

H B

719

Bill No. House Bill 719

Date May 15, 1984

Title "An Act relating to the rights of contractors on public works projects."

Contact: Eileen Plate  
465-2700

Bob Bacolas  
465-4870

*LA AND  
ENTERPRISES*

This bill would protect a prime contractor on a public works project from being required to pay wage claims to a principal or owner/operator of a subcontractor whenever a dispute arises between the prime contractor and the subcontractor concerning the performance of work under the subcontract.

Under this bill, the Department of Labor would be required to undertake investigations of the subcontractor's performance, hold hearings, and issue determinations as to whether or not the subcontractor has "substantially failed to perform the subcontract." These types of contract performance disputes frequently involve complicated questions of law and facts which are normally by the courts, not by administrative agencies. The Department would have to make what is ultimately a legal determination as to performance under the subcontract, which would likely involve the Department in third party court litigation and would not be in the best interests of either the Department or the State of Alaska.

Moreover, as the attached fiscal note makes clear, the Department would be required to retain certain professional, consulting, and legal services in order to make the necessary determinations of contract performance.

While the Department is not opposed to the idea of withholding payment to owner/operators of subcontractors during litigation of contract performance disputes, we believe that there is a much less costly way of accomplishing this result. In cases where a contract dispute arises between a prime contractor and a subcontractor, the contracting agency administering the public works project would withhold accrued payments from the prime contract as provided in AS 36.05.070 and .090 but would not disburse any wage payments to owner/operators or persons with an ownership interest in that subcontractor until the contract performance dispute has been resolved. During the pendency of litigation, the contracting agency could be directed to hold those amounts in escrow and disburse only in accordance with an order of the court or by stipulation of the parties.

Specifically, the Department recommends that in Section 1 of House Bill 719, the added language on line 15 be deleted. In Section 2 of the bill, proposed AS 35.05.095 should read as follows:

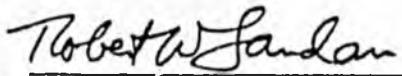
CONTRACTORS AND SUBCONTRACTORS. (a) A contractor may inform the Department of Labor that a contract dispute exists with respect to the performance of a subcontractor and that a court action has been filed concerning such dispute. Within ten days of receiving such notification, the department shall verify this information and transmit it to the contracting agency administering the public works project.

(b) Upon receipt of notification from the Department of Labor that a court action has been filed with respect to the performance of a subcontractor on a public works project, the contracting agency shall withhold but may not disburse any accrued payments from the public construction contract to pay wages to any person having an ownership interest in the subcontractor until directed to do so by court order or by stipulation of the parties.

(c) The Department of Labor may not exercise any of its statutory remedies under AS 36.05.010-110 against a contractor because of that contractor's failure to make payment to any person having an ownership interest in a subcontractor until such time as the contract performance dispute between the contractor and subcontractor has been resolved by court order or by stipulation of the parties.

A fiscal note is attached.

APPROVED:

  
for Jim Robison  
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 719  
Title: "An Act relating to rights of contractors. . . ."  
Sponsor: House Labor & Commerce  
Requestor: House Labor & Commerce  
Date of Request: May 14, 1984

FISCAL DETAIL

Agency Affected: Labor  
Program Category Affected: Public Protection  
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety BRU;  
Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		12.8	13.4	14.0	14.8	15.7
200 TRAVEL						
300 CONTRACTUAL		76.3	81.5	86.0	91.8	96.0
400 SUPPLIES		.5	.5	.6	.6	.6
500 EQUIPMENT		2.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	92.1	94.9	100.6	106.4	112.3

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	92.1	94.9	100.6	106.4	112.3
FEDERAL FUNDS						
OTHER						
TOTAL	0	92.1	94.9	100.6	106.4	112.3

POSITIONS:

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas Phone: 465-4870  
Division: Labor Standards & Safety Date: \_\_\_\_\_  
Approved by Commissioner: Robert W. Jordan Date: 5/15/84  
Agency: Labor

LEG:B:16  
Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

FISCAL NOTE

~~\$61,200~~  
\$61,990.<sup>00</sup>

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE  
BILL/RESOLUTION NO: HB 719  
TITLE: "An Act relating to rights of contractors on public works projects."  
AGENCY AFFECTED: Department of Labor  
Page 2

Under this bill the Department of Labor would be required to conduct complex investigations, issue formal determinations, and hold hearings in certain instances upon the request of a prime contractor. A request may occur when a wage claim is filed against the prime contractor by a subcontractor when litigation is pending between the parties arising out of a dispute concerning quality of work, or specific performance under the sub-contract.

The Wage and Hour Administration routinely handles about 20 enforcement actions each year that involve owners/operators who perform on public works projects as laborers, mechanics, or field surveyors. This fiscal note assumes that fifty percent of these actions will involve disputes between the prime contractor and subcontractor. In order to meet the investigation requirements of this bill, the cost associated with staffing full-time professionals, who have the required expertise to evaluate performance, would be prohibitive. Therefore, such activity would be handled through professional service contracts on an as-needed basis. Under this plan, the following assumptions can be made.

1. Contract attorney to handle the legal needs of the program (\$140 per hour).
2. Professional consultant fees associated with investigating, determining, and issuing reports (\$250 per hour).
3. A part-time Clerk Typist III in the Wage and Hour Administration to provide the required clerical support for the Department's involvement in the program.

We approximate it will take 16 hours per complaint for a private consultant to investigate, make a determination, and issue a report; and 16 hours per complaint by a contract attorney for legal involvement.

Based on these assumptions, the following formulas were used to compute the Fiscal Year 1985 costs to operate the program.

Consultant Fees: 10 investigations x 16 hours x \$250 per hour = \$ 40.0

Attorney Fees: 10 investigations x 16 hours x \$140 per hour = \$ 22.4

Miscellaneous other routine contractual services would include reporting and recording services \$ 7.5

Costs associated with the Clerk Typist III are shown on the attached Form 13. Of these costs, only the equipment costs of \$2.5 would be one-time items.

699

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

BILL/RESOLUTION NO: HB 719

TITLE: "An Act relating to rights of contractors on public works projects."

AGENCY AFFECTED: Department of Labor

Page 3

In preparing these cost estimates, we have assumed an effective date on the bill of July 1, 1984. Also, an inflation rate of six percent is included for fiscal years 1986 - 1989.

LEG:B:16



DEPARTMENT OF LABOR  
OFFICE OF THE COMMISSIONER

RECEIVED

MAY 2 1984

OFFICE OF THE COMMISSIONER

BRIEFING PAPER ON L & H ENTERPRISES

L & H ENTERPRISES IS THE PRIME CONTRACTOR ON THE ANCHORAGE SERVICE-MANSHEW SPORTS COMPLEX IN ANCHORAGE. GROUND UP CONSTRUCTION WAS UNDER SUBCONTRACT TO L & H ENTERPRISES FOR EXCAVATION AND INSTALLATION OF WATER AND SEWER LINES.

GROUND UP FAILED TO PAY WAGES FOR THE WORK PERFORMED ON THE PROJECT. AT LEAST FOUR PEOPLE PERFORMED WORK FOR GROUND UP ON THE PROJECT. THEY ARE:

GARY STERBA -LABORER- OWNER OF GROUND UP CONSTRUCTION

DENNIS THOMAS -LABORER & OPERATOR- REPUTED BY L & H TO BE CO-OWNER OF GROUND UP

ANDY STERBA -OPERATOR & LABORER- GARY STERBA'S BROTHER

ED GUTOWSKY-TRUCK DRIVER & LABORER

L & H HAS WITHHELD ALL PAYMENTS TO GROUND UP CONSTRUCTION FOR THIS PROJECT DUE TO A DISPUTE OVER THE QUALITY/QUANTITY OF WORK PERFORMED. IN FEBRUARY 1984, GROUND UP CONSTRUCTION FILED A CHAPTER 7 BANKRUPTCY. THE DEPARTMENT AUDITED AVAILABLE TIME RECORDS AND HAS REQUESTED THAT THE CONTRACTING AGENCY WITHHOLD \$17,639.54 WHICH REPRESENTS THE WAGES DUE FOR LABOR PERFORMED ON THIS PROJECT BY THE FOUR MEN LISTED ABOVE. THE AMOUNT TO BE WITHHELD WAS DETERMINED FROM AN AUDIT OF CERTIFIED PAYROLL RECORDS SUBMITTED TO THE DEPARTMENT ON DECEMBER 20, 1983 AND AUTHENTICATED BY A SWORN STATEMENT FROM GARY STERBA, THE OWNER OF GROUND UP CONSTRUCTION. WITHHOLDING WAS REQUESTED IN ACCORDANCE WITH AS 36.05.070(c).

COUNSEL FOR L & H ENTERPRISES HAS OBJECTED TO: THE HOURS SUBMITTED BY GROUND UP; THE DEPARTMENT SEEKING COLLECTION OF WAGES FOR COMPANY OWNERS OR REPUTED OWNERS; THE DEPARTMENT SEEKING COLLECTION FROM THE CONTRACTING AGENCY.

THE DEPARTMENT IS FOLLOWING ESTABLISHED PROCEDURES IN PURSUING THIS MATTER. THE CONTRACTOR/EMPLOYER IS IN BANKRUPTCY AND THE DEPARTMENT HAS NO ALTERNATIVE IN TITLE

BRIEFING PAPER  
PAGE 2  
MAY 1, 1984

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AN INFORMAL CONFERENCE WAS HELD IN ANCHORAGE ON APRIL 26. L & H AND GROUND UP CONSTRUCTION WERE REPRESENTED. NO RESOLUTION COULD BE REACHED SO THE MATTER WILL BE SET FOR HEARING TO DETERMINE THE NUMBER OF HOURS WORKED AND THE AMOUNT OF WAGES DUE TO BE PAID BY THE CONTRACTING AGENCY IN ACCORDANCE WITH AS 36.05.020(a).

MAY 16, 1984

TO: JOHN

FROM: KEN

RE: HB 719 RELATING RIGHTS OF CONTRACTORS

THE PURPOSE OF THIS BILL IS TO PROTECT PRIME CONTRACTORS ON PUBLIC WORKS JOBS FROM PAYING WAGE CLAIMS TO A SUBCONTRACTOR WHEN A DISPUTE ARISES OVER THE PERFORMANCE OF THE WORK BY THE SUBCONTRACTOR. IT IS PRESENTLY THE DEPARTMENT OF LABORS POLICY TO HAVE THE CONTRACTING AGENCY WITH HOLD AND SOMETIMES DISBURSE FUNDS EARMARKED FOR THE PRIME CONTRACTOR WHEN WAGE CLAIMS ARE MADE AGAINST THAT CONTRACTOR. THE MAIN INTENT OF THIS BILL IS TO PREVENT THE OWNER OF A SUBCONTRACTING FIRM FROM COLLECTING ON A WAGE CLAIM UNTIL ALL LITIGATION OVER THE PERFORMANCE OF THAT SUBCONTRACTOR HAS BEEN RESOLVED.

Bill No. House Bill 719

Date May 15, 1984

Title "An Act relating to the rights of contractors on public works projects."

Contact: Eileen Plate  
465-2700

Bob Bacolas  
465-4870

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Under this bill, the Department of Labor would be required to undertake investigations of the subcontractor's performance, hold hearings, and issue determinations as to whether or not the subcontractor has "substantially failed to perform the subcontract." These types of contract performance disputes frequently involve complicated questions of law and facts which are normally by the courts, not by administrative agencies. The Department would have to make what is ultimately a legal determination as to performance under the subcontract, which would likely involve the Department in third party court litigation and would not be in the best interests of either the Department or the State of Alaska.

Moreover, as the attached fiscal note makes clear, the Department would be required to retain certain professional, consulting, and legal services in order to make the necessary determinations of contract performance.

While the Department is not opposed to the idea of withholding payment to owner/operators of subcontractors during litigation of contract performance disputes, we believe that there is a much less costly way of accomplishing this result. In cases where a contract dispute arises between a prime contractor and a subcontractor, the contracting agency administering the public works project would withhold accrued payments from the prime contract as provided in AS 36.05.070 and .090 but would not disburse any wage payments to owner/operators or persons with an ownership interest in that subcontractor until the contract performance dispute has been resolved. During the pendency of litigation, the contracting agency could be directed to hold those amounts in escrow and disburse only in accordance with an order of the court or by stipulation of the parties.

Specifically, the Department recommends that in Section 1 of House Bill 719, the added language on line 15 be deleted. In Section 2 of the bill, proposed AS 35.05.095 should read as follows:

CONTRACTORS AND SUBCONTRACTORS. (2) A contractor may inform the Department of Labor that a contract dispute exists with respect to the performance of a subcontractor and that a court action has been filed concerning such dispute. Within ten days of receiving such notification, the department shall verify this information and transmit it to the contracting agency administering the public works project.

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APPROVED:

  
for Jim Robison  
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
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PART-TIME		1	1	1	1	1
TEMPORARY						

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

N/A

**ANALYSIS: Attach a separate page for analysis**

Prepared By: Robert J. Bacolas Phone: 465-4870  
 Division: Labor Standards & Safety Date: \_\_\_\_\_  
 Approved by Commissioner: Robert W. Jandau Date: 5/15/84  
 Agency: Labor

LEG:B:16  
 Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

12/1/83

## FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE

BILL/RESOLUTION NO: HB 719

TITLE: "An Act relating to rights of contractors on public works projects."

AGENCY AFFECTED: Department of Labor

Page 2

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Page 3

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LEG:B:16

1	POSITION TITLE Clerk Typist III			Range/Step 8 A	Barg. Unit GGU	Form 12 Page/Line	GOV.	APPROV.	DISAPP.
2	Type of Position PPT	Staff Months 6	RF Number HB 719	PCN Number	BRU Priority	Location Anchorage	Election District	LEG.	
3	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4	Type of Expenditure			Amount					
	1	2	3						
	PERSONAL SERVICES								
5	Salary		9,318						
6	Benefits		1,556						
7	Supplemental Benefits		571						
8	Fixed Benefits		1,362						
9	TOTAL PERSONAL SERVICES	01	12,807						
10	Travel	02	0						
11	Contractual	03	6,418						
12	Commodities	04	500						
13	Equipment	05	2,500						
14	Other								
15	TOTAL COST		22,225						
	RECEIPT CODE      FUNDING SOURCE								
16		Federal Receipts	1002						
17		G.F. Match	1003						
18	100	General Funds	1004	22,225					
19		I-A Receipts	1005						
20		Program Receipts	1028						
21		Other							
For M&B Use Only 4A Key Number _____									

This position would provide clerical support to the investigations required by this bill.

The clerk would maintain files on the cases, answer phones, type correspondence, etc.

Contractual Services costs include telephone charges, \$1,800 for rent, \$1,118 for management services support, etc.

A one-time cost of \$2,500 for equipment would include a desk, chair, calculator, file cabinet, etc.

13 REQUEST FOR NEW POSITION

AGENCY Department of Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage & Hour

FY 85

Page 1 of 1  
Revised Date

LEG:B:17

DEPARTMENT OF LABOR  
OFFICE OF THE COMMISSIONER

RECEIVED

MAY 2 1984

OFFICE OF THE COMMISSIONER

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DENNIS THOMAS -LABORER & OPERATOR- REPUTED BY L & H TO BE CO-OWNER OF GROUND UP

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BRIEFING PAPER  
PAGE 2  
MAY 1, 1984

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**ENTERPRISES INC.**

March 28, 1984

**RECEIVED**

APR 17 1984

File Code	_____
Com. No.	_____
AWC	_____
Asst. Comm.	_____
Up. Ass.	_____
Info. Of.	_____
Adm. Asst.	_____
Int. Rev.	_____
Rev.	_____

**OFFICE OF THE COMMISSIONER**

Joe L. Hayes  
Speaker of the House of Representatives  
Pouch WO (Mail Stop 3100)  
Juneau, AK 99811

Dear Speaker Hayes:

Enclosed is a copy of a request for investigation I have sent to Mr. Chenoweth, the State Ombudsman, pertaining to an investigation being performed by the Wage & Hour Administration, Labor Standards & Safety Division of the Department of Labor.

After you have had a chance to read the contents of my letter to Mr. Chenoweth, which sets forth the issues involved, perhaps it would be useful for you and other members of the legislature to address the impact of the interpretation that is being placed on the regulations and the enabling statute as to who the beneficiaries of the law are. Mr. Silverthorn, the investigator assigned, takes the position that the statute in question pertains to payment of wages to all personnel who provide work on a construction project for the State of Alaska or one of its political subdivisions, even if some of those people are the owners of the contractor who undertook to perform the services by contract. In the instant case, the subcontract between L & H Enterprises, Inc. and Ground Up Construction, a partnership owned by Gary Sterba and Dennis Thomas, was for \$14,550. Due to the failure of Ground Up to properly perform the work, and the requirement that L & H had to make good that portion of the work, as part of its duties as general contractor, L & H had back charges for almost the full amount of the contract.

