

TORONTO STAFF REPORT

May 23, 2006

To: Administration Committee
From: Manager, Fair Wage Office
Subject: Fair Wage Office Annual Report

Purpose:

To provide a summary of the highlights of Fair Wage Office activities and performance in 2005.

Financial Implications and Impact Statement:

There are no financial implications resulting from this report.

Recommendations:

It is recommended that this report be received for information

Background:

At its meeting on June 24, 25 and 26, 2003, City Council approved Clause No. 2 contained in Report No. 5 of the Administration Committee, clarifying the role of the Fair Wage Office and its responsibility for ensuring compliance with the Fair Wage Policy.

Municipal Code, Fair Wage Chapter 67, Schedule A & B require the Manager, Fair Wage Office report annually to the Administration Committee concerning the Fair Wage Policy administration and application including enforcement activities.

Comments:

The Fair Wage Policy is designed to ensure that contractors awarded contracts with the City of Toronto pay their workers “fair wages” for work performed and to ensure that workers are not exploited or discriminated against. The Fair Wage Office is responsible for ensuring that a fair,

open and transparent process is followed in the overall application and operation of the Fair Wage Policy and Labour Trade Contractual Obligations in the construction industry.

The intent of the Fair Wage Policy can be summarized as follows:

- (1) To produce stable labour relations with minimal disruption.
- (2) To compromise between the wage differentials of organized and unorganized labour.
- (3) To create a level playing field in competitions for City Work.
- (4) To protect the public; and
- (5) To enhance the reputation of the City for ethical and fair business dealings.

The Fair Wage Office investigates complaints and takes enforcement action when it is determined that contractors fail to pay their workers the prescribed hourly wage rate, vacation and holiday pay and any applicable amount for fringe benefits shown in the current Fair Wage Schedules.

The Fair Wage Policy provides wage protection for workers engaged on City Contracts. The competition for these contracts is often fierce and contractors and sub-contractors might be enticed to cut contract cost simply by cutting employee wages. In this environment, it is important to ensure that workers are fairly treated and compensated without disrupting the orderly functioning of the City's procurement process.

This report outlines the Fair Wage Office's activities in 2005 and provides information on contractors who had at least one incidence of non-compliance during the year, with a focus on the following areas:

- Procurement workload indicators (The number of contracts and firms reviewed)
- The number of established investigations conducted
- Type of violation found
- The amount of wages found to be unlawfully withheld from workers and the amount of unpaid wages recovered on behalf of workers, and
- The amount of penalties transferred to the City Treasurer as a result of the efforts of the Fair Wage Office

2005 Highlights

In 2005, the Fair Wage Office concentrated on industries that have a history of non-compliance that were complaint-based and within the cleaning, security guard and construction field. Complaints are generally received by the Office from workers, competing firms, unions, and various labour associations. Depending on the nature of the complaint, an initial investigation is commenced to determine if a complaint has merit. An investigation can take the form of communication with the principals and/or workers over the telephone, a work site inspection and/or an unannounced head office visit to inspect payroll records. The origin of the complaint is kept confidential.

Payroll investigations identified workers, their job classification, hours worked, wage rates and benefits paid against what is required under the Fair Wage Policy. The payroll audits revealed whether specific workers have been compensated in accordance with the Policy. If a firm has not been paying its workers the proper wage, the Fair Wage Office Manager deems the firm to be in non-compliance with the Fair Wage Policy and instructs the firm to pay its workers the appropriate back wages to make up the proper wage and benefit rate. The Fair Wage Office also has the discretion to charge an administrative fee of 15 percent.

Other highlights include a response to allegations of violation by the Staging and Theatrical Events Industry requiring the Fair Wage Office to investigate theatrical companies and their compliance with the Fair Wage Policy. The complaint alleged, among other things, that employees' minimum rate of pay shall be paid in accordance with industry standards for classification of work which includes rigging, electricians, carpenters, lighting electricians, sound technicians, fitters, loaders and other technicians performed work in connection with sets, props, costume, wardrobe, audio visual etc. Several firms were investigated and cited for their first violation under the Policy.

