

Comptroller Dealt Setback In Wage Ruling

By MICHAEL HOWARD SAUL

A New York state appeals court ruled on Tuesday that Comptroller John Liu violated the law when he set an inflated prevailing wage schedule for furniture movers in July 2010, marking another setback for New York City's chief financial officer as he contemplates a bid for mayor next year.

In a unanimous ruling, the New York State Supreme Court Appellate Division, First Department, determined that Mr. Liu's method for setting the prevailing wage for movers was "arbitrary, capricious and lacked a rational basis."

By "ignoring the data from his own survey" of wages in the moving industry and "instead blindly adopting" the rates from one union's collective-bargaining agreement, "the comptroller failed to comply with the statutory mandate to determine the wage 'to be prevailing,'" the appellate court said in its decision.

While awaiting the court's decision, the comptroller's office began conducting a "comprehensive survey of the moving industry, which will continue as planned," said a spokesman for Mr. Liu, Michael Loughran.

"We will review today's decision and weigh our options for moving forward," he said.

The court issued its ruling on the same day that the City Council voted 44-4 to override Mayor Michael Bloomberg's veto of legislation that sets a prevailing-wage requirement for building-service employees in certain city-leased or financially assisted facilities. Under this new law, it is the comptroller's wage schedule that would be used, but Mr. Bloomberg has threatened to file a lawsuit to prevent the law from taking effect.

According to state law, the comptroller is responsible for setting a wage schedule for workers in 470 job titles - such as movers, bricklayers, plumbers and roofers - performing business for the city. Employers must pay this rate, at a minimum, when such workers are used by the city; violators face stiff penalties and a potential five-year disbarment from any public project in the state.

For Mr. Liu, the appellate court's ruling delivers another blow to his reputation as a steward of the city's finances and provides fresh evidence to critics who say the comptroller is too tightly aligned with organized labor.

Since he became comptroller in January 2010, Mr. Liu has sparked criticism for a series of reports on worker wages and pensions that some say were too union-friendly.

In the midst of these policy debates, Mr. Liu's campaign fundraising operation has been the target of an ongoing federal investigation, prompting calls for his resignation. Earlier this year, a federal grand jury indicted Mr. Liu's former campaign treasurer and a top

fundraiser on charges they illegally funneled money to Mr. Liu's campaign; both have pleaded not guilty. Mr. Liu, who has not been charged with a crime, has repeatedly denied any wrongdoing.

According to the court's ruling, the comptroller's own survey of the moving industry showed more than 70% of the workers in the industry received less than \$20.63 per hour, but the comptroller nevertheless set a prevailing wage that is \$10 higher. Virtually all of the workers surveyed, or 96%, were paid wages lower than the high end of the comptroller's wage schedule, the court said.

"The comptroller's defeat in this case was inevitable, and the decision is the complete victory we expected," said Claude Millman, a lawyer representing the plaintiffs. "We hope that the comptroller will now start complying with the law and these court decisions."

In an emailed statement, Robert Koncelik, the president of the Metropolitan Movers Association, the lead plaintiff in the case, praised the court for a ruling that will protect companies from the "impact of inflated wage rates, conjured by the comptroller, that have nothing to do with the actual market wages."

"It is particularly gratifying that the decision came down [Tuesday]," Mr. Koncelik said, "just as the City Council is considering other misguided legislation in this area."

The new law, which the mayor plans to challenge in court, covers building-service employees working at economic-development projects totaling at least 100,000 square feet that receive more than \$1 million in taxpayer assistance. It also covers buildings where the city leases at least 10,000 square feet and a majority of the total space.

"In this day and age, this is not appropriate legislation if we want to get companies to come here and build this city," Mr. Bloomberg said.

Later, Council Speaker Christine Quinn, a Manhattan Democrat, defended the law.

"It is the responsibility of government to find ways to get and keep New Yorkers working," she said. "The city also has an obligation to lead the way in promoting good paying jobs."

Ms. Quinn said she doesn't believe there are any "legitimate grounds" for the mayor's threatened lawsuit.

The mayor declined Tuesday to outline the legal grounds he hopes to pursue.

But last month, during a speech when he vetoed the bill, the mayor said he was particularly concerned about the comptroller setting wages.

"Having a city employee, like the comptroller, tell the private sector what to pay - rather than letting the market tell businesses what is fair and equitable - will lead to all kinds of market distortions that cost taxpayers money," he said.

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