

The NW Public Works Report

Third Quarter Report 2006
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Fair Contracting Foundation



\$5 Million Mark Hit

Third Quarter wage & impact figures put FCF over the \$5 million mark for the lifetime of the Foundation

With a \$32,000 wage recovery this May for 12 Carpenters & Laborers on the Columbia Villa Community Campus project in Northeast Portland, filed by Investigator Paul Askew, FCF went over \$5 million dollars in wage recoveries, fines, and fees over the 17 year history of the Foundation.

The year 2002 saw our largest single recovery: over \$400,000 on the Port of Morrow's Kinzua Mill Project filed by our Senior Investigator, John Rowand.

FCF Yearly Totals

<u>Year</u>	<u>Recovery Total</u>
1992	\$24,311.05
1993	\$66,496.70
1994	\$235,207.35
1995	\$198,683.23
1996	\$179,942.77
1997	\$176,867.85
1998	\$335,857.34
1999	\$221,770.31
2000	\$135,945.26
2001	\$414,584.10
2002	\$868,170.93
2003	\$952,288.30
2004	\$477,754.28
2005	\$590,831.02
<u>2006 (1st & 2nd Qtr)</u>	<u>\$164,878.85</u>
Grand Total	\$5,043,589.34

FCF & Government Partnerships

OECCDD, ODOT, and county Development Councils sign training and compliance contracts

The second quarter of 2006 saw the finalization of four contracts between FCF and government agencies for Labor Standards compliance monitoring, training, and contractor pre-construction education. According to the National Alliance for Fair Contracting office, these may be the first and only direct-funding, government-to-foundation contracts in the nation.

For years FCF has provided free services to government agencies, from helping with the answers to arcane PWR questions, to conducting specific

investigations at an agency's request. Agencies, both contracting and enforcement, have long recognized the value of this service. Recently several agencies realized that if FCF is to continue to provide this high quality service they must be willing to help pay for it.

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FCF Mission Statement

By maintaining the highest standards of Neutrality, Credibility, and Professionalism, the Fair Contracting Foundation seeks to bring about Fairness throughout the public sector side of the construction industry and a "level playing field" for our Contributors.

Federal Funding Delays Costs Contractors Big-time

The third investigation was the interesting one.

“My first reaction is that (the letter) sounded like a threat”

BOLI collected \$199,074.00 for 42 Bridge Building Carpenters

TEA 21 funding hold-up snags contractors

With commitments to proceed with bridge projects in 2004 the Oregon Department of Transportation let several contracts with Oregon State funding alone. Ordinarily these projects use the Federal Davis Bacon Heavy Highway PWR, but with political wrangling over the highway budget, federal funds did not arrive in time to be included in a number of bridge projects, leading to the inclusion of State PWR in the contracts.

As pointed out by Carpenter’s Union Business Reps, some contractors incorrectly paid the State Carpenter Group 1 & 2 rate of \$28.50 (including benefits) which is correct for buildings in some counties; but the State has a separate wage rate for Bridge Building and Marine Carpenters (Carpenter Group 5) that is about the same as the Federal PWR of \$37.77, a difference of \$9.27 per hour.

“I suppose some contractors thought they were getting a bargain,” commented an ODOT official who asked not to be identified. FCF investigations turned up four projects where the incorrect PWR had been applied. One was beyond the statute of limitations; another involved a union contractor who immediately made up the back wages of over \$24,000.

The fourth investigation involved a contract that had just been awarded so the contractor wound up paying the correct PWR to the workers but took a big hit on their bottom line. The third investigation was the interesting one.

Politicians get involved on behalf of Contractor

At the time of FCF’s investigation into the Carpenter Group 5 PWR the Iron Workers had already filed a PWR Complaint against Huffman-Wright on

the Fords Crossing Bridge Project for Carpenters tying rebar, so when FCF produced documentation to the Oregon Bureau of Labor and Industries (BOLI) that there were Carpenter Group 5 issues -- the PWR Complaints were combined.

When it became apparent that the Carpenter Group 5 back wage claims alone would near \$200,000 Huffman-Wright balked and the BOLI effort to recover wages bogged down.

Four Republican lawmakers attempted to intervene on behalf of the contractor.

In a letter to Commissioner Dan Gardner the legislators, after suggesting that the Bureau should simply accept Huffman-Wright’s proposal for a settlement of \$94,000, the legislators went on to say: “In the current legislative budget environment, we do not imagine that there will be much sympathy for processes that operate on this inefficient level.”

