

ALASKA STATE LEGISLATURE

While in Anchorage
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While in Session
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Senate Judiciary Committee,
Chair

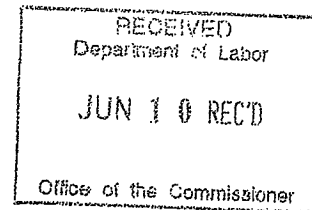
Senate State Affairs Committee

Senate Resources Committee



SENATOR HOLLIS FRENCH

June 8, 2010



Click Bishop
Commissioner
Alaska Department of Labor and Workforce Development
P.O. Box 111149
Juneau, Alaska 99811

Dear Commissioner Bishop:

I am writing to express concerns with the Department's interpretation of legal decisions regarding the payment of Little Davis-Bacon wages to truck drivers who deliver materials to a public construction site.

I have been copied on correspondence that refers to conversations and correspondence between interested parties and the Department dating as far back as June of 2009. The Department appears to have been taking the position that a superior court case titled *Quality Asphalt Paving v. State* required changes to the way the department paid drivers.

I have read that case, and also a related Alaska Supreme Court case, *Board of Trade, Inc. v. State*, and believe that the Department's interpretation of case law is inaccurate. In fact, the Board of Trade case specifically upheld the State's right to provide broader and more flexible coverage of the scope of work activities than does federal legislation. This would mean that the existing regulations are in fact applicable to work until or unless they are revised.

Commissioner Bishop
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More to the point, after more than a year of having this issue brought to the Department's attention by many parties, my staff was recently informed that only now has the Department decided to take action – and that action seems to be to file new proposed regulations.

I am puzzled on two counts. First, it is not clear why, if current regulations have been upheld by the Alaska Supreme Court, the Department needs new ones. Secondly, why are the current regulations not being enforced, at least until such a time as new regulations have been noticed, publicly heard, properly filed, and in effect?

I know that you are acutely aware of the importance of the summer construction season to so many Alaskan workers and businesses. This is not an issue that can wait for a lengthy regulation filing and hearing process. It needs to be addressed now, and it should be addressed by adhering to the current regulations the Department has promulgated for handling these wages.

Sincerely,

A handwritten signature in black ink, appearing to read "Hollis French", with a long horizontal flourish extending to the right.

Senator Hollis French

c.c. Dan Sullivan, Alaska Department of Labor

St Clair, Tina (DOL)

From: LSS-WH, Juneau (DOL sponsored)
Sent: Thursday, July 15, 2010 8:09 AM
To: Daugherty, Chris C (DOL)
Cc: St Clair, Tina (DOL)
Subject: FW:

From: mikewhitlatch@email.com [mailto:mikewhitlatch@email.com]
Sent: Thu 7/15/2010 7:03 AM
To: LSS-WH, Juneau (DOL sponsored)
Subject:

attn: Grey Mitchell

re: wage requirements to truck drivers

The facts as I understand them.

Davis Bacon wages were enacted in 1935, with the intent to level the playing field on federal contracts. The way I read the rule, is a truck driver would be paid Davis Bacon wage while on the FOOTPRINT OF THE JOB.

Now we have TITLE 36 or LITTLE DAVIS BACON ACT. Which is it??????

All it has meant to the trucking industry is more paper work on top of meaningless paper work. Absolutely no benefit to the trucker as far as wages.

A trucker hauling gravel products or asphalt should be paid 100% davis bacon wage from the time they receive the first scoop of material in there truck until they sign off the job at the end of the day. The trucker is an integral part of the crew for the duration of the day if he is hauling gravel products or asphalt for the job all day long. If these types of trucks/drivers were not a steady integral part of the crew all day long - 100% of the job would never be completed.

At this time we have some truck contractors paying D.B. wages to drivers while on the footprint, and others who will drive the routes and predetermine a time schedule for each delivered load regardless of any extenuating circumstances connected to delivery or on-sight work. That minimum pre-determined time frame is what one contractor writes in the bid for the job, while the other contractor allows for time on the job footprint. This is absolutely not fair to the truck drivers. How the driver is paid depends on how ethical the truck contractor is.

I have 40 plus years in this industry. first as a hired driver for someone else and the last 15 yrs as an owner operator and trucking contractor. I believe the bidding process should be fair and equitable for everyone. Above all truck drivers deserve to earn a decent income just like everyone else. We should all bid and pay D.B. wages to truckers 100%.

There should be d.o.t. people on site or working with contractors on federal and state projects. couldn't they monitor trucking?

The fact that you are having a meeting to discuss these concerns, gives me hope that someone is finally listening to people who work in the construction industry everyday

Jeannie Whitlatch
Jeannie Ent. Inc.

St Clair, Tina (DOL)

From: LSS-WH, Juneau (DOL sponsored)
Sent: Friday, July 16, 2010 8:17 AM
To: St Clair, Tina (DOL)
Subject: FW: Attn: Greg Mitchell RE: Stakeholder Meeting Notice with comments attached.

From: Ebersoles5@aol.com [mailto:Ebersoles5@aol.com]
Sent: Thu 7/15/2010 11:58 PM
To: LSS-WH, Juneau (DOL sponsored)
Cc: Ebersoles5@aol.com
Subject: Attn: Greg Mitchell RE: Stakeholder Meeting Notice with comments attached.

Dear Mr. Mitchell:

I would like to make a few comments about the meeting you are going to hold on 7/20/2010 referred to as "Stakeholder Meeting," as it pertains to truck drivers and wage stipulations. Please see the following reasons why driving and delivery time need to be the prevailing Davis Beacon wage :

1) Truck drivers aren't often paid on time, sometimes a paycheck isn't received for over 3 months or more. Therefore, this causes high risk for the driver and compromises their livelihood. A Davis Beacon wage should be earned at all times a truck driver is operating/working on the job in order to cover long delays in receiving paychecks and all factors of high risk associated with having an inconsistent & unreliable income.

2) Due to the incredible increases in the price of fuel, replacement parts for trucks, and other required services a truck driver must pay for regularly, a fair & reasonable wage is much needed. The contractors & brokers are always manipulating the construction project to short the trucker of working hours and make themselves more money.

3) Often, some of the contractors overload the trucks by as much as 10% if they can get by with it. Its another risk the trucker has to contend with so the contractor can hurry up and complete their projects.

4) In addition, the contractors go out of their way to hire out of state (outside Alaska) drivers, so they don't have to pay a higher wage as expected by Alaskan residents. Therefore, the local truckers who reside in Alaska have more difficulty finding employment and obtaining a reasonable wage with a consistent paycheck.

The above four comments are just a few truthful facts in our industry, as I've been a trucker in Alaska for over 30 years. I ask that you consider the high risks and difficulties a trucker faces as mentioned in the comments above when making a decision. Could we find a "level" playing field in this trucking business by enforcing the same wage stipulations for everyone involved.

Thanks for you time, its much appreciated,

Harold Ebersole,
Owner/Operator

Ebersole Trucking
(907)440-7717
(907)696-4004

LITTLE WILLOW EQUIPMENT

HC-89, Box 134

Willow, Alaska 99688-9702

Phone 907-495-6658 - Cell 907-715-6658 - Fax 907-495-6657

July 18, 2010

(E-Mailed to: Juneau.LSS-WH@alaska.gov)

Mr. Grey Mitchell
Director, Labor Standards and Safety
State of Alaska
Post Office Box 21149
Juneau, Alaska 99802

Dear Mr. Mitchell:

We are in receipt of the notice of a Stakeholders' Meeting to be held telephonically on Tuesday, July 20th. This meeting will be discussing prevailing wage issues associated with truck drivers working on public construction projects. Since we may not be available telephonically to attend the meeting, we have decided to put on concerns in writing for your review and consideration.

I believe that our concerns, as well as those of many of the truckers working both in the Valley and Anchorage, are the same. We would like for all truckers to be on the same playing field when it comes to working on a State and/or Federal project with regard to pay and per diem. We're also aware that some of our concerns fall between the parameters/regulations of different departments causing additional problems from a control standpoint.

When the "leased" trucks were finally done away with in 2008, I believe it was the intent of the Department of Labor (DOL) to make sure that all drivers (both employees and owner/operators) were going to receive the appropriate Davis-Bacon (hereinafter referred to as DB) wages and benefits as published by the DOL.

