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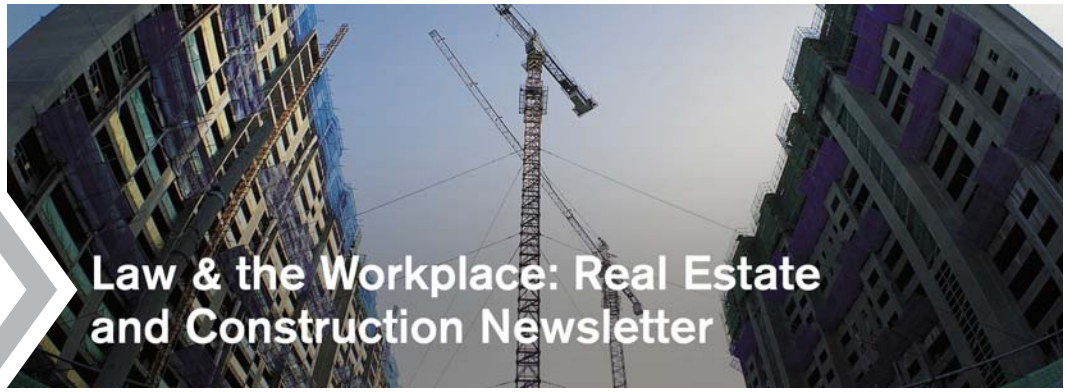

Law & the Workplace: Real Estate and Construction Newsletter

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Greetings From Proskauer and the RAB

Welcome to the Spring 2011 issue of the periodic *Law & the Workplace: Real Estate and Construction Newsletter*. As we head through the spring, the real estate and construction industries are attempting to address the continuing economic crisis plaguing the industries and the economy, as a whole.

On the labor front, New York will take center stage in the effort to ensure the future competiveness of the unionized construction industry. Approximately 30 collective bargaining agreements in the New York construction industry are set to expire in the coming months, with the first agreement having expired at the end of April, and the majority of agreements expiring at the end of June. Management and labor are searching for ways to revitalize the union construction industry from the effects of the economy and continued threat of non-union workers in this previously union-dominated market. A failure to constructively solve these issues at the bargaining table likely could cause work stoppages on vital construction projects throughout the city and further the "race to the bottom" in maintaining labor standards. The outcomes of these negotiations will have an impact not only on New York but on the construction industry nationwide. The recent agreement between DC 9, IUPAT and the Association of Master Painters and Decorators provides hope that creative agreements with "win-win" results can be achieved.

In the New York real estate industry, over the past year, the Realty Advisory Board on Labor Relations and two of its bargaining partners, Local 32BJ, SEIU and Local 94, International Union of Operating Engineers, reached mutually beneficial four-year collective bargaining agreements. In addition, the Bronx Realty Advisory Board finalized a successor agreement to the Bronx Apartment House Agreement with Local 32BJ. Towards the end of this year the New York real estate industry will commence negotiations over the Commercial Building and Contractors' Agreements, which expire on December 31, closing out a year of intense bargaining for the New York construction and real estate industries.

In addition to negotiations, we report on the hottest legal issues pertinent to the real estate and construction industries.

We hope you find our report of interest. Please feel free to contact us to share your thoughts, comments and general feedback.

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Collective Bargaining

New York City Construction Industry Collective Bargaining Agreements Set To Expire – Industry at Crossroads

The next few weeks will be a watershed period for the unionized construction industry in New York City. Approximately 30 different collective bargaining agreements will expire between April 30 and June 30. The resulting successor agreements – whether reached prior to or after any job actions – could determine the future of unionized construction in New York.

Both the unionized trades and employers will be seeking the same goal, though perhaps with different visions as to how to achieve it. Everyone is attempting to ensure the long term viability of an industry besieged by the continuing economic downturn and non-union competition. The focus in bargaining has to be on reversing the industry's troubles.