Nevertheless, Mr. Sterba and Mr. Thomas have made wage claims of approximately \$11,000, in addition to wage claims by two other men they claim worked for them on the project amounting to a little over \$6,000. Based on Mr. Silverthorn's "investigation," the school district has been ordered to withhold the full \$17,639.54, including almost \$11,000 for Sterba and Thomas, from

General Contractors/Design Build Services  
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

authorized builder **atlantic**

AWCS  
JUNEAU FEB 17 1984

Joe L. Hayes  
March 28, 1984  
Page Two

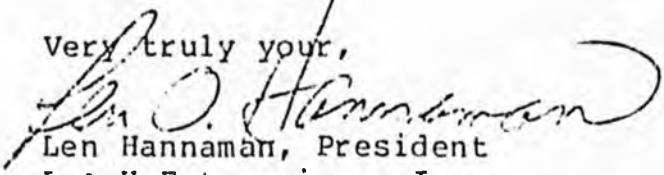
L & H Enterprises, Inc., since Ground Up Construction did not pay any wages to any of the personnel involved in the project.

You will note from our report to Mr. Chenoweth the criticisms we have of the methods of investigation that are being employed by this division of the State of Alaska. However, even more distressing, and the subject that I would appreciate the legislature addressing itself to, is the impact of this kind of enforcement practice on contracting on public works projects in the State of Alaska.

If Mr. Silverthorn is right in his interpretation, anytime a subcontractor fails to perform on a public works projects, the owners of the subcontractor can essentially get back all or even more than what they expected to make from the project through wage claims, breach their contract and fail to perform, cause their upstream contractor to expend substantial sums of money to complete the work that subcontractor has undertaken to perform, and, in addition, have to pay out of its pocket so-called "wages" of the owners of the subcontractor that defaulted. If that in fact is the law of the State of Alaska, I suspect the state and its political subdivisions are going to find it increasingly difficult to obtain reasonable bids from contractors to perform their projects.

Your inquiry into this matter would be very much appreciated. If Mr. Silverthorn is incorrectly interpreting the law, perhaps he should be set straight. If he is correctly interpreting it, obviously the legislature needs to take some corrective action. Thank you for your assistance.

Very truly yours,

  
Len Hannaman, President  
L & H Enterprises, Inc.

cc: All Legislative Members  
Governor William Sheffield  
Encl.

AWCD  
JUNEAU APR 17 1984

**ENTERPRISES INC.**

March 28, 1984

Jack Chenoweth  
Ombudsman  
State of Alaska  
Pouch WO (Mail Stop: 3000)  
Juneau, AK 99811

Re: Department of Labor Wage & Hours v. L & H Enterprises

Dear Mr. Chenoweth:

Bruce Silverthorn, investigator for the Wage & Hour Administration, Labor Standards and Safety Division of the Department of Labor in Anchorage has initiated a proceeding which has resulted in the Anchorage School District withholding the sum of \$17,639.54 from my company, L & H Enterprises, Inc., in connection with work we are performing on the Anchorage Service-Hanshaw Sports Complex, PWA 1183-025.

Because of the process that Mr. Silverthorn is employing, and some of the rationale he is proceeding under, I hereby request that you investigate this matter. On or about November 18, 1982, L & H Enterprises, Inc., as general contractor, contracted with the Municipality of Anchorage School District for the turnkey construction of the Service-Hanshaw Sports Complex. On May 24, 1983, L & H subcontracted with Ground Up Construction for certain excavation work, installation of water lines, backfilling, compacting, testing and inspection, for a total subcontract price of \$14,550. The subcontract was signed by Dennis Thomas, reflecting that he was "co-owner" of Ground Up Construction. This subcontract was signed on June 3, 1983.

In the course of performance by Ground Up Construction, Ground Up damaged underground utility lines and existing concrete curbing, improperly compacted and filled in trenches, and otherwise failed properly to perform under its subcontract. As a result, L & H back charged Ground Up Construction the sum of \$12,290.20 to correct and complete Ground Up's work.

General Contractors/Design Build Services  
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

authorized builder **atlantic**

Jack Chenoweth  
March 28, 1984  
Page Two

At the time that Mr. Silverthorn began investigating the matter, and notified L & H of his investigation, due to the size of the back charge, and the fact that L & H had not yet been paid by the municipality for a portion of the work covered by the Ground Up subcontract, L & H had not disbursed any payment to Ground Up under the subcontract.

In late November, Mr. Silverthorn was in touch with L & H to advise that he was conducting an investigation into a claim for unpaid wages being asserted by Mr. Thomas, Gary Sterba, the other owner of Ground Up Construction, Ed Grakowsky and Andy Sterba, a relative of Gary Sterba.

Although required by law to provide timely certified payrolls sworn under oath in connection with the project in question, Ground Up Construction failed to do so. However, at some point about the commencement of Mr. Silverthorn's investigation, Ground Up did submit a breakdown indicating when each of the four men in question worked on the project in question, the amount they were entitled to per hour and the amount of hours they put in, including overtime.

Mr. Silverthorn sent this document to L & H Enterprises, and requested that we evaluate it. Our superintendent on the project, Junior Russell, did compare the "payroll" documents submitted by Ground Up, and provided an affidavit dated December 16, 1983, a copy of which was sent to Mr. Silverthorn. In the affidavit, Mr. Russell points out that there were many glaring errors in the job log and time sheets submitted to the department by Ground Up. For example, those records claimed eight days of employment for a truck driver, when in fact a truck was only used on a maximum of four different days, for not more than one-half day each, for a total of two full days. Furthermore, the time sheets turned in by Ground Up in no way matched L & H's job log.

Mr. Russell also pointed out that Ground Up entered a separate contract with the school district to perform some repairs to a broken pipe, which was not part of the subcontract with L & H, and which might have accounted for a portion of the time claimed by Ground Up employees in connection with the Service-Hanshaw project. Of course, that was not the responsibility of L & H.

Finally, he pointed out that Andy Sterba was never on the job, notwithstanding the indication of the time sheets provided by

Jack Chenoweth  
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Page Three

Ground Up. Furthermore, he pointed out that Ed Grakowsky and Gary Sterba both were listed as operators of equipment on the same day, and were claiming eight hours a piece, or a combination of 16 hours as operators on the same piece of equipment on the same day. They only had one backhoe, and between them, during a straight time day, could not have gotten in more than an aggregate of eight hours.

These and other substantial discrepancies were promptly made known to Mr. Silverthorn.

Nevertheless, based upon the time sheets submitted by Ground Up Construction, on December 22, 1983, Jeane Morgan, Mr. Silverthorn's supervising investigator, sent a letter to the school district instructing the school district, pursuant to A.S. 36.05.070(c) to withhold \$13,129 from L & H Enterprises' contract. Thereafter, in February 1984, Mr. Silverthorn received a new "certified payroll" provided by Gary Sterba of Ground Up Construction. Mr. Sterba apparently informed him that the first report was erroneous, but the second report, after considering Mr. Russell's affidavit, was more accurate. A copy of that was sent to L & H Enterprises. That so-called "certified payroll" was not certified, was not presented under oath, nor was it signed by Mr. Sterba or anyone else. It radically departed from the earlier "certified payroll" that Ground Up had submitted to the Department of Labor, and as a result of it, Ms. Morgan sent a new letter to the school district on January 31, 1984 instructing the school district to withhold an even larger sum, \$17,639.54, from L & H's contract.

My attorney, Stephen S. DeLisio, on February 21, 1984, spoke with Mr. Silverthorn about the document we had now been provided as the latest "certified payroll" of Ground Up Construction. Mr. Silverthorn advised Mr. DeLisio that it was neither signed nor sworn to by Mr. Sterba or anyone else, since, by signing it, they would be representing that the wages had been paid, when the wages had not been paid. Apparently no wages whatever were paid to any of the four men in question, including the two owners, Gary Sterba and Dennis Thomas. Mr. DeLisio then requested Mr. Silverthorn to obtain an affidavit from someone at Ground Up Construction to the effect that the information contained in the most recent documents submitted by Ground Up was accurate. Mr. Silverthorn indicated that he should be able easily to do so.

Jack Chenoweth  
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Page Four

However, a month elapsed after that conversation, before we were provided such affidavit or further documentation from Mr. Silverthorn or anyone else. It finally arrived March 22, 1984, and a copy is enclosed.

Mr. Silverthorn asked L & H to make an analysis of the second payroll document from Ground Up, but we advised him that Junior Russell, the superintendent who would have to do the analysis, was traveling in the Lower 48 States, and was not expected back until approximately May. We do not have contact with Mr. Russell during the winter months, when he is off duty, and, although we have made attempts to locate him, we have not yet done so. Accordingly we have not been able to further analyze Ground Up's most recent reconstruction of the time its personnel allegedly worked on the project except as previously done by Junior Russell. Of course, Mr. Russell's critique was then into account by Ground Up in reworking its analysis.

Although the regulations under which Mr. Silverthorn is operating entitle L & H Enterprises to a full hearing, and an opportunity to examine the evidence supporting the Wage & Hour's instructions to the school district to withhold funds from L & H, and although L & H has requested an opportunity for such a hearing, none has yet been made available, although the matter has been under investigation now for more than four months, and a substantial sum of money has been withheld from L & H by the school district for more than three months.

Furthermore, and even more incredibly, Mr. Silverthorn takes the position that the two owners of the company, Gary Sterba and Dennis Thomas, are entitled to be paid their wages by L & H Enterprises, due to the failure of Ground Up Construction to do so, just as any of the employees of that company might be entitled under the law. Of the \$17,639.54 being withheld from L & H Enterprises by the school district, on instructions of the Department of Labor, \$10,618.16 is withheld on behalf of Gary Sterba and Dennis Thomas.

Under this arrangement, although Mr. Thomas and Mr. Sterba, as owners of the Ground Up Construction Company proprietorship, breached their contract with L & H Enterprises, entitling L & H to back charge almost the full amount of the contract price originally negotiated between the parties, these men will be able to take a sum of money representing almost three-quarters of

Jack Chenoweth  
March 28, 1984  
Page Five

their contract price in the form of wage claims from L & H Enterprises, if Mr. Silverthorn has his way. This notwithstanding Ground Up's breach of contract and the back charge that almost equals the full amount of the contract price, due to that breach. Mr. Silverthorn is operating on the premise that his Division's function is to recover wages for owners of subcontractors who perform work on the job themselves, notwithstanding their failure to perform the project correctly, timely or economically.

He also makes the rather unusual argument that, because Dennis Thomas now claims he was not an owner of Ground Up Construction for the purpose of this project, Thomas should not be treated as as owner, in any event, but just as another employee. This notwithstanding the fact that he has verified that Mr. Thomas signed the subcontract in question and identified himself on that contract, when he signed it, as well as otherwise during the course of the project to L & H Enterprises personnel, as a co-owner of Ground Up Construction.

I am deeply alarmed at the rather bizarre direction that this wage claim investigation has taken by Mr. Silverthorn and the Department of Labor. I do not feel that L & H has been dealt with fairly or reasonably in the matter. Mr. Silverthorn has compelled the school district to withhold very substantial sums of money from my company, based upon information which was suspect to say the least in the first instance and has been even more suspect when the first presentation was so substantially impeached by Mr. Russell's analysis, that a second presentation had to be made by Ground Up. Until March 20, 1984, none of these documents from Ground Up have ever been signed or submitted under oath, so that there could be recourse against the persons responsible for preparing them if one could eventually prove that the documents were false, and that the authors were misrepresenting the facts. Nonetheless, Mr. Silverthorn has proceeded on this documentation as if the information was Holy Writ.

Furthermore, Mr. Silverthorn's attempt to collect wages for owners of the company is grossly inappropriate. Our attorney has urged him to consult with the Attorney General's office in this regard, and although he says he has, he has never shown anything to our attorney that would indicate that such a consultation has been had or that the Department of Law was fully apprised of the

Jack Chenoweth  
March 28, 1984  
Page Six

issues in question. If the Department of Labor is going to pursue a policy to pay wages to owners of subcontractors who failed to fulfill their contract obligations on public projects, the whole underpinning of the free enterprise system in Alaska will be jeopardized, particularly as they regard public works. How can any responsible contractor afford to involve himself with a public contract in Alaska, governed by these Alaska statutes, where he may be compelled to pay the bulk if not all of the contract price to a defaulting subcontractor through that subcontractor's personal wage claims?

As I understand the law that Mr. Silverthorn is attempting to enforce, it is aimed at seeing to it that wages of hired employees on public works' projects are paid by someone - if not by the employer, then by one of the upper tier contractors from the public funds on the project. However, Mr. Silverthorn attempts to carry the matter one step further and withhold funds from us of which approximately two-third are for the benefit of the owners of the defaulting contractor.

Furthermore, although our attorney has inquired of Mr. Silverthorn regarding his intent to prosecute Ground Up for its obvious violations of the law requiring it to file certified payrolls on a timely basis and to pay its employees as required by law, Mr. Silverthorn has indicated that his only purpose in the investigation is to extract funds with which to pay the four men involved, including the two owners. This seems to me a severe lapse on the part of the Department of Labor in pursuing and prosecuting obvious wrongdoers under the law. Essentially what the department is attempting to do is to shift to L & H Enterprises, Inc., a blameless general contractor, the financial burden of a defaulting subcontractor for payment not only of wages, but also loss profits, etc.

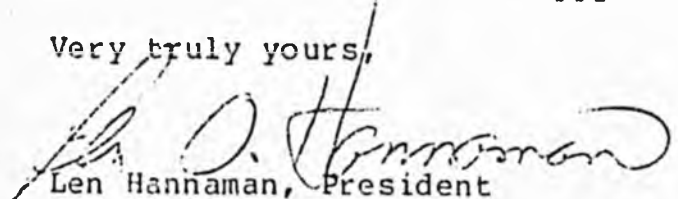
I would very much appreciate it if you would look into the matter, and advise me of your conclusions. I am enclosing herewith copies of documents that may be of help to you in your investigation, including the two sets of time records received from Ground Up Construction by the Department of Labor, a copy of Junior Russell's affidavit regarding the first set, Ms. Morgan's letters to the school district of December 22, 1983 and January 31, 1984, and my attorney's letters to Mr. Silverthorn dated December 22, 1983, February 6, 1984 and March 20, 1984.

Jack Chenoweth  
March 28, 1984  
Page Seven

Also enclosed is a copy of Mr. Silverthorn's letter to L & H Enterprises of January 31, 1984.

If we can provide you with any further information in regard to this matter, we will be happy to do so.

Very truly yours,

  
Len Hannaman, President  
L & H Enterprises, Inc.



ENTERPRISES INC.

July 22, 1983

Ground Up Construction  
7821 Sandy Place  
Anchorage, AK 99507

Gentlemen,

This letter is to inform you that as of this date, L & H Enterprises has not received a copy of your certified payroll records for the Service Hanshew Sports Complex project.

Furthermore, our accounting office has checked with the Alaska Department of Labor and they too, have not received the required reports.

Unless this information is forwarded in its entirety to L & H Enterprises' accounting department by the completion of your scope of this project, we will be forced to withhold all payments for this work, pending to audit by the Department of Labor.

Your immediate cooperation on this matter is necessary.

Sincerely,

L & H ENTERPRISES, INC.

Robert E. Kirkman  
Project Manager

cc: Len Hannaman  
Jim Stonebraker  
JR Russell  
Carol Skinner  
Judy Zundel

REK/ys

*I, Kevin Rensen, hand delivered the original document at 3:06 p.m. on July 22nd, 1983*

*(Gary)*

General Contractors/Design Build Services  
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

authorized builder atlantic

**ENTERPRISES INC.**

November 18, 1983

Ground Up Construction  
707 N Bunn  
Anchorage, AK 99508

Gentlemen:

In response to your recent phone calls, we at L & H Enterprises have enclosed a summary of all backcharges against your company herein.

Since our last meeting, there has been a significant increase in the charges due to corrective measures taken, to repair the problems created by your original work.

Your performance on this job was entirely inadequate, and caused us time and monetary losses far in excess of that documented herein. Furthermore the legal jeopardy that you placed L & H Enterprises in with your non - OSHA approved trenching practices is unexcusable.

In addition we at L & H Enterprises have had a lien placed on your contract by Tope Equipment for a sum of \$22,423.84 and any left over funds from your contract with us must be turned over to Tope Equipment immediately. Please note copy of lien enclosed.

Furthermore, our bookkeeper, Judy Zundel, has had a conversation with the Alaska Department of Labor regarding your claim against L & H Enterprises, Inc. for employee wages. She was told that your claim was invalid since the claimants were both co-owners of Ground Up Construction. That includes Mr. Denny Thomas who represented himself as a co-owner at the time he signed the contract.

In summation I will comment that in my entire construction career I have never had a subcontractor perform as badly, and with as little concern for the overall project as your firm so did.