In speaking with Patty Windel and Warren Petrasek of the Wasilla DOL office, it was believed that the trucking rates would increase because of the change. We were given a copy of 8 AAC 20.020(d) and (e) which state as follows:

- (d) Owner/operators who perform duties as laborers, mechanics, or field surveyors while working as contractors or subcontractors on a public work project shall be included on their certified payrolls in the same manner as any other laborer, mechanic, or field surveyor. However, an owner/operator who performs duties as a laborer, mechanic, field surveyor is not required to pay themselves each reporting period, but shall report hours worked and actual payment received under the terms of the contract and the

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period covered by each payment. After deducting operating expenses, the actual payment received by an owner/operator performing duties as laborer, mechanic, or field surveyor must meet or exceed the minimum prevailing rate of pay in the applicable classification for each hour worked on a public construction project.

- (e) If a contractor (broker) is under contract to provide trucks on a public construction project and leases a truck to an individual truck driver or dispatches an owner/operator working on that same project, the contractor (broker) shall pay no less than the prevailing wage for each hour worked each certified payroll reporting period to that driver.

We spoke with Warren regarding the phrase, "...after deducting operating expenses..." because this figure varies greatly from trucking company to trucking company based on things such as equipment (is it paid for in full or is there a loan payment involved), insurance costs (which would vary based on the driving history of both the driver and the company's claim record), fuel would vary from project to project (some projects are bid wherein the general pays for the fuel -- out-of-town projects), maintenance costs on the equipment (provided by the owner/operator themselves or is it provided by a third-party or is it a combination of both), etc. Warren couldn't supply us with a definitive figure in this regard. We attempted to explain to him that there would be a large variance from company to company.

Although the "leases" have been done away with, we've heard (hearsay only) that some truckers are finding loopholes and some have formed what they're calling co-ops. They'll place their drivers on the co-ops paperwork as members of the co-op, but they only receive wages and not a percentage of the company or its profits. The titles and registrations are changed to indicate the co-op but by year-end or when the driver is either laid off or quits, their names are removed from the co-op's records. There are also some trucking firms who are paying minimum wage to their drivers when they are not working on DB projects but who are paying DB wages when due (while on the footprint of the project unless that amounts to one hour or less a day).

With regard to DB wages, the majority of the truckers would like to see the entire project be DB rather than just while the trucks are on the "footprint" of the project. This would allow all truckers to bid on the projects on an equal footing and see to it that the project wages were paid to all of the drivers. We understand; however, that this may not be possible due to *Quality Asphalt Paving, Inc. v. State of Alaska, Department of Labor, Case No. 3AN-93-2052-CI*.

Since the removal of the leases, rather than the hourly rates going up to compensate the drivers, they have instead fallen to a low we haven't seen in about five years, which we don't believe was the original intent of the change.

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Our second major concern is that of double-shifting by the same driver. This can cause a major safety issue, which we have discussed with Mr. Dan Breeden, Director of MSC - MS/CVE (Commercial Vehicle Enforcement) of the DOT&PF and others. We spoke with Mr. Breeden regarding the death of a trucker named Greg Graves (work-related due to double shifting). Greg was an independent owner/operator who had worked for us in the past.

We attended a memorial for Greg at his Wasilla residence this past Sunday. Many of the people who showed up were truckers who were and are working on the same project (Anchorage International Airport). It was frustrating to hold our tongues when they advised that they were working 17-18 hours per day, seven days a week on the project, and then in the next breath stating how tired they were. This is clearly in violation of DOT and FMCSA regulations, and we still don't understand how they are able to get away with it. Mr. Breeden advised that they had done an investigation but hadn't been able to prove that Greg had been double-shifting on the project. If this is the case, they may have had him fill out two time cards (one for D-B time and one for non-DB time, possibly while he was stockpiling).

The main trucking subcontractor on the project is Alaska Pro Trucking (Danny Zipay). He and his dispatcher, Jennifer, in addition to personnel at Quality Asphalt Paving, have to be aware of the fact that many of the trucks are double-shifting (sole proprietors, same truck, working both shifts). In addition, Alaska Pro Trucking would be receiving copies of the driver's daily time sheets (at a minimum, one for each shift) which would indicate the driver's signature at the bottom. Two owner/operators we are aware of who are double-shifting are Gary Clark d/b/a C and C Enterprises, and Mike Cruz d/b/a Cruz-N-Services.

We say they would have to know because as a trucking subcontractor, we collect copies of the daily time sheets for invoicing purposes. I'm not sure how other truckers handle their invoicing, but we actually indicate the project, date, type of equipment used, hours worked, and trucking company for each day. If there are two shifts, I would further indicate a "day" shift and a "night" shift. We also maintain a dispatch log which indicates who was called out for a particular project. This is necessary to make sure that we receive all of the daily time sheets for our weekly billing. The only time a dispatch log would not be administered would be when we have a limited number of trucks (all the same trucks/drivers) on an out-of-town project, and we're being faxed all of the time sheets once a week for billing purposes.

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We've also heard that some of the drivers are/were driving both shifts but are/were signing different names to the time tickets to make it appear as if there was a different driver on each shift. If they're sole proprietors, then the "second" signature should be an "employee" and subject to payroll. If there's no payroll, then there was no second driver.

This letter is written simply as an indication of what's going on with one particular project; however, there are numerous projects, with different trucking contractors, where this same situation occurs. We, along with numerous other trucking companies in the South Central area, have talked to numerous state and federal agencies and have gotten absolutely nowhere. After speaking with these people, it's apparent that a lot of what's happening is due to the agencies not talking to one another or the problem falling between the cracks because not one particular agency can answer our concerns.

Our last concern relates to how per diem payments are verified. Point in question -- are the Anchorage trucks which are driving 75+ miles from Anchorage to work on the Parks Highway Project between MP 72 and 83 being paid per diem? a/k/a Plow (the trucking subcontractor) and several Anchorage-based owner/operators have been periodically working on this project. We have heard that the project is paying \$100/hour (for tractor and belly dump), but there has been no mention of per diem being paid. Since these trucks are driving more than 65 miles from the Anchorage Post Office, they should be paid per diem. Who is responsible for verifying that this is done?

In conclusion, prices for fuel, oil, lubricants, parts, repairs/maintenance, etc. (everything we need to maintain our trucks in their proper condition) keep rising. With the new FMCSA regulations coming into play the end of this year, the DOL changes which were made in 2008 (leases no longer valid), and increased insurance costs (the general contractors have increased dramatically the limits of coverage they're requiring on their projects, as well as requiring Waivers of Subrogation and other miscellaneous coverages), it's hard to understand how trucking rates can continue dropping..

If you personally spoke with some of the independent owner/operators you find that they're currently being paid as low as \$95/hour on DB projects, which doesn't come close to covering their DB wages and overhead. In most cases, they're turning money; however, they're not making enough money to pay their bills and support a family, which a lot are trying to do.

You may ask yourself why some of the owner/operators are working for such low rates and run the risk of being involved in an accident due to double-shifting. It simply comes down to one thing - they all have bills to pay and, in the majority of cases, have a family to support. At the end of the year; however, someone down the line isn't going to get paid because they haven't turned enough money. Many will lose their equipment, go out-of-business, or file bankruptcy.

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Since owner/operators are self-employed, when the main construction season is over, they can't file for unemployment. Who will pay their bills then? Will they apply for assistance from the State?

Look at it from the typical owner/operator's standpoint.

1. One truck or tractor and trailer
2. Self-employed and subject to self-employment taxes, as well as income taxes.
3. In most cases, you work long hours during the short construction season attempting to make enough to last through the long non-construction season.
4. You work on projects you know will more than likely damage your equipment because you need the money to pay your bills.
5. You're responsible for all of your own operating expenses, the No. 1 being fuel to operate.
6. There are no benefits for you or your family, unless their children qualify for Denali Kid Care.
7. In most cases, they have to wait from 30-90 days for payment (sometimes possibly longer) for their services.
(NOTE: The majority of truckers do not invoice for their services, but rather rely on either the records of the trucking sub or general contractor (if they work direct).
8. Most won't fight for their money as they may be blacklisted or put at the bottom of the call-out list for a trucking company or companies in the future because they questioned their practices,
7. And, of course, there's definitely no retirement benefits.

We don't think you would work under these circumstances, but for most truckers, this is what they've done all of their lives. No one ever said that you could make a fortune working as a trucker. They've invested what little they had to perform a service most of them love and wouldn't trade for another. Their equipment depreciates, not appreciates, in value each year and which, of course, has to occasionally be updated, in most cases, by assuming another loan,

All we're asking is that all truckers earn a fair day's pay for a fair day's work. That isn't being done, and we're just looking for some answers to this dilemma.