The city's unionized construction trades are enduring an unemployment rate of almost triple the city's overall rate – an estimated 25% unemployment rate for the unionized construction trades versus 8.9% for the city as a whole. Many trades are experiencing unemployment at even greater rates. In total, the industry has lost more than 18,000 jobs since the end of the economic boom in 2008. These figures are the result of both stalled construction in the city and the increasing presence of non-union contractors.[1] The industry must become more competitive in order to put its workers back to work.

The Building Trades Employers' Association, which represents 28 trade union contractor associations that, in turn, are comprised of over 1,700 construction managers and contractors in the city, has publicly detailed the items it believes need to be accomplished in bargaining to save the industry. These items are dominated by goals to ensure that all jobs on a project are productive jobs; that work rules foster productivity and competitiveness; and that the effects of the Great Recession are reflected in the economics of the new bargaining agreements.

Representing the unionized trades in the industry, the Building and Construction Trades Council has stated that its goal is to put its members back to work. It, however, feels that employers are exaggerating the threat of non-union competition, and publicly has resisted many of the employer proposals.

The true judge and jury regarding the outcome of the upcoming bargaining will be the building owners, developers and general contractors. If this constituency is satisfied with the progress made in any successor agreements, skilled labor workforces could retain the existing union construction work in the city and reclaim work previously ceded to non-union contractors. If the resulting collective bargaining agreements are not satisfactory to this constituency, or if the disputes between the trades and contractors result in any sort of prolonged work stoppage, we could reach the tipping point, further minimizing union construction in the city.

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[1] Statistics in this paragraph are from Daniel Massey, "The Hardest Hit." *Crains New York Business*, February 28, 2011.

Painters Agreement Sets Standard For Upcoming Construction Trades Bargaining

District Council No. 9, I.U.P.A.T., and the Association of Master Painters and Decorators of New York, Inc. agreed to a successor Trade Agreement covering all painting and related work in the greater New York area that could serve as a model for other construction trades. The Agreement, which was ratified by both parties on April 28, reflects the continuing recessionary economic climate while preserving workers' labor standards. The complex 4-year deal utilizes several mechanisms to cut costs and not only preserve but expand the work of the unionized contractors.

In terms of wages, the main agreement provides for a wage freeze in the first year that reflects the current difficulties in the unionized construction industry. The second year has two $0.50 increases, with a $1.50 and $2.00 increase in the third and fourth years of the Agreement, respectively. At the end of the contract painters will receive $39.50 per hour. The Agreement specifically prevents the money allocated to wages in the Agreement to be reallocated to other purposes absent an agreement by the parties.

Employers will contribute an additional $0.90 per hour to benefit funds in the first year, but have no future scheduled benefit increases. The Union agreed to cut at least 10% (more than $4.4 million dollars) of the current health fund costs through various methods, including potential increased co-pays and deductibles. Moreover, any need for additional funding for the health or pension plans will be derived within the economic parameters of the Agreement (upon the employers' approval), ensuring that employers will not be compelled to pay any amounts in excess of the contractually agreed upon amounts.

The total weighted average increase under the main part of the Agreement, before factoring in the discounts described below, is 1.9%. In addition, employers will receive an approximate 11% savings on the payroll costs of employing paperhangers, who are paid according to a different pay scale.

Overtime payments have been curtailed in two respects. First, there no longer will be overtime pay for shift work on any interior construction projects. Second, benefit payments for overtime work will cease being paid at time and a half rates, but at straight time plus time and a half for annuity and vacation payments – resulting in an approximate 20% savings on overtime benefit payments.

The Agreement contains various discounts off of the main frame rates described above. It provides for a 20% reduction of payroll costs attributable to wages and benefits for all non-Manhattan construction work. Such work outside of Manhattan may be pre-registered by employers as a 35 or 40-hour week project (7 or 8 hours per day). Similarly, the parties expanded the use of market recovery rates utilized to capture non-union work by permitting the market recovery provisions to be used for residential and commercial work in New York City's outer boroughs and neighboring counties and residential work in Manhattan currently being, or having previously been, performed by non-union contractors. The market recovery provisions provide a minimum wage of $13.25 per hour. Finally, all maintenance painting work will be performed at 80% of the regular painting rates.

