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U.S. SENATE CLIMATE CHANGE CLEARING HOUSE

United States Senate

October 21, 2013

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WASHINGTON, DC 20510-2107
202-224-2742

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617-565-8519

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SPRINGFIELD, MA 01101
413-785-4610

The Honorable Thomas E. Perez
U.S. Secretary of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Perez,

I write to ask you to investigate reports of companies offering training sessions for non-union companies on how to avoid the requirements of the Davis-Bacon Act, specifically the requirement to pay local prevailing wages on federally funded contracts. If these reports, which were brought to my attention by some of my constituents, are true, I am concerned that many hard-working Americans, including some citizens of Massachusetts, are being needlessly deprived of wages to which they are entitled under federal law.

As you know, the Davis-Bacon Act of 1931 is a cornerstone of federal labor law and applies to federal contract for construction, alteration, or repair of public works. The law requires that federal workers on these projects receive the local "prevailing wages" for their positions, with "prevailing wages" representing both the value of the local basic hourly wage and typical fringe benefits. In other words, the Act mandates that laborers and mechanics employed directly on the project site have to be paid at least the monetary value determined by the Department of Labor to be the typical compensation in the area for those positions. It prevents companies from engaging in a competitive race-to-the-bottom for federal bids that results in workers being paid at below-market rates, and it also helps prevent sub-standard work on federal construction projects. At its heart, then, the law ensures that what workers are paid for a federal construction project is fair pay for that area -- whether the project uses union or non-union workers.

Unfortunately, some of my constituents have forwarded to me information suggesting that some companies may be offering training sessions for companies on how to evade this critical law. Specifically, I have received a flyer concerning a seminar from Beneco Inc. that appears to offer such training; a copy of the flyer is attached to this letter. The flyer promises that the seminar will teach "non-union contractor[s] . . . [h]ow to SAVE 6-8% on Total Labor, Escape 25-30% on Every FRINGE Dollar in FICA Taxes, State & Federal Unemployment Taxes, Workers Compensation & General Liability, [and] BID Prevailing Wage Projects More Competitively." The flyer even includes the disturbing recommendation that non-union contractors should "STOP Spoiling Your Hourly Employees with High Prevailing Wage Rates."

On its face, the flyer's content is alarming. Prevailing wages are not something employees are spoiled by receiving, but are an inherent right of workers employed on federal construction contracts. Similarly, companies should never be allowed to "escape" their legal requirements to pay "State & Federal Unemployment Taxes, Workers Compensation and General Liability," regardless of whether they are involved in federal contracts. We all know that it is paramount that all companies respect the rule of law. Based on this flyer, I am deeply concerned that this type of seminar may be aimed at assisting non-union contractors in attendance in evading the Davis-Bacon Act and paying their workers on federal construction projects less than the locally prevailing wage.

Beneco advertises itself as "the nationwide Department of Labor approved plan for Non-Union Contractors doing federal, state, and municipal prevailing wage projects" and claims that "more than 2000 contractors in 40 states" have "learned about prevailing wage regulators and Department of Labor rules" by "using the Beneco plan." I am therefore concerned that this flyer may be merely one example of a widespread effort to encourage non-union contractors to evade or dodge Davis-Bacon Act requirements regarding prevailing wages. In fact, I have found other examples of this language in advertisements¹ for other Beneco² training seminars³ located across the country.

Given the possibility that this flyer is one piece of a broader effort, I urge you to immediately launch an investigation of whether companies are teaching federal contractors how to evade or dodge the Davis-Bacon Act. At the very least, I would strongly encourage you to send a representative to attend the training seminar advertised on the flyer, which will occur in the Boston area on October 30, 2013, so that the Department can evaluate its contents first-hand. I have also sent a copy of this letter to Attorney General Eric Holder.

In order to better understand whether contractors are following the Davis-Bacon Act's requirements on prevailing wages for federal contracts, I additionally request that you answer the following questions.

- 1) It is my understanding that Beneco has been offering training seminars on the Davis-Bacon Act for 20 years. Has the Department of Labor previously investigated Beneco's program of seminars for any reason or received any complaints thereon?

¹ Flyer for seminar in Atlanta, Georgia, held on April 16, 2013, available at <http://iecgeorgia.org/index.php/news8/current-news/209-iec-partners-with-beneco-to-offer-free-prevailing-wage-seminar-april-17th>.


² Flyer for seminar in Grapevine, Texas, held on March 20, 2013, available at http://www.iecdallas.com/pdf/2013_wage_seminar.pdf.