As mentioned, there are major FMCSA regulation changes coming into play the end of this year. It is very likely that some truckers/trucking companies will not even qualify to operate their equipment (a new rating system is going to be used), as well as additional costs being incurred to even operate as a trucking company. Changes have to be made and all we're asking is that they start here.

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If you'd like to discuss this matter further or have additional questions, please don't hesitate to contact us. Thanks in advance for your consideration.

Sincerely,

Donna M. Sulkosky
Partner

DMS:dth

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STATE OF ALASKA

Department of Labor and Workforce Development

OFFICE OF THE COMMISSIONER

SEAN FARNELL, GOVERNOR

P.O. BOX 111149
JUNEAU, ALASKA 99811-1149

PHONE: (907) 465-2700
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June 16, 2010

The Honorable Hollis French
Alaska State Senate
716 West 4th Avenue, Suite 420
Anchorage, AK 99501

Dear Senator French,

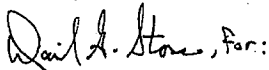
I received your letter dated June 8, 2010 regarding the payment of Little Davis-Bacon wages for truck drivers who deliver materials to a public construction site.

The department has been evaluating previous interpretations of the *Quality Asphalt Paving*¹ and the *Board of Trade, Inc. II*² cases after questions were raised by a concerned party in a letter dated February 23, 2010. Although our response has been delayed by the pressures and activities of the Legislative Session, this question has received considerable attention. Based on the questions raised, the department intends to consider potential changes to legal interpretations that have been in existence since 1994. In recognition of the fact that substantial changes to longstanding policies upon which the public has come to rely tend to invite costly litigation, we intend to start the process by hearing the concerns of interested parties.

In the coming weeks, the Department will convene a meeting of stakeholders with ample public notice to discuss the pros and cons of any changes to department practices or if changes are needed to the Department's regulations. Your letter along with other letters and public comments received will provide a basis to ensure a complete and fair review process.

I appreciate your interest in this matter and will send your office a notice of the stakeholder meeting once it is scheduled. If you have any further questions, please contact my office.

Sincerely,


Clark Bishop
Commissioner

¹ Quality Asphalt Paving, Inc. v. State of Alaska, Department of Labor, 3 AN-93-2062 CI, March 21, 1994
² Board of Trade, Inc. v. State of Alaska, Department of Labor, Sup. Ct. Op. #5771; January 23, 2004

Notes of the subject matter of the teleconference and other items that have a bearing on the subject of the July 20, 2010 discussions.

The idea of a hearing, "Public Hearing," is to mean what as the Commissioner of Labor wrote in his letter to Senator Hollis French dated June 16, 2010? Why is the Department of Labor willing to discuss these issues now when for the last 23 years they have turned a deaf ear to the earth hauling industry? There have been so many Representatives and Senators in the State of Alaska approached by the people in our industry and Senator French is the only Alaskan in Juneau who has offered to help us. I wonder if the Department of Labor Commissioner's office tried to dissuade Senator French from getting involved. It seems like the Department of Labor has power beyond our comprehension.

In the Alaska Department of Labor discussion announcement they use the term "truck driver's wages." If you do not separate Freight truck drivers from construction drivers hauling dirt products you are in error. Freight trucks generally haul one way only and only one trip a day. Almost never haul away as we do. In fact, it is more important to haul away than it is to haul in until the hole is dug out. The "X" material is also very often hauled to the same pit that supplies the gravel. Contractors are more efficient filling in the hole as they remove the old unwanted material. This approach helps suggest the LDB wages should be applied to the dirt drivers at all times.

The idea of these discussion's are long over due and the letter is extremely misleading.

Is Senator Hollis French going to be at the discussion or is he writing something? My understanding from Cindy Smith in Senator French's office will be in the teleconference.

Alaska Statutes Sec. 23.10.065. Minimum wages.

(a) Except as provided in (b) of this section and as otherwise provided by law, for hours worked in a pay period, whether the work is measured by time, piece, commission, or otherwise, an employer shall pay to each employee wages at a rate that is not less than \$7.25 an hour until December 31, 2009, and thereafter not less than 50 cents an hour more than the federal minimum wage. An employer may not apply tips or gratuities bestowed on employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938, as amended, does not apply to the minimum wage established by this section.

Note: This is the basis for "Mini Davis Bacon" wages. The subcontractors have decided that the drivers of the trucks can be paid minimum wage when not under the guidelines of Pamphlet 400 for LDB wages and paid LDB wages when they are. **This is not true of private work.** The trouble here

is the drivers are not given any guidelines in writing or verbal instructions as to how to keep their time for the difference. Charlotte Emerson of World Equipment, in Anchorage, is the only company who even comes close to this requirement. Drivers never see their reported times on certified payrolls and cannot attest to the accuracy. They are told to shut up and drive and the paper work will be handled by others. This has set up the most grievous offenses under the Little Davis Bacon and Davis Bacon Acts ever.

Mini Davis Bacon was created to offset LDB wages by paying an amount of minimum wage and DB wages at the other times. This is not what was intended for trucks on LDB

Sec. 44.62.245. Material incorporated by reference.

(1) post on the Alaska Online Public Notice System and publish in a newspaper of general circulation or trade or industry publication or in a regularly **published agency newsletter** or similar printed publication, not later than 15 days after the amended version of the document or other material becomes available, a notice that describes the affected regulation, the effective date of the amended version of the document or other material, and how a copy of the amended version may be obtained or reviewed.

Note: We Earth Haulers would have a published agency newsletter, but the industry will not support one due to the failings of many persons (truckers) who have in the past tried to lead the industry out of the horrible situation and failed because the Alaska Department of Labor will not enforce the rules, regulations and laws as written in the various Pamphlets issued by the Alaska Department of Labor.

8 AAC 30.020. Certified Payroll.

e) If a contractor is under contract to provide trucks on a public construction project and leases a truck to an individual truck driver or dispatches an owner/operator working on that same project, the contractor shall pay no less than the prevailing wage for each hour worked each certified payroll reporting period to that driver.

No certified payroll is ever audited for anything other than personnel who should be in the state working.

Instructions to drivers for time keeping is not done!

Lease: See Page 18 of Tax Book

To qualify as an independent contractor, a contract laborer **must meet all three** of the following conditions:

- 1) Be free from direction and control
- 2) Not be in the employer's usual course or place of business
- 3) Be customarily working in an independent trade or business of the same nature.

There are less than five trucking owner operators among many who lease equipment working on a Little Davis Bacon Project or Davis Bacon Project who can meet the above guidelines. The Division of Wage and Hour can believe they have investigated but they would be wrong. It is really no different than the Division of Security Tax that published a letter on 4-23-2009 that stated this. They did not follow up and did not change anything. This supports the idea most trucker/brokers/general contractors have that the Department of Labor is not going to enforce any rules, regulations or laws as they have not done for the last 23 years!

48th Street project was \$130/hr in 2008 and \$79 in 2009. Why is the Alaska Department of Labor not questioning the \$79/hr price on the 48th street project as not meeting the Pamphlet 600 requirements? At \$47.00 per hour the owner of the truck is earning only \$32 per hour for their truck. Does no one see the troubles here?

There are companies who have insisted the drivers sign over their LDB pay checks and accept their regular pay checks as a way around LDB. Wage and Hour has not found this issue because they have not looked for it even though they have heard about it.

Other contractors insist the driver pay back the difference! This way at least the certified payrolls appear to be correct! The drivers do not realize the taxes that are due on the checks written to them at the end of the year. There are more than 30 percent of dirt truckers who owe back taxes to the IRS for more than 10 years. I was behind by six years before I decided to get rid of my trucks. I have now paid all the back taxes and it gives me drive to fight for the dirt truck driver who is so abused by the industry supported by the Alaska Department of Labor.

Starting with the 48th street job 2009 the drivers owner-operators were forced to fill out their own certified payrolls to receive their truck rate payments. It is only a delay to allow the broker or sub-contractor to keep the money for a longer time period of time! According to 8 AAC 30.020 in Pamphlet 400 part of this action is illegal. All drivers are to be paid at least the wages and benefits every week or two weeks and that is not being enforced. The Department/Division will not even discuss it! Except for North Star Trucking on the 48 Street project 2009 portion, the truckers were not told they would need to fill out the certified payroll paperwork and now the subcontractors are using the idea to hold up payment. Most subcontractors and truck driving Owner Operators have never seen a form, must less filled one out.

