

Not-So-Genuine Builder

For many years, James Bunker and his company, Genuine Builders (among other various similarly named companies) from Arlington, SD, has been a notoriously low-road contractor in many respects. Specifically, in 2013 USDOL penalized Mr. Bunker and his companies in excess of \$180,000 for fines and back wages for wage theft and overtime violations in relation to misusing foreign workers under the H-2B program to work outside their authorized work areas.

Most recently, on Nov. 8, 2023, Mr. Bunker pled guilty in U.S. Federal District Court in Sioux Falls, SD, to making false statements to financial institutions related to his receipt of COVID relief loans under the Paycheck Protection Program (PPP) and the Main Street Lending Program. In return for his guilty plea, a number of charges including bank fraud were dropped. When sentenced for the crimes, Mr. Bunker could face a maximum of 30 years in prison and a \$1 million fine. He is scheduled to be sentenced on March 4, 2024.

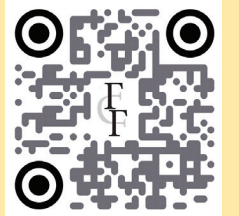
Although Mr. Bunker's eventual criminal sentence in this case will arise out of financial crimes, the fact that he will be suffering criminal consequences is unsurprising to anyone who has ever investigated Genuine Builders' H-2B practices and probable labor trafficking. Even though Mr. Bunker will be criminally punished on some charges, it does not exonerate him of others. But it does make it harder for him to continue to violate worker rights for personal gain.

Companies like those owned and managed by Mr. Bunker are the reason why we, the union construction industry, need to keep our eyes and ears open, and advocate for laws and regulations that level the playing field for all contractors and workers who choose to take the high-road.

2022 Study Highlights Productivity & Cost Advantage in Union Construction

A December 2022 study by Independent Project Analysis (IPA), which provides project management consulting services on behalf of project owners, examined the differences in productivity and cost between union and nonunion construction companies. This study is based on IPA's internal database of 1,550 capital projects constructed in the United States during the last 20 years, which includes a mix of manufacturing facilities, offices, laboratories, and warehouses. Nonunion firms constructed 51% of the projects, 25% by exclusively union firms, and 24% by a mix of union and nonunion firms.

The study found that the projects built using only union contractors had 14% higher labor productivity compared to projects built using nonunion contractors, and 7% higher productivity compared to projects built with a mix of union and nonunion contractors. The projects built by union firms also enjoyed overall cost savings of approximately 4% (despite higher per-worker labor costs), and had fewer scheduling delays. This research highlights the value of union labor to the construction economy, giving project owners better insight into the decision about how to build capital projects.



Save the Date: Business Agent/Organizer Training

Calling all business agents and organizers, new and long-tenured! Join us on Friday, March 15, 2024, at the FCF office in St. Paul for a training seminar.

We'll cover updates about your rights to organize workers under the National Labor Relations Act, Prevailing Wage compliance, the Minnesota state survey, 1099 worker

misclassification, and wage theft liability. Union representatives hired in the last two years will find this seminar to be a valuable primer on industry issues, and it provides a great forum to ask the questions that might not be asked elsewhere. Most years we also have a few seasoned veterans return to get a better understanding on new developments in the industry. We'll also discuss what FCF

does day-to-day and how you can best use us as a resource to make sure that we continue to have a healthy and functioning union construction industry in Minnesota for generations to come. **Please contact FCF if you want to be added to the list to receive an invitation to the training.**



Federal Prevailing Wage Rate Reminders

If you or your contractors work on federally funded projects, please review the federal prevailing wage rates at the website below:

<https://sam.gov/content/wage-determinations>

CBAs should be submitted to the Federal DOL promptly when wage rates increase so that any union rates on the wage determinations can be adjusted during the year. The CBAs can be submitted via email to

WHD_CBA_UPDATES@DOL.GOV.

If you have any questions related to the federal prevailing wage process (the Davis-Bacon Law) or if you are interested in learning more about the federal prevailing wage law and survey process, please contact FCF.