To increase worker efficiency on projects, a number of work rules have been modified. The Agreement provides for flexible start times between 6 a.m. and 9 a.m., permits work on Labor Day if special circumstances exist, removes the Union's hiring hall, and provides a mechanism to more easily remove poor performing workers from the general workforce. All restrictions on the work permitted to be done by apprentices have been removed and the employers retain free use of the tools. The parties further agreed to ensure that all employees are physically fit to perform necessary job functions, have an

appropriate OSHA certification, and may be subject to security background checks and drug and alcohol testing where required by a contracting party. In addition, all job and shop stewards must be qualified workers and, if not qualified or productive, may be removed subject to a 24-hour hearing.

Finally, the parties are working with the Real Estate Board of New York and the Building Construction Trades Council of Greater New York to agree to a project labor agreement for all interior construction work in Manhattan. If such a PLA is agreed upon and results in savings of at least 17 to 20% through a combination of wage and benefit reductions and/or work rules, the employers will contribute an additional $0.50 health care contribution in May 2013 and May 2014.

As the first agreement to be reached among the approximately 30 collective bargaining agreements set to expire by June 30, this Agreement is an example of a “win-win” solution – addressing the economic realities of the construction industry while preserving the dignity of workers.

Proskauer represented the Association in negotiating this Agreement.

New York Apartment Building Agreement Finalized

On April 21, 2010, the Realty Advisory Board on Labor Relations and Local 32BJ completed a 4-year collective bargaining agreement covering building service workers in New York City's apartment buildings. The cornerstone of the Agreement dealt with containing escalating health fund costs – an issue that certainly resonates with employers and employees nationwide.

Historically, the industry's agreements with Local 32BJ have contained a Maintenance of Benefits clause – language that requires the employer to pay the total health contributions necessary to fund the current plan of benefits offered by the Fund. As a result of this Agreement, that provision has been suspended. For the duration of this contract, no employer will be called upon to contribute any more than the agreed-upon amounts should costs spin out of control. Rather, through a combination of significant modifications that the parties will seek to implement together, the Fund's health care costs will be controlled. To this end, the Union has pledged to reduce, commencing no later than January 2012, the costs of providing health care under the Health Fund by no less than $70 million annually, on both the residential and the separately negotiated commercial side of the industry.

Furthermore, the Agreement calls for hard benefit contribution caps (pension plus health) in the final two years of the Agreement, which usually are not determined until the negotiation of the Commercial Building Agreement. In addition to setting these caps, the Union has pledged that at no time during the course of the Agreement will the amount of money in the Health Fund fall below an amount enough to maintain the cost of providing benefits (as reduced by the commitment above) and operating the Fund for six months.

As a result of these changes in the funding of benefits, the parties were able to reach an agreement that provided average annual wage increases of 2.3% and average annual wage and benefit increases of 2.9%.

In addition to the wage and benefit issues, the Agreement includes a new provision to expedite the arbitrations of superintendents, an enhanced annuity for superintendents with at least two years of seniority at a specific location, and an economic hardship reason for a reduction-in-force.

Proskauer represented the RAB in negotiating this Agreement.

New York Real Estate Industry Agrees to New Engineers Agreement

The Realty Advisory Board on Labor Relations and I.U.O.E., Local 94, 94A and 94B, AFL-CIO, successfully negotiated a successor collective bargaining agreement. Local 94 represents approximately 4,000 stationary engineers in New York City commercial office buildings. The Agreement is effective as of Dec. 30, 2010 and covers New York building owners and contractors employing Local 94 engineers.