The Dept of Labor personnel including Grey Mitchell are not working and communicating with our industry. The unions are having some of the same troubles our industry is having. The Dept of Labor is not and has not been responsive. It is believed

the Department of Labor is not going to work with us.

We are very happy to have Commissioner Bishop set this discussion up but it has taken Senator Hollis French to make it happen after 16 years. I personally have worked with a number of representatives and State Senators who would not take any interest to help us.

The dirt trucking industry does not stand together because they fear the Department of Labor will not enforce the rules after the discussions and that has been proven to be true. It is also true that I have gotten comments from unions that they do not want to upset the Department of Labor out of fear!

Because the Department of Labor is not enforcing regulations and laws, Steve Hulse of Snowman Enterprises has lost \$500,000 per year over the last two years and will lose \$500,000 per year while he is in this business, if the Department does not enforce the rules to all participants. This is totally due to the actions of the Department of Labor. Steve would be here to talk but he is so tired of the lying and misleading statements from investigators and any one else he speaks with at the Alaska Department of Labor, Wage and Hour.

Think about the idea when anyone in our industry hears my name, Del Baldwin, they immediately back away because I will cause them to be blackballed in the industry!

Drivers' instructions don't exist! The trucking brokers generally don't want the drivers to know anything. Their motto is a stupid (uninformed) trucker is a good trucker. A number of sub-contractors will report here today that the driver does not fill out time sheets properly and that is why certified payrolls may not be correct! If a trucker asked almost anything he is signed out and sent home.

Hopeful and excited and then disappointment and then despair and then anger and then disrespect! This is the pattern any earth hauling person that deals with the Alaska Department of Labor experiences. It should not be this way but the corruption is so embedded it is unavoidable. I have not heard from any person dealing with the Alaska Department of Labor walking away happy except Quality Asphalt Products in 1994. Even then they sued the attorney to cut his \$14,000 fee in half to \$7,000.

The general contractor's have the money in their bid and the contract but do not want to give it to the trucking industry. They must always be prepared for The Alaska Wage and Hour Division to actually do its job of enforcing the regulations and laws.

The attitude of the truckers is so negative toward the Department of Labor. This is because the negative attitude has been generated by the Department of Labor over many, many years of abuse toward the truckers. Most truckers and trucking brokers who have had any dealings at all with the Department of Labor at any level, have come away with an attitude of disgust and that is not unfounded.

Truck drivers Start/Stop times:

The idea that dirt truck drivers (employees) starting their day in the truck at the owners yard and then drive to the work site and only start receiving pay at the time of loading the truck or the assigned time of being at the site is absurd. The drive time to the site is not compensated for. The drive time after the job site to the yard is not compensated for either. Portage does not cover the time required and is not acceptable. It is accepted by the drivers because they have no choice except to quiet.

Don't forget the court case or that is "police report" about the Ray Close's, Alaska Storm, and the driver being on the scofflaw list. Ray's name was on the time ticket because he wanted to avoid paying the driver LDB wages. The driver was not advised at all about how to keep his time. The truck was impounded because the driver was stopped by APD and was on the Scofflaw List. The APD Case number was given to Alaska Wage and Hour and the certified payroll was ignored! Ray Close was ignored! Ray Close owns Alaska Storm. Ray Close hired driver Julian: APD police case #08-45436, time ticket number 6685 under Fry's Services as Broker on the Elmore/Tudor intersection Project in 2008. Ray Close is indicated as the driver!

Fry's Services, LLC

4853 Nottingham Way
Anchorage, AK 99503
Ph: (907) 562-8214
Fax: (907) 562-8205

CONTRACTOR
WILKER

DATE 9-26-08 NC

OWNER OPERATOR / COMPANY
AK STRON

JOB LOCATION
TUDER + ELMA

HOURLY	TONNAGE
<u>X</u>	

HAULED FROM
TUDER + ELMA

START	STOP	TOTAL
<u>8 AM</u>	<u>11 AM</u>	<u>3 M</u>

TYPE MATERIAL
X

M	M	M

EQUIP# 833 DRI

M	M	M

ED ED&P BEL

FLAT VAN SEN

LOAD COUNT

TIME (LOAD)	TICKET NO.	NET WEIGHT	TIME (DUMP)	TIME (LOAD)	TICKET NO.
<u>1805</u>	<u>X</u>	<u>X</u>	<u>840</u>	13	
<u>2905</u>	<u>X</u>	<u>X</u>	<u>930</u>	14	
<u>3905</u>	<u>X</u>	<u>X</u>	<u>1000</u>	15	
4				16	
5				17	
6				18	
7				19	
8				20	
9				21	
10				22	
11				23	
12				24	

REASON FOR DOWN TIME: _____

TOTAL HOURS _____
TOTAL LOADS _____

White - Office Yellow - Office
Pink - Contractor Goldenrod - Driver

LARRY H
FOREMAN'S SIGNATURE

ALL BLANKS MUST BE FILLED IN - PAYMENT ON LATE TIME CARDS WILL BE DELAYED UNTIL THE NEXT

APD
Case # 08-45436

Photos: Regulation investigator Doug Love: In my experience of identifying trucking companies to the Department of Labor, Division of Wage and Hour, I have run into nothing but BRICK WALLS! Truck owners who are instructing the driver of their trucks to indicate the driver on the time ticket as the owner are acting illegally circumnavigating payroll taxes and rates. The Department has no desire to know about this action.

W&H Investigator Doug Love quoted to me in an effort to shut me up;

Sec. 36.10.190. Reporting provisions. An employer obligated to meet resident hire requirements under this chapter shall comply with the reporting provisions that the commissioner of labor determines are reasonably necessary to carry out this chapter. Except for statistical data, all information regarding specific employees is confidential and may not be released by the Department of Labor. However, confidential employee information may be shared between departments for purposes of this chapter.
(§ 5 ch 33 SLA 1986)

However, since I have purchased many certified payrolls he did not stop me. I have a letter from Sandy Canon, Statewide W&H Supervisor, who is also Doug Love's supervisor, advising me as to how to receive certified payrolls.

Unfortunately, drivers are not given very much information on projects, especially information about identifying projects to the Division of Wage and Hour. This action is very much at the direction of the General Contractor and the Trucking Brokers. It is their way of controlling the complaints filed by drivers who are being abused! Wage and Hour has been told this many times and continue to ignore it under the direction of Commissioner Bishop and Director Mitchell and the Supervisor Canon!

STATE OF ALASKA

Department of Labor and Workforce Development
Wage and Hour Administration
Labor Standards and Safety Division

Sarah Palin, Gov

3301 Eagle Street,
Anchorage, AK 9
PHONE: (907) 26
FAX: (907) 269-4
<http://www.labor.state.ak.us>

October 28, 2008

Lil Wheel Trucking
Attention: Del Baldwin
P. O. Box 241705
Anchorage, AK 99524

RE: REQUEST FOR INFORMATION DATED 10.6.08

Dear Mr. Baldwin:

You submitted a request for information on October 6, 2008, which has been approved. However, you attached a total of four pages of projects that you are asking for certified payrolls on from January 2007 through the present date.

This letter serves as a summary of the conversation between yourself, Vernon "Vern" Wagner and Warren Petrasek, where you were advised the list you submitted did not contain sufficient identifying information. We were unable to determine the projects you are interested in from the limited information you supplied to us.

Projects are closed each week in our office. Unless we can identify the projects we will not be able to retain the files you have requested. In order to assist us in identifying the information you are seeking, please supply the following for each project:

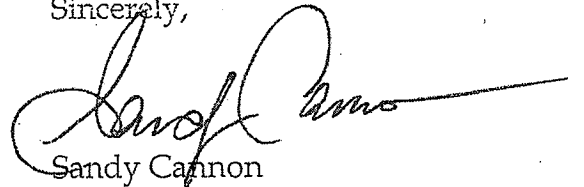
- Name of project (add a description if possible)
- Location of project
- Name of the Prime contractor
- Project number (if possible)

Lil Wheel Trucking
October 28, 2009
Page 2

Please submit any other identifying information to our office in the event y
still desire copies of these payrolls.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandy Cannon", with a long horizontal flourish extending to the right.

Sandy Cannon
Statewide Supervising Investigator
Wage and Hour Administration

SC:ws
cc: Warren Petrasek
Veronica Wagner
LilWheelRFI

Drivers don't get wages during a break down! The driver is stranded on the job or highway and the owner does not pay them their wage. If their truck is red tagged at the weigh station on the Glenn highway the wages stop at that point. This is simply wrong! The owner of the truck is strapped for cash and cannot keep their truck in a good safe operating condition on the highway because they generally have not been paid for their services in a timely manner.

