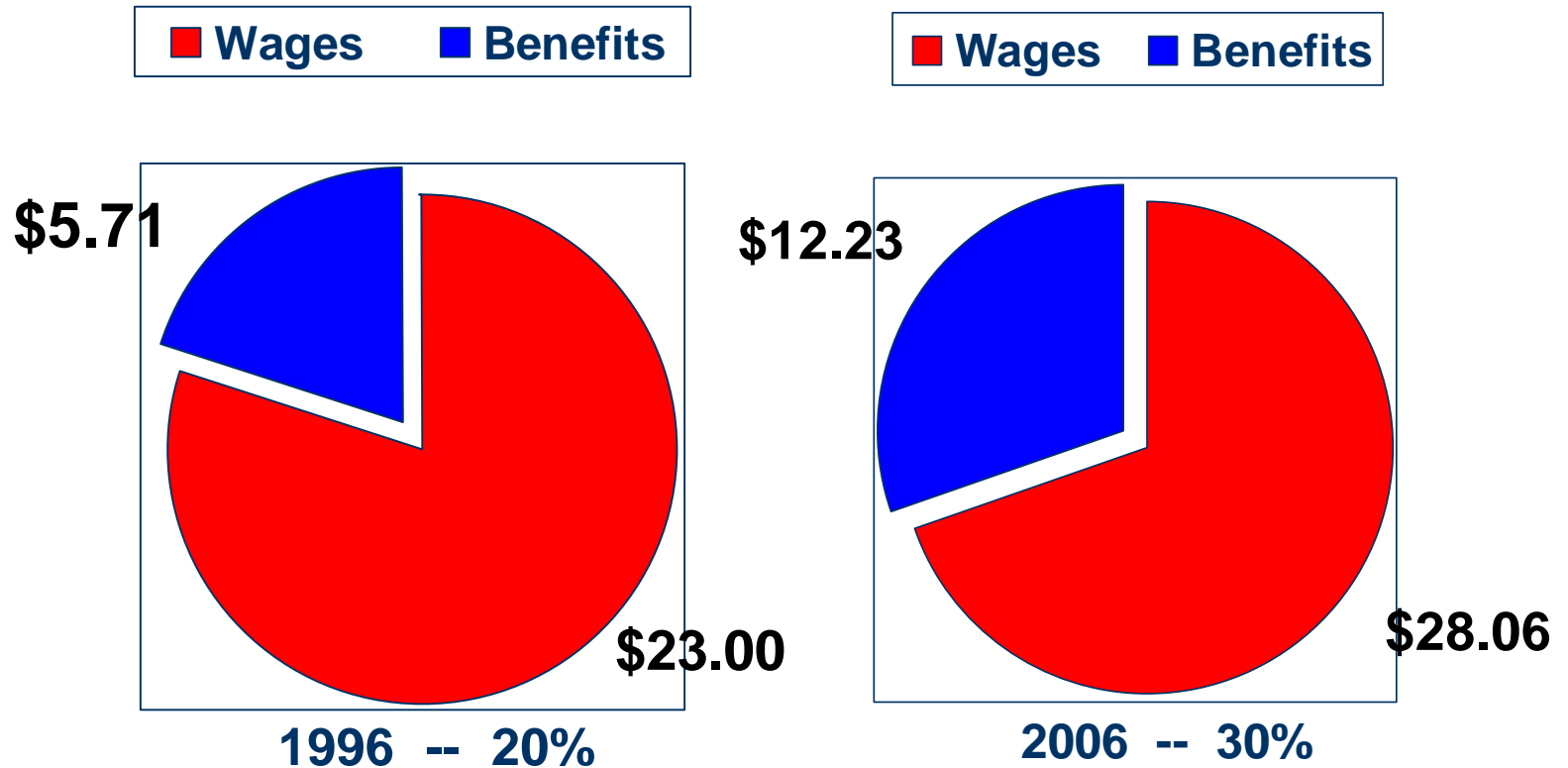


# **BENEFITS FRAUD ON PREVAILING WAGE JOBS**