“My first reaction is that sounded like a threat,” said Andi Miller of Oregon Common Cause, a non-partisan government watch dog agency. “And no matter how tight a budget is you shouldn’t hold an agency hostage to get a desired outcome.” A political firestorm ensued and the legislators backed off.

BOLI collected \$199,074.00 for 42 Bridge Building Carpenters who had been paid at the Carpenter Group 1 & 2 averaged rates. In addition \$34,556 was collected for Huffman-Wright’s failure to pay overtime for 29 workers of various trades. There were other smaller recoveries of \$18,247 for Iron Workers and \$1,892 for Pipe Fitters for a total of \$253,769 by BOLI for nearly 100 workers.

DOL Scores Big on Piecework

The U.S. Department of Labor out of Portland, Oregon recovers over \$18,000 for drywall piece-workers

In a first-of-its-kind co-operative investigation involving FCF, CASA of Oregon, and the USDOL, a dozen workers on the Lilac Meadows housing project for the Jackson County Housing Authority received back wages for all time worked. The workers had agreed to piecework wages with Oregon Drywall

out of Eugene. According to Davis - Bacon rules, piecework is allowable if the workers make the PWR per hour. "The HUD wage rate that applied to this project was only \$15.00 - and change - per hour", recalls Daniel Bonham who investigated the worker complaints on the project. "But at the end of the day most of these workers were only making \$8.00 to \$10.00 per hour." DOL has not decided whether to seek Federal debarment against the contractors involved at this time.

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Meet the FCF Team



Fair Contracting Foundation Staff

Left to Right: John Rowand, Corey Haan, Christie Kern, Daniel Bonham, Jennie Kordenat, Paul Askew.

Contact us

FCF provides assistance to workers, contractors and contracting agencies throughout Oregon and Southwest Washington to promote compliance with prevailing wage laws. If you wish to speak with someone in person, please call us at 503-244-3644, --toll free at 877-FCF-FAIR (877-323-3247), or e-mail us at fcffair@fcffair.org .
Se habla español.

The keys to FCF success

The most important factor in making the Fair Contracting Foundation unique, as well as successful in the labor compliance arena, is that we draw our Investigators from the Trades. We also look for people who have demonstrated a desire to serve their brother and sister workers, and the contractors they work

for by volunteering their personal time with community organizations.

"We can train anyone on the law, and procedures," states Daniel Bonham, Director of the Foundation. "What we cannot train is construction experience and a passion for workers' and contractors' rights. An Investigator has to bring the experience and passion with them."

Confidentiality

Contractors and employees who look to the Foundation for assistance can be assured of FCF's strict policy of confidentiality.



John Rowand, Sr. Compliance Investigator

John Rowand is our Senior Compliance Investigator at FCF. He has been with FCF since 1996 working as a Compliance Investigator, Interim Executive Director and finally as Senior Compliance Investigator. He is the former Assistant Director, Training Coordinator and Compliance Investigator for Northwest Fair Contracting Association located in Seattle, WA.

He served in the United States Air Force from 1961-1968. He is a 36 year member of LIUNA having served as Vice-President of Local 292. John also served as a delegate to both Washington

State Building Trades and Labor Council for five years. He is the recipient of the Wage and Hour Vision Award from the U.S. Department of Labor District Director.

John is a huge asset to FCF - the foundation has accomplished much of its success and notoriety due to his tireless dedication and vast knowledge. His personable demeanor and ability to communicate and build good working relationships has given him the reputation of a well respected and vital leader in the labor movement.



Paul Askew, Compliance Investigator

Paul was hired as a Compliance Investigator by Fair Contracting Foundation in 2005. Paul started his career in 1988 as a Laborer's Local 296 member by working at the Portland Ship Repair Yard where he worked as a marine laborer and supervisor. Paul became very active in his union after winning an election for shop steward in 1997. In 2000, after representing his union during the course of 67 Interest Based Bargaining sessions, Paul was selected by the Metal Trades to serve as a Deck Plate Committee Representative and work at the direction of the Contract Administrator for the Cascade

General Inc.-Metal Trades of Portland Joint Labor Management Committee.

This experience has paid off as Paul has proven to be a natural at investigations, already filing numerous wage complaints with BOLI, which have led to significant recoveries for workers. When asked what he enjoys about working for FCF, Paul said, "What I find most rewarding about being a Compliance Investigator for FCF is educating workers about prevailing wages and assisting workers in recovering unpaid prevailing wages that were unscrupulously withheld."



