S T A T E O F N E W Y O R K

398

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JOHN -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to moneys withheld for benefit of laborers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs b, c, d and f of subdivision 2 of section 220-b of the labor law, paragraphs b, c and f as amended by chapter 304 of the laws of 1989 and paragraph d as amended by chapter 547 of the laws of 1998, are amended to read as follows:

b. Moneys withheld pursuant to this section shall be held by the financial officer for the sole and exclusive benefit of the workers employed on said public improvement and for payment of any civil penalty that may be assessed as provided herein and shall not be used for any other purpose except upon court order *AND, ABSENT SUCH COURT ORDER, NO PART OF THE MONEYS WITHHELD SHALL BE RELEASED TO THE CONTRACTOR OR SUBCONTRACTOR PRIOR TO FULL RESTITUTION BEING MADE TO SUCH WORKERS. ADDITIONALLY, THE AMOUNT OF WAGES AND SUPPLEMENTS, INCLUDING INTEREST AT THE RATE PROVIDED IN THIS ARTICLE, FOUND TO BE DUE TO THE WORKERS EMPLOYED ON SUCH PUBLIC IMPROVEMENT SHALL NOT BE REDUCED PURSUANT TO ANY SETTLEMENT OR OTHER NEGOTIATION OF A WRITTEN COMPLAINT FILED PURSUANT TO THIS SECTION.* Any person, partnership, association, corporation or governmental body who files a lien or commences a judicial proceeding with respect to any monies withheld pursuant to this section shall notify the fiscal officer in writing of the lien or claim on or before the date of filing of the lien or commencement of the judicial proceeding. In any proceeding to obtain moneys withheld pursuant to this section by any person, partnership, association, corporation or governmental body, the fiscal officer shall have the right to appear and be heard.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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c. The fiscal officer shall cause an investigation to be made to determine whether any amounts are due to the laborers, workmen or mechanics, or on their respective behalves, on such public improvement, for labor performed after the commencement of the three-year period immediately preceding the filing of the complaint or the commencement of the investigation on his own initiative, as the case may be, and shall order a hearing thereon at a time and place to be specified and shall give notice thereof, together with a copy of such complaint, or a statement of the facts disclosed upon such investigation, which notice shall be served personally or by mail on all interested persons, including the person complained against and upon the financial officer of the civil division interested; such person complained against shall have an opportunity to be heard in respect to the matters complained of, at the time and place specified in such notice, which time shall be not less than five days from the service of said notice. The fiscal officer in such an investigation shall be deemed to be acting in a judicial capacity and shall have the rights to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules. Such investigation and hearing shall be expeditiously conducted, and upon such hearing and investigation, the fiscal officer shall determine the issues raised thereon and shall make and file an order in his office stating such determination and forthwith serve a copy of such order, either personally or by mail, together with notice of filing, upon the financial officer of the civil division interested, and the parties to such proceedings and, if the fiscal officer be the comptroller or other analogous officer of a city, upon the commissioner. Such order shall direct payment of wages or supplements found to be due, including interest at the rate of interest then in effect as prescribed by the superintendent of banks pursuant to section fourteen-a of the banking law, AND IN COMPLIANCE WITH SUBDIVISION FIVE OF SUCH SECTION, per annum from the date of the underpayment to the date of the payment TO THE WORKERS EMPLOYED ON SUCH PUBLIC IMPROVEMENT.

d. In addition to directing payment of wages or supplements including interest found to be due, the order of the fiscal officer may direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. In assessing the amount of the CIVIL penalty ONLY, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations of the employer or any successor or substantially-owned affiliated entity or any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, and any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and the failure to comply with recordkeeping or other non-wage requirements. Upon the fiscal officer's determination of the penalty, where the fiscal officer is the commissioner, the penalty shall be paid to the commissioner for deposit in the state treasury. Where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury.

f. If the financial officer of the civil division interested fails to pay to the claimant the amount of the claim as determined by the fiscal officer within ten days after the expiration of the contractor's time to commence a proceeding for review of the fiscal officer's order or, if such a proceeding has been commenced, within ten days after entry and

service of a court order confirming the fiscal officer's order, the civil division interested shall pay to the claimant interest on the claim at the rate of interest then in effect as prescribed by the superintendent of banks pursuant to section fourteen-a of the banking law, AND IN COMPLIANCE WITH SUBDIVISION FIVE OF SUCH SECTION, from the date the financial officer was required to pay the claim as provided herein to the date of payment; provided, however, this paragraph shall not apply if the failure of the financial officer of the civil division interested to pay the amount of the claim is pursuant to court order.

S 2. This act shall take effect immediately.