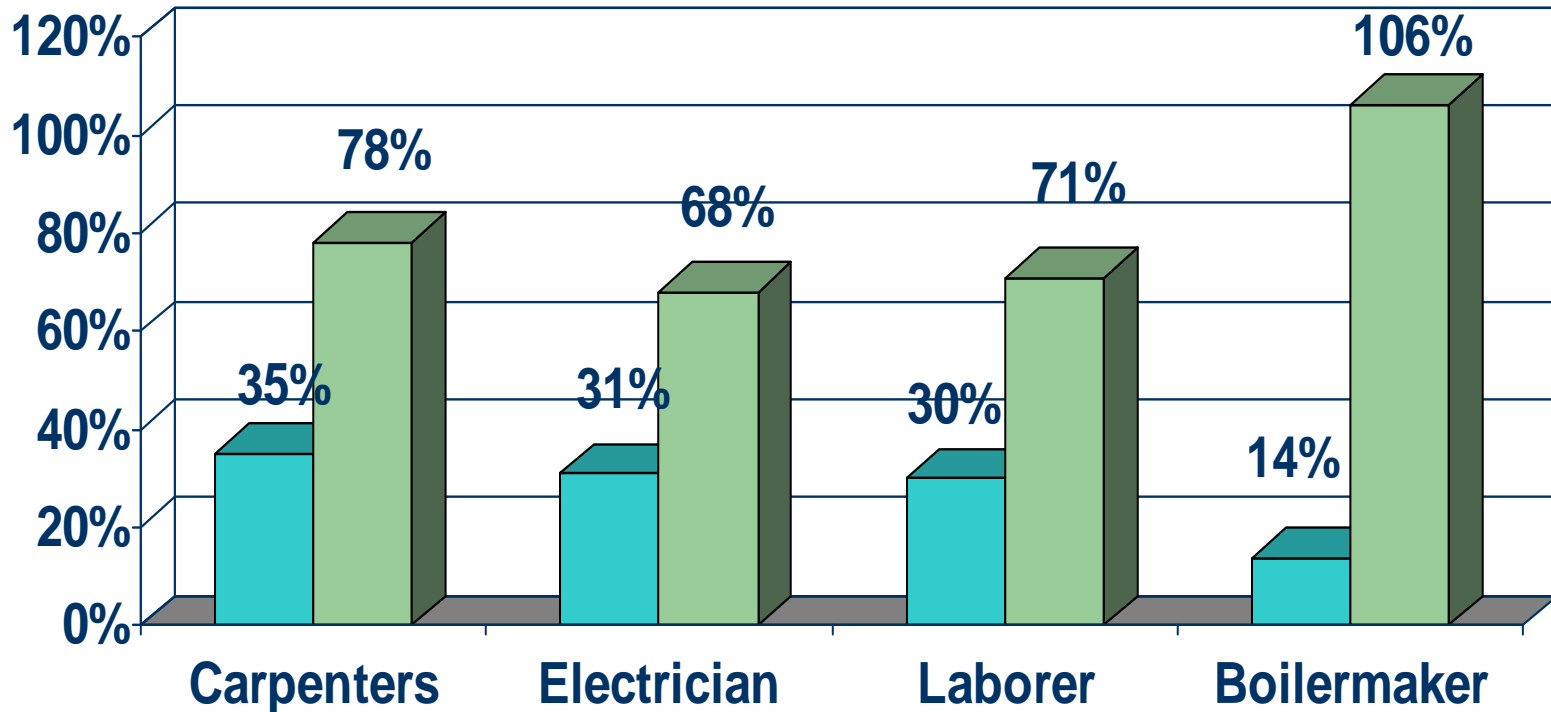
Apprenticeship, Health  
and Welfare, and  
Pension

