

R&H Construction pays \$193,000 to settle wage theft case



PAYDAY: BETTER LATE THAN NEVER Drywall installers at a drug treatment center built in 2021 were left unpaid by Portland Drywall Systems. | Photo by Celina Flores

By **DON McINTOSH**

In a 10th floor conference room, 26 men filled every seat, waiting for what might be the biggest payday of their lives.

“We’re really sorry it took this long,” said Jessica Giannettino-Villatoro, addressing the men Feb. 15. It was her sixth week as Oregon’s deputy labor commissioner at Bureau of Labor and Industries (BOLI) headquarters in Portland.

One by one, workers heard their names called. Each signed a piece of paper, and was handed a check. The checks totaled \$192,979.47. It was BOLI’s biggest wage theft case in 10 months.

The case began in early 2021, the moment Portland Drywall Systems began work on a new drug treatment center at Southeast 102nd and Cherry Blossom Drive. DePaul Treatment Centers — since rebranded Fora Health — received \$4.5 million in public funds for a new

\$27.6 million treatment center. The public funding came with a requirement: Construction workers would have to be paid the area prevailing wage and benefits.

But before work even began, Victor Anguiano had serious doubts about whether Portland Drywall Systems would comply with that requirement.

Anguiano, 32, is an organizer for Painters District Council 5, and works with its affiliate, Drywall Finishers Local 101. Before going to work for the union in 2018, Anguiano spent six years in the drywall industry. His father and brother work installing drywall. So do his uncles, cousins, and others from his hometown of San Gabriel in the Mexican state of Jalisco. Anguiano knows the drywall industry.

And he had reason to worry about Portland Drywall Systems, because company owner Abelardo “Abe” Chavez Aguilar had been a classmate of his at Liberty High School in Hillsboro.

“We would call him ‘verbo’ in Spanish” — a sweet talker, Anguiano recalled. “He would ask for money. To this day, I have friends that he owes money to.”

In 2019, Anguiano learned that Chavez had started a company framing, hanging, and taping sheetrock. Corporate records show Chavez registered Portland Drywall Systems in 2018.

Making the most of their high school acquaintance, Anguiano pitched Chavez on the benefits of signing with Local 101 as a contractor, including access to trained workers from the union hiring hall. Chavez declined. Not long after, Anguiano started hearing from people he knew who worked for Chavez. They were seeing discrepancies with pay. One day, a nonunion drywall contractor came to the union hall and told Anguiano that Chavez had subcontracted drywall work to him, and then stiffed him and his crew tens of thousands of dollars.

A chance to do it right

Chavez, charismatic, had potential as a business owner, Anguiano thought, but only if he cleaned up his act. Working with Painters District Council 5 business rep Kirk Malcom, Anguiano persuaded Portland Drywall Systems to sign on as a temporary union contractor on a couple of small jobs. They hoped Chavez would see that working with the union could be a positive experience. They also thought it would be an opportunity to see how Chavez was operating.

It didn’t go well. Malcom and Anguiano said it was like a game of cat and mouse to get Chavez to make payments to union health and retirement funds as required under the union contract.

So in 2021 when they learned Chavez had won a big prevailing wage contract to install drywall on the DePaul treatment center, Anguiano was concerned. He met with general contractor R&H Construction to warn them they would have problems with Portland Drywall Systems.

“They just brushed me off,” Anguiano said.

On the treatment center project, contractors were required to pay the state prevailing wage. For drywall finishers, that was \$36.98 an hour plus \$15.44 an hour for benefits. For carpenters, who set up the frames the drywall is attached to, the rate was \$37.96 an hour plus \$16.51 in benefits. Problems began immediately.

To save money on the required benefits, Portland Drywall Systems had again signed another temporary agreement with Local 101, but when Anguiano visited the construction site to get workers signed up as union members, he says he was physically blocked by an R&H official and told to get off the property.

On a prevailing wage project, all contractors are required to submit weekly “certified payroll” records, so that public funders can make sure the contractors are complying with the prevailing wage requirement. They’re called certified payroll reports because contractors sign under penalty of prosecution that the reports are true and accurate. But Portland Drywall Systems never submitted the reports, Anguiano said.

The company also wasn’t paying the prevailing wage as required by law. In fact, pay was highly irregular. Sometimes workers would be classified as employees and receive pay stubs. Other times they’d be classified as independent contractors. Sometimes they’d be paid with a check from a Benjamin Moore paint franchise Chavez owned. Sometimes they’d be paid by personal check. Sometimes they’d be paid in cash. Sometimes even by PayPal or Venmo. Pay checks would bounce. And all too often, pay never came at all. Workers would wait two, four, six weeks to get paid. Some stopped coming back to work.

“He was burning crews,” Anguiano said. A crew of workers might work for a week and be replaced the next week by a new crew. Anguiano said Chavez also fell behind on the project, and faced quality problems.