Fair Contracting Foundation

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Mayo Clinic is Future-looking

The recently opened \$120 million Anna-Maria and Stephen Kellen Building at the Mayo Clinic campus in Rochester has 11 floors, 176,000 square feet and a subway connector. The space age futuristic façade, built by the Sheet Metal Workers Local 10, illustrates Mayo's commitment to transformative biomedical research. The facility will complement Destination Medical Center's 20-year project plan, which is on track to its projected goal of \$5.6 billion in economic development to downtown Rochester by 2033.



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Fair Contracting Foundation

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State Prepares for Independent Contractor Misclassification Push

This past summer, two efforts were initiated to examine the misclassification of workers as independent contractors. This practice deprives workers of traditional employment protections (e.g., overtime, workers' compensation) and shortchanges public systems funded by payroll taxes (e.g., Social Security, unemployment insurance).

First, Minnesota Attorney General Keith Ellison convened an advisory task force to "make practical, workable recommendations to the Legislature, State agencies, other levels of government, industry, nonprofit organizations, and advocates" about this issue. The Task Force will continue its work through February 2024. Second, the MN Legislature directed the Office of the Legislative Auditor (OLA) to produce a new report on misclassification, specifically focusing on the rise of the gig economy, OLA's first such report since 2009. That report is expected in early 2024. Both of these efforts appear to be laying the groundwork for some sort of activity during the 2024 legislative session.

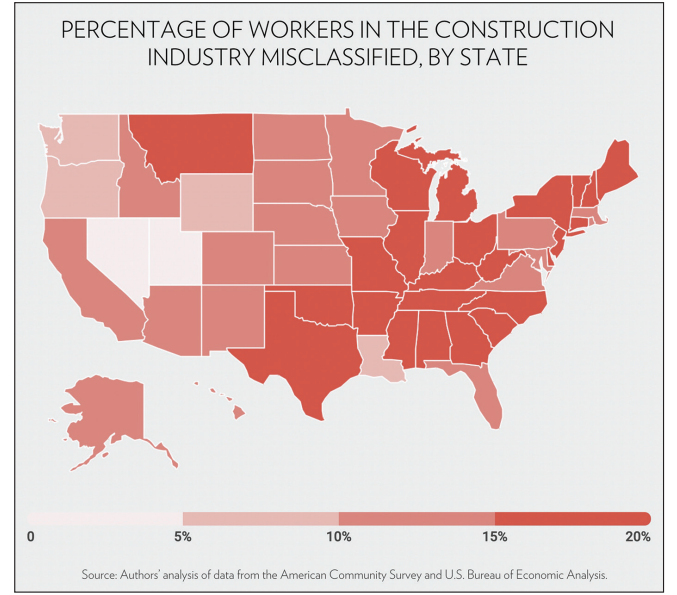
Such an effort could not be more timely. A November 2023 report by The Century Foundation concluded that between 1.1 to 2.1 million construction workers are either misclassified or paid off-the-books entirely, ultimately costing American taxpayers between \$5-10 billion per year in unpaid payroll taxes. A separate report by North Star Policy Action found that affordable housing construction is a particularly challenging industry for misclassification in Minnesota.

REPORT ECONOMICS

Up to 2.1 Million U.S. Construction Workers Are Illegally Misclassified or Paid Off the Books

With the legislature's approval of \$1 billion for affordable housing during the 2023 session, it is critical to ensure that workers are not left behind during this growth.

While the main legislative focus will likely be on the corporate gig economy, we should remember that Minnesota already has one of the most robust statutory tests for independent contractor status, at least in the construction industry. As with all labor standards, **enforcement is the most critical factor**, and the State could certainly improve its track record on this issue in construction and other industries. As the State prepares for new legislation, worker advocates need to ensure that proper resources are committed to enforcement of the nascent regulation.



Union Building Trades Share the Spirit

For more than 30 years, members of the Central Minnesota Building Trades have acted as the arms and legs for the Share the Spirit Christmas event. Share the Spirit, a holiday event sponsored by the Diocese of St. Cloud, matches families in need with volunteer donors who want to ease their burdens and share some gifts. In the end, they make sure everyone has something underneath the tree even when times are tough.

This year Share the Spirit served 203 families. Ten days prior to Christmas, the floor of the St. Cloud National Guard Armory gym was lined four rows deep with presents, organized and grouped for each family. They collected their gifts by driving into the back of the armory where they were loaded into the cars. It's a logistical feat to keep everything organized and delivered to the right people, but this is where the work ethic and the discipline of the Building Trades excels – you must get the job done right the first time.