Christie Kern, Compliance Investigator

Christie Marie Kern moved to Portland from a strong union community in Milwaukee, Wisconsin.

Christie entered the carpenter's apprenticeship in 1983 specializing in Interior Systems and metal stud welding. It was through her love of welding that she entered into the world of codes, inspection and teaching, leading to a teaching position at the Willamette Carpenters Training Center.

Christie joined the FCF team in February 2006.

"As a Compliance Investigator covering the I-5 corridor from Salem south to Klamath Falls, Oregon, I enjoy the opportunity to meet with workers and the Building Trades of different markets, crafts and community arenas." She is currently a Delegate to the Pacific Northwest Regional Council of Carpenters.

Jennie Kordenat, Compliance Investigator

Jennie Kordenat is the newest Compliance Investigator for the FCF team as of July this year. She has been in the construction trades as an electrician since 1993. Jennie is in her second term as the IBEW Local 970's Recording Secretary and Executive Board member. In 2004 Washington Governor Gary Locke appointed her as

the labor representative to the Washington State Public Hospital District Project Review Board, where she still serves. Since coming to work for FCF, Jennie says, "I have been impressed by the positive impact the Foundation has on the goal to ensure a fair bidding process for all contractors on public works projects."



Corey Haan, Administrative Assistant

Corey Haan began her work for the Fair Contracting Foundation over 10 years ago. Her first assignments were mainly clerical, but she soon became involved in developing a database for tracking all public works projects in the state of Oregon. She later developed into the Foundation's ad hoc administrator in charge of day-to-day office operations. For a brief time she went to work for the Oregon District Council of Laborers in Portland, developing and implementing a strategic plan to obtain contractor participation for the USDOL Oregon wage survey.

Today, as the Foundation's Administrative Assistant, Corey remains the backbone of the Foundation's progress in charge of Operations and Programs. As a member of Laborers Local 320, Corey understands the importance of Labor for securing workers rights and benefits. "My favorite part about working for FCF is meeting the workers when they come to our office to interview with the Investigators or fill out Wage & Hour forms," Corey said. "It's a great feeling at the end of the day to know that you work for an organization that does so much good for people."



Daniel F. Bonham, Executive Director

Daniel F. Bonham has been with the Fair Contracting Foundation since January 2001 as an Investigator until October 2005, and as Director from then to the present. Daniel has worked in the construction industry for over 25 years as a Carpenter, Foreman, Superintendent, Project Manager/Estimator and small business owner.

"I have seen first hand the huge difference between working in states where there are prevailing wage protections on one hand and the so called 'right to work' states on the other," Daniel said. "As a worker, it was nearly impossible to provide a good future for my family in states lacking PWR laws, and as a construction manager and business owner it was difficult to get good hands. Since coming to Oregon in 1998 my family has

flourished, and I have seen how much better it is here for both workers and contractors. Since coming to work for the Foundation I've developed a passion for protecting the benefits we all receive from compliance with the prevailing wage laws."

Under Daniel's direction, the Foundation has increased its revenue base, and recently signed the first contract to receive direct government agency funding of any "fair-contracting" organization in the country. "The OECDD contract was the direct result of the work of my predecessors and the credibility developed by our Investigators and FCF's philosophy of neutrality", Daniel said. FCF maintains strict neutrality with respect to issues involving workers, contractors, labor organizations and contracting agencies.



Success in the Court System

GSL, IGS, the Coos County Pipe Line, and the Salem Conference Center

GSL later complained that in addition to the back wages, the developer had to spend "a couple hundred thousand dollars" to fight the BOLI lawsuit.

From time to time we hear that FCF is barking up the wrong tree: that we should resort more often to "private action" through lawyers, and not "waste our time" filing Complaints with government agencies like BOLI. However, our success (see article "\$5 Million Mark, *above*) belies this suggestion. The problems, as we see it, are 1) most lawyers won't take a case unless they are sure of a sizable pay-off. 2) Those that do take cases are often "in house" paid attorneys, and we cannot afford such services, and 3) it can be years before the working families see their back wages. Nevertheless, sometimes (unfortunately) our cases do go to court.

GSL: In a dispute with BOLI over the application of the PWR to a "Public-Private Partnership", the developer, GSL, was forced to pay over \$200,000 in back wages in an out-of-court settlement. A spokesman for GSL later complained that in addition to the back wages, the developer had to spend "a couple hundred thousand dollars" to fight the BOLI lawsuit. The PWR Complaint was originally filed by Investigator Dick Stolte (retired).