Unpaid workers walk out

Fed up, 17 drywall workers walked off the job on Aug. 22, 2021, and called Anguiano, who rushed to the site to meet with them. Seeing a crowd of men gathering outside the site, foremen from R&H came out to see what was going on.

“I was like, ‘well, you know, I warned you about this,’” Anguiano told the foremen. ““These guys haven’t gotten paid.””

Portland Drywall Systems abandoned the DePaul project after the walkout. R&H brought in another contractor to finish the job, and Chavez left Oregon, moving to Texas.

Returning a call from the Labor Press, Chavez blamed his nonpayment of his workers on R&H, which he says withheld \$600,000 in payments. Chavez said he’s suing R&H for \$2 million. [They’re suing him too.]

R&H Construction owner John Ward did not return calls from the Labor Press.

Chavez said he ran into difficulty with certified payroll because his payroll system was biweekly, not weekly as required.

But a former employee confirmed that Chavez’ payroll problems began long before the DePaul project.

“If I’m gonna be honest, I’m a little embarrassed that I stayed with him as long as I did,” said Mark Urquiza, one of the workers left unpaid. Urquiza had worked alongside Chavez at Dick’s Color Center, a Portland-area Benjamin Moore paint franchise, and went to work for Chavez after he started Portland Drywall Systems. Urquiza said Chavez paid, but never correctly or on time.

“I’d have to say, ‘Abe, where’s my money?’ ‘Oh, can I give you half now and half later?’ It was always like that.”

Urquiza says Anguiano’s arrival made a huge difference.

“Everybody was just grumbling in the hallways. People knew that we weren’t getting paid on time. So Victor comes in and says, ‘What’s going on?’ And we kind of give him the whole lowdown,” Urquiza said. “He said, everything that’s owed to you, document everything that you can.”

Anguiano told the workers they needed to file a wage claim with BOLI. It’s illegal to cheat workers of pay they’re owed, and it’s BOLI’s job to enforce the law. Anguiano told the workers he would help them file claims for unpaid wages — not just for the 13 drywall finishers who were supposed to have become Local 101 members, but also for the 15 drywall carpenters who had been stiffed in exactly the same way.

Anguiano set a date for them to meet him in the Home Depot parking lot at the Mall 205 near the DePaul job site, and told them to bring all the records they had: pay stubs, bank statements showing bounced checks, images of personal checks, PayPal records, text messages from Chavez.

Not all workers agreed to file claims. Anguiano said at least a dozen declined because they didn't believe anything could come of it or feared that filing would attract attention from immigration authorities.

But for those who did, Anguiano scanned documents claim by claim, worker by worker, and uploaded the documentation to BOLI. Anguiano filed the claim online on Sept. 21, 2021, handing BOLI a wage theft case on a silver platter. It wasn't until Oct. 28, 2021, that an agent laid eyes on the dossier he had assembled.

At that point, the case seemed to go dark. Months went by. Then more months. Anguiano and Malcom say they repeatedly called and emailed the agent, Prevailing Wage Rate Compliance Specialist Efrain Marquez, and would sometimes hear back that he was working on the case. Anguiano said no workers were interviewed, as far as he was aware.

Finally, on Aug. 19, 2022 — 11 months after the case was filed — Marquez emailed Anguiano that the investigation was complete, and he'd be requesting payment for the workers, with hopes to get checks out by the end of September.

“This case was one of several that I am currently assigned, and I have tried my best to resolve it while managing the competing priorities of my other cases,” Marquez wrote to Anguiano.

September came and went. More than a year had passed since Anguiano gave BOLI everything it needed.

“The workers and I were fed up,” Anguiano recalled.

Time to march again, this time on BOLI

Anguiano decided the workers should confront BOLI in person. On Oct. 7, 2022, Anguiano and 18 workers assembled in the headquarters parking lot and took elevators to the 10th floor, marching in unannounced.

“We're here to talk to Efrain about this case,” Anguiano said. “And they're like, oh, Efrain is on a retreat. He won't be here for the next couple days.”

Staff seemed nervous, Anguiano said.

“Obviously they’ve never seen this before,” Anguiano said.

BOLI Compliance Manager Jessica Ponaman invited Anguiano and the workers to a conference room. There, she committed to make the case her priority and promised to provide biweekly progress reports to Anguiano, who would update the workers.

Anguiano said she kept her word. Soon thereafter the case was reassigned to BOLI Compliance Specialist Ren Lutz.

A week after workers marched on BOLI, Lutz sent a letter to Chavez and his wife at their new home in Texas. BOLI had completed its investigation, the letter explained, and found that Portland Drywall Systems had failed to accurately record hours worked on a prevailing wage project and failed to submit *any* certified payroll reports. BOLI could assess a civil penalty of up to \$5,000 per day for each of those violations, the letter explained. The letter demanded payment of all the unpaid compensation owed — \$128,652.98 — plus a 50% penalty of \$64,326.49.

