

IRAPs Problematic Before Final Approval



The final rule to establish Industry-Recognized Apprenticeship Programs (IRAPs) is now expected in April 2020. In mid-October, however, the U.S. Dept. of Labor Inspector General's office opened an investigation into whether funds earmarked by Congress specifically for registered apprenticeship programs were being diverted toward IRAPs, in violation of federal law. At issue are three contracts worth \$32 million for services

such as information technology and marketing in support of registered apprenticeships. DOL admitted at a congressional hearing in November that \$1.1 million had been "misapplied" to advance IRAPs, but said the agency has taken steps to correct the issue.

DOL initially proposed the formal rule establishing IRAPs in June 2019, which provided an exemption for the construction industry and allowed 60 days for public comment. The proposed rule received an unprecedented 325,000 comments opposing its expansion into the construction industry, the largest number ever received by DOL on a proposed rule. Despite the overwhelming opposition to IRAPs in construction, there remain concerns that the agency may expand the program anyway, and the misappropriation of funds before the program even officially existed certainly elevates these concerns that the will of the people is being subverted to benefit special interests.

2019 Industry Highlights

In 2019 the efforts of FCF and our partners resulted in wage recoveries and penalties of more than \$180,000. This number brings FCF's total recovery to almost \$1.5 million since its inception. Our enforcement efforts would not be possible without the cooperation of union representatives and industry stakeholders. Thank you to everyone who works with FCF in protecting our industry, public dollars, and workers through our joint enforcement efforts. Some highlights from 2019 include:

- The resolution of a complaint FCF filed several years ago against Thul Specialty Contracting for work performed on two projects. Thul and the Minnesota Department of Labor and Industry entered into a consent order requiring Thul to pay back wages of more than \$15,000 and more than \$7,500 in liquidated damages.
- Bristlin Construction Services was found to have underpaid workers by \$27,508 on a Becker County Material Recovery Facility project.
- Advanced Concrete & Masonry, Inc., owed workers almost \$6,500 for work performed on the Eastgate Apartments in Rochester. The project had received HUD funding.
- Gerit Hanson Contracting, Inc., underpaid its employees by \$4,500 for work performed on the Novak Bridge Replacement project.
- Colorful Concepts Painting & Custom Finishing, Inc., owed workers nearly \$5,000 as a result of complaint filed on the Villas at Worthington project.
- Franzen Concrete & Masonry LLC owed \$2,300 in back-pay to workers on the Brainerd Lakes Regional Airport General Aviation Building.
- After FCF shared information demonstrating potential licensing and electrical code issues with the MnDLI, the Construction Codes and Licensing Division and Apadana LLC entered into a consent order with a \$14,000 penalty, with \$8,000 of that penalty stayed.

In addition to compliance work, FCF engaged in substantial outreach efforts in 2019. This fall FCF has given prevailing wage presentations to more than 1,000 apprentices. Last summer we presented on prevailing wage at a CLE for government attorneys hosted by the Attorney General's office. During the year, our industry partners also joined us to educate numerous local governments about prevailing wage.

Construction Fun Facts:

- According to a study by the Midwest Economic Policy Institute, construction is the third fastest growing industry in Minnesota.
- According to the same study, the 10 largest joint labor-management apprenticeship programs in Minnesota invest 100 times more in worker training annually than Associated Builders and Contractors of Minnesota and North Dakota.
- The same study found that the economic return on investment from union construction apprenticeship programs to be \$20.73 for every dollar spent.
- On Nov. 5, 2019, Minnesota voters approved more than **\$1.3 billion** in school construction referendums.
- More than 7 in 10 bond questions passed, the highest approval rate since the Minnesota School Board Association began tracking school referendums.
- In 2019 Minnesota voters approved more than **\$2 billion** in school construction referendums.
- A 2019 law in Minnesota allows law enforcement to issue traffic citations based on reports from construction flaggers.
- MnDOT is experimenting with new technology to encourage bats to relocate in advance of construction projects to minimize the impact of bridge construction on bat colonies.



Credit: FCF-Vince Muzik

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.



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Credit: FCF-Vince Muzik

Tyler Sitz of Laborers Local 563 preps the deck for a concrete pour on the 11th floor of the new parking ramp at the Minneapolis-Saint Paul International Airport scheduled to open next spring.



Trades Women Build Nations: Epic Movement in the Making

The next generation of building trades members came to Minneapolis in October. To organize, to learn, but most importantly, to celebrate being in the trades.

The 9th National Trades Women Build Nations Conference solidified itself as the North America's Building Trades Union's (NABTU's) largest annual gathering. More than 2,700 women from across North America attended, surpassing last year's total. Equally impressive is that the attendees paid their own way.

"The people in leadership who attended were very surprised at the pride women have in being union trades workers. They couldn't believe the energy of the conference as a whole," said Vicki O'Leary, chairwoman of the NABTU committee. "More general presidents taking a role is exactly what we need to keep women's membership growing."

Local Minnesota unions and their leadership made a strong contribution to the success of the conference according to Jessica Looman, executive director of the Minnesota Building Trades. "The conference was very well



Credit: FCF-Vince Muzik

supported by the locals. One thing really exciting to see was local union leadership really embrace the conference not just by asking their members to attend but by encouraging them to be leaders," she said.

Women compose less than 10 percent of building trades members, and it's not unusual for a woman to be the only woman on a job site. The conference provides a way for women to learn from one another, giving them a sense of community, as well as learning in small group sessions. Topics ranged from "How to Engage Millennials" to "Caring for Skin and Hair When You Wear a Hardhat" to addressing sexual harassment. Then there's the banner parade. O'Leary described it with one word: epic. "It was great to see a group of people who were not marching because they were angry, but were expressing solidarity and the joy of being together."

