

# NORTHWEST LABOR PRESS

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## ...Wage theft

From Page 1

stucco, and install weather-proofing foam around doors and windows. The work took place at a six-story 110-unit luxury apartment building, 35 Club Apartments, named for its address at 35 Club Road in Eugene.

In November, an ODP employee on the project reached out directly to Local 82. To communicate with the Spanish-speaking worker, Business Manager Kent Sickles called in José Avalos, an organizer for sister union Cement Masons Local 555. Avalos interviewed two ODP workers and shared what he learned with Mario Silva, a Seattle-based specialist employed by OPCMIA to investigate cases of wage theft throughout the Pacific Northwest. Silva says pay stubs provided by the two workers were all he needed to show that ODP was violating federal law.

Since 1931, a federal law known as Davis-Bacon has required contractors to pay the local prevailing wage on federally funded construction projects. The law is meant to prevent the government's purchasing power from driving down local wage rates. The idea is that the public interest is best served by having

the work done right, with contractors who compete based on quality and efficiency, not on who can get away with paying workers the lowest. The Labor Department determines annually what the prevailing wage is in each area for each construction craft specialty.

Workers on the 35 Club Apartments project were entitled to be paid the prevailing wage because the U.S. Department of Housing and Urban Development (HUD) had guaranteed a 40-year \$26.5 million loan on the project. ODP employees, as plasterers, were supposed to be paid \$32.22 an hour plus \$16.58 an hour in fringe benefits. Because ODP doesn't provide workers fringe benefits, it was supposed to pay workers the combined \$48.80 an hour.

But the ODP employees Avalos talked with never saw wages that high. One was being paid \$25.99 and another \$34.45, their pay stubs showed. And that was actually a big pay bump for them: On previous projects, ODP had paid \$15 an hour. And that wasn't all, according to interviews the union conducted with workers. The workers were not paid overtime they were supposed to be paid, and had to pay their employer in cash for hotel rooms where they slept five to a room. They also told Avalos they were given just one 30-minute break

per 10-hour day.

Avalos helped the workers fill out and sign official complaint forms in English, and Silva turned the evidence over to an investigator at the Wage and Hour Division office in San Francisco.

HUD and the Wage and Hour Division of the U.S. Department of Labor investigated and found that ODP had misclassified its workers, paying them at the rate for laborers instead of the rate for plasterers. Investigators also determined that the cash payments for the hotel violated a federal law called the Copeland Act, which bars employers from taking kickbacks from workers on federally-funded projects. There was more. When the plasterers worked more than 40 hours a week, they weren't paid time and a half as federal law requires. And Portland area workers weren't paid for the extra two hours of drive time it took to get to Eugene.

Of the nine workers, five co-operated and received checks ranging from \$3,708 to \$33,244.

Reached by phone, ODP owner Oscar Palacios agreed he had paid some workers at the laborers rate, but said that's because they did some laborer work and weren't qualified to do stucco work unsupervised. Palacios didn't document what they were doing every hour on the job, he said.

"I could have hired an attorney, and paid maybe 15 or 20 grand more and fought it, but I don't have time to fight," Palacio told the *Labor Press*. "I made good money on the project."

Sickles, the Local 82 business manager, said he hoped to find good union jobs for the workers, but only one of the five could pass E-verify, the voluntary government program that verifies that employees have the legal right to work in the United States. Members of the union-signatory contractors association Associated Wall & Ceiling Contractors of Oregon and S.W. Washington use E-Verify, and it's required for contractors on federal construction projects.

"All my employers follow the rules," Sickles said. "That's the reason this upsets me."

Wage theft doesn't just harm workers, it also cheats the state of tax revenue and workers' comp contributions, and it's unfair to competitors who play by the rules, says Victor Roach, president of Western Partitions Inc., the family-owned and proudly union company that was underbid by ODP Systems.

"When contractors get away with cheating, it's kind of a race to the bottom," Roach said. "If that happened everywhere, it would put us out of business."

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