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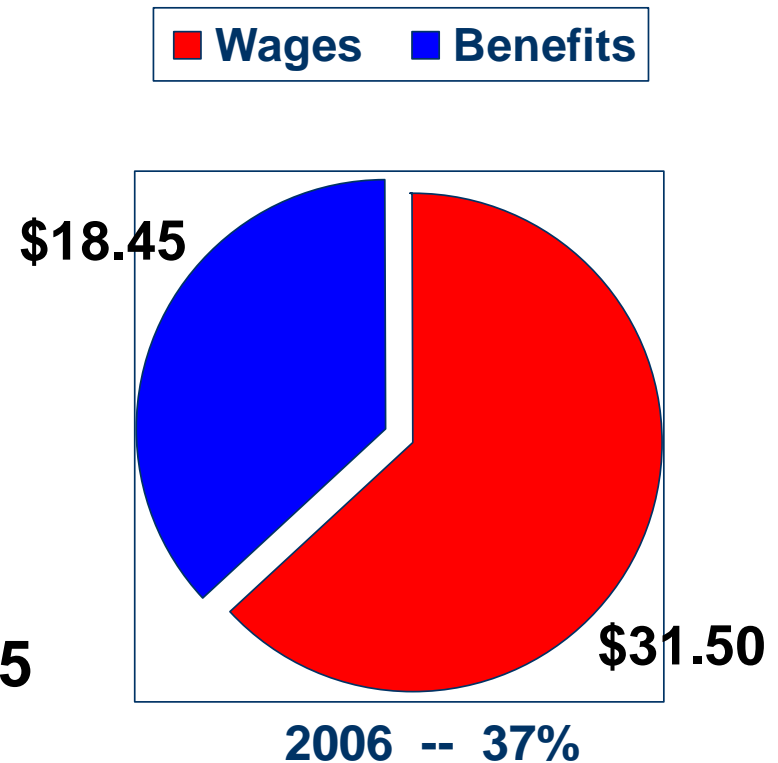
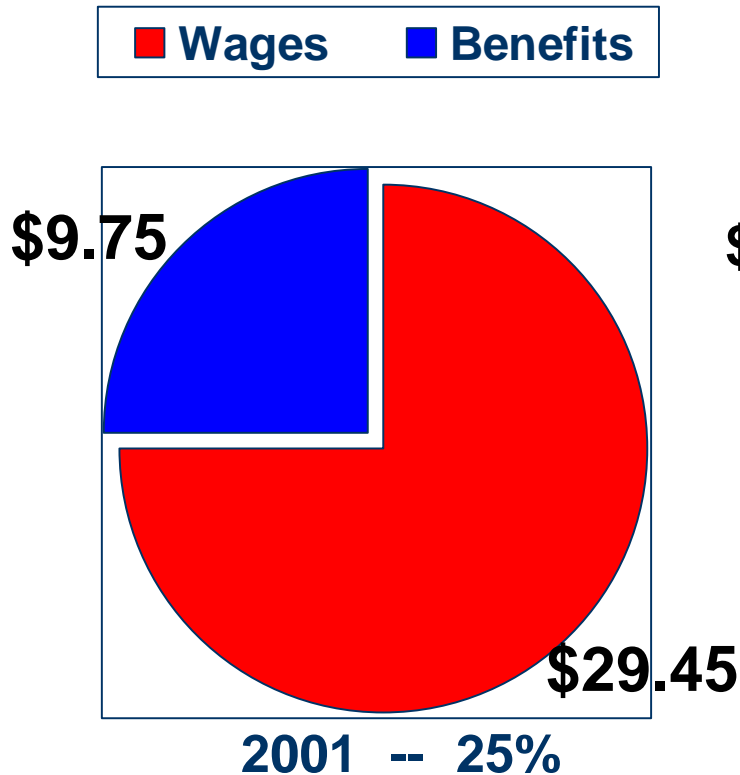
# Federal, King County, Drywall