IGS: Towards the end of the now infamous Coos County Pipeline project (see MasTec and the Coos County Pipeline: below) a group of Pipe Weld Technicians (sometimes referred to as

"inspectors") contacted FCF to help them receive the PWR for their work on the pipe laying crews. We failed in an attempt to have the workers classified under the Pipe-fitter classification, but there remained the issue of overtime, and FCF assisted the workers in filing their Wage Claims. IGS claimed the workers were salaried and not entitled to overtime. BOLI differed. The day following FCF's deposition, IGS settled out-of-court for over \$18,000 in back overtime wages for the workers.

MasTec and the Coos County Pipeline: FCF conducted a text-book investigation into misclassification issues on this project in the summer of 2003 that resulted in the largest "Notice of Claim" (similar to a lien) in BOLI history: 8.4 million dollars against MasTec's bond. After the Complaint was filed, BOLI conducted an audit of MasTec's payroll that occupied two Compliance Specialists for nearly a year. MasTec refused to make good on the back wages owed, so BOLI sued. The case is scheduled for December 2006.

The Salem Conference Center: After receiving favorable determinations from both the USDOL and BOLI that the so called "back of house" contract with a Public Private Partnership with VIP's (the parent company for the Phoenix Inns) is covered under PWR regulations and wage rates, FCF filed PWR Complaints against the Salem Urban Renewal Agency, SURA. SURA refused to comply, so in 2004 BOLI sued. The case is still in the courts; no resolution is expected any time soon.

The Foundation's investigation resulted in the largest "Notice of Claim" in BOLI history: 8.4 million dollars.

Education and Commitment

FCF is a non-profit labor/management corporation dedicated to fairness in public works construction. The Foundation works to educate contractors and awarding agencies about state and federal wage laws, and to promote compliance with those laws. It is FCF's philosophy that with a knowledge of the law and a

commitment to fairness, both agencies and contractors can be assured that public works projects are awarded fairly, completed smoothly with the highest standard of quality, and constructed in compliance with the law.



*Reser Stadium
right before
completion Fall
2005*

Reser Stadium: Recovery Before-the-Fact

Quick intervention sets the stage for a smooth project

When union contractors called FCF in the spring of 2004 to complain that they could not compete for sub-bids on OSU's Reser Stadium project we were surprised to find that the University procurement department had applied the 2003 PWR to the sub-bids that came out in 2004. A quick research effort revealed that an individual in the procurement department had found what she thought was a weakness in the BOLI rules. Backed by an informal opinion by the University's Dept. of Justice attorney she applied the PWR from when the "Request for Proposal" (RFP) was advertised for bid rather than the date of the advertisements for sub-bids as per BOLI rules. FCF immediately filed a PWR Complaint that drew the personal attention of the Oregon Labor

Commissioner, Dan Gardner. He was able to quickly set the record straight on the application of the BOLI rules.

Not only did signatory contractors submit bids where they had previously decided not to bother, most of the awards went to union contractors. "We could not have manned the project with good people for those wage rates anyway," said one estimator.

[Author's note: One contractor from a Trade that does not contribute to FCF was not going to bid before the FCF intervention. They won the contract and over \$30,000 dollars (by one reliable estimate) were contributed into the Trade's Trust for hours worked on the Reser Stadium. It would have been nice to see some contributions to the Foundation as a result.]

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FCF Investigations and Worker Assistance

The Foundation works closely with a variety of state and federal agencies to investigate compliance on public works projects. A comprehensive investigation includes a check of proper bidding procedures, licensing and bonding, submittal of subcontractor lists, and payroll deductions.

FCF investigators monitor payroll records to compare them against actual hours worked, work with employees to ensure that correct wages and fringe benefits are paid, take witness statements and help employees fill out complaint forms if a violation is alleged. Assistance is also offered to help workers with information on their medical eligibility and pension vesting.



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FCF provides assistance to workers, contractors and contracting agencies throughout Oregon and Southwest Washington to promote compliance with prevailing wage laws.

We're on the Web!
www.fcffair.org

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The Fair Contracting Foundation is working for OECDD, ODOT, and BOLI.

We're working for the AGC and Allied Trades Signatory Contractors.

We're working for the Carpenters, Laborers, Painters & Allied Trades and Teamsters.

Are we working for you? If not, why not?

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