

CONSTRUCTION LAW NEWSLETTER

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TRENDS IN CONSTRUCTION LAW

New York State, local governments and public authorities have committed to spending tens of billions of dollars in public works in the next 5-10 years.

A recent commentary in a New York newspaper posits that billions of taxpayer funds could be saved if New York eliminated its prevailing wage system.

The article further states that the prevailing wage system was implemented in the 19th century

due to worries that government contracts would be won by firms importing cheap labor. The article further criticizes the way that prevailing “wages” are calculated based upon the locality.

Also relevant to the discussion is an Empire Center report cited in the article which concludes that prevailing wage requirements boost building costs by 15% in the Hudson Valley, 20% in Long Island and Buffalo and 25% in New York City.

The article suggests a



solution could be to set the prevailing wages based on regional private sector averages and that “wages” should only include pay, not benefits.

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CASE LAW UPDATE

On April 3, 2017, Justice Debra A. James, of the New York County Supreme Court, decided the case of *Isufi v. Prometal Constr., Inc.*

The case involved a class action lawsuit brought by a group of workers seeking recovery of prevailing wages and/or supplemental benefits on a New York City Housing Authority Project (“NYCHA”).

The defendant filed a mo-

tion to dismiss, arguing that the workers were first required to exhaust their administrative remedies through its complaints to the NYCHA. The defendants also argued that the plaintiffs had selected the administrative forum for resolution of their claims and could not simultaneously file a lawsuit seeking to obtain the same relief.

The Court denied the motion to dismiss and held that the plaintiff class of workers

were permitted to seek relief in two separate forums at the same time.

The Court further held that the workers were entitled to bring the breach of contract cause of action as third party beneficiaries of the contract between its employer and the general contractor because the prevailing wage requirements in the contract were made for their benefit.

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