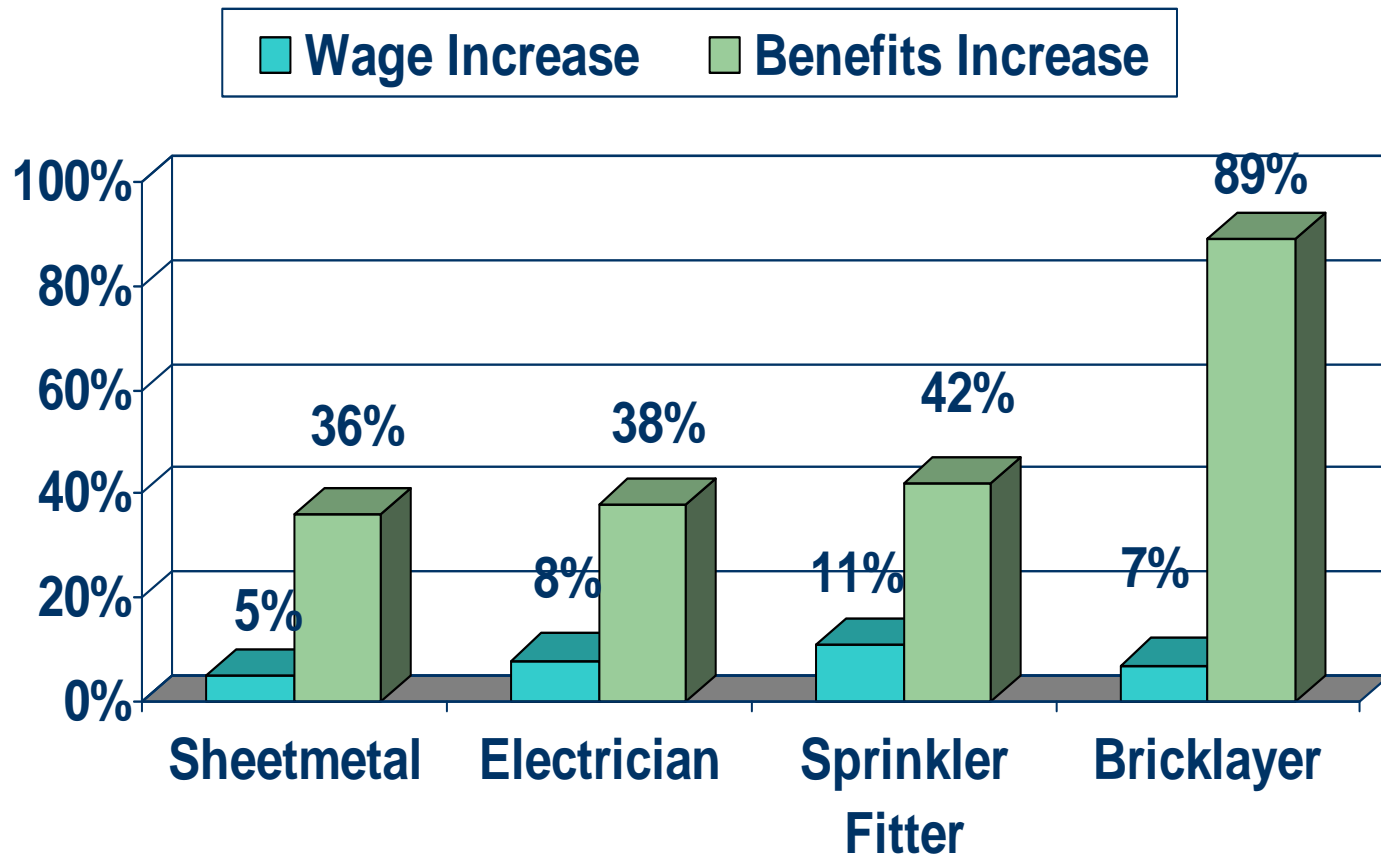
# Federal, King County—WA 1996 - 2006



# California, SF County, Bricklayers



# California, SF County, 2001 - 2006



# New York City U.S. DOL 2008 Building Rates

- Laborer: \$34.89 wage and \$22.61 benefits
- Insulator: \$46.86 wage and \$26.97 benefits
- Plumber: \$46.15 wage and \$29.65 benefits
- Electrician: \$46.00 wage and \$34.18 benefits
- Sheet Metal: \$43.69 wage and \$34.69 benefits
- Ironworker: \$38.65 wage and \$49.26 benefits

