



Martin Luther King, Jr. County Labor Council, AFL-CIO

2800 First Avenue, Suite 206 • Seattle, Washington 98121
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Resolution in support of KCLS Janitors Adopted 9/18/13

WHEREAS King County Library System (KCLS) and National Maintenance Contractors (NMC) have entered into a contract for janitorial services where both parties have a legal requirement to ensure prevailing wages are paid to janitors working at KCLS facilities; and

WHEREAS approximately 32 workers at KCLS facilities are not receiving prevailing wages because NMC claims they are “independent contractors” for which there is a loophole in the prevailing wage law; and

WHEREAS NMC has a history of preying on low-income, immigrant communities and has been involved in multiple lawsuits concerning workers’ rights; and

WHEREAS low-income independent contractors are frequently unable to contribute their full portion of Social Security and Medicare withholding and State Unemployment and Workers Compensation system contributions, despite being at high risk for on-the-job injuries. Therefore employer misclassification of workers as independent contractors is a serious concern of state governments and the IRS resulting in numerous lawsuits against NMC; and

WHEREAS a janitor cleaning KCLS libraries on a full-time basis (40 hours per week) is required to buy a franchise from NMC for approximately \$20,000 for the first 5 years of work with NMC. In addition, franchisees are required to purchase their own equipment and supplies – a start-up kit is available from NMC for \$3,716; and

WHEREAS NMC forwards KCLS payments to their franchisees after deducting 24% in fees. Additionally, 20 to 25% may be withheld if the franchisee has financed part of their buy-in fee with NMC; and

WHEREAS the KCLS Request for Proposal (RFP) for Custodial Services and contract section 4.1.2 requires that: All Goods/Services shall be provided by employees regularly employed by the contractor unless prior written permission is given by KCLS (it was not given for the NMC contract award); and

WHEREAS only franchise owners are exempt from earning prevailing wage. Franchisees are legally required to pay their employees the prevailing wage. However filings with L&I indicated an employee of a NMC franchisee earned \$10 per hour (with no benefits) cleaning for KCLS (about half of the prevailing wage); and

WHEREAS, prior to the contract awarded to NMC in early 2013, KCLS janitors were union represented and received prevailing wage; be it therefore

RESOLVED that MLKCLC calls on KCLS to respect the intent of the prevailing wage law and terminate their Custodial Services contract with NMC and re-issue a RFP removing any option to use subcontractors.

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October 3, 2013

Bill Ptacek, Director
Board of Trustees
King County Library System
960 Newport Way NW
Issaquah, WA 98027

Dear Director Ptacek and Board of Trustees,

It has come to our attention that the King County Library System (KCLS) has entered into a contract with National Maintenance Contractors (NMC) to clean our library facilities. This news is of great disappointment to our executive board and the 75,000 working families our 125 affiliates represent here in King County.

NMC has a long history of law suits and unscrupulous labor practices including the failure to pay prevailing wages as required by law. Under KCLS's current contract with NMC, there have already been four Prevailing Wage Act violations identified by the Dept. of Labor and Industries. It is unconscionable that, despite knowing this information, KCLS continues to spend our tax dollars doing business with NMC.

Our labor movement and its community allies have worked hard over the years to establish livable wages and respectable conditions for all citizens in our county. By allowing corporations like NMC to pervert the owner/operator small business environment, effectively cutting wages and benefits while still making a profit margin for themselves, KCLS is undercutting the progress we have made in the workplace and is lowering the quality of life throughout our communities.

We call on you, the Trustees and KCLS management, to fully realize your own values by embracing your unique role and responsibilities to act in the public interest by:

- Creating a fair bidding process that excludes contractors who evade prevailing wage and labor laws through cynical "owner/operator" employment practices;

Jessica Bonebright, President • Betsy Shedd, Vice President • David Freiboth, Executive Secretary

AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

- Immediately opening a new bidding process for janitorial services that guarantees that workers have the right to organize so they may collectively advocate for themselves and their families;
- Excluding owner/operator subcontractors from performing regularly performed work; and
- Respecting and protecting our prevailing wage law.

Please feel free to contact me at (206) 441-8510 to further discuss this serious issue. Thank you in advance for your consideration.

Sincerely,



David Freiboth

cc: King Co. Executive Dow Constantine
Metropolitan King County Council

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Algona-Pacific
Auburn
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Black Diamond
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Boulevard Park
Burien
Carnation
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Federal Way 320th
Foster
Greenbridge
Issaquah
Kenmore
Kent
Kingsgate
Kirkland
Lake Forest Park
Lake Hills
Library Connection @ Crossroads
Library Connection @ Southcenter
Library Express @ Redmond Ridge
Maple Valley
Mercer Island
Muckleshoot
Newcastle
Newport Way
North Bend
Redmond
Renton
Renton Highlands
Richmond Beach
Sammamish
Shoreline
Skykomish
Skyway
Snoqualmie
Valley View
Vashon
White Center
Woodinville
Woodmont

October 10, 2013

Mr. David Freiboth
Martin Luther King, Jr. County Labor Council, AFL-CIO
2800 First Avenue, Suite 206
Seattle, WA 98121

Dear Mr. Freiboth,

I received your letter dated October 3, 2013 in which you expressed disappointment that the King County Library System (KCLS) has entered into a contract with National Maintenance Contractors (NMC) and urged the KCLS Board of Trustees and Library Management to take actions to reverse that decision.

