

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 15 May 2012

Case No.: 2011-SCA-00013

In the Matter of:

CHESTER VINCH doing business as
VINCH'S PI & SECURITY, and
CHESTER VINCH Individually

PETER VINCH d/b/a
PARTNERS TRAINING SCHOOL and
PETER VINCH Individually
Respondents.

APPEARANCES:

Terrence Duncan, Esq.
For the Department of Labor

Peter Vinch and Chester Vinch,
Pro Se

BEFORE:

Ralph A. Romano
Administrative Law Judge

DECISION AND ORDER

This proceeding arises under the McNamara-O'Hara Service Contract Act¹ (SCA or the "Act"), and regulations issued pursuant thereto.² The Act sanctions those who are awarded a federal contract and subsequently fail to (1) pay the required wages, (2) award minimum fringe benefits, or (3) keep adequate records, by barring them from receiving federal contracts for a period of 3 years.

Background and Procedural History

On April 5, 2011 the Solicitor filed a complaint on behalf of the Secretary of Labor against Respondents, alleging they had violated the Act by failing to pay the minimum wages, failing to provide required fringe benefits, and failing to maintain and make available pay records under contracts with the U.S. Department of Housing and Urban Development (HUD) to provide security guard services for nine HUD properties in Syracuse, New York. Administrative Law Judge Exhibit (ALJX) 1. I was assigned to hear the case and issued a Notice of Hearing.

¹ 41 U.S.C. § 6701 *et seq.*

² 29 C.F.R. Parts 4, 6.

ALJX 5. A hearing in this matter was held in Syracuse, New York on November 30, 2011, at which the parties were afforded a full opportunity to call and cross-examine witnesses, offer exhibits, and make arguments. The Respondents are without counsel and Respondent Peter Vinch represented the Respondents at the hearing, collectively. Hearing Transcript (“T.”) at 5.

At the hearing, the parties called and offered the following witnesses and exhibits.

Witnesses

Respondent Peter Vinch
Respondent Chester Vinch
Wage & Hour Investigator Geoffrey Lacroix
Abraham Abraham
Jack LaDue
Edres Ibrahim
David Harper
Jack Judware
Norma Vinch

Exhibits

Plaintiff’s Exhibits (PX) 1-22(c).
Respondent’s Exhibits (RX) 1-3.

I have considered all of these documents and that testimony in reaching my decision.

The parties submitted post-hearing briefs. The Respondents’ brief was received in my office March 5, 2012. The government’s brief was received February 29, 2012. After the government moved for time to submit a reply brief and I allowed it, the government’s reply was received March 26, 2012.

Law

The Act requires individuals who enter into contracts to provide services to the United States through the use of service employees³ to pay those employees certain minimum wages and provide fringe benefits reflective of those locally prevailing, as determined by the Secretary of Labor.⁴ Contractors who fail to do so are liable to their employees for the underpayment⁵ and may be barred from entering into additional service contracts for a three-year period.⁶ The implementing regulations require contractors to maintain for three years records of the hours worked by each employee, the wages they earned, and the fringe benefits they were provided. Contractors must also make those records available for inspection.⁷ A contractor’s failure to maintain those records properly may result in giving more weight to the agency’s calculation of

³ 41 U.S.C. § 6702.

⁴ 41 U.S.C. § 6703.

⁵ 41 U.S.C. § 6705.

⁶ 41 U.S.C. § 6706.

⁷ 49 C.F.R. § 4.6(g)(1).

shortages.⁸ The regulations also clarify that debarment is appropriate unless the Secretary finds unusual circumstances exist; relief from that remedy is not warranted where there are willful or culpable violations and failure to maintain records.⁹ “The legislative history of the SCA makes clear that debarment of contractors who violated the SCA should be the norm, not the exception, and only the most compelling of justifications should relieve a violating contractor from that sanction.”¹⁰

Evidence

Wage and Hour Division (“Wage & Hour”) Investigator Geoffrey Lacroix testified to investigating Respondents Peter Vinch, Chester Vinch, Vinch’s PI & Security, and Partners Officers Training School (“Training School”) for the period of April 2008 until December 2008. T. at 24. Lacroix stated that the investigation covered this period — between the start date of the Lord and Dominion Investments and Management Services (“Lord & Dominion”) prime contract, and the Respondents’ termination of their sub-contract (April-December 2008) — because Wage & Hour does not investigate violations committed under a closed contract, and therefore any violations that may have taken place while HCD International was the prime contractor, are not at issue in this matter. T. at 27. Vinch’s PI & Security offers security guard services in Syracuse, New York, while the Training School markets security guard training services. PX 1.

Peter Vinch is the owner of the Training School and Director of Operations of Vinch’s PI & Security. Chester Vinch is the owner of Vinch’s PI & Security and the Director of Operations of the Training School. T. at 188-91. Chester Vinch testified that his son, Peter, makes many business decisions for Vinch’s PI & Security in his capacity as Director of Operations, and that they have both signed contracts on the company’s behalf. T. at 188-89. Chester Vinch also stated that the Training School trained and sometimes paid security guards working under Vinch’s PI & Security, during the period of the investigation. T. at 196.

