

Boston Employment Commission Special Hearing Minutes / Sanction Appeals

A **Sanction Appeals hearing** was held by the Boston Employment Commission (BEC) virtually on Zoom, Tuesday, May 2, 2023.

Commissioners Present: Commissioner/Chair JocCole “JC” Burton, Commissioner Travis Watson, Commissioner Kenell Broomstein, Commissioner Priscilla Flint and Commissioner Darrin Howell.

Hearing began: 1:15 PM

Commissioner Burton:

The roll call of the commissioners was taken. Commissioner Watson is present in an observance role only. He will not be weighing in on the appeal (recused due to his employer conflict of interest with this project).

Jodi Sugerman-Brozan, Deputy Chief, Worker Empowerment gives overview of the appeals process and review of the assessed fines for the 9 Leyland Street project through PowerPoint. The GC is Kaplan Construction and the 2 subcontractors fined and presenting appeals is Dykeman Welding & Fabrication and Bridgeline GC for late payroll violations on the 9 Leyland Street project. It is the decision of the Commission whether to vacate, reduce or let the fine stand. The BRJP Construction Monitor, Celso Ribeiro has provided updated information since the February 1, 2023 Sanction Determination hearing.

Commissioner Burton referenced this being the first Sanction Appeals hearing in the history of the Boston Employment Commission and expressed the role of the Commission in taking this process seriously on behalf of the intent of the BRJP Ordinance Section 8-9.3 as it relates to the interest of the construction workforce for the citizens of Boston.

Dykeman Welding & Fabrication – 30-day late payroll, \$9,000 fine (\$300 per violation)

Kaplan Construction:

Nate Peck (Kaplan): We work diligently with the subcontractors, early, on timely payroll submission. Historically, Kaplan has had a fairly successful record in comparison to other companies (reference to engagement with M/WBEs). There was a challenge with the Salesforce database in terms of access and data entry. We had complications getting in touch with our BRJP representative along the way. Our staff sent out notifications days before the due date to subcontractors who had outstanding obligations and would help them through the process.

Commissioner Burton: The importance of monitoring payroll is the potential for fraudulent activity. Payroll delays and late payments sometimes signals fraud.

Dykeman Welding & Fabrication (Mark and Alyson Dykeman): We weren't on the job for a long period and couldn't provide the work hours for additional workforce. We're not a big company (9 employees). A fine of this amount will hurt us. Using the online payroll system (Salesforce) was not friendly. Rachel from Kaplan did give us assistance. The type of work we do requires skilled training, certified and special licensing, which our core crew has. It would have been nice to hire someone in the categories required, but the quick turnaround wasn't feasible. We are one of the most dangerous professions that involve swinging Cranes, Riggs and Welding and there are greater risk factors. Being a non-union subcontractor, we didn't want any conflict with unions (*protests*) and got in and out quick and safe (*flying by the seat of our pants*). There's minimum remaining rail work. **Commissioner Burton:** Thank you for your comments and presentation. I would like to note, we did receive your written appeal and written correspondence from Kaplan as well. At this time we will have the Commissioners ask questions and you can provide feedback, if necessary. **Commissioner Flint:** How long have you been doing work in the city of Boston and were you aware of the ordinance? **Dykeman (Mark):** since 2005 we've done small jobs (railings). This is the first large job. We were aware of the ordinance, but never had to address this before. Katrina Conrad (Conrad Builds) is consulting with us now. **Commissioner Howell:** Appreciate your explanation, but by your own account, you've had decades of doing work with the city of Boston and the ordinance has been in place for decades. You would be responsible to know the policy. **Dykeman (Mark):** Isn't it the responsibility of the GC to enforce that? **Commissioner Howell:** Correct. **Dykeman (Mark):** We