In many respects, the most important aspect was the effort to continue to identify and remedy problems related recovery of unpaid wages. The Office settled several prominent cases that underscore the continuing success in the area of improper payment of wages.

In 2005, City Council highlighted its Resolution on Support for Undocumented Workers by amending the Fair Wage Policy to ensure that Disqualification provisions apply not only to the contractor or sub-contractor found in non-compliance with the Policy, but also to any related companies owned or operated or controlled by the same individuals.

Table 1 illustrates the workload indicators and policy enforcement activities for 2005. It should be noted that the degree of complexity can vary significantly between tenders, RFQs, RFPs, departmental purchase orders (DPOs), and sole source requests reviewed and investigations undertaken.

Table 1. - 2005 Fair Wage Office Activity

Totals 2005	
Number of Firms Reviewed	8,681
Number of Tenders/RFQs/RFPs/DPOs/Sole Source Requests	2,740
Total Investigations Conducted	87
Fair Wage Policy Investigations	65
Labour Trade Contractual Obligations Investigations(LTCO)	22
Value of Violations (Fair Wage Policy & LTCO)	\$214,642.90
Number of Workers Receiving Compensations	274
Value (\$) Collected for Fair Wage Policy Administration Fee	\$ 22,240.91
Number of Contractors Cited for First Violation	53
Fair Wage Policy Enforcement	
Fair Wage Policy Investigations	65

Value of Fair Wage Violations	\$181,197.06
Number of Workers Receiving Back Wages	274
Value (\$) Collected for Fair Wage Policy Administration Fee	\$22,240.91
Labour Trade Contractual Obligations Enforcement	
Number of Grievances Investigated	22
Value of Violations	\$33,445.86
Number of Work Jurisdictions Reviewed	1084
Other Revenues	
Exhibition Place – payment received for FWO Service	\$2,577.00

Fair Wage Violation

Much of the work undertaken by the Fair Wage Office in investigating contractors' compliance is directed at verifying payroll information. This is achieved through testing of a specific time period designed to gather appropriate contractor evidence to meet specific wage rates, vacation pay, hours of work and workers job classifications

A significant percentage of complainants were interviewed and alleged contravention by contractors was noted. Written notification advising contractors of their non-compliance of the Fair Wage Policy was emphasized given the bylaw requirement to disqualify contractors who habitually violate the Policy provisions over a three-year period. Consequently, since new policy changes took effect on August 1, 2003, a total of 77 contractors were noted in non-compliance and will be tracked for further violations and possible disqualification. The Fair Wage Office has created an electronic data base of prior violations to assist investigators in tracking those firms.

In 2005, penalties were assessed and back wages and benefits owing from non-compliant contractors totalling \$181,197.06 were collected and distributed on behalf of a total of 274 workers. The successful collection of \$22,240.91 made payable to the Treasurer, was collected and deposited in a timely and accurate manner. Several staff reports to the Administration Committee will be submitted in 2006 for consideration related to second violation and recommendation for disqualification.

As part of its enforcement responsibilities, The Fair Wage Office has increased efforts to educate contractors, workers, City staff and other external organization about the Fair Wage Policy.

The Fair Wage Office Web page (<http://www.toronto.ca/fairwage/>) and telephone hotline (416-392-FAIR) receives inquiries from employers, employees and other members of the public concerning a variety of employment related issues. Common topics include questions about unpaid wages, required fair wage rates, classification of work involved and labour trade requirements. The hotline is also a source of complaints regarding employers that have failed to pay workers the prescribed fair wage rates.

The Fair Wage Office is committed to ongoing communication and the establishment of a web page has been effective in its objectives to inform employers and workers of the major policy changes, and encourage people to access the web site and call the hotline to obtain further information and advice. Through these efforts, workers and employers are better informed of their rights and responsibilities. Better and more readily available information has generally resulted in behavioural changes which improve compliance with the Fair Wage Policy.

Labour Trade Violations

The Fair Wage Office provides support to Employee and Labour Relations staff with respect to grievances filed against the City by a labour trade union for alleged violations of the City's Labour Trade Contractual Obligations in the construction industry and/or the application of the collective agreements.