In 2007, HUD entered into a contract with HCD International, to arrange for property management services for several HUD-owned properties nationwide. PX 22 (A); T. at 26. Such services included security monitoring. PX 22. HCD International then contracted with UCC to provide certain security services. PX 22(c). UCC further subcontracted security services to Vinch’s PI & Security, for which Peter Vinch (acting as agent for Vinch’s PI & Security) was a signatory. PX 1. Under this contract, Vinch’s PI & Security was required to provide security guard services for nine properties in Syracuse, New York, collectively known as the “Eljay Apartments.” PX 1, 14; RX 1. The contract specifically stated that “pricing” was based on “SCA wages.” RX 1.

In April 2008, a new contract between HUD and Lord & Dominion, replacing HCD International as the prime contractor, became effective. PX 22; *see* PX 3; T. at 27. In July 2008, Marlaw Systems Technology (“Marlaw”), on behalf of Lord & Dominion, contracted with UCC

⁸ *Thomas & Sons Building Contractors, Inc.*, ALJ Case No. 1996-DBA-37 (Feb. 17, 2000), *citing Anderson v. Mt. Clemens Pottery Co.* 328 U.S. 680 (1946); *Groberg Trucking Inc.*, ARB Case No.09-137 (Nov. 30, 2004).

⁹ 49 C.F.R. § 4.188(a).

¹⁰ *Vigilantes v. Adm’r, Wage & Hour Div.*, 968 F.2d 1412, 1418 (citing 29 C.F.R. § 4.188(b)(2)).

to continue providing security services at the Eljay Apartments. PX 4; T. at 27. UCC retained Vinch's PI & Security as the third-tier subcontractor for these services. PX 10. Respondents cancelled the contract, effective December 6, 2008. PX 10.

Investigator Lacroix testified that his investigation revealed that the Respondents had employees working on a service contract funded by HUD and governed by the Act. T. at 25. Additionally, he found violations of the Act in that the Respondents failed to pay their employees SCA-prevailing wages and failed to provide fringe benefits and holiday pay. T. at 26. Investigator Lacroix also found the Respondents made unauthorized deductions from their employees' pay and failed to adequately pay for overtime work. T. at 26, 30. Lastly, he concluded the Respondents failed to maintain accurate records of the service employees' hours of work. T. at 25.

Several contracts introduced into evidence clearly specify that the parties must comply with SCA requirements. *See* PX 3 (Lord & Dominion-HUD contract); PX 4 (Lord & Dominion-Marlaw contract); PX 1 (Respondents-UCC contract). Respondent Peter Vinch sent a fax to the president of UCC seeking clarification regarding the SCA wage rates on November 9, 2007, which was 13 days after the date of the contract signed between UCC and the Respondents. PX 15; *see* PX 1.

At the hearing, five witnesses who worked for the Respondents as security guards at the Eljay Apartments in 2008 testified. These employee-witnesses each testified to working for the Respondents with several other individuals at the Eljay Apartments, which they understood to be HUD properties. *See, e.g.*, T. at 125, 142, 161, 173.

For the contract at issue in this matter, the SCA-prevailing wage consisted of a base rate of \$11.95 per hour, plus \$3.16 per hour for fringe benefits, plus holiday pay. PX 3; *see* T. at 26. The employee-witnesses testified to receiving less than \$11.95 per hour, not receiving fringe benefits, not being paid overtime¹¹, and not being paid for holidays. *See, e.g.*, T. at 123-24, 141, 143, 153, 166; *see also* PX 8, 17. Respondent Chester Vinch testified that he paid employees the same rate for holidays as regular working days and that he "did not pay overtime." T. at 196-97.

Regarding unauthorized payroll deductions, the government provided statements of two employees. These two employees either had deductions that could not be explained, or were taken out to pay child support, but payments were never delivered to the appropriate state agency. PX 8, 17; *see also* T. at 26. Moreover, the employee-witnesses testified that they were not reimbursed for gas, mileage, and uniform expenses incurred. *See, e.g.*, T. at 124, 142, 153-54; PX 17).

Investigator Lacroix testified that he repeatedly asked for records of Respondents' employees' hours and wages, but only received W2 statements, along with a list of employees'

¹¹ One employee-witness, Jack Judware, testified that he was paid time and a half for overtime work that he worked one week. Mr. Judware's statement, however, directly conflicts with his statement at Plaintiff's Exhibit 17, and therefore I find his testimony to lack credibility. *See* T. at 177, *contra* PX 17 (Judware's Statement: "If I worked over 40 hours/wk, I received straight time for my hours worked over 40/wk – I never received overtime pay from Vinch.")

names, addresses, and Social Security numbers. T. at 28; *see* PX 12, 13. Chester Vinch testified to shredding wage records after three months. T. at 193. He also acknowledged that, due to lack of funding, sometimes he paid employees working at the Eljay Apartments out of Training School bank accounts. T. at 196. Furthermore, Chester Vinch stated, one to three weeks after the contract began, he was asked by UCC's Dave Turner, and the Vinchs acquiesced, to keeping two sets of records: one set of "log sheets" showing actual hours worked and a second set of "time sheets" showing employees worked 40 hours each week. T. at 192-93. Chester Vinch stated that the Respondents paid their employees from the "time sheets," which showed that they only worked forty hours each week. T. at 193. Respondent Peter Vinch stated that wage records were lost due to a burglary. T. at 232.