General Contractors/Design Build Services  
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

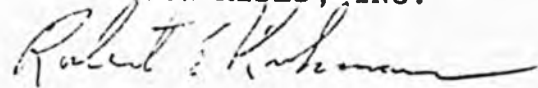
authorized broker **atlantic**

Letter to Ground Construction  
November 18, 1983  
Page two

Please direct any future communication in the form of type-written letter to the attention of Mr. Len Hannaman.

Sincerely,

L & H ENTERPRISES, INC.



Robert E. Kirkman  
Project Manager

Enclosure

REK/ys

**ENTERPRISES INC.**

November 15, 1983  
SERVICE HANSHEW SPORTS COMPLEX PROJECT

BACKCHARGES - Ground Up Construction

8/29	Alagco	97113	\$ 215.51
7/15	Kenai Supply	233064	148.60
	- JR Russell	9781	[82.34]
7/18	Central Plumbing	1377	103.75
6/30	Central Plumbing	1366	100.00
7/07	Central Plumbing	44144	1,895.10
7/07	Central Plumbing	150148	1,245.05
6/30	Kenai Supply	233056	329.86
6/28	Kenai Supply	232812	92.84
8/27	Alagco	97094	404.64
6/14	Central Plumbing	43614	164.05
9/19	Summit Paving	618	1,288.00
9/30	Shelton Electric	1148	3,336.50
9/07	Stephans Tool Rental	65301	30.00
8/26	Alagco	97079	<u>65.57</u>
	Total Invoice Charges		\$9,337.13

LABOR

		Man Hours:
7/21	Christianson	2
7/22	Christianson	2
7/20	Christianson	2
7/19	Christianson	2
8/27	Christianson	6½ (Overtime)
6/30	Brown	1
8/29	Remsen	5

General Contractors/Design Build Services  
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

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Backcharges to Ground Up Construction  
November 15, 1983  
Page two

8/31	Remsen	2½	
8/29	Christianson	5	
8/31	Christianson	4	
8/30	Christianson	<u>4</u>	
		36 hours @	
		37.50/hr =	\$ 1,350.00

Subtotal	10,687.13
15% Overhead	<u>1,603.07</u>
Total Due	
to L & H Enterprises	<u><u>\$12,290.20</u></u>



November 8, 1983

Mr. Bruce Silverthorn  
State of Alaska  
Department of Labor  
3301 Eagle  
Anchorage, AK 99503

Re: Ground Up Construction  
Service Hushew Sports Complex

Gentlemen:

Attached you will find a copy of our subcontract with Ground-Up Construction, where you will see that Denny Thomas represented himself to us a Co-owner of his company.

Secondly, I have enclosed a memorandum from Bob Kirkman, our project manager for the job, showing some of the problems which were caused by Ground-Up Construction.

If you need further information, do not hesitate to contact me.

Sincerely,

L & H ENTERPRISES, INC.

A handwritten signature in dark ink, appearing to read 'Jim Stonebraker', is written over the typed name.

Jim Stonebraker  
General Manager

Enclosure

JS/ys

General Contractors/Design Build Services  
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

authorized builder **atlantic**

INTER OFFICE MEMO

Date: September 30, 1983

To: Jim Stonebraker

From: Bob Kirkman

Re: Service Hanshew Sports Complex Ground Up Construction

I advise that all payments to Ground Up Construction be withheld pending back-charges incurred in the following areas:

1. Damage to underground utility lines
2. Damage to existing concrete curbing
3. Improper compaction and non-spec fill material in trenches
4. Charges for plumbing equipment and accessories purchased on L & H Enterprises account
5. Additional supervision, labor and management charges

The above mentioned items, along with any additional back charges, are currently being itemized for an accurate accounting.

In addition, serious consideration should be given to the project delays incurred through Ground Up's mismanagement of their scope of the work, and the resulting dollar impact suffered by L & H Enterprises therein.



Robert E. Kirkman  
Project Manager



SUBCONTRACT

THIS SUBCONTRACT, made and entered into as of this 24  
day of May, 1983, by and between

L & H Enterprises, Inc.

whose mail address is

P.O. Box 111593  
Anchorage, AK 99511

hereinafter called "Contractor", and

Ground Up Construction

hereinafter called "Subcontractor", whose mail address is

630 Western Drive  
Anchorage, AK 99501

WITNESSETH

WHEREAS, Contractor entered, or is about to enter into a  
contract, Numbered C-20397  
and dated November 18, 1983, with

Municipality of Anchorage

hereinafter called "Owner", for the performance of certain work  
according to the terms and conditions of said contract and the  
general specifications and supplements to the specifications,  
addenda, general and special provisions and conditions, plans,  
drawings, bid schedule, maps and other documents made a part  
thereof, and all change orders or amendments thereto, all of  
which are herein collectively referred to as the "General  
Contract", said work under the General Contract being generally  
described as follows:

Turnkey construction of the Service Houshaw Sports Complex.

and,

WHEREAS, the parties are desirous of entering into a subcontract whereby Subcontractor shall undertake the performance of a part of the work to be done under the General Contract, on the terms and conditions herein stated;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and conditions herein contained, do hereby agree, one with the other, as follow:

I WORK TO BE PERFORMED

The subcontractor agrees to furnish all materials, labor, tools, equipment, supervision, supplies, and other things, unless otherwise provided herein, necessary or required to perform, and to perform fully and completely, at the price or prices set out herein, all that portion of the work required to be done by Contractor under the General Contract described as follows:

Item No.	Estimated Quantity	Item Description	Unit Price	Total
1	As General Spec-	Cut asphalt, remove from job		
2	ifications and	Excavate		
3	prints for Ser-	Install 2" water line		
4	vice Hanshaw	Install 4" water line		
5	Sports Complex	Backfill		
6		Compaction		
7		All testing as required		
8		All inspections as required		\$14,300.00

9- TAP SEWER LINE \_\_\_\_\_ 250<sup>00</sup>  
D. Thomas

It is understood and agreed that quantities shown above are quantities estimated to be required under the General Contract and that the actual quantities shall be in such amounts as may eventually be required and determined under the General Contract or under the General Conditions of this Subcontract.

II PAYMENTS

In consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of this Subcontract by Subcontractor, Contractor agrees to pay and Subcontractor agrees to receive and accept as full compensation for doing all work and furnishing all materials, supplies and equipment contemplated and embraced herein and for well and faithfully completing the work aforesaid and the whole thereof in the manner and according to the requirements of this Subcontract, the General Contract, the Owner and the Contractor, the sum of Fourteen thousand three hundred and no/100, (\$14,300.00) subject to additions and deductions, if any, by reason of variance from estimated quantities, change orders, deletions or extra work orders pertaining to the Subcontract items.

III SPECIAL CONDITIONS

The Special Conditions, consisting of Paragraphs through attached hereto are a part of this Subcontract and by this reference are incorporated herein and made a part hereof as fully as though set forth herein.

IV GENERAL CONDITIONS

The General Conditions, consisting of Paragraphs 1 through 27, attached hereto are a part of this Subcontract and by this reference are incorporated in this Subcontract and made a part hereof as fully as though set forth herein.

V SUPPLEMENTS

The Supplements, consisting of Numbers, attached hereto are a part of this Subcontract and by this reference are incorporated in this Subcontract and made a part hereof as fully as though set forth herein.

IN WITNESS WHEREOF, the parties have executed this Subcontract the day and year first hereinabove written.

Subcontractor

Contractor

By A. J. [Signature]  
Title CO-owner

[Signature]  
Title Supt.

L & H Enterprises, Inc.

, Contractor

Ground Up Construction

, Subcontractor

dated May 24, 1983

Subcontractor scope of work includes:

- Cut asphalt, remove from job
- Excavate
- Install 2" water line
- Install 4" sewer line
- All testing as required
- Backfill
- Compaction
- All inspections as required

Subcontractors work excluded:

- Vacating electrical and gas lines
- Hookup to existing water, main

# STATE OF ALASKA

## DEPARTMENT OF LABOR

December 22, 1983

*L & H Ground Up Const.*

BILL SHEFFIELD, GOVERNOR

3301 EAGLE STREET

ANCHORAGE, ALASKA 99503

PHONE 581-2082

RECEIVED — ANCHORAGE

DEC 29 1983

SCHAIBLE, STALEY,  
DeLISIO AND COOK, INC.

Anchorage School District  
Pouch 6-614  
Anchorage, AK 99502

Attention Lowell T. Freeman

Dear Mr. Freeman:

RE: ASD-SERVICE HENSHEW SPORTS COMPLEX

As we explained to you in our phone conversation of December 21, we are currently investigating Ground Up Construction for alleged violations of Title 36 of the Alaska Statutes. Ground Up Construction is a subcontractor with L & H Enterprises on this public works project.

Ground Up Construction has failed to pay its employees on this project in accordance with the law. As a part of our investigation we are attempting to determine the exact hours worked by these employees and the total wages due. Our best available information currently show three employees are owed a total of \$13,129 in wages for work performed on the Service Henshaw Sports Complex. These wages are broken down as follows:

<u>Ed Gutosky</u>		
112 hours s.t. @ \$23.84 per hour	=	\$2670.08
61 hours o.t. @ \$35.76 per hour	=	2181.36
173 hours fringe benefit @ \$5.45	=	<u>942.85</u>
Total		\$5794.29
<u>Dennis Thomas</u>		
133 hours s.t. @ \$22.45 per hour	=	\$2985.85
43.5 hours o.t. @ \$33.675 per hour	=	1464.86
176.5 hours fringe benefit @ \$5.45	=	<u>961.93</u>
Total		\$5412.64
<u>Andy Sterba</u>		
72 hours s.t. @ \$26.69 per hour	=	\$1921.68
Total wages due		<u>\$13,129.00</u>

AS 36.05.070(c) states, in part:

"A contract for public works in the state or a political subdivision shall contain provisions that

(4) the state or political subdivision shall withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the contractor or subcontractors the difference between

Anchorage School District  
December 22, 1983  
Page 2

(A) the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work, and

(B) the rates of wages in fact received by laborers, mechanics, or field surveyors."

In accordance with the above, I am directing the Anchorage School District to withhold from this public construction contract the amount of thirteen thousand one hundred twenty-nine dollars (\$13,129) pending the conclusion our investigation into this matter.

Any questions you may have regarding this may be directed to me or Bruce Silverthorn, the investigator on the case.

In closing, I would like to ask that you confirm to us in writing that these funds have been withheld. We feel it our responsibility to advise you that failure to comply with this demand for retention of funds may result in further action in accordance AS 36.05.030(b).

Very truly yours,



Jean Morgan  
Supervising Investigator  
Wage & Hour Administration  
Labor Standards & Safety Division

certified # P483768426  
cc: Ground Up Construction  
cc: L & H Enterprises, Inc.  
cc: Steve DeLisio

The Law Firm of  
Schaible, Staley, DeLisio & Cook, Inc.

December 22, 1983

Anchorage Office	Fairbanks Office
Stephen S. DeLisio	Grace Berg Schaible
Alan Sherry	Howard Staley
Joseph M. Moran	Dennis E. Cook
Michael C. Geraghty	Barbara L. Schulmann
Patricia L. Zobel	Robert B. Groseclose
Walter J. Szudlo	Charles D. Silvey, Jr.
Allan J. Olson	
	Of Counsel:
	William V. Boggesa

Mr. Bruce Silverthorn  
Dept. of Labor  
Division of Wage and Hours  
3301 Eagle St., Suite 310  
Anchorage, AK 99503

Re: Ground Up Construction Certified Payroll -  
Service Hansnew Sports Complex

Dear Mr. Silverthorn:

This is to follow up on telephone conversations we have had concerning wage claims of the owners and employees of Ground Up Construction with regard to work performed on the Service Hansnew High School Sport Complex project. As I have advised you, I am counsel for L & H Enterprises, the contractor to whom Ground Up subcontracted for certain work in connection with that project.

By now you will have received the affidavit of Junior Russell which demonstrates, under oath, that a substantial amount of the information contained in the certified payrolls received from Ground Up Construction is at least erroneous, and at worst false. Accordingly, it becomes incumbent upon you, in the course of your investigation, to require all evidence from Ground Up and its employees to be received in a sworn form. Whether or not that is your usual procedure is irrelevant in this case. Here we have sworn testimony in hand reflecting that the information you are being provided by Ground Up is incorrect. Obviously, a search for the truth in making a determination by you is the bottom line.

In furtherance of the search for truth, I would strongly recommend that Sterba, Thomas and anyone else who provides information concerning these matters be informed, upon

**FILE COPY**

Mr. Bruce Silverthorn  
December 22, 1983  
Page Two

giving sworn testimony, the penalties of perjury. With that sombering information, the chance of you receiving truthful information should be enhanced.

Based on Mr. Russell's affidavit, the information contained in Ground Up's payroll pertaining to this project is incorrect. Moreover, from the face of the document, the certified payroll was not filed timely pursuant to A.S. 36.05.040. A.S. 36.05.060 sets forth the penalty for violation of the Chapter, including violation of A.S. 36.05.040. In your "even handed" approach to such a matter, one would assume that appropriate criminal prosecution of a contractor would follow from false and untimely filing of certified payroll, as provided by law. However, when I discussed this possibility with you, you seemed to take the view that your department was not interested in prosecution violators of the statute in question.

The fact that the Ground Up payroll was prepared and submitted so long after the fact should raise some serious questions in your and everyone else's minds as to the legitimacy of what is happening here. Considering the close similarity between the amount being claimed as wages and the amount of the contract price that has not been paid to Ground Up by L & H, one should ask whether the procedure which was instituted by Mr. Thomas and is being pursued by Gary Sterba, the co-owners of Ground Up Construction, is merely a back door effort to obtain payment under the contract to which they are not otherwise entitled due to their breach of contract.

As I advised you by telephone on December 19, 1983, some of the time set forth in the certified payroll charged against L & H's contract was actually performed directly by Ground Up Construction under a separate contract directly with the School District. Accordingly, those services had nothing to do with the relationship between L & H and Ground Up Construction.

On the question of whether the owners of the company would be entitled to payment of wages through the process you are pursuing in your agency, and whether Dennis Thomas is or

Mr. Bruce Silverthorn  
December 22, 1983  
Page Three

should be considered for such purposes as an owner of Ground Up Construction in regard to the work in question are matters which we have discussed at length. I have strenuously urged you to seek the advice of a qualified attorney assigned to the Dept. of Labor from the Attorney General's office on these issues. Since you are not an attorney, you are in no position to make a legal evaluation of those issues, although you seem fully prepared to take that on yourself without legal advice. That is an issue that L & H intends to pursue legally to the full limits of the law, should an adverse ruling be made by your division. I am confident that a qualified, experienced attorney will come to the same conclusion that I have: that neither Gary Sterba nor Dennis Thomas are entitled to payment of any wages through Division of Wage and Hour procedures under the Act, for the reason that they are owners of the company.

On the face of the subcontract between L & H and Ground Up, Dennis Thomas signed his name as a co-owner. He made the same representation to L & H's representative in negotiating the contract. Gary Sterba made the same representation to L & H's representatives. Regardless of the fact that Sterba's name may appear to be the only one on the contractor's bond filed with the state or on the state business license, that does not mean that Dennis Thomas was not, at least for the purposes of this one project, a co-owner of Ground Up Construction. He was apparently added as a partner after the contractor's license and business license were obtained. Whether or not he and Sterba would have applied for an amended or new business license or contractor's bond, or even would be required to do so under the law, is wholly irrelevant. Moreover, even if it were to develop unequivocally that Dennis Thomas was in fact not a genuine owner of Ground Up at any time, by having signed the contract with L & H as an owner, he is estopped legally from denying that he was an owner of the company for purposes of enforcement of this contract. He is civilly liable to L & H for breach of contract under the law, just as co-owner Gary Sterba is.

You indicated that the normal enforcement policy of your division is to require payment of wages to owners. I am

Mr. Bruce Silverthorn  
December 22, 1983  
Page Four

curious to know how frequently the issue has come up. I would be surprised if it came up more than on a rare occasion. However, regardless of whether there is in fact a policy or if that is simply the way that some enforcement officer for Wage and Hour Division handled an individual situation in the past, there is no authority under the enabling legislation to permit such a result.

You have indicated that the regulations permit that approach, but I would remind you that the regulations can do no more than what the enabling statutes authorize. Any effort on the part of the regulations to go beyond the authority granted by the statutes is null and void as a matter of law. You also seem to think that the regulations and this so-called "policy" is justified under the provisions of the Act that require owners to include on certified payrolls their hours and rates of pay for doing the same sort of work as their employees. However, it is quite obvious from the statute that there is essentially one reason for doing this: to make sure that, for determining the appropriate average wage applicable to the given type of work for enforcement purposes, the division receives all data germane to making that calculation. The amount that owners pay themselves for doing the identical type work in question is obviously important data to that determination.