never had to have diverse workforce from Boston before. **Commissioner Burton:** It's a requirement of the ordinance. We will ask Kaplan about their compliance communications with subcontractors. I do see that you worked in 2016 (Lyndhurst St.) and 2019 (General Health Square) and the compliance regulations were as they are now. **Dykeman (Alyson):** I believe the GC was NEI and we provided the payrolls appropriately and would not have gotten paid if we weren't in compliance. **Katrina Conrad (Conrad Builds):** Thank you, Ms. Dykeman for your feedback. Commissioner Burton, per the documentation, the commission would have received in the past 24/48 hours, Conrad Builds has been hired as the diversity compliance consultant for Kaplan Construction and we have been working with Kaplan, Dykeman Welding & Fabrication and Bridgeline for the past 30-45 days preparing for this discussion. As Mr. and Mrs. Dykeman stated, it's unfortunate that perhaps previous GC's did not inform or educate subcontractors on the benchmarks of the BRJP. As they stated, they have learned from this incident and will be mindful going forward on future jobs with the city to be in compliance with payrolls and to utilize resources we have provided to help with the requirements of the BRJP ordinance as it relates to workforce diversity. **Commissioner Burton:** Can someone from Kaplan explain your onboarding process with the subcontractors? We understand, the city hires contractors (GCs) and the contractors are responsible to inform the subcontractors (*language in contracts*). At times in the early stages of mobilization the numbers are lower. It appears by Dykeman's testimony that that is the case. **Nate:** Commissioner Burton, as you stated, it's true, earlier trades on most jobs struggle. Not so much in demo trades, but the specialized trades (*piles, concrete, steel erection, etc.*) In this line of work, licenses are required (*high risk and heavy dangerous equipment*) experience is important and necessary. We support OSHA trainings and look to help newer workers to be successful. Unfortunately, this particular job had a short time-frame and required a ready experienced workforce. **Jacqueline:** Before onboarding, the BRJP information is part of the bid process. We have implemented some new onboarding requirements and it's been a learning curve for us as well. We require core crew identification and Best Faith Effort logs of candidates being considered to assess where there may be need to help resource the BRJP requirements. A resource list is shared. **Commissioner Burton:** Celso, can you share the touch points/context of your communication around the late payrolls with Dykeman? **Celso:** Dykeman was offsite when Corrective Action meetings were held. However, they did attend the pre-con meeting and was made aware of the BRJP ordinance requirements. **Commissioner Burton:** I do understand the point made that this is one of the most dangerous professions, you state that in your appeal (Dykeman) and there is a safety component. Safety is a component for all construction projects, and high-rise projects even more so. The city of Boston has people who work in those trades, being a city that has lots of high rises. You stated there being a challenge to look for someone new. That is a personal preference (*Mr. Dykeman accepted Commissioner Burton's statement*). What is the total value of the contract? **Dykeman:** \$400,000 (steel) and \$50,000 (miscellaneous metals). **Commissioner Flint:** How long has Kaplan been working in the City of Boston? **Nate:** 30 years and we've had excellent performance, historically, on jobs with this requirement. **Commissioner Burton** asked the commissioners if they had any further questions and there were none. **Commissioner Burton** asked Celso if he was able to confirm if Dykeman attended a Corrective Action meeting. **Celso confirmed that Dykeman did not have a correction action meeting.** **Commissioner Burton** stated that under the context and circumstances with lessons learned beyond what's been recommended, having no corrective action meeting (*Jacqueline from Kaplan challenged the no corrective action comment*). **Jacqueline** stated that Dykeman attended a Corrective Action meeting on December 1, 2022. Commissioner Burton asked to give the timeline as to when Dykeman mobilized and demobilized and stated that the commission needed to have accurate details to be fair in considering the appeal. Dykeman stated they started July 2022 and was onsite for 2 weeks of structural work and then a gap of time and finished up in 3 weeks. The kickoff was held in January of 2022, pre-con followed and mobilization happened in July 2022. The recommendations for sanction of late payrolls was notified in January of 2023 and the Sanction hearing was held in February of 2023. Mr. Dykeman stated that his Project Manager (AI), who is no longer with Dykeman, spoke with one of the Commissioners on the phone. Mr. Dykeman believed it was Commissioner Flint. Commissioner Flint corrected his statement and said she's never spoken with this contractor or anyone associated. Commissioner Burton expressed that it is highly unusual that the person would have spoken with a commissioner and perhaps they spoke with a city staff member. In summary, Commissioner Burton expressed it seemed there were errors on all sides. Dykeman coming in doing the work quickly and leaves. The GC perhaps didn't do well to inform Dykeman of information they would need although it's in the fine print and in the larger print of the contract. The BRJP compliance staff made Kaplan aware of the late payrolls, Dykeman was off the job and it's not clear if they made the meetings. **Celso confirmed that Dykeman did make pre-con meetings and was made aware of the BRJP requirements.** Commissioner Burton described the in and out of Dykeman as sneaking in by the cover of night to avoid the unions. Mr. Dykeman took offense and felt the commissioner's interpretation made him out to be a villain. Commissioner Burton, expressed that she was being cheeky not literal and by Mr. Dykeman's own words, he expressed getting in and out quickly for fear of the unions. Mr. Dykeman wanted to know how many other subcontractors have been late with payrolls and held up a document he had with names of others who he referred to as having late payroll submissions and even larger fines, but only Dykeman and Bridgeline was sanctioned. Commissioner Burton asked Mr. Dykeman if he was using this document as part of his argument (*he was using it as a point of reference*) and she also felt it was inappropriate for him to bring up others who were not at the hearing. Commissioner Burton referred Mr. Dykeman to view the recording of the February Sanction hearing and it would