The 4-year deal provides for weighted average wage increase of 2.4%, which when combined with increases in contributions to the various benefit funds amounts to weighted average increase of 2.7%. If any current or future legislation causes contributing employers to incur additional costs with respect to the health care or pension funds, the parties agree to discuss actions to eliminate any adverse impact such additional payments have on the fund, employers and employees.

The Agreement recognizes the significant customer service role engineers play in buildings. It therefore permits an employer to transfer an employee to another building and/or terminate an employee, with three months termination pay, based upon a customer demand. In addition, it permits substance abuse testing and security background checks of employees upon a change in ownership/management of a building.

The parties also sought to provide for the future needs of the industry. Recognizing that the development of new engineers is critical, the Agreement ensures that individuals hired as “helpers” continue on a path to become engineers by requiring the proper certifications to be attained within specified time frames. In an acknowledgment of the times that we live and the increasing importance of emergency preparedness in buildings, the Agreement creates a Fire Safety/Emergency Action Safety Plan Director position, which can be filled by a Local 94 engineer in certain buildings.

Proskauer represented the RAB in negotiating this Agreement.

Bronx Apartment House Agreement Finalized

The Bronx Realty Advisory Board and Local 32BJ, SEIU, agreed to a new, 4-year Apartment House Agreement on March 14, 2011. This Agreement covers more than 3,000 superintendants, assistant superintendants, janitors, handypersons, porters, firepersons, doorman, elevator operators and garbage handlers in more than 1,000 Bronx residential buildings. The Local 32BJ members ratified the Agreement on March 24, 2011.

This new Agreement provides for a 6% wage increase over the 4-year contract, as well as fully employer-paid health care and pensions. Sick days, holidays, overtime and vacation benefits are all maintained in the new contract.

Spotlight On Legal Issues

New York's Wage Theft Prevention Act Becomes Law

On December 10, 2010, Governor Patterson signed the New York State Wage Theft Prevention Act (the "Act") into law. The new statute requires more stringent pay notices and provides for increased penalties for wage payment, notice, and recordkeeping violations. All New York employers will need to update and/or revise their pay practices to come into compliance immediately, as the Act's effective date was April 9, 2011.

The Act significantly increases notice requirements under New York Labor Law Section 195(1). With respect to new hires, in addition to existing notice requirements, employers will now be required to disclose to the employee (both in English and in the language identified by the employee as his or her primary language) whether the employee is paid by the hour, shift, day, week, salary, piece, commission or otherwise, and whether the employer intends to claim allowances against the minimum wage. For non-exempt employees, "the notice must state the regular hourly rate and overtime rate of pay." The New York Department of Labor recently has released form templates for the law's Notice and Acknowledgement requirements, which can be found on their web site (www.labor.ny.gov).

Between January 1 and February 1, 2012, employers also must provide this Notice information to all existing employees, and do so annually thereafter. When providing the Notice an employer needs to obtain, and retain for at least 6 years, a signed and dated written acknowledgment of receipt from each employee. The New York Department of Labor also may add to these Notice requirements in the future.

The Act further requires employers to furnish employees covered by the Minimum Wage Law with a Wage Statement every pay period identifying the employee's wage rate; the basis thereof (e.g., whether paid by the hour, shift, day, week, salary, piece, commission, and allowances); the amount of gross wages; any wage deductions; the net wages paid, the period covering the payment, regular hours worked, overtime hours worked, regular rate of pay, and the overtime rate of pay, and the wage statement (pay stub) must identify the employer, its principal address and include a phone number.

Penalties for employers in violation of the New York Labor Law are increased significantly by the Act. An employer who violates New York's wage payment laws faces liability for all unpaid wages due to employees plus interest, and reasonable attorney fees. As a result of the Act, liquidated damages for nonpayment or underpayment of wages are now increased to 100 percent of wages due (as under the federal law) unless the employer can prove a "good faith basis" for believing that its underpayment of wages was in compliance with legal requirements.

