

Building Contractors Association of New Jersey

NATIONAL LABOR NEWS

December 2009

BCANJ's Quarterly Labor Update

Building Contractors Association of New Jersey publishes the National Labor News quarterly as an insert in our monthly Update in March, June, September and December. We will continue to focus on local and state issues via our monthly Update and regular bulletins. We welcome your comments.

More Construction Union Wins in 2009

In September, we reported unionization rates in the US in 2008 had returned to levels of a decade ago. Augmenting that, construction unions won 85.7% of the elections to decide unionization in the first half of 2009. Among the 10 most active unions were the Operating Engineers and Laborers.

States Influence Model Language on Misclassification

New Jersey's "stop-work" order, passed in July 2009, is just one of several state laws enacted this year to punish employers for willfully misclassifying workers. Colorado, Delaware and Maryland chimed in with laws that, if knowingly violated, can result in stiff fines, debarment and stop-work orders. The legislative actions were taken in response to a problem that affects millions of workers who lose out on wages and benefits, and state governments short-changed by huge losses in payroll tax revenue.

However, in November, the National Conference of Insurance Legislators approved model language intended to exempt sole proprietors and small businesses from misclassification

laws the NCOIL considers "overly broad." NCOIL is offering the "Model Construction Industry Workers' Compensation Coverage Act" to state legislators who seek to limit the scope of their worker misclassification laws. Much of the language comes from Tennessee, West Virginia and Florida, which have already passed tough misclassification laws.

Provisions in the model would require near-universal coverage for workers on construction sites, exempting only sole proprietors working on residential projects. But, if a sole proprietor served as a subcontractor on any other job, or took on a helper, the sole proprietor would have to provide coverage. Liability provisions in the model hold primary contractors liable for coverage if there is an injury, and defines a primary contractor as a general contractor who hires a sole proprietor as a worker or an individual hired by a subcontractor as a worker. The effect is to establish upstream liability to hold primary contractors responsible for the uninsured employees of their subcontractors who get injured on the job.

Prevailing Wage Update

The US Environmental Protection Agency issued guidance on prevailing wage provisions for clean water and drinking water projects funded in

FY2010. Builders and contractors have to pay prevailing wage under federal Davis-Bacon requirements on infrastructure projects that use federal revolving loan funds “for the entirety of the construction activities financed by the assistance through completion of construction, no matter when construction begins.”

The “Jobs for Main Street Act of 2010,” informally called the “Jobs Bill,” was approved by the House in mid-December and headed to the Senate with Davis-Bacon requirements. The bill covers multiple appropriations, including transportation funding and school construction.

Laborers Awarded Weatherization Training Grant

New Jersey’s DOL awarded the New Jersey Building Laborers Training and Apprenticeship Fund \$2.8 million to train 600 State residents in residential energy-efficiency weatherization, preparing them to perform projects funded by the American Recovery and Reinvestment Act, which allocated \$118 million for weatherization projects in New Jersey. The DOL has established a minimum prevailing wage of \$17.40 per hour for weatherization workers in the State; the expected wage for weatherization workers in the region, including benefits, will be \$22 per hour.

As part of the DOL grant, the Fund will partner with New Jersey Vocational Technical Schools, the Black Ministers Council of New Jersey, Laborers International Union of North America, Laborers Local Union 55 and various State and County Workforce Agencies, and work with community-based organizations that deliver weatherization services in the State.

Multiemployer Pension Funds Relief Bill

In late October, Rep. Earl Pomeroy (D-ND) and Rep. Pat Tiberi (R-OH) introduced new legislation to provide pension funding relief that would meet the challenge of sky-high pension costs and enable employers to retain or even grow their workforce. The Preserve Benefits and Jobs Act is designed to restore defined benefits plans to financial soundness over time, so that employers would not have to freeze their pension plans or cut the workforce to make up for pension losses. The Act would cover multiemployer pension plans. It was referred to the House Subcommittee on Health, Employment, Labor, and Pensions on December 8, 2009; we will continue to monitor its progress.

Construction Job Loss Rate Slows

Across the country, the rate of unemployment in the construction industry hit 19.4% in November, just about double the overall unemployment rate. The faintly good news is the rate of job losses for the second half of 2009 slowed. Job losses averaged 63,000 per month from May to October, considerably less than the average of 117,000 jobs lost per month from November 2008 through April 2009. November saw a loss of 27,000 jobs, with 86% in nonresidential construction, a smaller number due in large part to good weather conditions in most of the US. In New Jersey, 2,800 construction jobs were lost.

AGC of America Chief Economist Ken Simonson stated, “The fact fewer people lost their job in construction this month is little solace for the one in five construction workers out of a job today. This is yet another reminder that our economy will not be able to fully recover until we find new ways to drive demand for construction services.”