Drivers are not paid wages while driving the owner's truck to and from the job!

Interviews cancelled:

In today's world there is little reason not to use the Internet to better the lives of dirt truckers and get the wages we deserve and work so hard for. However, at every corner the Alaska Department of Labor works against the Labor Industry! This negative attitude is not only true of the earth hauling industry; it is also true of many unions at the same time.

I sat up an interview with Mr. Roger Hickel of Roger Hickel Contracting and after getting approval from Mr. Hickel for the interview, we heard from Mr. Grey Mitchell of the Alaska Department of Labor. Mr. Mitchell distanced himself and the Alaska Department of Labor from me, stating the Department was in no way represented by Mr. Baldwin. Mr. Hickel cancelled the interview that was to be posted on my web site for the viewing of the industry. Mr. Hickel stated he had discussions with his foreman and decided they are all following the rules and that is simply not true!

A perfect example of this misconception is the 2008 project UAA Parking Garage Amenity, Anchorage, AK. Project Number UAA 514992(08)! This project started off as a standard project for the industry. Generally, the industry does not know what a Little Davis Bacon project is. The General Contractor did not report the fact of LDB status because it affected the price of the trucking! The General Contractor included all of the money required to handle the cost of LDB in his bid but did not want to pay it to the trucking companies as it would be a big addition to the profit structure of the project for the General Contractor.

In this case Roger Hickel Contracting contracted with Snowman Enterprises in 2008 to handle the trucking for the project. However, Mr. Hulseley was not informed that his project was Little Davis Bacon and knew little about Little Davis Bacon at the time. Alaska Department of Labor, Division Wage and Hour investigator Angelina Marsh, informed Mr. Hulseley as to the status of the job being Little Davis Bacon. Mr. Hulseley contacted the foreman of the project at Roger Hickel Contracting and it was confirmed the project was, in fact, Little Davis Bacon. At this point Mr. Hulseley informed Roger Hickel Contracting the job could not be done for \$125/hr and the price had to go to \$152.50/hr. Roger Hickel Contracting Company told Steve Hulseley, Snowman Enterprises, they would pay him the required amount of money to cover the completed work to that point, which was about \$12,000 extra dollars, and they would change the project trucking firm to AKA Plow, Tony Green, who would agree to the \$125/hr under the Little Davis Bacon conditions. Steve Hulseley of Snowman Enterprises had to just agree to disappear and go away. This action by the Roger Hickel Contracting Company

cost Snowman Enterprises a huge amount of money. It cost all of their drivers a huge lost of income.

Angelina Marsh gained a good deal of respect by the earth haulers but lost all of that respect when she stopped doing her job. She never followed up on the results of her actions when AKA Plow took over the trucking project due to pressure from higher management is my guess. There was not one certified payroll indicating proper times and payments on the job! There was not one earth hauling driver who was paid in accordance with Pamphlet 400 or 600. Snowman Enterprises had all Certified Payrolls filled out by his accountant as best they could with their understanding of LDB at the time.

At a later time Warren Petrsek, Alaska Department of Labor, Division Wage and Hour investigator, agreed to check on certified payroll checks issued by Tony Green of AKA Plow to assure the Department that Certified Payrolls were being followed properly. This never happen as reported by Warren Petrsek, himself.

Why would Wage and Hour not question this as they questioned Snowman Enterprises paying LDB.

Another issue:

In fact, there was not one lease of equipment on the UAA Project properly investigated by the Alaska Department of Labor, Commissioner Nelson, Security Tax Division relative to a tax clearance by the leasing companies! Below you will find regulations and a letter written by the Security Tax Division in an effort to control the leasing situation of trucks in Alaska, but it was never followed up on by the Security Tax Division. They, too, are in the Alaska Department of Labor and working hard "not" to support the hard working earth hauling driver's. In essence, all of the Alaska Department of Labor and its Divisions are working against the Labor forces in Alaska!

Lease: See Page 18 of Tax Book

To qualify as an independent contractor, a contract laborer **must meet all three** of the following conditions:

- 1) Be free from direction and control
- 2) Not be in the employer's usual course or place of business
- 3) Be customarily working in an independent trade or business of the same nature.

In Alaska there are less than five trucking owner operators among many who lease equipment working on a Little Davis Bacon Project or Davis Bacon Project who can meet the above guidelines. Ninety nine percent of the leasing companies are employees! The Division of Wage and Hour can believe they have investigated and believe the drivers who answered the questions posed to the driver and they are wrong. It is really no different than the Division of Security Tax that published a letter on 4-23-2009 that stated this. They did not follow up and did not change anything. In today's world the trucks are being rented to avoid payroll taxes and the same thing applied the payroll taxes are being circumnavigated. That is supporting the idea most trucker/brokers/general contractors

have that the Department of Labor, all Divisions, are not going to enforce any rules, regulations or laws as they have not done for the last 23 years!

STATE OF ALASKA

DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT
EMPLOYMENT SECURITY DIVISION/ ANCHORAGE FIELD TAX

Sarah Pa

3301 EAGLE ST.
PO BOX 24
ANCHORAGE
PHONE: (907) 269-4850
FAX: (907) 269-4850

April 23, 2009

Delma Baldwin
Lil Wheel Trucking
PO Box 241705
Anchorage, Ak 99524

Employment Security Tax has encountered workers being incorrectly classified as independent contractors in the trucking industry. If a driver does not own the vehicle he/she is driving, the driver is an employee of the owner of the truck. If the vehicle (employer) is not reporting the wages of the employee (driver) to the Employment Tax office, the prime contractor can be held liable for the taxes due.

It is the prime contractor and any other subcontractor's (truck broker) responsibility to ensure the driver on the job site either owns the truck he/she is driving or the driver is an employee of the owner of the truck. For prime contractors to avoid a possible tax liability, **tax clearance should be obtained from the owner of the truck indicating that all unemployment insurance taxes have been paid on the drivers.**

A tax clearance can only be requested by the owner of the vehicle (employer) after increments of work have been completed to present as proof to the prime contractor that their unemployment insurance taxes have been paid on the employee drivers. The clearance should include: **employer name & address, time period worked, specific job and contractor.**

A tax clearance is not necessary for a driver that owns and drives his/her single truck. Employee tax clearance will no longer be issued, because the driver is either the owner of the vehicle or he/she is an employee of the owner of the truck.

A truck owner with drivers and/or other staff must have an Employment Security Tax account to report the wages. An Employment Security Tax account can be obtained on line at the local tax office.

If you have any questions, please contact your local field tax office.

Anchorage Field Tax Office
3301 Eagle St. Room #106
Anchorage, AK 99503
(907) 269-4850

Juneau Field Tax Office
1111 W 8th St. Room 203
Juneau, AK 99811-5509
(907) 465-2787

Wasilla Field Tax Office
877 Commercial
Wasilla, AK 99687
(907) 352-2535

Fairbanks Field Tax Office
675 7th Avenue, Station L

Kenai Field Tax Office
11312 Kenai Spur Hwy, Suite 2

The Crime Lab project was a more difficult project to get a handle on. SOA, DOT & PF/58954 is the Contracting Agency Project number. I addressed this project because the Alaska Department of Labor, Wage and Hour Division investigator, Doug Love, required me to have photos of the trucks in question about the driver of a truck not being the driver listed on the time ticket. I was at the entrance of the project taking photos. The Nesser project manager came out and asked what I was doing. I told him. The next thing I hear is Chuck York, General Manger of Nesser, calling me and telling me I cannot be on the project property taking photos or any thing else because of liability insurance reasons. Even though I was just inside the bike path on the property he asked me not to be there. I moved. He insisted all the drivers on the project were being paid properly and I did not need to be involved. I suspected that Mr. York had a lot to hide. However, the Alaska Department of Labor, Wage and Hour started to make it more difficult for me to get copies of Certified Payrolls that I stopped following up on the project.

I received the following letter from Sandy Canon, Statewide Supervisor of Wage and Hour for the Alaska Department of Labor concerning the Crime Lab Project. She suggest with the Departments 2,700 projects in the State that the Department cannot be concerned with the abuse of the earth hauling and union issues as suggested by me. We are talking about many Hundreds of Millions of dollars out of the pockets of the earth hauling community that is causing poverty and unsafe trucks in our industry. It is very odd to me the Department of Labor with all its divisions cannot be bothered with infractions of Pamphlets 400 and 600 and Security Tax issues.