give explanation as to why the fine was given. Commissioner Burton expressed that based on the requirements of the ordinance and the sanction process, the commission was making efforts to be fair. Mr. Dykeman expressed that he didn't believe a \$9,000 clerical fine was fair and was very upset and left the virtual hearing. Commissioner Burton stated that as a courtesy she recommends reducing the fine from \$9,000 to \$7,000. Commissioner Broomstein believed the fine should stay at \$9,000 and expressed that Mr. Dykeman's behavior was very telling of perhaps how he handles his business. Commissioner Howell expressed that although it was expressed by Mr. Dykeman that the GC did not emphasize the ordinance requirement, ignorance is not a defense and he also expressed that Mr. Dykeman's behavior didn't help matters. Commissioner Flint agreed with Commissioners Broomstein and Howell and expressed that Mr. Dykeman is not new to the BRJP ordinance, per his testimony and the fine should stand as is. She also took offense to being falsely accused of reaching out to this subcontractor. Commissioner Burton stated that the appeal was heard, deliberation has taken place, her friendly amendment was rejected and the fine of \$9,000 stands.

Bridgeline GC – 39 days late, \$11,700 fine (\$300 per violation)

Commissioner Burton: We see based on the stats from 2020 – 2023 the project percentages are 2% Boston Residents, 99% People of Color and 0% Females.

Jharel Monier PM (Bridgeline GC): Bridgeline GC isn't a safe trade, just as it was mentioned by the previous presenter (Dykeman). It too is a specialized trade and requires special people. The extremely tall equipment can be an inhibitor. I found during interviews, whether in person, on site or virtual, people aren't interested in this type of trades work. The exterior work isn't appealing because of the weather elements. Rachana Kheraj speaks to Bridgeline's outreach programs. We understand that this program (BRJP) was set up to provide opportunities for Boston Residents, People of Color and Females. We have worked this past year to foster movement towards training and creating opportunities. We're finding hiring involves education and training. The best way forward is involving the younger population in the City of Boston. We have developed a 2 year educational pathway program in partnership with Madison Park High Vocational school and Youthbuild Boston and have contributed our finances toward the efforts of building the next generation of a diverse construction workforce. It's difficult to hire and train in short periods of time. **Commissioner Burton:** I appreciate your future efforts. In regards to the appeal, when were you on site, what's the duration and what is the contract value? **Jharel:** We started in November 2022 and are currently onsite. Kaplan asked us to increase our scope (\$50,000 - \$100,000 change order). The contract value is \$800,000. Was there a corrective action meeting? **Celso:** They had just started in November and were not a part of the December corrective action meeting. A corrective action meeting is scheduled for tomorrow. **Commissioner Burton:** What were the circumstances of the 39-day late payroll? **Jharel:** We used a lower tier/2nd tier sub in a large capacity – more people brought on and had a hard time getting demographics of the workers. **Commissioner Burton:** What help were you offering the 2nd tier sub? **Jharel:** I asked daily for information. **Commissioner Burton:** Asking doesn't necessarily make things work faster. Did you offer resources? **Jharel:** Yes, but he doesn't use an automated system and we couldn't connect. **Commissioner Burton:** 2nd tier not using any type of technology. Did Kaplan have knowledge of the 2nd tier subcontractor? **Jacqueline (Kaplan):** We knew but did not know the challenges with technology. **Commissioner Burton:** What has the submissions been like since being fined? **Celso:** Perfect with payrolls since then. **Commissioner Flint:** I realize I ask this question often and I have yet to get a good answer. What does a corrective action meeting do? **Celso:** The monitor sits with GC and subcontractor and creates a plan of action to address the problem of meeting the numbers and timely payroll submissions or whatever the challenging case may be. **Commissioner Flint:** Not sure if there are other monitors at this hearing, but do the Corrective Action meetings help? **Christopher Brown (BRJP Manager):** Most of the time, not all the time. The employment factors of availability and trades that just don't have the workforce to meet specialized needs. Unfortunately, it's hit or miss. Equipment Operators don't usually have female workers. At the very least it shows we are watching and are engaged. We follow-up on what was said at the corrective action meeting. **Commissioner Burton:** Is the 2nd tier subcontractor M/W/VBE, Boston-based? **Jharel:** Select Caulking & Waterproofing is the 2nd tier sub and they are out of Brockton. Owner is a person of color and the workers of people of color. **Commissioner Burton:** What are the Boston resident numbers since the fine? **Celso:** 0%. **Commissioner Flint:** How long has Bridgeline been established? **Gustavo Lopes (Owner/Bridgeline GC):** Since 2013. We started as a 2nd tier subcontractor and in 2017 we began working directly with GCs. We were located in Peabody and moved to Concord, MA less than a year ago. **Commissioner Burton:** As a comment of advocacy, for companies to grow they must have resources and the GC's must provide that support. It's clear that the 2nd tier subcontractor is challenged with technology growth and you as a 2nd tier turned subcontractor-direct are learning the space as well. While it is true, there's a safety component with high-rise work and it requires a certain expertise/training, you are hanging siding and people hang siding around these parts all the time. We cannot vacate the fine because the other issue around meeting Boston residents is super important. My recommendation is to reduce the fine. What are the thoughts of the other Commissioners? **Commissioner Flint:** What were you thinking? **Commissioner Burton:** \$8,000 (1% of \$800,000