The State Labor Commissioner also will have the authority to assess up to 100 percent liquidated damages in an administrative action. If the Commissioner finds that an employer has engaged in willful or egregious violations, or the employer previously has been found in violation of the New York wage laws, the Commissioner "shall direct payment to the commissioner [in other words, the New York Department of Labor] of an additional sum . . . in an amount not to exceed double the total amount of wages, benefits, or wage supplements found to be due." Further, the statute of limitations is "tolled" from the date an employee files a complaint with the Commissioner.

There also are increased penalties for failing to comply with the notice provisions of the Act. An employee who does not receive the mandatory notice of wages within 10 business days of his or her first day of employment may recover damages of $50 for each workweek that the violation occurred, capped at $2,500, plus costs and reasonable attorneys' fees. Similarly, with respect to existing employees, if any do not receive the mandatory wage statements, the employer may be subject to a civil action and damages of $100 per week, per employee, capped at a total of $2,500, plus costs and reasonable attorneys' fees.

Failure to pay a judgment for more than 90 days will subject an employer to an additional 15 percent of damages to defray the cost to the employee of collecting on the judgment.

An employer who violates the wage payment law may now be required by the Commissioner to post a notice of the violation in the workplace, for up to one year, in an area visible to employees, summarizing the violations found. If the violation was willful, the employer must post the notice in an area visible to the general public for up to 90 days.

In addition to these civil penalties, an employer, its officer or agent who fails to pay minimum wages or overtime compensation in violation of the provisions of the Labor Law may be found guilty of a Class B misdemeanor. In the event the employer is found guilty of a second or subsequent offense within six years of the conviction for a prior offense, the employer may be charged with a felony. While these criminal penalties existed before the passage of the Act, the Act expands expand the range of covered employers to include partnerships and limited liability corporations.

In order to avoid liability, employers should ensure they are in compliance with these new statutory wage notice and payroll practice requirements. Among other things, employers are well advised to take these action steps:

- Review and update your new hire forms;
- Create a Notice form in compliance with the Act;
- Review and update wage statement forms (if not already in compliance);
- Make sure you have a system in place that accurately records and maintains payroll records for a minimum of six years;
- In order to ensure against "off-the-clock" claims brought by non-exempt employees, employers are required to keep track of hours, meaning times of arrival and departure (and technically, for meal periods too);
- If an employer suspects that it may have worker classification issues, the impending increase in penalties (and six-year limitations period) make this an ideal time to consider a wage-hour classification audit of selected jobs and a payroll practices audit; and

Train officers, managers, and supervisors in the requirements of New York's wage payment and payroll practices laws, as such agents of the employer can, in certain circumstances, be held both civilly and criminally liable under the Act.

New York State Aims To Correct Worker Misclassification In The Construction Industry

In an effort to curb wage and hour violations in the construction industry, New York State has implemented the New York Construction Industry Fair Play Act. Aimed at preventing the misclassification of construction workers, the Act creates a presumption that all construction workers are employees under the law. However, this presumption can be rebutted by an employer demonstrating that a worker meets the following criteria: (1) the worker is "free from control and direction in performing the job, both under his or her contract and in fact;" (2) the service "must be performed outside the usual course of business which the service is performed;" and (3) the worker is "customarily engaged in an independently established trade, occupation, profession, or business that is similar to the service at issue."

The Act also contains a "business entity" exception for the presumption of employee status. The "business entity exception" allows for a sole proprietor, partnership, corporation, or person to be classified as an independent contractor. This exception, however, requires the entity satisfies the Act's elaborate twelve-part test. For an entity to be considered an independent contractor it must: (1) perform the service free from the direction or control over the means and manner of providing the service, subject only to the right of the contractor for whom the service is provided to specify the desired result; (2) not be subject to cancellation or destruction upon severance of the relationship with the contractor; (3) have a substantial investment of capital in the business entity beyond ordinary tools and equipment and a personal vehicle; (4) own the capital goods and gain the benefits and bear the losses of the business venture; (5) make its services available to the general public or the business community on a continuing basis; (6) include services rendered on a Federal Income Tax Schedule as an independent business or profession; (7) perform services for the contractor under the business entity's name; (8) obtain and pay for a license or permit in the business entity's name when such are required; (9) furnish the tools and equipment necessary to provide the service; (10) hire its own employees without contractor approval, pay the employees without reimbursement from the contractor, and report the employees' income to the Internal Revenue Service; (11) not represent the business entity as an employee of the contractor to the contractor's customers; *and* (12) have the right to perform similar services for others on whatever basis and whenever it chooses.