After that I received another email from Donna Glover, an Alaska Department of Labor, Wage and Hour investigator concerning the Crime Lab Project and the 48th Street Project. A copy of that email follows the letter from the Alaska Department of Labor. It suggests a connection to the 48th Street project that is in close proximity to the Crime Lab Project. In reality, the foreman of the Crime Lab project called the Alaska Department of Labor and reported I was representing myself as Alaska Department of Labor, Wage and Hour investigator and, of course, this was not true. The Alaska Department of Labor did not interview me as to the truth, they just sent the email instructing me to please cease and desist from the practice. It is amazing to me the investigators are so willing to believe anything about a trucker and not even question the people in Nesser. They did not even ask how Nesser got my name. It was from my business card, LilWheel Trucking, where I list my name and phone numbers. I gave my business card to the foreman who was asking me why I was inside the bike trail taking photos at the Crime Lab. Chuck York called me using my card with phone number and yet they suggest I represented myself as an Alaska Department of Labor, Wage and Hour investigator.

STATE OF ALASKA

Sarah Pa

Department of Labor and Workforce Development
Wage and Hour Administration
Labor Standards and Safety Division

3301 Eagle
Anchorage
PHONE:
FAX: (907)
<http://www.wad.state.ak.us>

April 12, 2009
Dictated: 4/7/09

Mr. Del Baldwin
P. O. Box 241705
Anchorage, AK 99524-1705

RE: ALASKA SCIENTIFIC CRIME DETECTION CENTER

Dear Mr. Baldwin:

Thank you for your email dated April 7, 2009, regarding the reference. You have indicated that you believe there may be some noncompliance issues regarding truck drivers on this project. Please be advised that the Department initiated enforcement actions to address truck drivers' concerns on this project.

As you can appreciate, the Wage and Hour Administration administers programs which include: Wage Claims; Minimum Wage and Overtime Enforcement; Child Labor Enforcement; Prevailing Wage Enforcement; Employment Preference Enforcement; Licensing Employment Agencies; Construction Contractor Licensing; the Alaska Family Leave Act. Currently, the Anchorage office has a total of 10 investigators who primarily handle prevailing wage enforcements. These investigators are also responsible for many other duties, including telephone calls, on-site inspections, counter-work, conducting seminars and approving minor work. As we are rapidly entering our busy construction season, their primary goal is to conduct on-sites and gather information. Often follow-ups for these on-sites occur for long periods of time due to the nature of the follow-ups and the heavy work load. With over 2,700 open construction projects just in our immediate jurisdiction, focus is often not only on one project.

When complaints are made concerning a project, an investigator is assigned to the complaint. If that investigator determines that the project is nearing completion, they may request that project funds be withheld in the event wages are owed. If the project is not nearing completion, funds are usually not withheld and the

Mr. Del Baldwin
April 13, 2009
Page 2

It appears that you believe that the Wage and Hour Administration responsive to your complaints with regard to the trucking industry. On the part of Mr. Baldwin, we take any information that is provided to us seriously. However, we are obligated to prioritize our workload and depending on the current issues, we may not act upon the information in what you believe is a timely manner. As previously explained, *if we believe the project has impending payout status*, we can withhold funds.

Mr. Baldwin, if a truck driver, owner/operator, or an employee files a complaint, we will initiate a formal investigation. However, you have previously indicated that truck drivers are not willing to do so. Our offices will continue to determine compliance during the life of this project and will initiate an investigation on our own motion if violations become apparent. If a driver came forward with a complaint, the investigation process would begin immediately.

Again, any information you supply us will be directed to the appropriate investigator.

Sincerely,



Sandy Cannon
Statewide Supervising Investigator
Wage and Hour Administration

SC:ws
Baldwin Reply

E-mail to Del Baldwin

0:

RE: 48th Avenue Extension, Elmore Rd to Boniface Prkwy, 08/09-9776A

As previously communicated, the Wage and Hour Administration has reviewed you that trucks drivers on the above referenced project are not being paid prevailing wage, the payrolls are not being submitted or do not accurately reflect compensable time. In response to your allegations, each subcontractor providing truck hauling services for this project is being investigated to verify the merit of your allegations and to ensure statutory compliance.

If the Department finds that any driver-employee on this project has not been provided with a prevailing wage enforcement action will be taken to secure all unpaid wages. If the Department finds that a contractor-employer has not submitted certified payrolls, enforcement action will be taken on this issue.

Receipt of certified payrolls are being cross-referenced against the list of contract drivers you provided and also against information received from other sources. Every contractor is being audited for prevailing wage compliance. Additionally, Wage and Hour Investigators are providing education and assistance to each contractor-employer or driver-employee that contacts them with questions regarding certified payrolls, compensable time or any other issues. If certified payrolls received are not complete or are inaccurate, the first action taken will be to educate. On a large scale, enforcement policies are being emphasized at preconstruction conferences and agreements.

While you are correct in your assertion that payment of prevailing wage may not be specified in any contractual terms or business agreement entered into between two contractor-employees, the relationship between each party that determines the responsibility for filing compliant payrolls is the timely payment of prevailing wages. Part of the enforcement process in this matter is to determine the relationship between each driver and contractor.

Therefore, your blanket assertion that Northstar Trucking (NST) bears the sole responsibility for the timely payment of wages due every truck driver on the 48th Avenue project is in error. Specifically, the responsibility falls as follows:

- NST, as contractor-employer, is responsible for the weekly payment of prevailing wages to driver-employees and for filing certified payrolls at least bi-weekly.
- Likewise, each trucking subcontractor-employer is individually obligated and liable for the accurate payment of prevailing wage to their driver-employees.
- If any bona-fide owner-operator is providing hauling services, the owner-operator must submit their own certified payroll. However, a true owner-operator is not required to pay prevailing wage weekly unless the owner-operator is incorporated or an LLC filing taxes as a corporation. If an owner-operator must receive prevailing wage after expenses.
- If an owner-operator hires a driver to drive a truck owned by the owner-operator, the driver-employee is now treated as a contractor-employee and must pay the driver-employee to submit certified payrolls no less than bi-weekly.

- If a driver is leasing a truck from a contractor-lessor, and the contractor-lessor dispatches a driver to a public construction project, then the contractor-lessor is responsible for certified payrolls and for paying the driver-leasee at least every other week. The driver must receive prevailing wage after expenses. If a driver has not received prevailing wages after expenses, a complaint must be filed before any enforcement action will be taken.

It is clear that you are determined, persistent and passionate in your cause. However, Wage and Hour Administration is an educational and enforcement agency within the Department of Labor, not a legislative one. While a Wage and Hour Investigator does pursue unpaid wages for employees working public construction, each investigation is approached from a neutral, fair position and due process is afforded to all parties with a vested interest. However, the Department cannot resolve issues that are outside of the Department's jurisdiction. As such, the Department cannot mediate contractual issues between contractors and subcontractors.

Moreover, Anchorage has over 1700 open public construction projects. The 48th Avenue project is currently receiving priority enforcement time and resources. However, the investigation and enforcement process is most effective when the Department is able to focus its time, resources and energy on substantive issues, rather than expending time on non-substantive and non-judicial issues or on defamatory comments.

Lastly, the Department is receiving reports that you may be representing yourself as a Wage and Hour Investigator or as an independent investigator authorized to collect information on behalf of Wage and Hour Administration. If these reports are true, we are asking you to cease and desist. The Department does appreciate and accept information from outside organizations and the Department does not authorize any outside person to investigate on behalf of the Department. Information you have provided thus far is being utilized and we will continue to utilize any information you submit. However, do not solicit information on our behalf by indicating you are a Wage and Hour representative. If you have any questions regarding this specific matter, contact Sandy Casper, Statewide Supervising Investigator, at (907) 269-4909.

Please give the investigation and enforcement process time to work. Your cooperation and patience during the course of these investigations is greatly appreciated.

Video of the schooling seminars on certified payrolls: I wrote Warren Petrasek about video taping a certified payroll seminar so I could place it in my web site www.alasksdirt.com and the earth hauling industry could view it at their leisure and learn how to deal with payrolls and the Department of Labor, Wage and Hour. Warren wrote me back and told me the Department Policy would not allow taping of seminars! There was another seminar recently at the General Contractors Association offices that a number of contractors attended and it was reported to me that they simply could not make any sense out of the information presented by the Alaska Department of Labor, Wage and Hour investigator Warren Petrasek and another Federal Department of Labor, Wage and Hour investigator of which I do not have the name. The reason for the videos of the seminars on my web site is to try and teach the industry about Little Davis Bacon Certified Payrolls because the regular seminars are not doing a very good job.