³ Flyer for seminar in Laurel, Maryland, held on December 5, 2012, page 21, available at <http://www.iecchesapeake.com/wp-content/uploads/2012/11/November2012web.pdf>.

- 2) Beneco claims that it "is the nationwide Department of Labor approved plan for Non-Union Contractors doing federal, state, and municipal prevailing wage projects." Is this claim accurate? If so, when did this approval occur and what was the process by which the Department of Labor approved the plan?
- 3) Under federal statute 18 U.S.C. § 709, whoever "falsely advertises or otherwise represents by any device whatsoever that his business, product, or service has been in any way endorsed, authorized, or approved by the National Credit Union Administration, the Government of the United States, or any agency thereof" is subject to a fine under the U.S. criminal code and "imprisonment for not more than one year, or both." Is it your opinion that the flyer's claim that its plan has been approved by the Department of Labor is consistent with this section of our criminal code?
- 4) According to federal regulation 5 C.F.R. 2635.702(c), "an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service, or enterprise," except in furtherance of statutory authority or "as a result of documentation of compliance with agency requirements or standards as a result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission." Has any employee of the Department of Labor allowed the Department's name to be used or permitted in an endorsement of any product or service, and if so, how is that consistent with this regulation?
- 5) Has the Department of Labor approved other companies' plans for "Non-Union Contractors doing federal, state, and municipal prevailing wage projects?" If so, how many plans have been approved, and what are the names of the companies who own those plans?
- 6) Is Beneco itself directly involved in any federal contracts with the Department of Labor?
- 7) Does the Department of Labor have any information about the techniques that are offered at Beneco seminars which are not already apparently derived from Department of Labor and Davis-Bacon Act regulations?

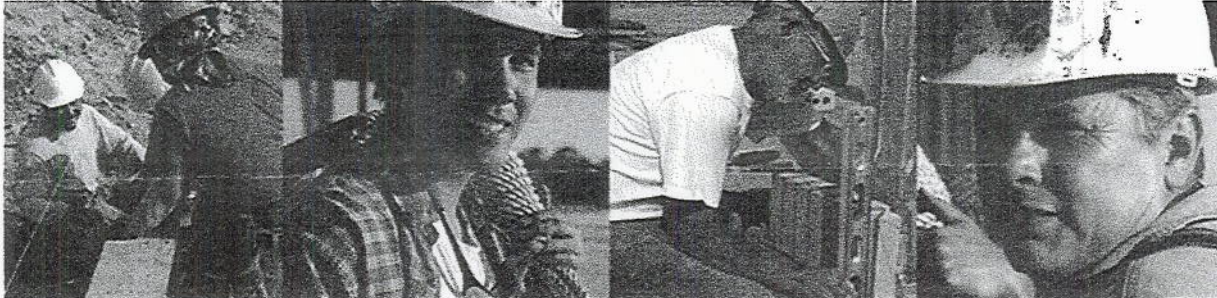
Thank you in advance for your assistance on this critical issue. Please feel free to contact Justin Slaughter on my staff with any questions by calling 202-224-2742. I ask that you respond to these questions by Tuesday, October 29.

Sincerely,


Edward J. Markey



**ARE YOU A NON-UNION CONTRACTOR
BIDDING DAVIS BACON/PREVAILING WAGE PROJECTS OR
A FEDERAL SERVICE CONTRACTOR BIDDING GOVERNMENT CONTRACTS?**



Learn how to SAVE 6% - 8% on total labor
when bidding/performing on all federal, state, and municipal prevailing wage projects.

**Prevailing Wage Seminar
BOSTON MARRIOTT QUINCY**

1000 Marriott Drive, Quincy, MA 02169

**WEDNESDAY
October 30th, 2013
10:30AM - 12:30PM**

BENECO is the nationwide Department of Labor approved plan for Non-Union Contractors doing federal, state, and municipal prevailing wage projects. Come and learn about prevailing wage regulations and Department of Labor rules as more than 2000 contractors in 40 states have done using the **BENECO** plan.

- How to **SAVE 6%-8% on Total Labor**
- **Escape 25%-30% on Every FRINGE Dollar in FICA Taxes, State & Federal Unemployment Taxes, Workers Compensation & General Liability**
- **BID Prevailing Wage Projects More Competitively**
- **STOP Spoiling Your Hourly Employees with High Prevailing Wage Rates**

RSVP requested by Tuesday, October 29th, 2013 by either calling or emailing us at:



1-800-678-9181 or seminars@beneco.com