The janitorial contract between KCLS and NMC has been a topic of discussion at the last several Board meetings. During their deliberations, the Board heard from staff, members of the Service Employees International Union (SEIU), NMC staff and franchisees, as well as KCLS' legal counsel who advised the Board that it is the responsibility of the Washington State Department of Labor & Industries to determine whether there are prevailing wage violations associated with the contract.

Based on counsel's advice and the several months of deliberations, the Board approved a motion at the August 27 meeting ***"to direct staff to monitor the status of KCLS' contract to the extent that the Department of Labor & Industries and/or the Attorney General's office indicates a compliance problem. If a problem exists, staff will inform the Board for further consideration. In the absence of a problem, the Board will table the matter."***

If you have other questions, please feel free to contact me.

Sincerely,

Bill Ptacek
Library Director

c: King County Executive Dow Constantine
Metropolitan King County Council
KCLS Board of Trustees



Martin Luther King, Jr. County Labor Council, AFL-CIO

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October 11, 2013

Bill Ptacek, Director
King County Library System
960 Newport Way NW
Issaquah, WA 98027

Dear Mr. Ptacek,

I am in receipt of your letter dated October 11, 2013. I must say I am disappointed at the unprofessional, perfunctory tone of your message in that you failed to address the core issue I raised – the lack of a respectful employment environment for the employees contracted to provide custodial services to KCLS.

I use the term employee loosely because the contractual relationship you entered into with National Maintenance Contractors (NMC) denies those workers the protections afforded classified employees under the law. Those of us dedicated to preserving living wage employment are very much aware that employers like NMC subvert employment and labor law protections by classifying workers like these as individual subcontractors, thereby denying them employee status. This, as you must know, largely denies the Department of Labor and Industries (L&I) standing regarding prevailing wage enforcement in that the scope of L&I's jurisdiction is typically restricted in terms of any tangible oversight of independent, single operator subcontractors.

By denying workers employee status in work that historically has been performed by employee groups, unscrupulous employers posing as "general contractors" employ no classified employees at all to perform contracted services. Instead they "subcontract" services to "subcontracted owner operators." These "owner operators" largely preform the same tasks as traditional classified employees. What this business practice does is largely deny "individual contractors" health and safety employment protection not to mention 40 hour work weeks, overtime pay and other elements of employment that, coupled with a living wage, creates a respectful employment environment.

It is either naive or cynical to expect those who have experienced these abuses to accept that a pledge to rely on L&I or the Attorney General's oversight will actually address the reprehensible business practices an outfit like NMC employs.

What the KCLS has produced by contracting with low road companies like NMC is tax payer support for barely legal employment practices designed to drive real earnings down to poverty levels. Low road jobs like these are often filled by recent immigrant groups whose language and cultural challenges often trap them in these unsustainable jobs with little hope of laddering into respectable employment. It is exploitation of our most vulnerable citizens at its worst. While this may be within the confines of our regressive labor and employment laws, it certainly does not mean that it is a respectful and healthy way to treat contracted workers regardless of their legal definition.

I must state again my extreme disappointment that you would attempt to deflect criticism of such activities by sharing a motion made by your board that has no teeth and is morally dishonest. I have worked with many lawyers in my years in the labor movement, and while I do not know how KCLS interacts with your legal counsel, I do know that lawyers set the tone and legal environment leadership directs them to. If all you folks wanted to do was cover yourselves in terms of your legal liabilities then I guess your counsel's advice on how to construct the motion referenced in your letter would accomplish that. I am confident that if you had directed your legal team to establish bidding construct that would have protected the decent custodial jobs that were in place before NMC was awarded the contract, they could easily have done so. No, this situation is clearly driven by staff leadership and it is in your hands where the responsibility lies. In terms of the moral responsibility you have to the folks who take care of our libraries, your correspondence falls well short of addressing in a responsible and professional way the concerns of the tax payers of King County interested in respectful contracting practices by their public servants.