An entity meeting the "separate business entity" requirement will not be considered an employee of the contractor, but will itself be deemed a contractor under the Act, and will be required to comply with all of the provisions of the Act applicable to contractors with respect to its own engagement of workers. On the other hand, if the subcontractor fails to meet either the Act's three-part or twelve-part test, it will be classified as an employee of the general contractor and subject the general contractor to various penalties for non-compliance with the Act; however, it is unclear whether the general contractor would be liable for any compliance violations committed by the subcontractor

A willful violation, where a contractor knew or should have known that his or her conduct was prohibited, will subject an contractor to penalties ranging from $2,500 per misclassified employee for a first offense to $5,000 for each misclassified employee for each subsequent offense within five years. Contractors who willfully misclassify construction workers also can be charged with a criminal misdemeanor and can face debarment from public works contracts for up to five years. Where the contractor is a corporation, any officer thereof or shareholder who owns or controls at least 10% of the outstanding stock "who knowingly permits" the corporation to "willfully violate" the law, also is subject to civil and criminal penalties.

In addition to the aforementioned requirements, employers in the construction industry must post a Department of Labor statement (in English, Spanish and any other appropriate languages) in a conspicuous place on the construction site. The statement details protections against retaliation, the penalties proscribed for improper classification of workers, the responsibilities of independent contractors, and the rights of employees to unemployment insurance benefits, workers' compensation, minimum wage, and other federal and state workplace protections. Employers also must post contact information for individuals to file complaints or inquire about employment classification status. Failure to comply with these notice and posting requirements can result in civil penalties totaling up to $2,500.

New York Court Clarifies Real Estate Sales Agent Commissions

We all understand the importance of detailing commission agreements so that there can be no misunderstanding regarding the payments or the conditions that must be satisfied prior to payments being made. Unfortunately, employees and employers often still have different understandings of commission arrangements. It, therefore, is refreshing to see a case where a clear commission agreement is upheld by a court. *Root v. Swig Equities, LLC*, 2010 NY Slip Op 50843U (N.Y. Sup. Ct. Feb 20, 2010), is a good reminder of the usefulness of a clearly written agreement.

The plaintiff was hired as an internal sales agent at a residential building and her compensation was governed by her employment agreement. This agreement stated that she was to receive a $50,000 annual salary plus a bonus (or commission) for each unit she sold. However, to receive the bonus, title on the unit must unconditionally pass to purchaser while the agent is employed in good standing. In the event the agent was terminated without cause, the agent was entitled to commissions for any unit that was under contract at the time of her termination, even if the actual closing occurred after the date of termination. Section 3 of the Employment Agreement expressly stated that "[n]o bonus shall be due unless title unconditionally passes while Agent is employed in good standing with Broker. Any bonus earned by Agent shall be paid within thirty (30) days following such passing of title." Moreover, the agreement stated: "Sponsor [Swig Equities] may reject Purchaser or refuse to close title for any reason and no Commission shall be due to Agent."

After nearly two years of employment, the plaintiff was terminated. At that time, the parties met to discuss the payment of outstanding commissions. The employer argued that the plaintiff was only entitled to commissions if closings occurred, while the plaintiff argued that she was entitled to commissions for all sales in which she produced "ready, willing and able purchasers." Unable to reach an agreement on the commissions, plaintiff filed a lawsuit for breach of contract, violation of New York Labor Law Article 6, and quantum meruit.