You indicated that there is a second use for this information: in reviewing contracts and public works, you are able to make certain that the contractor submits a valid competitive bid with sufficient funds to in fact pay wages to employees who are actually performing the work in question. If such review of contracts is a legitimate exercise of your division, still the purpose of requiring the owner to submit his hours and rates of pay on certified payroll is for data collection purposes. In short, nothing in the statute authorizes your division to enforce payment of wages to owners.

Finally, I am somewhat concerned about the approach that is being taken in this entire matter. Under the Act, the contractor who is in violation of the Act for nonpayment of wages is Dennis Thomas and Gary Sterba d/b/a Ground Up Construction. Quite apart from your investigation in determining validity of wage claims, etc., what effort is being made to compel Ground Up Construction to pay its

Mr. Bruce Silverthorn  
December 22, 1983  
Page Five

employees? Again, violation of the Act carries criminal penalties. Have Sterba and Thomas been informed of those penalties and is any prosecution under consideration should they fail to meet their obligations as employer under the Act with regard to payment of the employees?

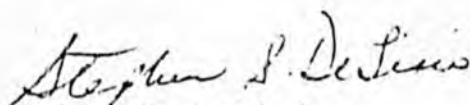
From my conversations with you, it seems as if your primary thrust is to satisfy yourself, primarily based on unsworn information received from Sterba, Thomas and their employees, as to how much wages are involved, and then seek to force L & H, the general contractor on the project, or the school district to pay those wages. Obviously the entity responsible for payment of the wages is Ground Up Construction, and every effort available to the Division should be exhausted in seeking to compel Ground Up to pay its employees, before the Division even considers pursuing other sources of payment. I trust that is exactly what you will do, and that my uneasy feeling in this regard is unfounded.

As I had indicated before, if we can be of any further assistance in developing data or factual information that will assist you in getting at the truth in this matter, we will be happy to cooperate. However, my client has a right to be treated fairly under the law and according to due process of law, just as anyone else does. The Wage and Hour Division function should not be prostituted to become a method of subcontractors getting their money out of an upstream contractor, when the subcontractor has breached his contract and failed to fulfill his obligations to the upstream contractor. Such a process would constitute at best a gross abuse of the enabling legislation, as well as a major miscarriage of justice.

With best regards,

SCHAIBLE, STALEY, DeLISIO  
& COOK, INC.

By:

  
Stephen S. DeLisio

SSD/slb  
cc: Len Hannaman

# STATE OF ALASKA

**DEPARTMENT OF LABOR**  
WAGE & HOUR ADMINISTRATION  
LABOR STANDARDS & SAFETY DIVISION

BILL SHEFFIELD, GOVERNOR

3301 EAGLE STREET  
POUCH 7-021  
ANCHORAGE, ALASKA 99510  
PHONE: (907) 264-2435

RECEIVED — ANCHORAGE

FEB 1 - 1984

SCHAIBLE, STALEY,  
DeLISIO AND COOK, INC.

January 31, 1984

L & H Enterprises, Inc.  
P.O. Box 111593  
Anchorage, Alaska 99511

Attention: Len Hannaman

Dear Mr. Hannaman:

RE: ANCHORAGE SERVICE-HANSEW SPORTS COMPLEX  
PWA 1183-025

Enclosed is a copy of our letter to the Anchorage School District requiring the withholding of funds on the project referenced above. The total to be withheld has been increased to \$17,640.00. This new figure is based upon the following:

1. Ground Up Construction has submitted revised certified payrolls to our office, along with its payroll records.
2. The Attorney General's Office has informed us that wages earned by owner/operators must be paid at prevailing wage rates; specifically, 29 CFR 5.2(i) states,

"Every person paid by a contractor or subcontractor in any manner for his labor in the construction prosecution; completion or repair of a public building or public work...is 'employed' and receiving 'wages' regardless of any contractual relationship alleged to exist."

Therefore, we have adjusted the amount of funds being retained.

As you will see from the payroll copies enclosed, the hours of work shown vary from the original payrolls submitted by Ground Up Construction. If you have any dispute with the hours shown, please submit any documentation or other evidence you may have that supports your contention(s) to me at the address shown above.

L & H Enterprises  
January 31, 1984  
Page 2

If you agree with the time shown, please inform our office of the action you wish to take to have these wages paid. Whatever the case, please respond to this letter by February 10, 1984.

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

Yours,



Bruce Silverthorn  
Investigator  
Wage & Hour Administration  
Labor Standards & Safety Division

Enclosure

cc: Steve Delisio  
cc: Ground Up Construction  
cc: Anchorage School District

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR  
WAGE & HOUR ADMINISTRATION  
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET  
POUCH 7021  
ANCHORAGE, ALASKA 99510  
PHONE: (907) 254-2435

January 31, 1984

Anchorage School District  
Pouch 6-614  
Anchorage, Alaska 99502

Attention: Lowell T. Freeman

Dear Mr. Freeman:

RE: ASD-SERVICE HANSHAW SPORTS COMPLEX  
PWA 1183-025

On December 22, 1983, we wrote to the Anchorage School District to explain that we were investigating the wages paid to the employees of Ground Up Construction. Ground Up Construction is a subcontractor of L & H Enterprises, Inc. on this project. Our letter directed you to withhold a total of \$13,129.00.

Since that time, we have been provided with additional information on the total hours worked by the Ground Up Construction employees, as follows:

Gary Sterba

Laborer

157 s.t. hrs. @ \$ 18.82	=	\$ 2,954.74
59 o.t. hrs. @ 28.23	=	1,665.57
216 f.b. hrs. @ 5.65	=	1,220.40
		<u>\$ 5,840.71</u>

\$ 5,840.71

Denny Thomas

(117 s.t. hours, 51 o.t. hours)

Laborer (80%)

93 1/2 s.t. hrs. @ \$ 18.82	=	\$ 1,759.67
41 o.t. hrs. @ 28.23	=	1,157.43
134 1/2 f.b. hrs. @ 5.65	=	759.93
		<u>\$ 3,677.03</u>

Operator (20%)

23 1/2 s.t. hrs. @ \$ 23.84	=	\$ 560.24
10 o.t. hrs. @ 35.76	=	357.60
33 1/2 f.b. hrs. @ 5.45	=	182.58
		<u>\$ 1,100.42</u>

\$ 4,777.45

Ed Gutsky  
(117 s.t. hours, 51 o.t. hours)

Operator (80%)  
93 1/2 s.t. hrs. @ \$ 23.84 = \$ 2,229.04  
41 o.t. hrs. @ 35.76 = 1,466.16  
134 1/2 f.b. hrs. @ 5.45 = 733.03  
\$ 4,428.23

Laborer (20%)  
23 1/2 s.t. hrs. @ \$ 18.82 = \$ 442.27  
10 o.t. hrs. @ 28.23 = 282.30  
33 1/2 f.b. hrs. @ 5.65 = 189.28  
\$ 913.85

\$ 5,342.03

Andy Sterba  
(64 s.t. hours)

Truckdriver (80%)  
51 s.t. hrs. @ \$ 19.80 = \$ 1,009.80  
51 f.b. hrs. @ 6.89 = 351.39  
\$ 1,361.19

Laborer (20%)  
13 s.t. hrs. @ \$ 18.82 = \$ 244.66  
13 f.b. hrs. @ 5.65 = 73.45  
\$ 318.11

\$ 1,679.30

TOTAL WAGES EARNED = \$ 17,639.54

In accordance with the provisions of Title 36 of the Alaska Statutes quoted in our previous letter, we are hereby directing the Anchorage School District to adjust the amount of funds withheld from the L & H Enterprises, Inc. contract to \$17,640.00.

In closing, I would like to ask once again that you confirm to us in writing that you have complied with this demand for withholding. As mentioned in our first letter, failure to comply may result in further action by the Department of Labor in accordance with A.S. 36.05.030(b).

Anchorage School District  
January 31, 1984  
Page 3

If you have any questions, please contact Bruce Silverthorn or myself, and we will assist you.

Very truly yours,

*Jean Morgan*

Jean Morgan  
Supervising Investigator  
Wage & Hour Administration  
Labor Standards & Safety Division

cc: L & H Enterprises, Inc.  
Steve Delisio  
Ground Up Construction

The Law Firm of  
Schaible, Staley, DeLisio & Cook, Inc.

February 6, 1984

Anchorage Office	Fairbanks Office
Stephen S. DeLisio	Grace Berg Schaible
Alan Sherry	Howard Staley
Joseph W. Moran	Dennis E. Cook
Michael C. Geraghty	Barbara L. Schuhmann
Patricia L. Zobel	Robert B. Grusecose
Walter J. Szudlo	Charles D. Silvey, Jr.
Allan J. Olson	

Of Counsel:  
William A. Roggers

Bruce Silverthorn, Investigator  
Alaska Department of Labor  
Wage & Hour Administration  
Labor Standards & Safety Division  
Pouch 7-021  
Anchorage, AK 99510

Re: Anchorage Service-Hanshew Sports Complex  
PWA 1183-025

Dear Mr. Silverthorn:

Your letter to L & H Enterprises of January 31, 1984, with regard to the above matter has been referred to me for response on behalf of L & H. I have ceased to be amazed at the lack of due process which your department appears to favor in these matters, at least as it has been demonstrated in this case.

To begin with, the thrust of your letter is directed at my client, the general contractor, not at the employer of the employees who have not been paid as required by the law you seek to enforce. What action is being taken with regard to Ground Up Construction and its co-owners, Gary Sterba and Dennis Thomas, in this regard? What do they propose to do about paying the wage claims of their employees, is the more appropriate question that should be asked at this time. Furthermore, what action does your department intend to take with regard to the statutes that set forth sanctions for failure of an employer to file timely certified payroll records and fail to properly pay prevailing wage rates to its employees?

Under any reasonable procedure, one would have every reason to expect that the administrative procedures available to your agency would be exhausted in dealing with the party who is directly responsible for the problem - the employer. Yet your letter does not even address that subject matter, but addresses the subject to L & H Enterprises as if L & H was the actual employer of the workmen in question.

FILE COPY

Bruce Silverthorn  
February 6, 1984  
Page Two

As you very well know, we do dispute the hours shown by Ground Up Construction. For whatever reason, your letter completely fails to address the fact that, without any obligation to do so, we submitted to you a sworn affidavit of Junior Russell dated December 16, 1983, setting forth the basis for our challenging the payroll record of Ground Up Construction, as then known. We realize that you have received more recent information, but that more recent information has resulted in a substantial increase in the amount of hours allegedly worked, whereas Mr. Russell's affidavit demonstrated that the earlier smaller alleged payroll record was grossly excessive.

Furthermore, the form in which you have provided us the alleged hours worked is utterly useless in our being able to make a response with regard to disputing those hours. No attempt is made in your attached letter of January 31, 1984 to the school district, wherein the hours are set forth, to show on what days each increment of hours was put in. Obviously that is the only way that we would have to challenge the hours shown.

Third, whatever happened to the right to a hearing on a dispute of this type. From the tone of your letter, our entitlement to be heard is apparently going to be limited to submission of documentation or other evidence that we have that supports our contentions. This is very disturbing inasmuch as your letter failed to note that we had already submitted a substantial sworn document which very extensively challenged the claims being asserted by Ground Up Construction and its employees.

In addition, we had previously advised you that a portion of the work provided by Ground Up Construction at Anchorage Service-Hanshaw Sports Complex was performed directly to the account of the Anchorage School District, and not under the subcontract with L & H Enterprises. Nevertheless, neither your letter to L & H Enterprises or your letter to the school district, both of which are dated January 31, 1984, deal with this question. A hundred percent of what you are asking the school district to withhold is being asked to be withheld from L & H Enterprises contract. Obviously, no matter how the statute and regulations you are attempting to enforce are interpreted in the final analysis, there would be absolutely no right for anybody to have the school district withhold monies from L & H Enterprises for wages owed by Ground Up Construction to its employees for performing services to the direct account of the Anchorage School District.

Concerning your advise with regard to the entitlement of owner/operators, as you well know, we intend to challenge that, if necessary, to the highest court. The interpretation is being made

Bruce Silverthorn  
February 6, 1984  
Page Three

of a regulation which does not expressly say what you say it says. In other words you are interpreting what the words mean. The regulation only has such scope, force and effect as the enabling statute gives it, and there is nothing under the statute that gives the Department of Labor the right to establish a regulation which would require an upstream contractor to pay a defaulting subcontractor owner/operator prevailing wage rates.

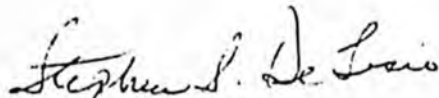
We hereby demand our rights as established by law to the benefit of the administrative procedures pertaining to such matters. Furthermore, we request an answer to the inquiries we have made above.

Should you see fit to provide us with a breakdown of the hours claimed by Ground Up's employees and owners, on a day-by-day basis so that we can evaluate them, we will be happy to make a further evaluation. However, we question whether such an analysis would be a waste of time, since you have obviously disregarded Mr. Russell's previous sworn analysis.

Very truly yours,

SCHAIBLE, STALEY, DeLISIO  
& COOK, INC.

By:

  
Stephen S. DeLisio

SSD/slb

cc: Len Hannaman

The Law Firm of  
**Schaible, Staley, DeLisio & Cook, Inc.**

March 20, 1984

Bruce Silverthorn, Investigator  
Alaska Department of Labor  
Wage & Hour Administration  
Labor Standards & Safety Division  
Pouch 7-021  
Anchorage, AK 99510

Anchorage Office	Fairbanks Office
Stephen S. DeLisio	Grace Berg Schaible
Alan Sherry	Howard Staley
Joseph M. Moran	Dennis E. Cook
Michael C. Geraghty	Barbara L. Schuhmann
Patricia L. Zobel	Robert B. Groseclose
Walter J. Szudlo	Charles D. Silvey, Jr.
Allan J. Olson	
Gregory L. Youngman	

Of Counsel:  
William A. Higgins

Re: Anchorage Service-Hanshew Sports Complex  
PWA 1183-025

Dear Mr. Silverthorn:

You will recall on February 21, 1984 our telephone conversations regarding the fact that, even the most recent revised proported payroll records produced to you by Ground Up Constructions were not presented under oath. You stated that Mr. Sterba was unwilling to provide a "certified payroll", on the ground that he felt such certification constituted a representation that the payroll had been paid, when it had not.

Accordingly, I requested that you obtain from Ground Up Construction a sworn affidavit to the accuracy of the information contained in whatever payroll record Ground Up intends now to rely upon. You advise that that would be an easy thing to accomplish, and that you would do so and send me a copy of the affidavit immediately.

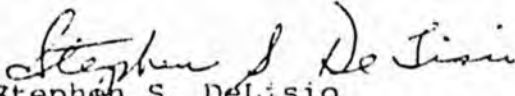
We are now approximately one full month since that discussion, and I have not received any such affidavit. Has Mr. Sterba declined to provide one? When may we expect to see some sworn support for this oft changed and perhaps in the future often changing payroll "record?"

I attempted to call your office on March 19, only to be advised that you were gone on personal leave until April 1. I trust you will respond to this promptly after your return.

Very truly yours,

SCHAIBLE, STALEY, DeLISIO & COOK, INC.

By:

  
Stephen S. DeLisio

SSD/slb

cc: Len Hannaman  
943 West 6th Avenue  
(907) 279-9571

Post Office Box 102810  
Cable Address: MURANCH

Anchorage, Alaska 99510-2810  
Telex No. 25-257

Fairbanks Office: 330 Barnette Street

Post Office Box 810

Fairbanks, Alaska 99707-0810

(907) 452-1855

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF LABOR**  
WAGE & HOUR ADMINISTRATION  
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET  
POUCH 7-021  
ANCHORAGE, ALASKA 99510  
PHONE: (907) 264-2435

RECEIVED — ANCHORAGE

MAR 22 1984

SCHAIBLE, STALEY,  
DeLISIO AND COOK, INC.

March 21, 1984

Schaible, Staley, Delisio & Cook, Inc.  
PO Box 102840  
Anchorage, AK 99510

Attention Stephen S. Delisio


RE: ASD-SERVICE HANSEW SPORTS COMPLEX  
PWA1183-025

Enclosed are the amended certified payrolls submitted by Gary Sterba, on behalf of Ground Up Construction, for work performed on the above referenced project. Mr. Sterba's certification is attached for your review.

Please compare these payrolls for consistency with your own records and provide this office with any comments you might have by April 6, 1984.

If you have any questions, please don't hesitate to contact our office at 264-2435.