contract value)). **Commissioner Howell:** There was certainly a difference in the demeanor and dialogue of this presentation. There were challenges highlighted and if you think 1% is fair, I would not reject that reduction. **Commissioner Flint:** I'm not trying to gauge people out of money. The goal is not to fine, the goal is to hire Boston residents, People of Color and Females. I would hope that you don't find yourself in this same place going forward. I'm in agreement with \$8,000. **Commissioner Broomstein:** I believe we need to be consistent and I'm interested in your reasoning for a reduction. **Commissioner Burton:** They didn't have a corrective action meeting, they admitted being aware of the policy, the 2nd tier subcontractor will most likely be impacted with the fine. We had this discussion last year about how the sanction would work against the smaller contractor and they may be meeting the numbers but not the paper work for lack of resources. **Commissioner Broomstein:** Understood. I agree with the \$8,000 reduction. **Commissioner Flint:** As commissioners we don't get to discuss outside of our meetings. Regarding Corrective Action meetings, some GCs/subcontractors need to be disbarred. **Commissioner Burton:** License revoked. **Commissioner Flint:** This was the first sanctioning/appeals process. It's been a long time coming and I hope others take note that the ordinance will no longer be taken lightly. **Commissioner Howell:** The first presenter stated in so many words that the ordinance that has been in place for decades wasn't taken seriously. This board is sending a message no longer allowing the ordinance to be taken advantage of. It's unfortunate, you have to impact people's pockets to achieve compliance.

Commissioner Flint: This may not be the space, but is there an update on filling the 2 vacant commissioner seats?

Commissioner Burton: It is on Director Jodi-Sugarmen-Brozan's list of things to do. Before we get off track, let's close out with Bridgeline. We are unified in reducing the 39-day late payroll fine to \$8,000 (1% of the \$800,000 contract value). Thank you Bridgeline for your professionalism in your presentation. Thank you Kaplan for your advocacy and commentary. As Commissioner Flint stated, fining is not our goal, it is providing opportunities for Boston residents, People of Color and Females (*the intent of the BRJP Ordinance*). I would like to revisit a conversation about a resource center with the City of Boston. By way of shameless plug, there's a \$15,000 grant the city is providing to help contractors. Jodi provided the link. Thank you city staff, Celso and all BRJP monitors, thank you Chris, Jodi and Mrs. Odom for providing this commission with the materials to be prepared in making informed decisions.

Jodi: I will check in with Chris and Kim on formal notification for next steps to the subcontractors. Thank you commissioners for your time in reviewing all the materials and giving thoughtful approach to this appeals process.

Commissioner Howell motioned to adjourn, Commissioner Burton 2nd and all I's.

Meeting adjourned at 2:45pm

KO/BEC Coordinator