For several members of the trades, Share the Spirit is a "must participate" event. Every year they mark off time on their calendars to help. Mike Ganz, President of the Central Minnesota Building and Construction Trades Union, has done it for 23 years. "It's a great feeling to know you are helping people in the community," he said.

Larry Mareck, a retired business representative from Carpenters Local 322, has participated 31 years. He's seen the trades go the extra mile, delivering gifts and packages when someone showed up with too small of a car; once driving to Alexandria, 68 miles away. For Mareck, "The bottom line is we like doing this so we set aside days just to help out."



Pictured: Tyler Krogen & Bryan Stolze from Roofers & Waterproofers Local 96

Photo Credit: FCF - Vince Muzik

A Warm Welcome Back

During the past decade FCF has had six talented and dedicated employees move into professional government careers. While each one was a temporary loss to our productivity, there was an important benefit, too. All six of these workers understood the important, and often thankless, work involved in compliance. Each of them realized the value of prevailing wages and other laws affecting the construction industry. And they all learned the culture of the unionized trades to which they became committed. When they took that wealth of information forward into government work, it was a net gain to our unionized industry and working people, in general.

Today, FCF is grateful to announce that one of these talented individuals has returned. Jacob Shawback left his role at the Ramsey County Attorney's Office as Investigator and Prevailing Wage Specialist to rejoin FCF's staff in January. Shawback was the chief architect in John Choi's office on a wage theft enforcement model that will now be left for the County to improve upon. Shawback educated procurement professionals in the County, as well as other municipalities, on prevailing wages. He also cultivated relations with the St. Paul Police Department, who now believe that wage theft is indeed a crime worth investigating and prosecuting. We're confident that his expertise, diligence, and relationships will only make their job easier in the future.

Upon return, Shawback will begin learning the technical challenges and nuances of survey reporting and data work from our internal ace, Gary Johnson. His focus will be FCF's succession plan, but he will also enhance our existing compliance work and broad representation on construction laws. Please welcome him back.

PLAs Have Never Looked So Good



For the past six months, FCF has redoubled its efforts to promote and educate stakeholders on the value of Project Labor Agreements (PLAs). The driver behind the heightened enthusiasm is an enhanced benefit to the end-user: money. The Biden Administration's passage of the Inflation Reduction Act (IRA) provides private developers who build "green" with

cost-cutting tax credits if they use labor standards and apprentice requirements. Recapturing some of the construction costs through newly created tax credits is made easy by building under a PLA.

Equally exciting is that tax-exempt governmental bodies can receive

direct funding with the same prerequisites. The St. Paul Public Schools (SPPS) are proving to be a pioneer in this opportunity. Facilities and Operations Director Tom Parent reached out to FCF to further explore this option. With the assistance and support of the St. Paul Building Trades Council's Don Mullin, Parent wants to ensure that SPPS is meeting apprentice and labor standards on much of their \$300 million in upcoming green construction so that the St. Paul taxpayers can get a swift and direct return on investment, while showcasing apprentice careers and getting high quality projects through the proven success of a PLA! We hope they lead the way for other government bodies to succeed on all fronts of quality, great jobs, and promising apprentice programs.

Contact FCF if you know of other project owners who are interested in this new development in cost savings through high standards.

Annual MN Prevailing Wage Reminders

Highway/Heavy rates were certified on Nov 20, 2023. These rates are certified by region, and each of the 10 regions were assigned a rate based on surveys submitted between April 2022 and May 2023, a 14-month window.

Commercial rates were certified on Dec. 26, 2023. Commercial rates are certified by county also based on the annual survey. You have 30 days from the date of certification to request a rate review.

All locals and contractors should be familiar with these rates. Not all prevailing wage rates are union rates; they depend on the survey results. To minimize potential wage-rate issues, all locals and contractors should review their rates and follow up with any questions.

If there are people in your organization unfamiliar with the prevailing wage survey process and rules, please consider contacting FCF to request training. Understanding the ins and outs of prevailing wage is important. Call 651-797-2726 to schedule training.

The 2023-2024 surveys can be submitted now through the end of May 2024. Every survey submitted counts, and one or two extra surveys submitted in a county or region can have a huge financial impact.