Yours,

  
Bruce H. Silvertorn  
W/H Investigator  
Wage & Hour Administration  
Labor Standards & Safety Division

Enclosures



ALASKA DEPARTMENT OF LABOR  
LABOR STANDARDS & SAFETY DIVISION  
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL



DEPOSITED  
7920 Ladasa Pl 1983

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input checked="" type="checkbox"/> Gary L. Sterba Ground Up Construction	ADDRESS 7920 Ladasa Pl 1983	PHONE NO. 349-9985
---	--------------------------------	-----------------------

PAYROLL NO. None	FOR WEEK ENDING 7 / 10 / 83	CONTRACTOR'S LICENSE NO. A12273	PROJECT START DATE 6 / 20 / 83	PROJECT AND LOCATION Service Manshew H.S.	PROJECT OR CONTRACT NO. Sport Complex Water & Sewer Outside
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Name, Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Day and Date							Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS					Net Amount Paid	Check Number		
			Benefits OT or ST	Hours Worked Each Day									FICA	Fed W/H Tax	E.S.D.	Union Dues	Other (Explain)			Total Deductions	
				11	12	13	14	15	16												17
Gary L Sterba 7920 Ladasa Pl Anch AK 99507 508-52-4251	SAME	Owner Oper	OT		5	3	3	3		2	16	43.94	1874.64								
			ST		8	8	8	8		8	40	29.29									
			FB																		
Dennis Thomas 3948 Boniface #3 Anch AK 99504	SAME	Oper/Laborer	OT		5	3	3	3		2	16	36.71	1566.16								
			ST		8	8	8	8		8	40	24.47									
			FB																		
Edward Gutowsky P O box 64 Dillard, AK 97432 157-14-5682	SAME	Operator	OT		5	3	3	3		2	16	43.94	1874.64								
			ST		8	8	8	8		8	40	29.29									
			FB																		
Andy Sterba 7920 Ladasa pl Anch AK 99507 537-82-8048	SAME	Truck Driver Laborer	OT										195.76								
			ST							8	8	24.47									
			FB																		
			OT																		
			ST																		
			FB																		
			OT																		
			ST																		
			FB																		
			OT																		
			ST																		
			FB																		

*Municipal Project?*

ALASKA DEPARTMENT OF LABOR  
LABOR STANDARDS & SAFETY DIVISION  
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL



NAME OF CONTRACTOR OR SUBCONTRACTOR  Gary L Sterba  
Ground Up Construction

ADDRESS  
7920 Ladasa Pl

PHONE NO.  
349-9985

PAYROLL NO.  
None

FOR WEEK ENDING  
7 /24 /83

CONTRACTOR'S LICENSE NO.  
A12273

PROJECT START DATE  
6 /20 /83

PROJECT AND LOCATION  
Service Hanshaw H.S.

PROJECT OR CONTRACT NO.  
Sport Complex  
Water & Sewer Outside

Name Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Benefits C L I C I T Y	Day and Date							Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS					Net Amount Paid	Check Number	
				18	19	20	21	22	23	24				FICA	Fed W/H Tax	E.S.D.	Union Dues	Other (Explain)			Total Deductions
				Hours Worked Each Day																	
Gary L Sterba 7920 Ladasa Pl Anch AK 99507 508-52-4251	SAME	Owner Oper	OT	2	3	2	2	3		12	43.94	1698.88									
			ST	3	8	8	8	8		40	29.29										
			FB																		
Dennis Thor s 3048 Boni e #3 Anch AK 99504	SAME	Oper/Laborer	OT	2	3	2	2	3		12	36.71	1419.32									
			ST	8	8	8	8	8		40	24.47										
			FB																		
Edward Gutowsky P O BOX 64 Dillard, AK 97432 157-14-5682	SAME	Operator	OT	2	3	2	2	3		12	43.94	1698.88									
			ST	8	8	8	8	8		40	29.29										
			FB																		
Andy Sterba 7920 Ladasa Pl Anch AK 99507 537-82-8048	SAME	Truck Driver	OT									854.08									
			ST	8	8			8	8	32	26.69										
			FB																		
			OT																		
			ST																		
			FB																		
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			ST																		
			FB																		
			OT																		
			ST																		
			FB																		



ALASKA DEPARTMENT OF LABOR  
LABOR STANDARDS & SAFETY DIVISION  
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL



NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input checked="" type="checkbox"/> <b>GARY STERBA</b>			ADDRESS <b>17821 SANDY PLACE</b>			PHONE NO. <b>344-5114</b>			
PAYROLL NO. <b>None</b>	1 CR WEEK ENDING <b>7/2/83</b>	CONTRACTOR'S LICENSE NO. <b>A12273</b>	PROJECT START DATE <b>6/20/83</b>	PROJECT AND LOCATION <b>Service HANSHAW H.S.</b>			PROJECT OR CONTRACT NO. <b>Sport Complex - Water &amp; Sewer outside</b>		

Name, Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Day and Date							Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS					Net Amount Paid	Check Number		
			Benefit	Hours Worked Each Day									FICA	Fed W/H Tax	ESD	Union Dues	Other (Explain)			Total Deductions	
				27	28	29	30	1	2												3
STERBA Sandy Pl AK 99507 52-4251	SAME	OPERATOR LABORER	OT							60	29.29	1757.40							Not paid		
is THOMAS License # 3 AK 99504	SAME	LABORER	OT							47	24.47	1150.09							Not paid		
GRAKOWSKY	Refer to Dennis Thomas, Oregon	OPERATOR	OT							47	29.29	1376.63							Not paid		
STERBA LADASA PL AK 99507	SAME 537-82-8048	TRUCK DRIVER	OT							4	26.69	103.52							Not paid		
			ST																		
			FB																		
			OT																		
			ST																		
			FB																		
			OT																		
			ST																		
			FB																		

ALASKA DEPARTMENT OF LABOR  
LABOR STANDARDS & SAFETY DIVISION  
WAGE & HOUR ADMINISTRATION

CERTIFIED PAYROLL

Let 3-11-83  
PO Box 111593  
Anch. 99511



NAME OF CONTRACTOR  OR SUBCONTRACTOR  **GARY STERBA** ADDRESS **17821 Sindy Place** PHONE NO. **344-5114**  
**Round Up Const**  
 PAYROLL NO. **NONE** FOR WEEK ENDING **6/26/83** CONTRACTOR'S LICENSE NO. **A 12273** PROJECT START DATE **6/20/83** PROJECT AND LOCATION **Service HANSHEW H.S.** PROJECT OR CONTRACT NO. **SPORT Complex - WATER + SEWER 700's**

Name, Mailing Address & Social Security Number of Employee	Permanent Domicile Address of Employee (No Post Office or Star Route Boxes)	Specific Work Classification	Benefits OT ST FB	Day and Date							Total Hours Worked	Hourly Rate Paid	Gross Amount Earned	DEDUCTIONS					Net Amount Paid	Check Number	
				20	21	22	23	24	25	26				FICA	Fed W/H Tax	ESD	Union Dues	Other (Explain)			Total Deductions
STERBA Sandy P1 AK 99507 52-4251	SAME	Operator OWNER Backhoe	OT ST FB			8	8	8	8	8	64	29.79	\$1874.56								married 3d Not paid
is THOMAS Boniface #3 AK 99504	SAME	LABORER	OT ST FB				5				5	24.47	\$122.35								married 3d Not PAID
BANKOWSKY	Refer to Dennis THOMAS, OREGON	Operator Backhoe	OT ST FB			8	8	8			24	29.29	\$702.96								married 2d Not paid
STERBA LADISA Alice AK 99507	SAME 537-82-8048	TRUCK DRIVER 10yd Dump	OT ST FB		8	8	8				24	26.69	\$640.56								married 2d Not paid
			OT ST FB																		
			OT ST FB																		
			OT ST FB																		

MEMORANDUM

TO: File

FROM: SSD *sd*

DATE: 12/19/83

Re: L & H Enterprises v. Ground Up Construction

On this date I spoke at length with Bruce Silverthorn regarding the status of the matter. He is expecting to meet with Gary Sterba on the morning of December 20, 1983. He indicated that he had not told Sterba that he would be ordering the School District to pay the wages. He will, however, be instructing the School District to withhold a sufficient sum to cover wages that he thinks from his preliminary inquiry may be due.

I informed him of the affidavit prepared by Junior Russell from the L & H job logs, and agreed to deliver a copy of the affidavits to him as soon as possible. I sent it with Sharon on the afternoon of 12/19/83. I also read from it the conflicting information from the certified payroll records.

He indicates that a couple of the employees have even filed conflicting claims indicating that there is more owing them than is shown on the certified payroll submitted by Sterba.

Once again he reiterated his belief that owners were entitled to payment under the Act as well as regular employees. I pointed out to him that, before he made a major mistake in enforcement, he should inquire for an opinion of the assistant attorney general that advises the Department of Labor. He also indicated that his research had shown that Gary Sterba was the only owner shown on the contractor's bond and business license. I pointed out to him that was irrelevant, for purposes of this job, since Denny Thomas had held himself out and signed the contract as a co-owner. Hence Thomas should also be dealt with as an owner with regard to this claim. I further urged him to obtain an opinion on this from the attorney general's office.

Silverthorn admitted that he was not attorney, but was simply following enforcement practices that are apparently well established in the department. They have apparently routinely been enforcing payment of wages to owners, as well as to employees, where the situation has arisen.

I also insisted that he take any further information from Sterba, Thomas or the employees under oath, since we wanted the sanction of perjury over their heads if they lied. He sounded as if he really did not intend to do that since his only purpose was to determine whether wages were due, and not to make a case for anybody. I pointed out to him that, obviously, his function was to get to the truth and the best way to get to the truth was to take testimony under oath

particularly where there were major conflicts. I pointed out that, if he required all of the evidence to come in under oath, he was much more likely to get to the real truth earlier.

I also pointed out that some of this work had been done by Ground Up directly for the account of the School District, and that we were being charged as if it was done for us. He indicated that he would check with Hanscomb Herry to find out about this aspect.

cc: Len Hannaman



Payroll on the other contract with the School District will show this discrepancy. Maybe an oversight on their part. It is impossible from the Ground-Up time sheets to match our job log.

Andy Sterba was never an operator on this job yet time sheets show him as such. It is real confusing as to what they are trying to do. It looks as if they are guessing on their hours rather than being accurate.

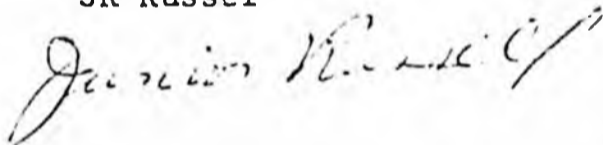
I have no argument on hours for Denny Thomas. Though accurate hours on him were not properly kept, as he would leave the job during work hours and did so on many occasions and would also show up late. He was looking and bidding other work and charging hours to L & H job as it appears and was told to me.

The most accurate hours would be on Ed Growkoski. However, both Ed Growkoski and Gary Sterba are listed as operators on the same days. It is very hard in an 8 hour day to get in 16 hours of operators time on one piece of equipment. They only had one backhoe.

As a former employee of L & H Enterprises, Inc. I am under no obligation, connection, or ties with L & H Enterprises, Inc. at this time.

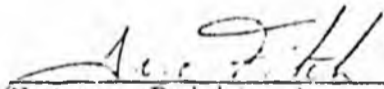
If I may be of further assistance please be advised that I will be glad to help. Log books, time sheets and personal knowledge of the above is true to the best of my knowledge.

Best Regards,  
JR Russel



Subscribed and sworn to before me  
this 16 day of December, 1983.

(Seal)

  
\_\_\_\_\_  
Notary Public in and for  
State of Alaska  
My commission expires; My Commission Expires

# Alaska State Legislature



Speaker of the House of Representatives

Pouch V  
State Capitol  
Juneau AK 99811  
(907)465-3720

Official Business

April 24, 1984

Mr. Len Hannaman  
President, L & H Enterprises, Inc.  
P.O. Box 111593  
Anchorage, Alaska 99511

Dear Mr. Hannaman:

Thank you for the letter and information regarding the investigation you have requested of a recent Wage and Hour Administration probe. I appreciate the amount of time and effort you spent compiling this information.

Investigations of this nature often prove to be difficult and time consuming. However, errors are often made during this process. Therefore, I am forwarding your letter and information to Representative John Cowdery, Chairman of the House Labor and Commerce Committee, for further review. This Committee is best equipped to conduct such an investigation and determine whether new legislation would be required to rectify the situation.

Thanks again for your input. If I can be of additional assistance, please feel free to contact me at my Juneau office.

Very truly yours,

Joe L. Hayes  
SPEAKER OF THE HOUSE

JLH:smh

**ENTERPRISES INC.**

March 28, 1984

Joe L. Hayes  
Speaker of the House of Representatives  
Pouch WO (Mail Stop 3100)  
Juneau, AK 99811

Dear Speaker Hayes:

Enclosed is a copy of a request for investigation I have sent to Mr. Chenoweth, the State Ombudsman, pertaining to an investigation being performed by the Wage & Hour Administration, Labor Standards & Safety Division of the Department of Labor.

After you have had a chance to read the contents of my letter to Mr. Chenoweth, which sets forth the issues involved, perhaps it would be useful for you and other members of the legislature to address the impact of the interpretation that is being placed on the regulations and the enabling statute as to who the beneficiaries of the law are. Mr. Silverthorn, the investigator assigned, takes the position that the statute in question pertains to payment of wages to all personnel who provide work on a construction project for the State of Alaska or one of its political subdivisions, even if some of those people are the owners of the contractor who undertook to perform the services by contract. In the instant case, the subcontract between L & H Enterprises, Inc. and Ground Up Construction, a partnership owned by Gary Sterba and Dennis Thomas, was for \$14,550. Due to the failure of Ground Up to properly perform the work, and the requirement that L & H had to make good that portion of the work, as part of its duties as general contractor, L & H had back charges for almost the full amount of the contract.

Nevertheless, Mr. Sterba and Mr. Thomas have made wage claims of approximately \$11,000, in addition to wage claims by two other men they claim worked for them on the project amounting to a little over \$6,000. Based on Mr. Silverthorn's "investigation," the school district has been ordered to withhold the full \$17,639.54, including almost \$11,000 for Sterba and Thomas, from

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P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

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building systems, inc.

Joe L. Hayes  
March 28, 1984  
Page Two

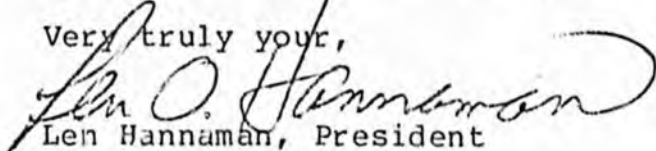
L & H Enterprises, Inc., since Ground Up Construction did not pay any wages to any of the personnel involved in the project.

You will note from our report to Mr. Chenoweth the criticisms we have of the methods of investigation that are being employed by this division of the State of Alaska. However, even more distressing, and the subject that I would appreciate the legislature addressing itself to, is the impact of this kind of enforcement practice on contracting on public works projects in the State of Alaska.

If Mr. Silverthorn is right in his interpretation, anytime a subcontractor fails to perform on a public works projects, the owners of the subcontractor can essentially get back all or even more than what they expected to make from the project through wage claims, breach their contract and fail to perform, cause their upstream contractor to expend substantial sums of money to complete the work that subcontractor has undertaken to perform, and, in addition, have to pay out of its pocket so-called "wages" of the owners of the subcontractor that defaulted. If that in fact is the law of the State of Alaska, I suspect the state and its political subdivisions are going to find it increasingly difficult to obtain reasonable bids from contractors to perform their projects.

Your inquiry into this matter would be very much appreciated. If Mr. Silverthorn is incorrectly interpreting the law, perhaps he should be set straight. If he is correctly interpreting it, obviously the legislature needs to take some corrective action. Thank you for your assistance.

Very truly yours,

  
Len Hannaman, President  
L & H Enterprises, Inc.

cc: All Legislative Members  
Governor William Sheffield  
Encl.

**ENTERPRISES INC.**

March 28, 1984

Jack Chenoweth  
Ombudsman  
State of Alaska  
Pouch WO (Mail Stop: 3000)  
Juneau, AK 99811

Re: Department of Labor Wage & Hours v. L & H Enterprises

Dear Mr. Chenoweth:

Bruce Silverthorn, investigator for the Wage & Hour Administration, Labor Standards and Safety Division of the Department of Labor in Anchorage has initiated a proceeding which has resulted in the Anchorage School District withholding the sum of \$17,639.54 from my company, L & H Enterprises, Inc., in connection with work we are performing on the Anchorage Service-Hanshaw Sports Complex, PWA 1183-025.

Because of the process that Mr. Silverthorn is employing, and some of the rationale he is proceeding under, I hereby request that you investigate this matter. On or about November 18, 1982, L & H Enterprises, Inc., as general contractor, contracted with the Municipality of Anchorage School District for the turnkey construction of the Service-Hanshaw Sports Complex. On May 24, 1983, L & H subcontracted with Ground Up Construction for certain excavation work, installation of water lines, backfilling, compacting, testing and inspection, for a total subcontract price of \$14,550. The subcontract was signed by Dennis Thomas, reflecting that he was "co-owner" of Ground Up Construction. This subcontract was signed on June 3, 1983.