"What I liked about the conference was how positive it was," added Looman. "It wasn't about challenges. It was about success."

Construction Contractor Debarred from Participating in H-2B Program for Five Years

On Oct. 17, 2019, DOL announced that Dagle Steel Construction of South Dakota agreed to be debarred from participating in the H visa programs for five years. The agreement was reached after investigators found that the contractor had violated several provisions of the H-2B program, including: paying workers less than the required wage rate; assigning H-2B employees to work outside the certified job location in South Dakota; assigning H-2B employees to job duties outside the certified job description; failing to pay for H-2B employees' international travel arrangements; failing to pay for H-2B employees' housing and visa fees; and, making improper wage deductions. Along with agreeing to a five-year debarment from participating in H visa programs, Dagle Steel Construction also agreed to pay \$69,951 in back wages to 16 employees, and \$30,049 in civil penalties.

While this recent compliance result is a positive sign that DOL continues to investigate potential wrongdoing in the H-2B program, it is unlikely that Dagle Steel Construction is the only contractor that has violated provisions of the H-2B program. This year alone, the Departments of Labor and Homeland Security

raised the annual H-2B visa allotment cap from 66,000 to 96,000 to meet apparent growing workforce demands. With an increase in the number of visas awarded this year, it also raises the concern of increased participation by unscrupulous and exploitative construction contractors.

The H-2B program was created in 1986 as an offshoot to the original H-2 guest worker program. The H-2B visa program provides temporary employment-based visas to foreign workers for work in non-agricultural and "low-skilled" jobs. Industries such as landscaping, hospitality, seafood processing, and construction, all rely on the labor provided by the H-2B program. There has been a steady increase in the number of visas awarded each year since the program's creation.



Mining Presents Generational Opportunity for Building Trades



New technology may lead to resurgence in the mining industry in Northern Minnesota. According to the Minnesota Department of Natural Resources, the first iron ore mines were opened in the late 1800s. Miners originally looked for gold. Iron ore was discovered by accident but proved to be fortuitous resulting in the birth of Minnesota's Iron Range. Unlike Minnesota's original miners, geologists know from thousands of

drilling samples that minerals such as copper and nickel lie beneath the ground.

Minnesota mineral deposits are attracting the attention of mining companies. In the coming decades hundreds of skilled building trades workers will have an opportunity to live and work in Northern Minnesota. Polymet and Twin Metals are the highest profile projects. There are also others interested in such formations as the Mesaba Deposit, the Tamarack Deposit and the potential gold reserves near Gilbert and Virginia. These metals are essential to the iPhone and the Green Economy, providing metals essential to making computer devices, batteries for hybrid vehicles, scientific instruments and wind turbines.

Developing these critical resources and preserving Minnesota's environmental heritage are not mutually exclusive either, says 8th district Congressional Rep. Pete Stauber. "With 21st century technology, we can and will do both. Minnesota has the most stringent environmental and labor standards in the world, allowing us to safely and responsibly achieve our nation's mineral needs."

Minnesota's mining economy is close to embarking on investing hundreds of millions of dollars on infrastructure that will require the trained skills of the building trades. "The mining companies employ a lot of building trades people. These jobs pay anywhere from \$60k to \$80k to \$100k a year," explained Mike Syversrud, president of the Iron Range Building and Construction Trades Council.

While Polymet signed a project labor agreement several years ago, Syversrud signed a project labor agreement with Twin Metals CEO Kelly Osborne at a public ceremony in August.

"People forget that when the hospital, the super market and the Ford dealership... when they put additions on, they used union labor," adds Syversrud. "Mining is the lifeline to a lot of what we do up here. It's the economic backbone of North Minnesota."

New Year's Action Items Regarding State and Federal Prevailing Wage

This article is our annual set of reminders related to State Prevailing Wage reporting and monitoring and Federal Prevailing Wage (Davis-Bacon) reporting and monitoring. Included are website references that have changed during the past year due to state and federal websites being updated.

Minnesota State Prevailing Wages

On Nov. 4, 2019, Highway/Heavy Rates were certified and on December 16 Commercial Rates were certified. Here are some reminders:

1. Highway/heavy rates are certified by **region** and commercial rates by **county** and stay in effect until the following November/December.
2. If interested, please get on the MnDLI email list if you are not on it so you are notified on the day new rates are certified.
3. In July/August MnDLI sends a request to every union or district council for:
 - a. CBAs
 - b. A summary of the wage rates broken down into base pay and fringes
 - c. A list of signatory contractors

What is submitted should be current and accurate.

4. When new rates are certified the rates for each county or region should be checked within a few days of certification. If the rate is a union rate, check to see if a CBA escalation rate is included.

5. Any potential discrepancies need be brought to the attention of MnDLI within **30 days** of certification. You may contact Karen Bugar at karen.bugar@state.mn.us or 651-478-8221 with your issues or FCF at 651-797-2726.
6. If you do not currently receive the detailed survey data from FCF and would like to please contact Gary Johnson at FCF. This data can help find potential errors in the certified rates.
7. Surveys for the 2019-2020 survey period can be submitted now and should include projects between April 2019 and May 31, 2020.
8. If you are in need of prevailing wage training contact FCF at 651-797-2726.

Federal Prevailing Wages (Davis-Bacon Rates)

Many of the federal rates that should be escalating each year are not because updated CBAs with rate sheets are not being submitted annually. Some rates are several years out-of-date. Out-of-date rates and rates that are as much as \$10/hour too high have been discovered this past year and have caused problems for contractors working on federal projects. So, please check the federal wage rates.

To ensure that union rates escalate, please submit your CBAs with building, heavy, highway, and residential rate sheets annually to WHD_CBA_UPDATES@DOL.GOV.