# Rochester US. DOL 2007 Building Rates

- Laborer: \$22.35 wage and \$11.17 benefits
- Insulator: \$25.41 wage and \$14.66 benefits
- Mason: \$26.09 wage and \$15.41 benefits
- Electrician: \$29.10 wage and \$15.82 benefits
- Sheet Metal: \$28.28 wage and \$15.86 benefits
- Ironworker: \$24.55 wage and \$17.84 benefits
- Operator: \$26.67 wage and \$18.28 benefits

# Nonunion Benefit Plan Prevalence

- Over half of nonunion construction companies with over 25 employees provide a health plan
- About 40% of nonunion construction companies with over 25 employees provide a pension plan
- Construction companies in states with prevailing wage laws are 20% more likely to provide health plans and 80% more likely to provide pension plans.

# Three Areas of Potential Violations

- Prevailing wage laws
- ERISA laws
- IRS laws

# Prevailing Wage Laws

- Correct contributions on all hours worked
- Annualization
- Reasonably Related

# East Coast General Contractor

- Both 2006 benefit plan reports, welfare and pension, were filed with the U.S. DOL with an outside auditor's report.
- Estimates show the company spent \$5.18 per hour on fringes.
  - \$3.21 for health care
  - 88 cents for vacation
  - \$1.01 for pension
- 2007 certified payrolls claim an hourly fringe credit of \$12.35 to \$18.65 an hour.

# Major East Coast Mechanical Contractor

## Certified Payrolls

- Claims a \$16 an hour fringe credit
- Itemized list of fringes totaled only \$9.91

## Employee Manual

- Take credit for employee co-pays
- Fail to provide vacation/holiday benefits
- Make no contribution on private hours

# Annualization

- Applies to all benefit contributions, H&W, Pension, Apprenticeship, Vacation/sick/holiday
  - Defined contribution plans have an exemption from the U.S. Department of Labor
- Purpose: to covert fringe benefits not paid hourly into a prevailing wage hourly fringe credit,
  - Divide the annual cost of benefits by annual hours worked, on public and private jobs, for the allowed hourly fringe credit that can be deducted from a worker's check
- Results: equal fringe benefit contributions must be made on private as well as public work

# Annualization Law

- Required by U.S. Department of Labor
- Endorsed by *Miree Construction Corp. v. Dole*, 930 F.2d 1536 (11<sup>th</sup> Cir. 1991)
- Many states are modeled on federal law but could also officially adopt the interpretation
- Some states have improved
  - New York *and* Ohio

# Annualization Done Right

- Health care premiums for the worker costs \$6,240 a year.
- \$6,240, divided by the 2,080\*\* work hours in the year, equals \$3.00 an hour.
- The suggested wage determination for health care is \$6 an hour.
- This contractor takes a \$3.00 health care fringe credit---and pays the worker an additional \$3.00 an hour in wages.

# Annualization Done Wrong

- Joe works for Scuzzy Contractors; 1,040 hours on prevailing wage jobs and 1,040 hours on private jobs
- On prevailing wage jobs, the contractor takes the full \$6 an hour credit in the wage determination for health care, contributing \$6,240 to the health plan
- Joe gets coverage from same plan while working on private jobs with no contributions by the contractor.
- This worker is owed \$3,140, plus interest, for this year alone; and the contractor faces fines and possible disbarment .

# Health Care Scams

- Contributions only made on public work, or the contributions are higher on public work
- Workers with different contributions on public projects get the same benefits.
- Contributions cover benefits for workers who performed no public work
- The employer takes credit for premium payments made by the employee.
- Employer claims credit for health premiums on overtime hours.

# Defined Contribution Exemption

- Federal Law—500 hours service requirement
- Examples of violations
  - Excessive Service requirements
  - Vesting
  - Forfeitures
- State law may differ on this issue

## Some Defined Contributions Scams

- A year of service required to received the money
- 1,000 hours of work annually required to receive the money
- Various forms of illegal vesting.
- Requirement to be “actively employed” on the last day of the year to get the money.