In the course of performance by Ground Up Construction, Ground Up damaged underground utility lines and existing concrete curbing, improperly compacted and filled in trenches, and otherwise failed properly to perform under its subcontract. As a result, L & H back charged Ground Up Construction the sum of \$12,290.20 to correct and complete Ground Up's work.

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Jack Chenoweth  
March 28, 1984  
Page Two

At the time that Mr. Silverthorn began investigating the matter, and notified L & H of his investigation, due to the size of the back charge, and the fact that L & H had not yet been paid by the municipality for a portion of the work covered by the Ground Up subcontract, L & H had not disbursed any payment to Ground Up under the subcontract.

In late November, Mr. Silverthorn was in touch with L & H to advise that he was conducting an investigation into a claim for unpaid wages being asserted by Mr. Thomas, Gary Sterba, the other owner of Ground Up Construction, Ed Grakowsky and Andy Sterba, a relative of Gary Sterba.

Although required by law to provide timely certified payrolls sworn under oath in connection with the project in question, Ground Up Construction failed to do so. However, at some point about the commencement of Mr. Silverthorn's investigation, Ground Up did submit a breakdown indicating when each of the four men in question worked on the project in question, the amount they were entitled to per hour and the amount of hours they put in, including overtime.

Mr. Silverthorn sent this document to L & H Enterprises, and requested that we evaluate it. Our superintendent on the project, Junior Russell, did compare the "payroll" documents submitted by Ground Up, and provided an affidavit dated December 16, 1983, a copy of which was sent to Mr. Silverthorn. In the affidavit, Mr. Russell points out that there were many glaring errors in the job log and time sheets submitted to the department by Ground Up. For example, those records claimed eight days of employment for a truck driver, when in fact a truck was only used on a maximum of four different days, for not more than one-half day each, for a total of two full days. Furthermore, the time sheets turned in by Ground Up in no way matched L & H's job log.

Mr. Russell also pointed out that Ground Up entered a separate contract with the school district to perform some repairs to a broken pipe, which was not part of the subcontract with L & H, and which might have accounted for a portion of the time claimed by Ground Up employees in connection with the Service-Hanshaw project. Of course, that was not the responsibility of L & H.

Finally, he pointed out that Andy Sterba was never on the job, notwithstanding the indication of the time sheets provided by

Jack Chenoweth  
March 28, 1984  
Page Three

Ground Up. Futhermore, he pointed out that Ed Grakowsky and Gary Sterba both were listed as operators of equipment on the same day, and were claiming eight hours a piece, or a combination of 16 hours as operators on the same piece of equipment on the same day. They only had one backhoe, and between them, during a straight time day, could not have gotten in more than an aggregate of eight hours.

These and other substantial discrepancies were promptly made known to Mr. Silverthorn.

Nevertheless, based upon the time sheets submitted by Ground Up Construction, on December 22, 1983, Jeane Morgan, Mr. Silverthorn's supervising investigator, sent a letter to the school district instructing the school district, pursuant to A.S. 36.05.070(c) to withhold \$13,129 from L & H Enterprises' contract. Thereafter, in February 1984, Mr. Silverthorn received a new "certified payroll" provided by Gary Sterba of Ground Up Construction. Mr. Sterba apparently informed him that the first report was erroneous, but the second report, after considering Mr. Russell's affidavit, was more accurate. A copy of that was sent to L & H Enterprises. That so-called "certified payroll" was not certified, was not presented under oath, nor was it signed by Mr. Sterba or anyone else. It radically departed from the earlier "certified payroll" that Ground Up had submitted to the Department of Labor, and as a result of it, Ms. Morgan sent a new letter to the school district on January 31, 1984 instructing the school district to withhold an even larger sum, \$17,639.54, from L & H's contract.

My attorney, Stephen S. DeLisio, on February 21, 1984, spoke with Mr. Silverthorn about the document we had now been provided as the latest "certified payroll" of Ground Up Construction. Mr. Silverthorn advised Mr. DeLisio that it was neither signed nor sworn to by Mr. Sterba or anyone else, since, by signing it, they would be representing that the wages had been paid, when the wages had not been paid. Apparently no wages whatever were paid to any of the four men in question, including the two owners, Gary Sterba and Dennis Thomas. Mr. DeLisio then requested Mr. Silverthorn to obtain an affidavit from someone at Ground Up Construction to the effect that the information contained in the most recent documents submitted by Ground Up was accurate. Mr. Silverthorn indicated that he should be able easily to do so.

Jack Chenoweth  
March 28, 1984  
Page Four

However, a month elapsed after that conversation, before we were provided such affidavit or further documentation from Mr. Silverthorn or anyone else. It finally arrived March 22, 1984, and a copy is enclosed.

Mr. Silverthorn asked L & H to make an analysis of the second payroll document from Ground Up, but we advised him that Junior Russell, the superintendent who would have to do the analysis, was traveling in the Lower 48 States, and was not expected back until approximately May. We do not have contact with Mr. Russell during the winter months, when he is off duty, and, although we have made attempts to locate him, we have not yet done so. Accordingly we have not been able to further analyze Ground Up's most recent reconstruction of the time its personnel allegedly worked on the project except as previously done by Junior Russell. Of course, Mr. Russell's critique was then into account by Ground Up in reworking its analysis.

Although the regulations under which Mr. Silverthorn is operating entitle L & H Enterprises to a full hearing, and an opportunity to examine the evidence supporting the Wage & Hour's instructions to the school district to withhold funds from L & H, and although L & H has requested an opportunity for such a hearing, none has yet been made available, although the matter has been under investigation now for more than four months, and a substantial sum of money has been withheld from L & H by the school district for more than three months.

Furthermore, and even more incredibly, Mr. Silverthorn takes the position that the two owners of the company, Gary Sterba and Dennis Thomas, are entitled to be paid their wages by L & H Enterprises, due to the failure of Ground Up Construction to do so, just as any of the employees of that company might be entitled under the law. Of the \$17,639.54 being withheld from L & H Enterprises by the school district, on instructions of the Department of Labor, \$10,618.16 is withheld on behalf of Gary Sterba and Dennis Thomas.

Under this arrangement, although Mr. Thomas and Mr. Sterba, as owners of the Ground Up Construction Company proprietorship, breached their contract with L & H Enterprises, entitling L & H to back charge almost the full amount of the contract price originally negotiated between the parties, these men will be able to take a sum of money representing almost three-quarters of

Jack Chenoweth  
March 28, 1984  
Page Five

their contract price in the form of wage claims from L & H Enterprises, if Mr. Silverthorn has his way. This notwithstanding Ground Up's breach of contract and the back charge that almost equals the full amount of the contract price, due to that breach. Mr. Silverthorn is operating on the premise that his Division's function is to recover wages for owners of subcontractors who perform work on the job themselves, notwithstanding their failure to perform the project correctly, timely or economically.

He also makes the rather unusual argument that, because Dennis Thomas now claims he was not an owner of Ground Up Construction for the purpose of this project, Thomas should not be treated as an owner, in any event, but just as another employee. This notwithstanding the fact that he has verified that Mr. Thomas signed the subcontract in question and identified himself on that contract, when he signed it, as well as otherwise during the course of the project to L & H Enterprises personnel, as a co-owner of Ground Up Construction.

I am deeply alarmed at the rather bizarre direction that this wage claim investigation has taken by Mr. Silverthorn and the Department of Labor. I do not feel that L & H has been dealt with fairly or reasonably in the matter. Mr. Silverthorn has compelled the school district to withhold very substantial sums of money from my company, based upon information which was suspect to say the least in the first instance and has been even more suspect when the first presentation was so substantially impeached by Mr. Russell's analysis, that a second presentation had to be made by Ground Up. Until March 20, 1984, none of these documents from Ground Up have ever been signed or submitted under oath, so that there could be recourse against the persons responsible for preparing them if one could eventually prove that the documents were false, and that the authors were misrepresenting the facts. Nonetheless, Mr. Silverthorn has proceeded on this documentation as if the information was Holy Writ.

Furthermore, Mr. Silverthorn's attempt to collect wages for owners of the company is grossly inappropriate. Our attorney has urged him to consult with the Attorney General's office in this regard, and although he says he has, he has never shown anything to our attorney that would indicate that such a consultation has been had or that the Department of Law was fully apprised of the

Jack Chenoweth  
March 28, 1984  
Page Six

issues in question. If the Department of Labor is going to pursue a policy to pay wages to owners of subcontractors who failed to fulfill their contract obligations on public projects, the whole underpinning of the free enterprise system in Alaska will be jeopardized, particularly as they regard public works. How can any responsible contractor afford to involve himself with a public contract in Alaska, governed by these Alaska statutes, where he may be compelled to pay the bulk if not all of the contract price to a defaulting subcontractor through that subcontractor's personal wage claims?

As I understand the law that Mr. Silverthorn is attempting to enforce, it is aimed at seeing to it that wages of hired employees on public works' projects are paid by someone - if not by the employer, then by one of the upper tier contractors from the public funds on the project. However, Mr. Silverthorn attempts to carry the matter one step further and withhold funds from us of which approximately two-third are for the benefit of the owners of the defaulting contractor.

Furthermore, although our attorney has inquired of Mr. Silverthorn regarding his intent to prosecute Ground Up for its obvious violations of the law requiring it to file certified payrolls on a timely basis and to pay its employees as required by law, Mr. Silverthorn has indicated that his only purpose in the investigation is to extract funds with which to pay the four men involved, including the two owners. This seems to me a severe lapse on the part of the Department of Labor in pursuing and prosecuting obvious wrongdoers under the law. Essentially what the department is attempting to do is to shift to L & H Enterprises, Inc., a blameless general contractor, the financial burden of a defaulting subcontractor for payment not only of wages, but also loss profits, etc.

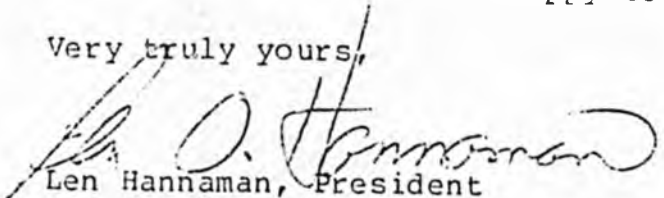
I would very much appreciate it if you would look into the matter, and advise me of your conclusions. I am enclosing herewith copies of documents that may be of help to you in your investigation, including the two sets of time records received from Ground Up Construction by the Department of Labor, a copy of Junior Russell's affidavit regarding the first set, Ms. Morgan's letters to the school district of December 22, 1983 and January 31, 1984, and my attorney's letters to Mr. Silverthorn dated December 22, 1983, February 6, 1984 and March 20, 1984.

Jack Chenoweth  
March 28, 1984  
Page Seven

Also enclosed is a copy of Mr. Silverthorn's letter to L & H  
Enterprises of January 31, 1984.

If we can provide you with any further information in regard to  
this matter, we will be happy to do so.

Very truly yours,



Len Hannaman, President  
L & H Enterprises, Inc.



July 22, 1983

Ground Up Construction  
7821 Sandy Place  
Anchorage, AK 99507

Gentlemen,

This letter is to inform you that as of this date, L & H Enterprises has not received a copy of your certified payroll records for the Service Hanshaw Sports Complex project.

Furthermore, our accounting office has checked with the Alaska Department of Labor and they too, have not received the required reports.

Unless this information is forwarded in its entirety to L & H Enterprises' accounting department by the completion of your scope of this project, we will be forced to withhold all payments for this work, pending to audit by the Department of Labor.

You immediate cooperation on this matter is necessary.

Sincerely,

L & H ENTERPRISES, INC.

Robert E. Kirkman  
Project Manager

cc: Len Hannaman  
Jim Stonebraker  
JR Russell  
Carol Skinner  
Judy Zundel

REK/ys

*I, Kevin Rensen, hand delivered the original document at 3:06 p.m. on July 22<sup>nd</sup>, 1983*

*(Gary)*

General Contractors/Design Build Services  
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

authorized buikler atlantic

**ENTERPRISES INC.**

November 18, 1983

Ground Up Construction  
707 N Bunn  
Anchorage, AK 99508

Gentlemen:

In response to your recent phone calls, we at L & H Enterprises have enclosed a summary of all backcharges against your company herein.

Since our last meeting, there has been a significant increase in the charges due to corrective measures taken, to repair the problems created by your original work.

Your performance on this job was entirely inadequate, and caused us time and monetary losses far in excess of that documented herein. Furthermore the legal jeopardy that you placed L & H Enterprises in with your non - OSHA approved trenching practices is unexcusable.

In addition we at L & H Enterprises have had a lien placed on your contract by Tope Equipment for a sum of \$22,423.84 and any left over funds from your contract with us must be turned over to Tope Equipment immediately. Please note copy of lien enclosed.

Furthermore, our bookkeeper, Judy Zundel, has had a conversation with the Alaska Department of Labor regarding your claim against L & H Enterprises, Inc. for employee wages. She was told that your claim was invalid since the claimants were both co-owners of Ground Up Construction. That includes Mr. Denny Thomas who represented himself as a co-owner at the time he signed the contract.

In summation I will comment that in my entire construction career I have never had a subcontractor perform as badly, and with as little concern for the overall project as your firm so did.

General Contractors/Design Build Services  
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

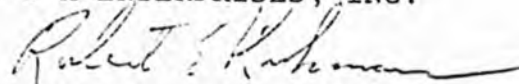
authorized builder **atlantic**

Letter to Ground Construction  
November 18, 1983  
Page two

Please direct any future communication in the form of type-written letter to the attention of Mr. Len Hannaman.

Sincerely,

L & H ENTERPRISES, INC.



Robert E. Kirkman  
Project Manager

Enclosure

REK/ys

**ENTERPRISES INC.**

November 15, 1983  
SERVICE HANSHEW SPORTS COMPLEX PROJECT

**BACKCHARGES - Ground Up Construction**

8/29	Alagco	97113	\$ 215.51
7/15	Kenai Supply	233064	148.60
	- JR Russell	9781	[82.34]
7/18	Central Plumbing	1377	103.75
6/30	Central Plumbing	1256	100.00
7/07	Central Plumbing	44144	1,895.10
7/07	Central Plumbing	150148	1,245.05
6/30	Kenai Supply	233056	329.86
6/28	Kenai Supply	232812	92.84
8/27	Alagco	97094	404.64
6/14	Central Plumbing	43614	164.05
9/19	Summit Paving	513	1,288.00
9/30	Shelton Electric	1148	3,336.50
9/07	Stephans Tool Rental	65301	30.00
8/26	Alagco	97079	<u>65.57</u>
	Total Invoice Charges		\$9,337.13

LABOR

Man Hours:

7/21	Christianson	2
7/22	Christianson	2
7/20	Christianson	2
7/19	Christianson	2
8/27	Christianson	6½ (Overtime)
6/30	Brown	1
8/29	Remsen	5

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P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

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Backcharges to Gro. & Up Construction

November 15, 1983

Page two

8/31	Remsen	2½	
8/29	Christianson	5	
8/31	Christianson	4	
8/30	Christianson	<u>4</u>	
		36 hours @	
		37.50/hr =	\$ 1,350.00

Subtotal 10,687.13

15% Overhead 1,603.07

Total Due \$12,290.20  
to L & H Enterprises



November 8, 1983

Mr. Bruce Silverthorn  
State of Alaska  
Department of Labor  
3301 Eagle  
Anchorage, AK 99502

Re: Ground Up Construction  
Service Hanshaw Sports Complex

Gentlemen:

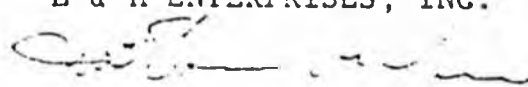
Attached you will find a copy of our subcontract with Ground-Up Construction, where you will see that Denny Thomas represented himself to us a Co-owner of his company.

Secondly, I have enclosed a memorandum from Bob Kirkman, our project manager for the job, showing some of the problems which were caused by Ground-Up Construction.

If you need further information, do not hesitate to contact me.

Sincerely,

L & H ENTERPRISES, INC.

  
Jim Stonebraker  
General Manager

264-2400  
Enclosure

JS/ys

General Contractors/Design Build Services  
P.O. Box 111593/Anchorage, Alaska 99511/Phone: (907) 349-2559

authorized builder Atlantic

INTER OFFICE MEMO

Date: September 30, 1983

To: Jim Stonebraker

From: Bob Kirkman

Re: Service Hanshew Sports Complex Ground Up Construction

I advise that all payments to Ground Up Construction be withheld pending back-charges incurred in the following areas:

1. Damage to underground utility lines
2. Damage to existing concrete curbing
3. Improper compaction and non-spec fill material in trenches
4. Charges for plumbing equipment and accessories purchased on L & H Enterprises account
5. Additional supervision, labor and management charges

The above mentioned items, along with any additional back charges, are currently being itemized for an accurate accounting.

In addition, serious consideration should be given to the project delays incurred through Ground Up's mismanagement of their scope of the work, and the resulting dollar impact suffered by L & H Enterprises therein.