Many times, high ranking trucking firm owners have told the Alaska Department of Labor they feel like they are operating illegally and one changed its name to Illegal Trucking for a short time to note the fact. This is because CERTIFIED PAYROLLS IN ALASKA ON LITTLE DAVIS BACON AND DAVIS BACON PROJECTS ARE SIMPLY CORRUPT AS THEY CAN BE!

PO Box 91423
Anchorage, AK 99509

RECEIVED

JUL 19 2010

LSS

Grey Mitchell
Director, Labor Standard & Safety
PO Box 111149
Juneau, AK 99811

July 14, 2010

RE: Truck Drivers on Public Construction Projects

I suggest the State DOT in conjunction with the DOL inform Truckers of the possibility that DB wages may be necessary on a specific Project at the time they certify a truck. The DOL should then contact the Contractor and have them update their list of Sub-contractors. When contractors know they will be watched they will be more willing to pay the Truckers the appropriate amount and not try to cheat the system and put the onus on the Trucking outfit *after the fact*.

The business of Truck Driving has a low threshold for entry and there are a number of misconceptions that lead many to believe this is a great way to make a very good living. Regretfully, many of the assumptions are based on illegal practices that have taken place for decades. I applaud your efforts to bring a level playing field to Truck Drivers on Public Construction Projects.

The key issue of when to pay for Davis Bacon wages begins with the Contractor. Trucking is a commodity and no contracts are typically lined up in advance. The Contractor calls a trucking outfit and tells them to be at a specific location on a certain date and time. There is no notification to the Trucker that this is a DB Project.

The State DOT must certify the MAGVW for each truck utilized on a State Project. This should be the first clue to the Trucker that the Project could involve DB wages. Many truckers do not understand this. However, all truckers are afraid that by questioning the Contractor they will be removed from the Project and not utilized by that Contractor on future projects.

In short, the Truckers may be ignorant of DB requirements and the Contractor does everything possible to keep the truckers in the dark. A month after the project is complete the Contractor sends a notice to the Trucker telling them that this was a DB Project and they need to supply a proper Certified Payroll in order to receive payment.

What now? Should the trucker lie about the wages paid? He certainly can't cry foul and tell the Contractor that they need to pay more money or he will cut himself off from future work.

The Municipalities don't care about who is breaking the laws as long as they get the job done at the cheapest cost. In fact, they will even pay for overweight trucks but only the legal weight part of the load. This is not very supportive of the law.

However, the State does have a history of showing interest in making sure the laws are being followed. They certify each truck and refuse to pay any money for overweight loads. With this support for following all the laws I see no reason why the State would not be in favor of making sure Truckers are getting paid appropriately on their projects.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arthur Solvang', written in a cursive style.

Arthur Solvang

St Clair, Tina (DOL)

From: LSS-WH, Juneau (DOL sponsored)
Sent: Tuesday, July 20, 2010 8:28 AM
To: St Clair, Tina (DOL)
Subject: FW: Trucks/DB wages

From: Sleipner [mailto:sleipner@strahlco.com]
Sent: Mon 7/19/2010 1:51 PM
To: LSS-WH, Juneau (DOL sponsored)
Subject: Fw: Trucks/DB wages

I'll try again, forgot the Juneau part of your address.

----- Original Message -----

From: Sleipner
To: LSS-WH@alaska.gov
Sent: Monday, July 19, 2010 12:33 PM
Subject: Trucks/DB wages

7/19/10

Dear Mr. Bishop,

I am writing this letter in response to your teleconference scheduled for Tuesday, July 20 about Little Davis-Bacon wages for truck drivers who haul in and out of a public construction site. I appreciate you looking into this absurd situation.

As a truck owner I find it impossible to put a truck to work and know if there will money left over at the end of the day. A truck driver is to get DB wages if they cross an imaginary line and not on the other side of the line. If there is a delay loading then we pay more DB time, no delay, less DB time? Is the driver more important, less important on one side of the line or the other? How can we ensure that the time on either side of the line is correct? How can we know how much per hour we need for the trucks when the wages can vary drastically depending on how the day goes?

Would it make sense in your office to pay people differently when they are typing, or on the phone? How would you keep track of the time? Are the more important doing one task than another?

Would you please explain to me, or give me the ruling that explains the reasoning for the policies as they are now. Is it even legal to have policies that pay one individual so much more than another individual working on the same project?

I feel *everyone* on the same job should be treated the same. It is the only way to ensure quality work from quality people. All drivers dispatched to DB jobs should receive DB pay from the time they sign in in the morning until they sign out at night, whether hauling exc. out or material in.

If a three hour teleconference may not be enough time, are there any public meetings scheduled? Could I please be notified of dates. Could I have a copy of all other written submissions as well as a copy of minutes from teleconference also?

Again I respect your willingness to look into this matter.

Regards,

Dick Rankins

Sleipner
1221 E 71st Avenue
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St Clair, Tina (DOL)

From: LSS-WH, Juneau (DOL sponsored)
Sent: Wednesday, July 21, 2010 8:15 AM
To: St Clair, Tina (DOL)
Subject: FW: Truck Driver Stakeholder Meeting Comments

From: Alaska Pro Truck [mailto:akprotruck@alaska.com]
Sent: Tue 7/20/2010 4:20 PM
To: LSS-WH, Juneau (DOL sponsored)
Subject: Truck Driver Stakeholder Meeting Comments

I am Erin Shaw and I am submitting comments on behalf of Alaska ProTruckers, Inc. We are a truck broker that performs work on both public and private construction projects – mostly in and around the Anchorage bowl.

First of all, thank you for taking comments on trucking. While I appreciate your initiative and willingness to listen to all of the trucking voices, I am skeptical that any changes made will actually help the situation. Here are our 3 biggest areas of concern.

1. The biggest complaint I receive is about payment to our subcontractors. It does not solve anything to squeeze the brokers to pay faster. You can enact and enforce as many policies/regulations as you want to control when brokers pay their own employees and owner/operators, however, this is doing nothing more than squeezing the brokers and it's not solving anything. Not to mention the question of it's legality. We brokers do not have unlimited financial resources. Yes, we enter the season with as much money as possible to cover fuel, employee wages, overhead, and Little Davis Bacon payments to owner/operators until we receive payment on projects. However, if you do the math, you'll realize that it's not enough. Brokers end up floating payments to employees and owner operators anywhere from 2 weeks to a month or longer (usually a month+ at the beginning of a project). This adds up quickly. Brokers aren't not paying our subcontractors faster because they don't want to – it's because there is only so much money that can be floated before running out. If you really want money to flow to drivers faster and more consistently, the payment system needs to change. The state/municipality/etc needs to pay the contractors and brokers faster and more frequently. Currently we don't get paid until after a pay estimate time period is completed (1st – 15th and 16th – last day of the month for the DOT projects, often longer for municipalities and other agencies), our invoice is approved by the contractor, and the contractor gets paid. Oh and most contractors only hand out checks one day a week. Best case scenario is approval of our trucking invoice within a week of the pay estimate period closing with payment coming from the contractor the following week. That's a month from the 1st date of work. Often the best case scenario is not possible because truck tickets from drivers are missing preventing the invoice from being finalized, the time on the ticket was added wrong and the driver needs to make a change, etc. Why doesn't the state have money set aside to give to the contractor and in turn the broker weekly to cover the estimated prevailing wages on a job at a minimum? Why are the brokers expected to float all of the money? I agree it's hard for drivers and they shouldn't float all the money either. But go further up the line – don't just stop at the broker and look to them as the cash flow solution because the cash flow just simply isn't there. Go to the source – the project owner.