“Please notify our office if you are unwilling or unable to pay,” BOLI wrote.

More months passed. When, to no one’s surprise, Portland Drywall Systems failed to pay, BOLI moved to collect the back pay and penalties from R&H Construction, the general contractor. On construction projects, general contractors are legally responsible if subcontractors owe money and don’t pay. The general pays and can later sue the subcontractor to recoup the payments.

In January 2022, R&H forked over \$192,979.47 to BOLI.

Finally, workers would get their money, right? Not so fast. Now the money was in the hands of BOLI’s processing department. Another week passed. Then two.

“Once we were close to the 18-day mark,” Anguiano says, “I was like, ‘Hey, you know what? These workers are done. Like, there’s no fucking way that you guys have had their money for 18 days and you haven’t processed it.’”

Anguiano said Lutz was apologetic and frustrated too, and told him that BOLI’s internal systems were very old. Anguiano told Lutz and Ponaman workers would be marching on their office Feb. 14 to demand their money. Ponaman told Anguiano she’d call the processing

department to see what was taking so long, and called back the next day to tell them the checks had been printed and were in the mail, and could be distributed Feb. 15.

Why did BOLI take so long?



Prevailing wage compliance officer Trent Lutz (left) worked with Victor Anguiano and Kirk Malcom (center) to distribute checks to wronged workers. | Photo by Celina Flores

On Feb. 15, 27 workers left the 10th floor conference room with a little bit of justice in their pockets. But the saga of what it took to get that paints a very unflattering picture of Oregon’s enforcement of the law.

Painters District Council 5 staff had to become private investigators to ensure that the law was followed on a public project, and then organize workers to put pressure on BOLI to do its job.

“If we wouldn’t have pushed them, these guys would have never seen a penny,” Malcom said.

Laura van Enkevort, interim head of BOLI’s wage and hour division, agreed that the timeline in this case was especially egregious.

“We don’t want workers to go that long without wages,” she told the Labor Press by phone. Van Enkevort said part of the delay was that the employer was non-responsive, and it took time to obtain records. The biggest issue was the caseload of BOLI’s five prevailing wage compliance specialists when the case began. Each investigator had 20 investigations on average at the time. Last year lawmakers approved a budget increase to hire a sixth prevailing wage investigator. That was Lutz. Caseload has since dropped to 12, which Van Enkevort described as ideal.

“When you look at when we received this claim to when we finally got the workers paid, in my mind, it’s unacceptable, and we’re trying to make improvements.”

One of those improvements would be a modernized database, and Van Enkevort said BOLI is asking the legislature to fund that. But BOLI didn’t ask for any more prevailing wage compliance specialists. Van Enkevort said that’s because BOLI needs staff even more to enforce other labor standards. BOLI saw a 73% increase in wage theft claims in the most

recent fiscal year, and newly installed labor commissioner Christina Stephenson is asking the Legislature for 25% more agents. If they grant her budget request, that would bring the total to 10 staff to enforce labor laws covering 2 million Oregon workers.

Why the case isn't over

R&H Construction may have paid Portland Drywall Systems workers, but Local 101 isn't done. Anguiano and Malcom want BOLI to bar Chavez or his companies from working on future public works projects, in case he returns to Oregon. They also want to see Chavez criminally prosecuted.

“This guy should be in jail,” Anguiano said. “This was 100% fraud.”

In 2016, the Oregon Legislature made it a Class C felony — punishable by up to five years in prison, a \$125,000 fine, or both — for a contractor to knowingly violate the state's prevailing wage law. Seven years later, not a single violator has been criminally prosecuted.

In March 2022, Multnomah County District Attorney Mike Schmidt announced an agreement in which BOLI would refer cases for his office to prosecute. By email, DA's office spokesperson Liz Merah said no cases have been prosecuted yet, but several are under review, including the Portland Drywall Systems case.

Chavez might be a good candidate for prosecution, with stories of misdeeds dating back at least to his days at Dick Color Center. BOLI records show at least a dozen wage an hour complaints and two civil rights complaints filed against Portland Drywall Systems. One



\$4.5 million in public funds went into constructing DePaul Treatment Center, now Fora Health. That meant workers were supposed to be paid prevailing wage. But drywall workers had trouble being paid at all.

complainant, hired in January 2021 to tape drywall, reported that the company issued paychecks with insufficient funds throughout the time he worked there. After complaining to Chavez about it, he was given more bad checks, and fired when he complained again.

Merah said the DA's office is working with BOLI to improve the chances of successful prosecution of wage theft cases, training agents on how to build a successful case, and taking on the bulk of subpoena work required.

Chavez now lists an address in Texana Plantation, a gated community in a suburb of Houston. His new venture in Texas repurposed Portland Drywall Systems initials and logo: Texas corporate records list him since 2020 as the owner of PDS Paint Center, Inc., a Benjamin Moore paint franchise. The company lists four Houston area locations on its Instagram account.