Robert E. Kirkman  
Project Manager



SUBCONTRACT

THIS SUBCONTRACT, made and entered into as of this 24  
day of May, 1983, by and between

L & H Enterprises, Inc.

whose mail address is

P.O. Box 111593  
Anchorage, AK 99511

hereinafter called "Contractor", and

Ground Up Construction

hereinafter called "Subcontractor", whose mail address is

630 Western Drive  
Anchorage, AK 99501

WITNESSETH

WHEREAS, Contractor entered, or is about to enter into a  
contract, Numbered C-20397,  
and dated November 18, 1983, with

Municipalit of Anchorage

hereinafter called "Owner", for the performance of certain work  
according to the terms and conditions of said contract and the  
general specifications and supplements to the specifications,  
addenda, general and special provisions and conditions, plans,  
drawings, bid schedule, maps and other documents made a part  
thereof, and all change orders or amendments thereto, all of  
which are herein collectively referred to as the "General  
Contract", said work under the General Contract being generally  
described as follows:

Turfkey construction of the Service Hanshaw Sports Complex.

General Contractors' Design Build Services  
P.O. Box 111593 Anchorage, Alaska 99511/Phone: (907) 349-2559

and,

WHEREAS, the parties are desirous of entering into a subcontract whereby Subcontractor shall undertake the performance of a part of the work to be done under the General Contract, on the terms and conditions herein stated;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and conditions herein contained, do hereby agree, one with the other, as follow:

I WORK TO BE PERFORMED

The subcontractor agrees to furnish all materials, labor, tools, equipment, supervision, supplies, and other things, unless otherwise provided herein, necessary or required to perform, and to perform fully and completely, at the price or prices set out herein, all that portion of the work required to be done by Contractor under the General Contract described as follows:

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Item Description</u>	<u>Unit Price</u>	<u>Total</u>
1	As General Spec-	Cut asphalt, remove from job		
2	ifications and	Excavate		
3	prints for Ser-	Install 12" water line		
4	vice Hanshaw	Install 4" water line		
5	Sports Complex	Backfill		
6		Compaction		
7		All testing as required		
8		All inspections as required		\$14,300.00

9- TAP SEWER LINE \_\_\_\_\_ 2.50<sup>00</sup>  
D. Thomas

It is understood and agreed that quantities shown above are quantities estimated to be required under the General Contract and that the actual quantities shall be in such amounts as may eventually be required and determined under the General Contract or under the General Conditions of this Subcontract.

II PAYMENTS

In consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of this Subcontract by Subcontractor, Contractor agrees to pay and Subcontractor agrees to receive and accept as full compensation for doing all work and furnishing all materials, supplies and equipment contemplated and embraced herein and for well and faithfully completing the work aforesaid and the whole thereof in the manner and according to the requirements of this Subcontract, the General Contract, the Owner and the Contractor, the sum of Fourteen thousand three hundred and no/100, (\$14,300.00) subject to additions and deductions, if any, by reason of variance from estimated quantities, change orders, deletions or extra work orders pertaining to the Subcontract items.

III SPECIAL CONDITIONS

The Special Conditions, consisting of Paragraphs through attached hereto are a part of this Subcontract and by this reference are incorporated herein and made a part hereof as fully as though set forth herein.

IV GENERAL CONDITIONS

The General Conditions, consisting of Paragraphs 1 through 27, attached hereto are a part of this Subcontract and by this reference are incorporated in this Subcontract and made a part hereof as fully as though set forth herein.

V SUPPLEMENTS

The Supplements, consisting of Numbers, attached hereto are a part of this Subcontract and by this reference are incorporated in this Subcontract and made a part hereof as fully as though set forth herein.

IN WITNESS WHEREOF, the parties have executed this Subcontract the day and year first hereinabove written.

Subcontractor

Contractor

By Henry Thomas

Title CO-owner

Date Executed 4-2-87

[Signature]  
Title Supt.

Date Executed 1 - 1 - 87

L & H Enterprises, Inc.

, Contractor

Ground Up Construction

, Subcontractor

dated May 24, 1983

Subcontractor scope of work includes:

- Cut asphalt, remove from job
- Excavate
- Install 2" water line
- Install 4" sewer line
- All testing as required
- Backfill
- Compaction
- All inspections as required

Subcontractors work excluded:

- Vacating electrical and gas lines
- Hookup to existing water, main

# STATE OF ALASKA

*L & H G Ground Up Const*

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF LABOR

3301 EAGLE STREET

December 22, 1983

RECEIVED — ANCHORAGE

Anchorage School District  
Pouch 6-614  
Anchorage, AK 99502

DEC 29 1983

SCHAIBLE, STALEY,  
DeLISIO AND COOK, INC.

Attention Lowell T. Freeman

Dear Mr. Freeman:

RE: ASD-SERVICE HENSHEW SPORTS COMPLEX

As we explained to you in our phone conversation of December 21, we are currently investigating Ground Up Construction for alleged violations of Title 36 of the Alaska Statutes. Ground Up Construction is a subcontractor with L & H Enterprises on this public works project.

Ground Up Construction has failed to pay its employees on this project in accordance with the law. As a part of our investigation we are attempting to determine the exact hours worked by these employees and the total wages due. Our best available information currently show three employees are owed a total of \$13,129 in wages for work performed on the Service Henshaw Sports Complex. These wages are broken down as follows:

<u>Ed Gutosky</u>			
112 hours s.t. @ \$23.84 per hour	=	\$2670.08	
61 hours o.t. @ \$35.76 per hour	=	2181.36	
173 hours fringe benefit @ \$5.45	=	<u>942.85</u>	
Total			\$5794.29
 <u>Dennis Thomas</u>			
133 hours s.t. @ \$22.45 per hour	=	\$2985.85	
43.5 hours o.t. @ \$33.675 per hour	=	1464.86	
176.5 hours fringe benefit @ \$5.45	=	<u>961.93</u>	
Total			\$5412.64
 <u>Andy Sterba</u>			
72 hours s.t. @ \$26.69 per hour	=	<u>\$1921.68</u>	
Total wages due			\$13,129.00

AS 36.05.070(c) states, in part:

"A contract for public works in the state or a political subdivision shall contain provisions that

(4) the state or political subdivision shall withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the contractor or subcontractors the difference between

Anchorage School District  
December 22, 1983  
Page 2

(A) the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work, and

(B) the rates of wages in fact received by laborers, mechanics, or field surveyors."

In accordance with the above, I am directing the Anchorage School District to withhold from this public construction contract the amount of thirteen thousand one hundred twenty-nine dollars (\$13,129) pending the conclusion our investigation into this matter.

Any questions you may have regarding this may be directed to me or Bruce Silverthorn, the investigator on the case.

In closing, I would like to ask that you confirm to us in writing that these funds have been withheld. We feel it our responsibility to advise you that failure to comply with this demand for retention of funds may result in further action in accordance AS 36.05.030(b).

Very truly yours,



Jean Morgan  
Supervising Investigator  
Wage & Hour Administration  
Labor Standards & Safety Division

certified # P483768426  
cc: Ground Up Construction  
cc: L & H Enterprises, Inc.  
cc: Steve DeLisio

---

The Law Firm of  
Schaible, Staley, DeLisio & Cook, Inc.

---

December 22, 1983

Anchorage Office	Fairbanks Office
Stephen S. DeLisio	Grace Berg Schaible
Alan Sherry	Howard Staley
Joseph M. Moran	Dennis E. Cook
Michael C. Geraghty	Barbara L. Schulmann
Patricia L. Zobel	Robert B. Groseclose
Walter J. Szudlo	Charles D. Silvey, Jr.
Allan J. Olson	
	Of Counsel:
	William V. Bogges

Mr. Bruce Silverthorn  
Dept. of Labor  
Division of Wage and Hours  
3301 Eagle St., Suite 310  
Anchorage, AK 99503

Re: Ground Up Construction Certified Payroll -  
Service Hansnew Sports Complex

Dear Mr. Silverthorn:

This is to follow up on telephone conversations we have had concerning wage claims of the owners and employees of Ground Up Construction with regard to work performed on the Service Hansnew High School Sport Complex project. As I have advised you, I am counsel for L & H Enterprises, the contractor to whom Ground Up subcontracted for certain work in connection with that project.

By now you will have received the affidavit of Junior Russell which demonstrates, under oath, that a substantial amount of the information contained in the certified payrolls received from Ground Up Construction is at least erroneous, and at worst false. Accordingly, it becomes incumbent upon you, in the course of your investigation, to require all evidence from Ground Up and its employees to be received in a sworn form. Whether or not that is your usual procedure is irrelevant in this case. Here we have sworn testimony in hand reflecting that the information you are being provided by Ground Up is incorrect. Obviously, a search for the truth in making a determination by you is the bottom line.

In furtherance of the search for truth, I would strongly recommend that Sterba, Thomas and anyone else who provides information concerning these matters be informed, upon

**FILE COPY**

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943 West 6th Avenue  
(907) 279-9574

Post Office Box 102810  
Cable Address - MERANCH

Anchorage, Alaska 99510-2810  
Telex No. 25-257

---

Fairbanks Office: 300 Barnette Street

Post Office Box 910

Mr. Bruce Silverthorn  
December 22, 1983  
Page Two

giving sworn testimony, the penalties of perjury. With that sombering information, the chance of you receiving truthful information should be enhanced.

Based on Mr. Russell's affidavit, the information contained in Ground Up's payroll pertaining to this project is incorrect. Moreover, from the face of the document, the certified payroll was not filed timely pursuant to A.S. 36.05.040. A.S. 36.05.060 sets forth the penalty for violation of the Chapter, including violation of A.S. 36.05.040. In your "even handed" approach to such a matter, one would assume that appropriate criminal prosecution of a contractor would follow from false and untimely filing of certified payroll, as provided by law. However, when I discussed this possibility with you, you seemed to take the view that your department was not interested in prosecution violators of the statute in question.

The fact that the Groun Up payroll was prepared and submitted so long after the fact should raise some serious questions in your and everyone else's minds as to the legitimacy of what is happening here. Considering the close similarity between the amount being claimed as wages and the amount of the contract price that has not been paid to Ground Up by L & H, one should ask whether the procedure which was instituted by Mr. Thomas and is being pursued by Gary Sterba- the co-owners of Ground Up Construction, is merely a back door effort to obtain payment under the contract to which they are not otherwise entitled due to their breach of contract.

As I advised you by telephone on December 19, 1983, some of the time set forth in the certified payroll charged against L & H's contract was actually performed directly by Ground Up Construction under a separate contract directly with the School District. Accordingly, those services had nothing to do with the relationship between L & H and Ground Up Construction.

On the question of whether the owners of the company would be entitled to payment of wages through the process you are pursuing in your agency, and whether Dennis Thomas is or

Mr. Bruce Silverthorn  
December 22, 1983  
Page Three

should be considered for such purposes as an owner of Ground Up Construction in regard to the work in question are matters which we have discussed at length. I have strenuously urged you to seek the advice of a qualified attorney assigned to the Dept. of Labor from the Attorney General's office on these issues. Since you are not an attorney, you are in no position to make a legal evaluation of those issues, although you seem fully prepared to take that on yourself without legal advice. That is an issue that L & H intends to pursue legally to the full limits of the law, should an adverse ruling be made by your division. I am confident that a qualified, experienced attorney will come to the same conclusion that I have: that neither Gary Sterba nor Dennis Thomas are entitled to payment of any wages through Division of Wage and Hour procedures under the Act, for the reason that they are owners of the company.

On the face of the subcontract between L & H and Ground Up, Dennis Thomas signed his name as a co-owner. He made the same representation to L & H's representative in negotiating the contract. Gary Sterba made the same representation to L & H's representatives. Regardless of the fact that Sterba's name may appear to be the only one on the contractor's bond filed with the state or on the state business license, that does not mean that Dennis Thomas was not, at least for the purposes of this one project, a co-owner of Ground Up Construction. He was apparently added as a partner after the contractor's license and business license were obtained. Whether or not he and Sterba would have applied for an amended or new business license or contractor's bond, or even would be required to do so under the law, is wholly irrelevant. Moreover, even if it were to develop unequivocally that Dennis Thomas was in fact not a genuine owner of Ground Up at any time, by having signed the contract with L & H as an owner, he is estopped legally from denying that he was an owner of the company for purposes of enforcement of this contract. He is civilly liable to L & H for breach of contract under the law, just as co-owner Gary Sterba is.

You indicated that the normal enforcement policy of your division is to require payment of wages to owners. I am

Mr. Bruce Silverthorn  
December 22, 1983  
Page Four

curious to know how frequently the issue has come up. I would be surprised if it came up more than on a rare occasion. However, regardless of whether there is in fact a policy or if that is simply the way that some enforcement officer for Wage and Hour Division handled an individual situation in the past, there is no authority under the enabling legislation to permit such a result.

You have indicated that the regulations permit that approach, but I would remind you that the regulations can do no more than what the enabling statutes authorize. Any effort on the part of the regulations to go beyond the authority granted by the statutes is null and void as a matter of law. You also seem to think that the regulations and this so-called "policy" is justified under the provisions of the Act that require owners to include on certified payrolls their hours and rates of pay for doing the same sort of work as their employees. However, it is quite obvious from the statute that there is essentially one reason for doing this: to make sure that, for determining the appropriate average wage applicable to the given type of work for enforcement purposes, the Division receives all data germane to making that calculation. The amount that owners pay themselves for doing the identical type work in question is obviously important data for that determination.

You indicated that there is a second use for this information: in reviewing contracts and public works, you are able to make certain that the contractor submits a valid competitive bid with sufficient funds to in fact pay wages to employees who are actually performing the work in question. If such review of contracts is a legitimate exercise of your division, still the purpose of requiring the owner to submit his hours and rates of pay on certified payroll is for data collection purposes. In short, nothing in the statute authorizes your division to enforce payment of wages to owners.

Finally, I am somewhat concerned about the approach that is being taken in this entire matter. Under the Act, the contractor who is in violation of the Act for nonpayment of wages is Dennis Thomas and Gary Sterba d/b/a Ground Up Construction. Quite apart from your investigation in determining validity of wage claims, etc., what effort is being made to compel Ground Up Construction to pay its

Mr. Bruce Silverthorn  
December 22, 1983  
Page Five

employees? Again, violation of the Act carries criminal penalties. Have Sterba and Thomas been informed of those penalties and is any prosecution under consideration should they fail to meet their obligations as employer under the Act with regard to payment of the employees?

From my conversations with you, it seems as if your primary thrust is to satisfy yourself, primarily based on unsworn information received from Sterba, Thomas and their employees, as to how much wages are involved, and then seek to force L & B, the general contractor on the project, or the school district to pay those wages. Obviously the entity responsible for payment of the wages is Ground Up Construction, and every effort available to the Division should be exhausted in seeking to compel Ground Up to pay its employees, before the Division even considers pursuing other sources of payment. I trust that is exactly what you will do, and that my uneasy feeling in this regard is unfounded.

As I had indicated before, if we can be of any further assistance in developing data or factual information that will assist you in getting at the truth in this matter, we will be happy to cooperate. However, my client has a right to be treated fairly under the law and according to due process of law, just as anyone else does. The Wage and Hour Division function should not be prostituted to become a method of subcontractors getting their money out of an upstream contractor, when the subcontractor has breached his contract and failed to fulfill his obligations to the upstream contractor. Such a process would constitute at best a gross abuse of the enabling legislation, as well as a major miscarriage of justice.

With best regards,

SCHAIBLE, STALEY, DeLISIO  
& COOK, INC.

By:

  
Stephen S. DeLisio

SSD/slb

cc: Len Hannaman

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR  
WAGE & HOUR ADMINISTRATION  
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET  
POUCH 7-021  
ANCHORAGE, ALASKA 99510  
PHONE: (907) 264-2425

RECEIVED — ANCHORAGE

FEB 1 - 1984

SCHAIBLE, STALEY,  
DeLISIO AND COOK, INC.

January 31, 1984

L & H Enterprises, Inc.  
P.O. Box 111593  
Anchorage, Alaska 99511

Attention: Len Hannaman

Dear Mr. Hannaman:

RE: ANCHORAGE SERVICE-HANSHAW SPORTS COMPLEX  
PWA 1183-025

Enclosed is a copy of our letter to the Anchorage School District requiring the withholding of funds on the project referenced above. The total to be withheld has been increased to \$17,640.00. This new figure is based upon the following:

1. Ground Up Construction has submitted revised certified payrolls to our office, along with its payroll records.
2. The Attorney General's Office has informed us that wages earned by owner/operators must be paid at prevailing wage rates; specifically, 29 CFR 5.2(1) states,  
"Every person paid by a contractor or subcontractor in any manner for his labor in the construction prosecution; completion or repair of a public building or public work...is 'employed' and receiving 'wages' regardless of any contractual relationship alleged to exist."

Therefore, we have adjusted the amount of funds being retained.