# Reasonable Relationship Issues

- For prevailing wage credit, contributions must go for benefits
- Contributions can't be excessive compared to benefits
- Measure benefits received
- Examine costs as percentage of contributions

# Reasonable Relationship Law

- DOL requires
- Upheld in *Miree and Royal Roofing*
- Many state laws prevailing wage laws adopt the federal rules, but others have officially adopt the interpretation
  - California, Kentucky & Ohio

# Major ABC Apprenticeship Trust

- If training money is sent is a prevailing wage benefit deduction [i.e. a worker's money] the Trust charges 50 percent administration fee.
- If training money is sent from the contractor, [i.e. the contractor's money] the Trust charges as little as an 8 percent administration fee.

# ERISA Laws

- Breach of general fiduciary duty
- Prohibited transactions
- Remedies: Removal of fiduciaries, disgorgement
- Standing: Current participant, or U.S. DOL Secretary of Labor

# Major Nonunion Multiple Employer Defined Contribution Health Plan

- The Fund openly banks prevailing wage dollars to pay for health care on private work
- Between 2003 and 2006, the Trust spent \$82 million on health care premiums and \$16.7 million on commissions and administrative fees.
- \$9.1 million of these fees and commissions were paid to a company owned by two plan trustees.
- While not a non-profit, the Trust does not pay state or federal income tax due to what it calls the “body of case law” about complex trusts.

# Major Electrical Contractor

- Failure to contribute millions into the plan
  - On 12/1/05, 32% of \$9 million in total assets was a company IOU.
- No employee choice of investments
  - Owner himself makes all the decisions
- Failure to diversify investments
  - Almost all investments are in stocks, most gaming and banking
  - Two stocks accounted for 14% of total assets.

# IRS NonProfit Laws

- Misuse of 501(c)3 money
- Failure to disclose related party transactions
- Action by the IRS is the only recourse, but the IRS documents can also help show violations of other laws.

# Nonunion Multiple Employer Supplemental Unemployment Benefit Plan

- A nonprofit founded by a father and son insurance agent team.
- IRS annual reports for 17 affiliated nonprofit benefit plans disclose fees of 11% of annual contributions.
  - Denied made to a related nonprofit.
  - The plan website lists the administrator; a company owned by the family
- Individual participants are not informed of the amounts in their account, nor are they allowed to file claims—a right reserved for the participating contractor/employer.

# Other Nonunion Groups

- One trade association training trust spent \$771,026 on salaries from 2002 to 2004, while the trade association spent only \$153,732
  - Its program graduated 14 apprentices a year.
- Another trade association training trust paid the association a \$1.6 million “administration fee” in 2005.
  - This was three times the amount raised through membership dues

# Another ABC Training Trust

- Charges a 12% “accounting fee” on all contributions.
- Does not credit any earned interest to the beneficiary’s training fund account.
- Takes all money from a training account that is not used within 12 months.
- Tuition for one course often exceeds \$2,000, far more than comparable courses at a community college, more even than an entire semester of courses.

# IRS Payroll Tax Laws

- Wages and benefits and “cash benefits”
- Payroll taxes and welfare plan contributions versus 401k plan contributions
- State unemployment tax issues
- Workers compensation issues

# How Much Work is at Stake?

- In 2007, employers contributed some \$100 million to the Contractors and Employees Retirement Trust.
- If these pension deductions were 10% of payroll, their workers were paid \$1 billion of Davis Bacon wages.
- If labor is a quarter of construction costs, these nonunion contractors performed \$4 billion in prevailing wage work in 2007 alone in just this one plan.

# Revamping Union Compliance Work

- Union market share is becoming more dependent on prevailing wage work
- Compliance work requires dedicated staff supported by an organization
  - Including trained research staff
- Government agencies will not undertake these types of investigations unless someone else does most of the work
- Better certified payroll forms are needed