2. We are all after the same goal – ensuring that we all earn a decent living. You have regulations and policies that you expect us to follow to ensure that this happens. How on earth are we supposed to follow these if we don't know that there's been a change in how they are applied?!?! In April, I reviewed the Alaska Department of Labor website to see if there were any changes for the upcoming season. In May, I printed off some items

for a subcontractor. Not once was it mentioned that I needed to be aware of an upcoming change on how a regulation was going to be enforced. All of a sudden, the trucker handbook changed and the only clue was a small New! next to the link. How can you expect anyone to follow your policies when you change them in the middle of the season without saying ANYTHING. Besides the fact that the change was not a "small" change. This was a drastic change to the amount of prevailing wages incurred on a job. Payroll often doubled on the days that export material was hauled. The already small margins and precious cash flow on these jobs just turned negative in many cases with this change. Besides, the wording in the handout is confusing. Return directly. Does that mean prevailing wages don't apply if my driver stops to get something to eat or to goes to the restroom before returning to the jobsite? What if the driver stops and gets a rock and hauls it to the jobsite to build a rock garden for his favorite foreman? What if I told you that your mortgage doubled two months ago and you need to pay the difference due from the last 2 months plus this month's payment by Friday? Why did it change and why didn't I tell you sooner...I don't know. I hold your mortgage; you don't get to ask questions. My questions/ comments may seem ridiculous, but so was the way that this change was handled. Many of us in the trucking world became out of compliance without having a clue that we were. This change occurred not only after all of the jobs were bid and awarded, but after we already started hauling for the season. Changes to policies/regulations should be made after public comment, at the end of the season, and before all of the jobs for the upcoming season are already bid. Additionally, older projects should be grandfathered in. Otherwise, you are just inviting noncompliance issues.

3. I understand that my final complaint can't easily be fixed. But why does trucking take so much paperwork and time and why do the state and federal governments have to treat prevailing wages for truck drivers so differently? For the state, import isn't subject unless you are hauling asphalt and export is calculated until you dump unless you are returning to the jobsite empty. In that case all of the driver's time is subject to prevailing wages until he/she doesn't return directly to the jobsite or stops working for the day. Plus the state mandates when to pay prevailing wages owner operators. This means not only do I need to calculate prevailing wages for my employees, I need to do it for owner/operators, too. It's not easy to get them to give your tickets and DB time so you can pay them. I have no idea why, but some drivers just hate giving you their tickets. As if I magically know the information and don't need them. The Federal guidelines are so much simpler. They are much easier to understand and follow. All time on the jobsite is subject to prevailing wages. From when the wheels cross on to when they cross off. Simple. Easy to explain to a driver and get him/her to give you the correct time information. Also, I don't need to calculate the prevailing wages for owner operators. I just list their name on the certified payroll and write owner operator. No early payment that I then need to enter as a credit before paying out to owner operators on a job. Everything is a little faster. Simplifying things might make estimating prevailing wage payments by the project owner easier so that maybe, in a better world, cash would flow downhill from the project owner to all of us working on public construction easier and faster.

On another note, rumor has it that some people want private hauling and the entire work day to be covered by prevailing wages. I don't see this happening, but if it were to happen, it wouldn't necessarily be the solution. Either the contractor would use his own trucks because there wouldn't be an incentive not to or a lot of owner operators would be used because they would be cheaper since they don't get overtime. You could try to standardize the owner operator rate, but then you would have to address fuel, maintenance, etc. Not all trucks use the same amount of fuel and have the same maintenance costs, or even the same truck payment. You can't get rid of the variables no matter how hard you try. People will still complain. Some problems just aren't solved by over regulation. And the complaints – they'll never end. Some people complain just to complain. Some people complain because they don't like you. Others have a legitimate complaint. We're hoping that you follow a less is sometimes more approach to trying to solve all of the trucking complaints and stop constantly changing your policies and regulations. But if you do decide to change something, please give us plenty of notice.

Thank you for your time.

Mitchell, Grey R (DOL)

From: JP FREIE [frysservices@yahoo.com]
Sent: Monday, July 19, 2010 6:11 PM
To: Mitchell, Grey R (DOL); charolet emerson; Cannon, Sandy L (DOL); donna stark
Subject: RE: Trucking Stakeholders Meeting

Mr. Mitchell,

Regarding your response to my July 8, 2010 email:

The scheduling, timing and setup of this conference is disappointing and poorly planned. While some business owners may be able to attend the teleconference, the Department's poor scheduling of this event will preclude the majority of the stakeholders from taking an active part of the event. This teleconference is being held during the busiest part of the construction season and in the middle of the workday when most stakeholders are working. Maybe this is an oversight on the part of the department and maybe it was intentionally planned to limit the number of participants. The fact that stakeholders can email or send written comments is not an alternative to being able to vocalize their frustration when their livelihood is at stake. Despite the poor planning, each major stakeholder participant has made a commitment to make sure that all stakeholder issues will be put presented whether they represent the position of the employee, an owner/operator or a truck broker.

Further, while a step in the right direction, the conference alone is not going to resolve any issues. The most effective and direct route to real resolution is for the Commissioner's office to engage in a meeting or series of meetings with the major stakeholders in the industry to discuss and work through the possible resolutions and the Department of Labor's role in the resolution process. As it stands right now, the teleconference is merely designed to hear complaints. Your office has not provided any indication as to what the Department is going to do with this information or what action the Department is intending on taking if any action at all.

It is the industry's belief that the Department already is and has been aware of the issues the industry has been experiencing. If the Department's position is one of ignorance, than its ignorance by choice and your office is not communicating with the state's investigators that take in our complaints. What is apparent is that investigators that can only fix or enforce as they are directed by Labor management. Our complaints have accomplished nothing in the way of getting things changed and change is needed not another opportunity to complain. Interestingly, this public display of interest has been initiated at the onset of the battle for the governor's office. If the only hope of change within the Department of Labor practices is a change in state leadership, then we are prepared to actively support that change. We are also prepared to, if necessary; use the election fervor to bring our issues in front of the public. Basically, we are going to persevere until our goals are achieved and we will take our issues to whatever office or state official that has the power to make it happen. Hopefully, forward change will start at this level of administration.

Respectfully,

J.P. FREIE
President/CEO

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--- On **Thu, 7/8/10, Mitchell, Grey R (DOL)** <grey.mitchell@alaska.gov> wrote:

From: Mitchell, Grey R (DOL) <grey.mitchell@alaska.gov>
Subject: RE: Trucking Stakeholders Meeting
To: "JP FREIE" <frysservices@yahoo.com>
Cc: "Cannon, Sandy L (DOL)" <sandy.cannon@alaska.gov>
Date: Thursday, July 8, 2010, 7:23 PM

Dear Mr. Freie,

Thank you for your interest.

The stakeholder meeting is strictly designed as a teleconference to allow people to voice their thoughts about problems and solutions. To put everyone around the state on equal footing, comments will only be collected by telephone or in writing. There will be 100 lines available for the teleconference. At the beginning of the meeting, participants who wish to make a comment will be asked to identify themselves and we will then develop a schedule for people to comment and time limitations if any. We are estimating that each person will have about 3 minutes, which would allow for about 50 people to comment over the three hour period (with about a half hour of leeway). This may need to be adjusted as the meeting progresses.

Upon completion of the meeting, the department will compile a summary of the comments and post those on the Wage and Hour web site for interested parties to review, so there shouldn't be a need for people to hang on the line to listen to every comment. We will also be making a recording of the comments. Interested parties could make a request for a copy of the recording under the Alaska Public Records Act.

The meeting is not designed to be a question and answer forum, as this would take away from the purpose of the meeting, which is to allow for the public to provide input. I will be on the telephone to moderate the meeting and help answer questions that do not require prolonged complex answers. Participants may be asked to present particular questions in writing. This way, you will receive a written response that you can rely on based on a specific set of circumstances. The department is available to answer your more complex questions at any time other than at this public stakeholder meeting.

Let me know if you have additional questions.

Grey Mitchell

Director, Labor Standards and Safety

907.465.4855

From: JP FREIE [mailto:frysservices@yahoo.com]
Sent: Thursday, July 08, 2010 1:02 PM
To: Mitchell, Grey R (DOL); Cannon, Sandy L (DOL); charolet emerson; donna stark
Subject: Trucking Stakeholders Meeting

Mr. Mitchell,

Thank you for your initiative to meet with trucking industry stakeholders. This is long overdue and trucking stakeholders are hoping this gesture from you and the Commissioner is a genuine intent to resolve the issues that have arisen and to open a productive and ongoing channel of communication and mutual respect.

I have several questions regarding the Stakeholder Meeting.

1. Is it possible to attend this meeting in person instead of via teleconference?
2. Is there a limit to the number of participants that the teleconference system can receive?
3. Who is the chairman of the meeting and what other Department of Labor representatives will be available to address questions?
4. Are you going to poll and record the names of the participants?
5. How much time will be devoted to listening to and addressing participant's comments and questions?
6. How are you going to manage the queuing of participant's comments and questions?
7. Will there be a hard copy transcription or digital record of the meeting available for stakeholders not able to participate?

Thank you in advance for your prompt response.

J.P. FREIE

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