BENEFITS FRAUD ON PREVAILING WAGE JOBS

Apprenticeship, Health and Welfare, and Pension
Federal, King County, Drywall

1996 -- 20%
- Wages: $5.71
- Benefits: $2.00

2006 -- 30%
- Wages: $12.23
- Benefits: $5.83
Federal, King County—WA 1996 - 2006

Wage Increase | Benefits Increase

- Carpenters: 35% | 78%
- Electrician: 31% | 68%
- Laborer: 30% | 71%
- Boilermaker: 14% | 106%
California, SF County, Bricklayers

- **2001** -- 25%
  - Wages: $9.75
  - Benefits: $29.45

- **2006** -- 37%
  - Wages: $18.45
  - Benefits: $31.50
California, SF County, 2001 - 2006

Sheetmetal: 5% Wage Increase, 36% Benefits Increase
Electrician: 8% Wage Increase, 38% Benefits Increase
Sprinkler Fitter: 11% Wage Increase, 42% Benefits Increase
Bricklayer: 7% Wage Increase, 89% Benefits Increase
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
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 (11th Cir. 1991)
- Many states are modeled on federal law but could also officially adopt the interpretation
- Some states have improved
  - New York *and* Ohio
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.
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 receive 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
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