Sincerely,



David Freiboth

cc: KCLS Trustees
King Co. Executive Dow Constantine
Metropolitan King County Council

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King County

Metropolitan King County Council

King County Courthouse
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October 23, 2013

Lucy Krakowiak
President of the Board of Trustees
Board of Trustees
King County Library System
960 Newport Way NW
Issaquah, WA 98027

Dear Ms. Krakowiak and Trustees:

The King County Council and Executive have established clear, guiding principles, and goals based on the shared values of our communities. Our vision is to ensure diverse and dynamic communities with a healthy economy and environment where all people and businesses have the opportunity to thrive. Our goals can be realized by collectively promoting fairness and opportunity and eliminating inequities in our neighborhoods and in our workplaces.

Under the County's Equity and Social Justice Plan, we are committed to removing barriers limiting the ability of people to realize their full potential. It has come to our attention that the King County Library System (KCLS) may be erecting barriers limiting the potential of janitors and creating inequities in the market place. As appointees of the County Executive who have been confirmed by the County Council, it is crucial that you share our principles and values and convey these to the public, in word as well as by deed. As trustees, you have the opportunity to be a champion of working families and responsible business practices by ensuring that all janitors cleaning KCLS facilities receive the respect and protections deserved by all employees.

Our constituents have told us that since February, when the KCLS and National Maintenance Contractors (NMC) agreement went into effect for janitorial service at KCLS facilities, the handling of the janitorial issue has been disappointing. They express their belief that when NMC stated in a March 14, 2013 letter to KCLS that they were in compliance with the Prevailing Wage Act due to the loophole of "sole owners," this indicated it was NMC's intent not to pay prevailing wages. They do not understand how

KCLS believes its obligation to ensure prevailing wages is being met through the NMC agreement.

We have been told that within the first six months of NMC's contract with KCLS a Labor and Industries investigation was launched and it identified four individuals who failed to receive the prevailing wage. We understand these workers have been dismissed from KCLS facilities. If the worker, instead of the primary contractor, has been punished for not receiving the proper wage, this would be contrary to KCLS's own contract (4.1.3 "Contractor agrees it is fully responsible for all acts and omissions of subcontractors....") and the values of the King County Executive and Council.

Our constituents have also expressed concerns with KCLS's and NMC's contract beyond the prevailing wage issue. They consider NMC's relationship with the "franchisees" to appear to more closely resemble an employer-employee relationship as opposed to an independent contractor relationship. They explained this is apparent through the high level of supervision NMC has over the janitors, a practice that NMC has implemented in the library system by having librarians check-off on timesheets. They also reported NMC pays workers directly, dictates the equipment and supplies to be used, sets work times, inspects work, and forbids any direct communication with clients, all of which reflect the role of an employer.

This misclassification of workers as independent contractors underscores a deeper concern. Misclassified workers are often non-willing participants in the gray or underground labor market. King County, along with our State and Federal governments, has been working to end this misclassification because it denies access to benefits and protections including: overtime, minimum/prevailing wage, unemployment, Social Security, workers' compensation, and family and medical leave, to which they are entitled. Additionally, there is great concern because many of these misclassified workers have also been found to be victims of human trafficking.

Our constituents explained NMC's ability and willingness to skirt the Prevailing Wage Act, its questionable labor practices, and its denial of basic benefits to workers has created an unlevel playing field for responsible contractors. They have told us that this unfair bidding practice is evident in a January 17, 2013 letter to Service Employees International Union 6; Mr. Gregory Smith, Director of Facilities Management at KCLS wrote: "We interviewed ABM and National and chose National Maintenance Contractors as their pricing was half the cost of ABM."

We invite the Trustees of King County Library System to be real champions in the lives of our working families by:

- Upholding the true intent of the state's Prevailing Wage Act;
- Ensuring proper characterization of workers as employees;
- Creating a level playing field for contractors bidding on work by eliminating the use of sub-contractors for regularly performed work; and
- Entering into new contracts for janitorial services.

The people of King County are proud to have one of the highest standards of living in the country. These high standards have been accomplished, in no small part, due to our working families who have fought and sacrificed to ensure the rights of workers and jobs that support King County families. We cannot truly realize our goal to create vibrant, economically thriving, and sustainable communities without providing the opportunities for everyone to share in the prosperity.

Thank you for considering these comments.

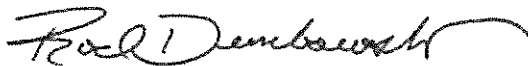
Sincerely,



Dow Constantine, Executive
King County



Larry Gossett, Chair
Metropolitan King County Council



Rod Dembowski, District One
Metropolitan King County Council



Larry Phillips, District Four
Metropolitan King County Council



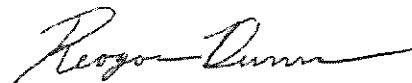
Julia Patterson, District Five
Metropolitan King County Council



Jane Hague, District Six
Metropolitan King County Council



Joe McDermott, District Eight
Metropolitan King County Council



Reagan Dunn, District Nine
Metropolitan King County Council

cc: Bill Ptacek, Director, King County Library System
Sergio Salinas, President, SEIU Local 6
Matt Haney, SEIU Local 6