The "clear, unequivocal and unambiguous" contract language created a simple decision for the court. The court held that "although a real estate broker is ordinarily entitled to a commission merely upon producing a buyer ready, willing and able to purchase the property upon terms acceptable to the seller, the parties to a brokerage agreement are free to add whatever conditions they may wish to their agreement, including a condition that the contract of sale actually be consummated before the broker is deemed to have earned his commission." Accordingly, the court stated, the brokerage agreement between the plaintiff and employer in this case could condition any commission upon the closing of a sale. Nor could the plaintiff successfully allege that the employer was liable for the commission because it was allegedly responsible for the nonperformance of the condition precedent to a commission – namely, the closing of a sale. The court held that a broker may choose to agree that even if a sale falls through due to the seller's conduct, the broker will not receive a commission. In this case, the broker clearly made such an agreement, as the agreement expressly reserved the seller's right to refuse to close for any reason.

Ultimately, because the court found that the terms of the employment agreement clearly provided that that the broker's commissions were contingent on the actual closing of sales, the court dismissed the plaintiff's claims in their entirety.

Contractor Debarred From Future Government Contracts For 3 Years For Failing To Pay Prevailing Wage

Wage and hour law violations can have a serious impact on your business. It is therefore important to have a thorough understanding of the law and the possible penalties resulting from violations. Recently, in February 2011, the Department of Labor's Administrative Review Board held that a New York construction contractor had willfully underpaid employees as a result of worker misclassification.

In *Pythagoras Gen. Contracting Corp. v. Wage and Hour Division*, DOL, ARB, No. 08-107 (Feb. 10, 2011), the Review Board found that Pythagoras General Contracting failed to pay, and /or ensure that its contractor pay, certain employees at the prevailing wage rates required by the Davis-Bacon Act, failed to pay certain employees for compensable time on a daily basis, and willfully underpaid wages to employees due to misclassification. As a result, the Review Board ordered Pythagoras to pay $792,356.69 in monetary damages and debarred the company and its owner from obtaining federal contracts for three years.

In June 2000, the New York City Housing Authority and Pythagoras entered into a contract for renovations to the residential buildings known as the Vladeck Houses. This contract was for $23.4 million. In November 2002, after several complaints, the Department of Labor (DOL) began an investigation into the project. Almost two years later the DOL Wage and Hour Division and the Regional Administrator issued a Charging Letter citing several Davis-Bacon Act violations.

The Davis-Bacon Act "requires that contractors pay no less than the prevailing wage to the various classifications of mechanics or laborers they employ" on federally funded contracts. It holds general contractors liable for the failure of its contractors to pay appropriate wages. The DOL sets these wages, and depends on the type and location of the work being done. Employers must keep payroll records that accurately demonstrate that workers were paid the prevailing wage for all compensable work and all fringe benefits.

The Review Board agreed with the Administrative Law Judge's finding that Pythagoras had misclassified certain workers as laborers when they really should have been classified as mason tenders and carpenters. Additionally they failed to compensate employees for the initial one-half hour of the workday.

The Review Board found Pythagoras's violations so egregious that they resorted to the penalty of debarment. Under the law, "aggravated or willful violations of the Davis-Bacon and Related Acts require debarment of a contractor for a period not to exceed three years." A willful violation is one that "encompasses intentional disregard or plain indifference to the statutory requirements." The Review Board determined that the violation was willful because the employer failed to list employees on the certified payrolls and segregate the types of work performed, failed to pay employees for the work they did perform, continued violations for two years after they were put on notice, and committed acts of witness intimidation.

This case serves as a reminder that when working on a Davis-Bacon project it is imperative that the proper wages are paid and that all employees are properly classified. For general contractors the responsibility to ensure compliance with Davis-Bacon extends not only to the general contractor's employees but also to the employees of its subcontractors. Vigilance is key. As evidenced by this case, failure to do so can result in severe sanctions.

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