing wage law in 1985, reinstated prevailing wage for public projects more than \$500,000. And Nevada undid changes from 2015 that weakened its prevailing wage law, including reducing the threshold from \$250,000 to \$100,000, and reinstated full prevailing wages on public education construction, which were previously capped.

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 or toll-free at 1-844-777-0606.