Investigator Lacroix testified that, because Respondents did not have adequate and accurate payroll records, he had to calculate hours and wages by using personal time records kept by some employees, as well as using employees' recollections. T. at 28. Under oath, he recounted extensively how he made his final determination of wages due. *See* T. at 26-30. Lacroix's reconstruction of these records is found at Plaintiff's Exhibits 8 and 17. He concluded that the Respondents' owe \$66,541 in back wages and \$4,833 in overtime, approximately \$71,000. T. at 33; PX 9. Lord & Dominion and UCC have authorized the Deputy Administrator to distribute the outstanding back wages, but Respondents have not permitted disbursement. *See* PX 5, 6; T. at 235.

Discussion

Although Respondents appeared to be candid during much of their testimony, Peter and Chester Vinch appeared also to have concluded that they should not be subject to the Act and therefore were justified in failing to comply with it. In any event, Chester Vinch's testimony alone was sufficient to establish that they failed: to pay their employees the designated minimum wages; to provide them the requisite fringe benefits; or even to maintain proper hour and wage records. *See* T. at 188-214. Accordingly, the only real issue is the quantum of their liability and whether they should be exempt from debarment.

There is no basis in this case for an exception to the general rule requiring the placement of violating contractors on the excluded list for three years. The failure to pay and provide fringe benefits was willful, even if it was based on Respondents' belief that they did not have an agreement with the federal government. Moreover, they failed to post employee notices of their obligations under the Act and have demonstrated repeatedly an attitude that they should not be subject to the Act. Accordingly, I find that the Respondents should be placed on the list of debarred bidders for a three-year period.

The absence of anything even approaching comprehensive and accurate wage and hour records makes determining the quantum of liability problematic. In pertinent part, 29 C.F.R. § 4.188(b)(3) states, that debarment is appropriate where violations are the result of blameworthy conduct, such as "culpable failure to comply with record-keeping requirements (such as falsification of records)" Respondent Chester Vinch's testimony unequivocally revealed that the Respondents' knowingly kept two sets of wage and hour records. The incomplete and

varying explanations for why one accurate set of records was not maintained fail to establish any unusual circumstances that would warrant relief from debarment.

With the exception of one,¹² the employee-witnesses stated that they were paid less than the prevailing wage rate, were not paid overtime, and did not receive fringe benefits. The testimony appears credible; these assertions have not been contradicted. Furthermore, the Plaintiff's brief refers to the *Anderson* case, which permits the award of back wages to non-testifying employees based on the representative testimony of a small number of employees. Plaintiff's Brief at 15; *see Anderson v. Mt. Clemens Pottery, Co.*, 328 U.S. 680, 687-88 (1946).

Considering all the evidence in this matter, I find the testimony and records of Investigator Lacroix to be the most reliable source of information upon which to base a finding of the quantum of liability. He is a highly experienced investigator who appeared to have done a thorough review of all the available records and witness statements. His methodology for calculating Respondents' liability to each employee was reasonable. His testimony was entirely credible and I adopt his calculations as my findings.

FINDINGS & ORDER

1. Respondents contracted with the United States to provide security guard services from April-December 2008. In the performance of that contract, Respondents hired several service employees to work as security guards.
2. From April 2008 to December 2008, Respondents violated the Act and implementing regulations by failing to maintain required wage and hour records, failing to pay service employees the minimum-required wages, and failing to provide the required fringe benefits.
3. In compensation for the wages not paid and benefits not provided, Respondents are ORDERED to permit disbursement of the back wages in the amount of \$71,424.00.
4. Respondents shall be DEBARRED from eligibility for contracts as per the Act for a period of three years.

SO ORDERED.

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Ralph A. Romano
Administrative Law Judge

Cherry Hill, New Jersey

¹² See note 11, *supra*.

NOTICE: To appeal, you must file a written petition for review with the Administrative Review Board (“ARB”) within 40 days after the date of this Decision and Order (or such additional time that the ARB may grant). *See* 29 C.F.R. § 6.20. The Board’s address is:

Administrative Review Board
United States Department of Labor
Suite S-5220
200 Constitution Avenue, NW
Washington, DC 20210

A copy of any such petition must also be provided to the Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, NW, Washington, DC 20001-8002. Your petition must refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

The ARB’s Rules of Practice further require that the petitioner provide to the ARB an original and four copies of the petition and any other papers submitted to the ARB. 29 C.F.R. § 8.10(b). Service is to be in person or by mail. 29 C.F.R. § 8.10(c). Service by mail is complete on mailing, and the petition is considered filed upon the day of service by mail. 29 C.F.R. § 8.10(c). The petition must contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service. 29 C.F.R. § 8.10(d).

A copy of the petition is also required to be served upon the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210; the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210; the Federal contracting agency involved; and all other interested parties. 29 C.F.R. § 8.10(e).