Where firms have allegedly violated the City's Labour Trade Contractual Obligations in the construction industry, the Fair Wage Office has continued to take an active role in facilitating many of the settlements achieved. The Fair Wage Office, holds exploratory and discovery meetings in order to resolve alleged Fair Wage and Labour Trade violations with various parties. These discussions may occur before or after a grievance is filed with the City and/or before the grievance is referred to the Ontario Labour Relations Board. The Fair Wage Office, together with Employee and Labour Relations and Legal Services staff regularly engage in informal or formal dispute resolution aimed at facilitating settlement. This frequently takes the form of addressing the relative strengths and weaknesses of the factual and legal positions of the parties, and giving the parties the opportunity for open and frank discussions. These efforts have directly resulted in many of the settlements reported, as well as faster case processing, thus avoiding costly grievance hearing with the Ontario Labour Relations Board.

Circumstances Involving Disqualification

If a contractor or any sub-contractor is found to be in non-compliance with the provisions of the Fair Wage Policy in two separate instances over a period of three years, they may be disqualified. It is clear that relatively new disqualification provisions under the Fair Wage Policy have raised some issues, particularly with respect to sub-contractors and labour trade matters. Issues around disqualification vary depending on the circumstances. It appears that it would be inappropriate to disqualify any contractor or sub-contractor under the existing bylaw provisions in cases where non-compliance is a labour trade violation.

These issues reveal important differences in terms of grounds for disqualification of contractors or sub-contractors under the Fair Wage Policy. Direction would be sought from the City Solicitor prior to any disqualification being recommended to Council for a decision. Following a further review of the issues to be undertaken by the Fair Wage Office, Employee and Labour Relations and Legal Services staff, staff will report further on recommended changes to the Fair Wage Bylaw and Policy.

Work Plan 2006

In 2006, the Fair Wage Office continues to focus on proactive investigations and compliance audits of firms doing business with the City, as well as promotion and education. The 2005 target is to conduct between 60 and 70 compliance audit investigations given existing resources within the Fair Wage Office. The Fair Wage Office will also concentrate efforts to focus attention on those areas that are most vulnerable to worker exploitation and abuse. Areas of high risk will continue to include labour activity in the construction industry, sewer services involving trenchless rehabilitation, cleaning services and security guard sector. A key goal is to reduce fears in the immigrant community that prevent complaints about labour abuse by unscrupulous employers from being filed with the Fair Wage Office. Many of these workers are employed in low-wage industries which will be targeted for increased compliance.

Staff will recommend that contractors found non-compliant with the provisions of the of the Fair Wage Policy in two separate instances over a period of three years inclusive be barred from undertaking City work for a period of two years. The names of disqualified contractors and sub-contractors will be published on the City's web site.

In 2005, staff conducted 161 site visits, and will continue to make site visits a priority by demonstrating to contractors and sub-contractors a more visible presence in the field. In addition, the Fair Wage Office will compare the list of proposed or current contractors with the latest disqualification list as a safeguard to ensure against ineligible contractors working on City contracts. Providing and distributing educational material in various languages, about the City's Fair Wage Policy to workers and contractors will continue to foster awareness.

Fair Wage Schedules were last amended in 2003 through discussion with employer and employee groups and associations. These rates will be reviewed by these groups, as required every three years, and any recommendations to Council by the Manager Fair Wage Office will be brought forward for approval.

The Fair Wage Office will also continue to work co-operatively with internal client groups, operating divisions and external industries to promote, educate and resolve fair wage and labour trade issues to meet policy objectives and related emerging critical issues throughout the year.

Conclusions:

The Fair Wage Office continues to administer the Fair Wage Policy. Operational, technological and communication improvements are in place to enhance the Office function. In 2005, a number of investigations and compliance audits were conducted resulting in violations on City contracts totalling over \$214,642.90. In 2005, 53 contractors were cited for their first violation and are being tracked for further non-compliance, and if necessary, for disqualification. The Fair Wage Office anticipates conducting 60 to 70 compliance audit investigations in 2006, and in particular, will be targeting firms contracted by the City for construction, sewer services involving trenchless rehabilitation, building cleaning and security services.

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