As you will see from the payroll copies enclosed, the hours of work shown vary from the original payrolls submitted by Ground Up Construction. If you have any dispute with the hours shown, please submit any documentation or other evidence you may have that supports your contention(s) to me at the address shown above.

L & H Enterprises  
January 31, 1984  
Page 2

If you agree with the time shown, please inform our office of the action you wish to take to have these wages paid. Whatever the case, please respond to this letter by February 10, 1984.

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

Yours,



Bruce Silverthorn  
Investigator  
Wage & Hour Administration  
Labor Standards & Safety Division

Enclosure

cc: Steve Delisio  
cc: Ground Up Construction  
cc: Anchorage School District

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR  
WAGE & HOUR ADMINISTRATION  
LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET  
POUCH 7-021  
ANCHORAGE, ALASKA 99510  
PHONE: (907) 264-2435

January 31, 1984

Anchorage School District  
Pouch 6-614  
Anchorage, Alaska 99502

Attention: Lowell T. Freeman

Dear Mr. Freeman:

RE: ASD-SERVICE HANSEW SPORTS COMPLEX  
PWA 1183-025

On December 22, 1983, we wrote to the Anchorage School District to explain that we were investigating the wages paid to the employees of Ground Up Construction. Ground Up Construction is a subcontractor of L & H Enterprises, Inc. on this project. Our letter directed you to withhold a total of \$13,129.00.

Since that time, we have been provided with additional information on the total hours worked by the Ground Up Construction employees, as follows:

Gary Sterba

Laborer

157 s.t. hrs. @ \$ 18.82	=	\$ 2,954.74
59 o.t. hrs. @ 28.23	=	1,665.57
216 f.b. hrs. @ 5.65	=	1,220.40
		<u>\$ 5,840.71</u>

\$ 5,840.71

Denny Thomas

(117 s.t. hours, 51 o.t. hours)

Laborer (80%)

93 1/2 s.t. hrs. @ \$ 18.82	=	\$ 1,759.67
41 o.t. hrs. @ 28.23	=	1,157.43
134 1/2 f.b. hrs. @ 5.65	=	759.93
		<u>\$ 3,677.03</u>

Operator (20%)

23 1/2 s.t. hrs. @ \$ 23.84	=	\$ 560.24
10 o.t. hrs. @ 35.76	=	357.60
33 1/2 f.b. hrs. @ 5.45	=	182.58
		<u>\$ 1,100.42</u>

\$ 4,777.45

Ed Gutosky

(117 s.t. hours, 51 o.t. hours)

Operator (80%)

93 1/2 s.t. hrs. @ \$ 23.84 =	\$ 2,229.04
41 o.t. hrs. @ 35.76 =	1,466.16
134 1/2 f.b. hrs. @ 5.45 =	733.03
	<u>\$ 4,428.23</u>

Laborer (20%)

23 1/2 s.t. hrs. @ \$ 18.82 =	\$ 442.27
10 o.t. hrs. @ 28.23 =	282.30
33 1/2 f.b. hrs. @ 5.65 =	189.28
	<u>\$ 913.85</u>

\$ 5,342.08

Andy Sterba

(64 s.t. hours)

Truckdriver (80%)

51 s.t. hrs. @ \$ 19.80 =	\$ 1,009.80
51 f.b. hrs. @ 6.89 =	351.39
	<u>\$ 1,361.19</u>

Laborer (20%)

13 s.t. hrs. @ \$ 18.82 =	\$ 244.66
13 f.b. hrs. @ 5.65 =	73.45
	<u>\$ 318.11</u>

\$ 1,679.30

TOTAL WAGES EARNED

=

\$ 17,639.54

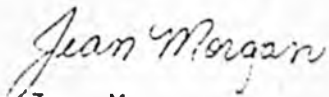
In accordance with the provisions of Title 36 of the Alaska Statutes quoted in our previous letter, we are hereby directing the Anchorage School District to adjust the amount of funds withheld from the L & H Enterprises, Inc. contract to \$17,640.00.

In closing, I would like to ask once again that you confirm to us in writing that you have complied with this demand for withholding. As mentioned in our first letter, failure to comply may result in further action by the Department of Labor in accordance with A.S. 36.05.030(b).

Anchorage School District  
January 31, 1984  
Page 3

If you have any questions, please contact Bruce Silverthorn or myself, and we will assist you.

Very truly yours,



Jean Morgan  
Supervising Investigator  
Wage & Hour Administration  
Labor Standards & Safety Division

cc: L & H Enterprises, Inc.  
Steve Dalisio  
Ground Up Construction

---

The Law Firm of  
Schaible, Staley, DeLisio & Cook, Inc.

---

February 6, 1984

Anchorage Office	Fairbanks Office
Stephen S. DeLisio	Grace Berg Schaible
Alan Sherry	Howard Staley
Joseph M. Moran	Dennis E. Cook
Michael C. Geraghty	Barbara L. Schuhmann
Patricia L. Zobel	Robert B. Groseclose
Walter J. Sczuflo	Charles D. Silvey, Jr.
Allan J. Olson	

Of Counsel:  
William V. Boggess

Bruce Silverthorn, Investigator  
Alaska Department of Labor  
Wage & Hour Administration  
Labor Standards & Safety Division  
Pouch 7-021  
Anchorage, AK 99510

Re: Anchorage Service-Hanshew Sports Complex  
PWA 1183-025

Dear Mr. Silverthorn:

Your letter to L & H Enterprises of January 31, 1984, with regard to the above matter has been referred to me for response on behalf of L & H. I have ceased to be amazed at the lack of due process which your department appears to favor in these matters, at least as it has been demonstrated in this case.

To begin with, the thrust of your letter is directed at my client, the general contractor, not at the employer of the employees who have not been paid as required by the law you seek to enforce. What action is being taken with regard to Ground Up Construction and its co-owners, Gary Sterba and Dennis Thomas, in this regard? What do they propose to do about paying the wage claims of their employees, is the more appropriate question that should be asked at this time. Furthermore, what action does your department intend to take with regard to the statutes that set forth sanctions for failure of an employer to file timely certified payroll records and fail to properly pay prevailing wage rates to its employees?

Under any reasonable procedure, one would have every reason to expect that the administrative procedures available to your agency would be exhausted in dealing with the party who is directly responsible for the problem - the employer. Yet your letter does not even address that subject matter, but addresses the subject to L & H Enterprises as if L & H was the actual employer of the workmen in question.

FILE COPY

Bruce Silverthorn  
February 6, 1984  
Page Two

As you very well know, we do dispute the hours shown by Ground Up Construction. For whatever reason, your letter completely fails to address the fact that, without any obligation to do so, we submitted to you a sworn affidavit of Junior Russell dated December 16, 1983, setting forth the basis for our challenging the payroll record of Ground Up Construction, as then known. We realize that you have received more recent information, but that more recent information has resulted in a substantial increase in the amount of hours allegedly worked, whereas Mr. Russell's affidavit demonstrated that the earlier smaller alleged payroll record was grossly excessive.

Furthermore, the form in which you have provided us the alleged hours worked is utterly useless in our being able to make a response with regard to disputing those hours. No attempt is made in your attached letter of January 31, 1984 to the school district, wherein the hours are set forth, to show on what days each increment of hours was put in. Obviously that is the only way that we would have to challenge the hours shown.

Third, whatever happened to the right to a hearing on a dispute of this type. From the tone of your letter, our entitlement to be heard is apparently going to be limited to submission of documentation or other evidence that we have that supports our contentions. This is very disturbing inasmuch as your letter failed to note that we had already submitted a substantial sworn document which very extensively challenged the claims being asserted by Ground Up Construction and its employees.

In addition, we had previously advised you that a portion of the work provided by Ground Up Construction at Anchorage Service-Hanshew Sports Complex was performed directly to the account of the Anchorage School District, and not under the subcontract with L & H Enterprises. Nevertheless, neither your letter to L & H Enterprises or your letter to the school district, both of which are dated January 31, 1984, deal with this question. A hundred percent of what you are asking the school district to withhold is being asked to be withheld from L & H Enterprises contract. Obviously, no matter how the statute and regulations you are attempting to enforce are interpreted in the final analysis, there would be absolutely no right for anybody to have the school district withhold monies from L & H Enterprises for wages owed by Ground Up Construction to its employees for performing services to the direct account of the Anchorage School District.

Concerning your advise with regard to the entitlement of owner/operators, as you well know, we intend to challenge that, if necessary, to the highest court. The interpretation is being made

Bruce Silverthorn  
February 6, 1984  
Page Three

of a regulation which does not expressly say what you say it says. In other words you are interpreting what the words mean. The regulation only has such scope, force and effect as the enabling statute gives it, and there is nothing under the statute that gives the Department of Labor the right to establish a regulation which would require an upstream contractor to pay a defaulting subcontractor owner/operator prevailing wage rates.

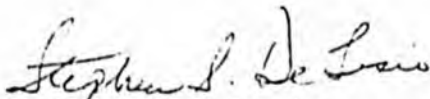
We hereby demand our rights as established by law to the benefit of the administrative procedures pertaining to such matters. Furthermore, we request an answer to the inquiries we have made above.

Should you see fit to provide us with a breakdown of the hours claimed by Ground Up's employees and owners, on a day-by-day basis so that we can evaluate them, we will be happy to make a further evaluation. However, we question whether such an analysis would be a waste of time, since you have obviously disregarded Mr. Russell's previous sworn analysis.

Very truly yours,

SCHAIBLE, STALEY, DeLISIO  
& COOK, INC.

By:

  
Stephen S. DeLisio

SSD/slb

cc: Len Hannaman

The Law Firm of  
**Schaible, Staley, DeLisio & Cook, Inc.**

March 20, 1984

Bruce Silverthorn, Investigator  
Alaska Department of Labor  
Wage & Hour Administration  
Labor Standards & Safety Division  
Pouch 7-021  
Anchorage, AK 99510

Anchorage Office  
Stephen S. DeLisio  
Alan Sherry  
Joseph M. Moran  
Michael G. Geraghty  
Patricia L. Zobe  
Walter J. Szumlanski  
Allan J. Olson  
Gregory L. Youngman

Fairbanks Office  
Grace Berg Schaible  
Howard Staley  
Dennis E. Cook  
Barbara L. Schuhmann  
Robert B. Groseclose  
Charles D. Silvey, Jr.

Of Counsel:  
William A. Rogness

Re: Anchorage Service-Hanshew Sports Complex  
PWA 1183-025

Dear Mr. Silverthorn:

You will recall on February 21, 1984 our telephone conversations regarding the fact that, even the most recent revised purported payroll records produced to you by Ground Up Constructions were not presented under oath. You stated that Mr. Sterba was unwilling to provide a "certified payroll", on the ground that he felt such certification constituted a representation that the payroll had been paid, when it had not.


Accordingly, I requested that you obtain from Ground Up Construction a sworn affidavit to the accuracy of the information contained in whatever payroll record Ground Up intends now to rely upon. You advise that that would be an easy thing to accomplish, and that you would do so and send me a copy of the affidavit immediately.

We are now approximately one full month since that discussion, and I have not received any such affidavit. Has Mr. Sterba declined to provide one? When may we expect to see some sworn support for this oft changed and perhaps in the future often changing payroll "record?"

I attempted to call your office on March 19, only to be advised that you were gone on personal leave until April 1. I trust you will respond to this promptly after your return.

Very truly yours,

SCHAIBLE, STALEY, DeLISIO & COOK, INC.

By:   
Stephen S. DeLisio

SSD/slb

cc: Len Hannaman  
943 West 6th Avenue  
(907) 279-9571

Post Office Box 102810  
Cable Address - MIRANCH

Anchorage, Alaska 99510-2810  
Telex No. 25-257

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF LABOR**  
WAGE & HOUR ADMINISTRATION  
LABOR STANDARDS & SAFETY DIVISION

301 EAGLE STREET  
POUCH 7-021  
ANCHORAGE, ALASKA 99510  
PHONE: (907) 264-2435

RECEIVED — ANCHORAGE

MAR 22 1984

SCHAIBLE, STALEY,  
DELISIO AND COOK, INC.

March 21, 1984

Schaible, Staley, Delisio & Cook, Inc.  
PO Box 102340  
Anchorage, AK 99510

Attention Stephen S. Delisio

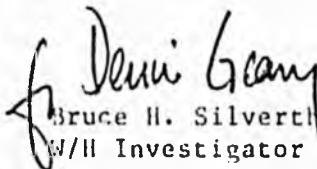
RE: ASD-SERVICE HANSHEW SPORTS COMPLEX  
PW1183-025

Enclosed are the amended certified payrolls submitted by Gary Sterba, on behalf of Ground Up Construction, for work performed on the above referenced project. Mr. Sterba's certification is attached for your review.

Please compare these payrolls for consistency with your own records and provide this office with any comments you might have by April 6, 1984.

If you have any questions, please don't hesitate to contact our office at 264-2435.

Yours,

  
Bruce H. Silverthorn  
W/H Investigator  
Wage & Hour Administration  
Labor Standards & Safety Division

Enclosures

MEMORANDUM

TO: File  
FROM: SSD  
DATE: 12/19/83

Re: L & H Enterprises v. Ground Up Construction

On this date I spoke at length with Bruce Silverthorn regarding the status of the matter. He is expecting to meet with Gary Sterba on the morning of December 20, 1983. He indicated that he had not told Sterba that he would be ordering the School District to pay the wages. He will, however, be instructing the School District to withhold a sufficient sum to cover wages that he thinks from his preliminary inquiry may be due.

I informed him of the affidavit prepared by Junior Russell from the L & H job logs, and agreed to deliver a copy of the affidavits to him as soon as possible. I sent it with Sharon on the afternoon of 12/19/83. I also read from it the conflicting information from the certified payroll records.

He indicates that a couple of the employees have even filed conflicting claims indicating that there is more owing them than is shown on the certified payroll submitted by Sterba.

Once again he reiterated his belief that owners were entitled to payment under the Act as well as regular employees. I pointed out to him that, before he made a major mistake in enforcement, he should inquire for an opinion of the assistant attorney general that advises the Department of Labor. He also indicated that his research had shown that Gary Sterba was the only owner shown on the contractor's bond and business license. I pointed out to him that was irrelevant, for purposes of this job, since Denny Thomas had held himself out and signed the contract as a co-owner. Hence Thomas should also be dealt with as an owner with regard to this claim. I further urged him to obtain an opinion on this from the attorney general's office.

Silverthorn admitted that he was not attorney, but was simply following enforcement practices that are apparently well established in the department. They have apparently routinely been enforcing payment of wages to owners, as well as to employees, where the situation has arisen.

I also insisted that he take any further information from Sterba, Thomas or the employees under oath, since we wanted the sanction of perjury over their heads if they lied. He sounded as if he really did not intend to do that since his only purpose was to determine whether wages were due, and not to make a case for anybody. I pointed out to him that, obviously, his function was to get to the truth and the best way to get to the truth was to take testimony under oath

particularly where there were major conflicts. I pointed out that, if he required all of the evidence to come in under oath, he was much more likely to get to the real truth earlier.

I also pointed out that some of this work had been done by Ground Up directly for the account of the School District, and that we were being charged as if it was done for us. He indicated that he would check with Hanscomb Herry to find out about this aspect.

cc: Len Hannaman



Payroll on the other contract with the School District will show this discrepancy. Maybe an oversight on their part. It is impossible from the Ground-Up time sheets to match our job log.

Andy Sterba was never an operator on this job yet time sheets show him as such. It is real confusing as to what they are trying to do. It looks as if they are guessing on their hours rather than being accurate.

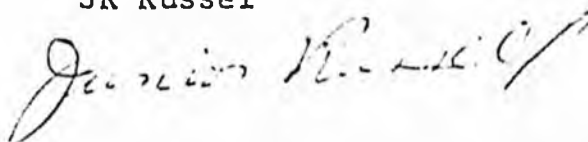
I have no argument on hours for Denny Thomas. Though accurate hours on him were not properly kept, as he would leave the job during work hours and did so on many occasions and would also show up late. He was looking and bidding other work and charging hours to L & H job as it appears and was told to me.

The most accurate hours would be on Ed Growkoski. However, both Ed Growkoski and Gary Sterba are listed as operators on the same days. It is very hard in an 8 hour day to get in 16 hours of operators time on one piece of equipment. They only had one backhoe.

As a former employee of L & H Enterprises, Inc. I am under no obligation, connection, or ties with L & H Enterprises, Inc. at this time.

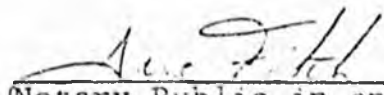
If I may be of further assistance please be advised that I will be glad to help. Log books, time sheets and personal knowledge of the above is true to the best of my knowledge.

Best Regards,  
JR Russel



Subscribed and sworn to before me  
this 16 day of December, 1983.

(Seal)

  
\_\_\_\_\_  
Notary Public in and for  
State of Alaska  
My commission expires; My Commission Expires: