

**BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON**

In the Matter of:

**VENUS VINCENT, Keith Johnson,
and Bernard Woodard,**

Respondents.

Case No. **26-02**

FINDINGS OF FACT
ULTIMATE FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
ORDER

SYNOPSIS

North American Construction & Consulting, Inc. ("NACC") intentionally failed to pay the prevailing wage rate on two public works projects in violation of ORS 279.350(1) and the prime contractors on both projects paid the unpaid wages to NACC's workers on NACC's behalf. Venus Vincent, NACC's corporate president and secretary, and Keith Johnson, NACC's corporate vice president and construction manager, were responsible for NACC's failure to pay the prevailing wage rate. The Commissioner placed Vincent and Johnson on the list of contractors or subcontractors ineligible to receive any contract or subcontract for public works for three years. ORS 279.350(1) and (4), ORS 279.361(1) and (2); OAR 839-016-0033, OAR 839-016-0035, OAR 839-016-0040, OAR 839-016-0085.

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Dan Gardner, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on January 22, 2003, at the Eugene office of the Bureau of Labor and Industries, located at 1400 Executive Parkway, Suite 200, Eugene, Oregon.

1 The Bureau of Labor and Industries (“BOLI” or “the Agency”) was represented by
2 case presenter Peter McSwain, an employee of the Agency. Attorney at law Joyce
3 Sobel appeared on behalf of Bernard Woodard (“Woodard”), who did not appear.
4 Respondents Venus Vincent (“Vincent”) and Keith Johnson (“Johnson”) did not appear
5 and were held in default.

6 The Agency called Tyrone Jones, Wage and Hour Division Compliance
7 Specialist, as its only witness.

8 The forum received into evidence:

9 a) Administrative exhibits X-1 through X-8 (submitted or generated prior to
10 hearing);

11 b) Agency exhibits A-1 through A-34, A-36 through A-40 (submitted prior to
12 hearing), and A-41 through A-45 (submitted at hearing).

13 Having fully considered the entire record in this matter, I, Dan Gardner,
14 Commissioner of the Bureau of Labor and Industries, hereby make the following
15 Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions
16 of Law, Opinion, and Order.

17 **FINDINGS OF FACT – PROCEDURAL**

18 1) On March 4, 2002, the Agency issued a Notice of Intent to Place on List of
19 Ineligibles and to Assess Civil Penalties in which it made the following charges against
20 Respondents Woodard, Vincent, and Johnson, as well as Respondents North American
21 Construction & Consulting, Inc. (“NACC”), and Magic Numbers Estimating, Inc:

22 a) NACC was a subcontractor on the Sweet Home Justice
23 Facility Project (“Sweet Home Project”), a public works project subject to
24 regulation under Oregon’s prevailing wage rate laws and intentionally
25 failed to pay five employees – Wayne Chaffin, Shane Harris, Jerry
Johnson, Gary Elsemore, and Matthew Woodard -- the prevailing wage
rate, intentionally failed to post the prevailing wage rates in a conspicuous
and accessible place on the Sweet Home Project, and failed to file
complete and accurate certified payroll reports for the work it performed

1 on the Sweet Home Project. The Agency sought a \$40,000 civil penalty
2 from NACC for these violations.

3 b) NACC was a subcontractor on the Deschutes County Health
4 & Human Services Building project ("Deschutes Project"), a public works
5 project subject to regulation under Oregon's prevailing wage rate laws and
6 intentionally failed to pay nine employees the prevailing wage rate,
7 intentionally failed to post the prevailing wage rates in a conspicuous and
8 accessible place on the Deschutes Project. The Agency sought a \$42,000
9 civil penalty from NACC for these violations.

10 c) NACC failed to provide the Agency with records necessary
11 to determine if the prevailing rate of wage was paid to its employees on
12 the Sweet Home and Deschutes Projects. The Agency sought a \$5,000
13 civil penalty from NACC for this alleged violation.

14 d) Respondents Woodard, Vincent, and Johnson were NACC's
15 corporate officers or corporate agents responsible for NACC's intentional
16 failure and refusal to pay the prevailing wage rate on the Sweet Home and
17 Deschutes County projects.

18 e) The Agency asked that Respondents NACC, Magic
19 Numbers Estimating, Inc., Woodard, Vincent, and Johnson and any firm,
20 corporation, partnership or association in which they had a financial
21 interest be placed on the list of those ineligible to receive contracts or
22 subcontracts for public works ("List of Ineligibles") for a period of three
23 years.

24 (Exhibit X-1a)

25 2) The Notice of Intent instructed Respondents that they were required to
make a written request for a contested case hearing within 20 days of the date on which
they received the Notice, if they wished to exercise their right to a hearing. (Exhibit X-
1a)

3) Respondents NACC and Magic Numbers Estimating, Inc. did not file an
answer and request for hearing and the Wage and Hour Division issued a Final Order
on Default against them. (Statement of McSwain)

4) Respondents Woodard, Vincent, and Johnson individually filed answers
and requests for hearing on March 27, 2002, in which they denied all of the Agency's
allegations. (Exhibit X-1d)

1 5) The Agency filed a request for hearing with the Hearings Unit on May 8,
2 2002. (Exhibit X-1)

3 6) On October 9, 2002, the Hearings Unit served Respondents Woodard,
4 Vincent, and Johnson with: a) a Notice of Hearing in Case Number 26-02 that set the
5 hearing for January 22, 2003; b) a Summary of Contested Case Rights and Procedures
6 containing the information required by ORS 183.413; c) a complete copy of the
7 Agency's administrative rules regarding the contested case hearing process; and d) a
8 copy of the Notice of Intent. (Exhibits X-2, X-2a, X-2b, X-2c)

9 7) On November 4, 2002, the ALJ mailed copies of the Notice of Hearing and
10 its enclosures to Venus Vincent at her correct mailing address. (Exhibit X-3)

11 8) On November 4, 2002, the ALJ ordered the Agency and Respondents
12 each to submit a case summary including: lists of all persons to be called as witnesses;
13 identification and copies of all documents to be offered into evidence; and any civil
14 penalty calculations (for the Agency only). The ALJ ordered the participants to submit
15 their case summaries by January 8, 2003, and notified them of the possible sanctions
16 for failure to comply with the case summary order. (Exhibit X-4)

17 9) The Agency filed its case summary on January 8, 2003. (Exhibit X-7)

18 10) Just prior to hearing on January 22, 2003, Joyce Sobel, attorney at law,
19 filed a notice stating that she represented Respondent Woodard in this matter. (Exhibit
20 X-8)

21 11) At the outset of the hearing, Respondents Vincent and Johnson did not
22 appear. The ALJ waited 30 minutes before commencing the hearing and declared them
23 to be in default. Pursuant to ORS 183.415(7), the ALJ verbally advised the Agency and
24 counsel for Respondent Woodard of the issues to be addressed, the matters to be
25 proved, and the procedures governing the conduct of the hearing. (Statement of ALJ)

1 6) The prevailing wage rates published in BOLI's January 1, 2000, prevailing
2 wage rate book applied to the Sweet Home Project. (Testimony of Jones; Exhibit A-42)

3 7) NACC subcontracted with Anderson Construction to perform drywall and
4 painting work on the Sweet Home Project. (Testimony of Jones; Exhibits A-6, A-22, A-
5 24 through A-31)

6 8) NACC employed Wayne Chaffin, Gary Elsemore, Matthew Woodard,
7 Shane Harris, and Jerry Johnson to perform painting or drywall on the Sweet Home
8 Project from January to March 2001. As of March 6, 2001, NACC owed at least
9 \$8,820.31 in unpaid, due and owing wages to these five workers. On that date, an
10 unsigned letter on NACC letterhead was sent to Anderson Construction acknowledging
11 these unpaid wages. The letter was also stated "Keith Johnson has asked me to get
12 together a list of unpaid labor from the men and get it to you. The wages have not been
13 paid starting on February 5, 2001 through the present date." (Testimony of Jones;
14 Exhibits A-21, A-24 through A-28; Calculation of ALJ)

15 9) On March 13, 2001, BOLI received wage claims from Elsemore and Harris
16 alleging they had not been paid wages due and owing from NACC on the Sweet Home
17 Project. On March 14, 2001, BOLI received a wage claim from Chaffin alleging he had
18 not been paid wages due and owing from NACC on the Sweet Home Project.
19 (Testimony of Jones; Exhibits A-24 through A-28)

20 10) On April 18, 2001, BOLI received three checks from Anderson
21 Construction to pay wages owed by NACC to Elsemore, Chaffin, and Harris. The
22 checks were for the following amounts: Elsemore (\$2,563.52), Harris (\$4,493.78), and
23 Chaffin (\$3,853.04). (Testimony of Jones; Exhibits A-43, A-44, A-45)

24 11) Anderson Construction had made progress payments to NACC while
25 NACC's workers worked on the Sweet Home Project. At the time Anderson sent its

1 checks for Elsemore, Harris, and Chaffin to BOLI, Anderson had already paid NACC
2 most the money that NACC should have used to pay its workers. As a result, Anderson
3 had to pay these workers, in part, from funds other than those set aside for its
4 subcontract with NACC. (Testimony of Jones)

5 12) On September 28, 1999, Deschutes County first advertised for bid the
6 contract specifications on its Health and Human Services Building Project (“Deschutes
7 Project”). On November 11, 1999, the contract was awarded to Merrill Contractors, Inc.
8 (“Merrill”), in the amount of \$3,247,172. The Deschutes Project was a public works
9 project that was not subject to the Davis-Bacon Act and was subject to regulation under
10 Oregon’s prevailing wage rate laws (ORS 279.348 *et seq.*). (Testimony of Jones;
11 Exhibit A-4)

12 13) NACC subcontracted with Merrill to perform drywall work on the
13 Deschutes Project. In order to perform the job, Keith Johnson, on behalf of NACC, was
14 required to sign a “Carpenter’s Compliance Agreement” with the United Brotherhood of
15 Carpenters and Joiners of America, Local Union No. 36 (“Local No. 36”). In the
16 Agreement, NACC agreed to “be bound by the Agreements governing, and to make
17 contributions to the Oregon/Washington Carpenters-Employers Health & Welfare,
18 Dental, Pension, Apprenticeship & Training, and Vacation-Savings Trust Funds * * *.”
19 (Testimony of Jones; Exhibits A-9, A-11)

20 14) NACC employed 21 workers to perform drywall work on the Deschutes
21 Project and did not pay all wages and fringe benefits due to them. As a result, Merrill
22 was required to pay approximately \$60,000 to Local No. 36 to cover the fringe benefits
23 that NACC owed but did not pay to its workers. (Testimony of Jones; Exhibit A-11)

24 15) Jones was assigned to investigate the complaints made to BOLI regarding
25 NACC’s failure to pay the prevailing wage rate to its workers on the Sweet Home and

1 Deschutes Projects. On November 17, 2000, as part of his investigation of NACC's
2 alleged violations of Oregon's prevailing wage rate laws, Jones issued a subpoena to
3 Vincent requiring her to provide records that showed, among other things, the names,
4 addresses, and phone numbers of NACC's employees from January 1, 1999, to
5 November 17, 2000, and any hours worked by those employees, wages paid to those
6 employees, deductions made from the employee's paychecks, and W-2 and 1099 forms
7 provided to those employees. The subpoena required Vincent, who lived in Cottage
8 Grove, Oregon, to bring these records to BOLI's Eugene office and present them to
9 Jones on December 7, 2001, at 1 p.m. Jones sought these records because of his
10 conclusion that they were necessary for him to determine whether or not NACC's
11 workers had been paid the applicable prevailing wage rates. (Testimony of Jones;
12 Exhibit A-15)

13 16) The subpoena was served on Vincent on December 5, 2000. On
14 December 5, 2000, Vincent faxed a letter to Jones in which she refused to honor the
15 subpoena. She enclosed a letter from Johnson in which Johnson stated "No
16 information will be given to you directly unless we are the Prime General Contractor on
17 a project, which we are not at this time." Johnson said he would only meet with Jones if
18 the "interested General Contractor [was] involved" and accused Jones of slandering
19 NACC. (Testimony of Jones; Exhibits A-15, A-18)

20 17) On December 7, 2000, Vincent hand-delivered a letter to Jones that she
21 had signed. The letter stated that Johnson had the requested records at his "home-
22 office" located at Welches, Oregon. Vincent stated that the requested records "would
23 be available for inspection during normal business hours and, upon request made a
24 reasonable time in advance at the Welches, Or. location." (Testimony of Jones; Exhibit
25 A-17)

1 18) On March 14, 2001, Johnson met with Jones at BOLI's Portland office and
2 provided NACC's payroll records, including the paycheck stubs and certified payroll
3 statements sought in Jones's subpoena. This included records for the Sweet Home and
4 Deschutes Projects. The certified payroll statements were all signed by Johnson and
5 state the correct prevailing wage rate for the majority of NACC's workers. (Testimony of
6 Jones; Exhibits A-25, A-27)

7 19) A subcontractor's failure to pay the applicable prevailing wage rates and
8 fringe benefits on a public works project works a hardship on the workers and families of
9 the workers who are not paid correctly. It defeats the legislative policy of creating a
10 "level playing field" for contractors and subcontractors by enabling dishonest
11 subcontractors to obtain an unfair advantage in competitive bids and to obtain an unfair
12 profit by taking advantage of its workers. It puts a hardship on prime contractors who
13 are liable for any prevailing wages that the subcontractor does not pay its workers.
14 Finally, it denies workers the right to a fair living wage. (Testimony of Jones)

15 20) Johnson has been involved with Bernard Woodard on other public works
16 projects in the past where Woodard's company did not pay the prevailing wage rate and
17 the prime contractor had to pay Woodard's workers, after having already paid Woodard.
18 (Testimony of Jones)

19 21) Tyrone Jones has worked as a compliance specialist for BOLI's Prevailing
20 Wage Unit for the last five years. During that time, he has spoken to Johnson on
21 multiple prior occasions where Johnson was a foreman on a public works project. On
22 those occasions, Jones has spent considerable time educating Johnson about Oregon's
23 prevailing wage rate laws and discussing those laws with Johnson. Johnson is aware of
24 the circumstances that led to Bernard Woodard's three-year placement on the List of
25 Ineligibles, starting on December 6, 1999. (Testimony of Jones)

1 duties were manual or physical in nature; and (3) NACC failed to pay those workers at
2 least the prevailing rate of wage for each hour worked on the project. *In the Matter of*
3 *Keith Testerman*, 20 BOLI 112, 126-27 (2000).

4 Undisputed testimony by Jones and documentary evidence consisting of WH-81
5 forms¹ filed by the City of Sweet Home and Deschutes County established that both the
6 Sweet Home and Deschutes Projects were public works not subject to the Davis-Bacon
7 Act. Testimony by Jones and certified payroll statements submitted by NACC
8 established that NACC employed workers on both Projects to perform painting and
9 drywall work, both involving duties that are manual or physical in nature. The Agency
10 established that NACC failed to pay its workers at least the prevailing rate of wage for
11 each hour worked on the Sweet Home Project by NACC's admission,² Jones's
12 testimony concerning the results of his investigation, and by evidence that Anderson
13 Construction, the prime contractor on the Project, paid the wages that should have been
14 paid by NACC. On the Deschutes Project, the Agency established NACC's failure to
15 pay its workers at least the prevailing rate of wage through Jones's testimony
16 concerning the results of his investigation, including his testimony that Merrill, the prime
17 contractor on that Project, was forced to pay at least \$60,000 in unpaid fringe benefits to
18 the local carpenter's union on behalf of NACC's workers.

19 **PLACEMENT ON THE LIST OF INELIGIBLES**

20 The Agency seeks to place Respondents Vincent and Johnson on the List of
21 Ineligibles based on their alleged responsibility for NACC's failure to pay the prevailing
22 rate of wage to its workers on the Sweet Home and Deschutes Projects and payment of
23

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25 ¹ The WH-81 form is BOLI's "Notice of Award of Public Works Contract" form that public agencies use to
comply with ORS 279.363.

² See Finding of Fact 8 – The Merits, *supra*.

1 wages required by ORS 279.350 by Anderson Construction and Merrill on NACC's
2 behalf.

3 ORS 279.361(1) provides that a subcontractor shall be placed on the List of
4 Ineligibles when the Commissioner determines that the subcontractor "has intentionally
5 failed or refused to pay the prevailing rate of wage to workers employed upon public
6 works" or "a subcontractor has failed to pay its employees amounts required by ORS
7 279.350 and the contractor has paid those amounts on the subcontractor's behalf."
8 ORS 279.361(1) further provides that "any corporate officer or corporate agent who is
9 responsible for the failure or refusal to pay * * * or the failure to pay to a subcontractor's
10 employees amounts required by ORS 279.350 that are paid by the contractor on the
11 subcontractor's behalf" shall also be placed on the List of Ineligibles.

12 In the context of a prevailing wage rate debarment, this forum considers
13 "intentional" as being synonymous with "willful." *In the Matter of Loren Malcom*, 6 BOLI
14 1, 9-10 (1986). In *Malcom*, the forum also adopted the Oregon Supreme Court's
15 interpretation of "willful" set out in *Sabin v. Willamette Western Corporation*, 276 Or
16 1083 (1976). "Willful," the court said, "amounts to nothing more than this: That the
17 person knows what he is doing, intends to do what he is doing, and is a free agent." *Id.*
18 at 1093. On both the Sweet Home and Deschutes Projects, all the relevant evidence
19 presented by the Agency indicates that NACC, through its agent Johnson, knew the
20 prevailing rate of wage and that the Projects were public works, knew what it was
21 paying its workers, intended to pay its workers the amounts it paid to them, and was a
22 free agent in these actions. There is no evidence to the contrary, and the forum
23 concludes that NACC's failures to pay the prevailing rate of wage on the Sweet Home
24
25

1 and Deschutes Projects were “intentional” and requires the Commissioner to place
2 NACC on the List of Ineligibles.³

3 The Agency presented reliable evidence that Anderson Construction and Merrill,
4 the prime contractors on the Sweet Home and Deschutes Projects, paid a substantial
5 amount of wages to NACC’s workers on NACC’s behalf because of NACC’s failure to
6 pay the prevailing rate of wage to its workers. This payment of wages by the two prime
7 contractors of wages required by ORS 279.350 that were owed by NACC also requires
8 the Commissioner to place NACC on the List of Ineligibles.⁴

9 In order for Vincent and Johnson to be placed on the List of Ineligibles, the
10 evidence must show that they were responsible for NACC’s failure to pay the prevailing
11 wage rate to its workers on the Sweet Home and Deschutes Projects. ORS 279.361(2).
12 Vincent, as NACC’s corporate president and secretary, and Johnson, NACC’s corporate
13 vice president and construction manager, were “responsible” if they “knew or should
14 have known the amount of the applicable prevailing wages.” OAR 839-016-0085(3)(a).

15 As a starting point, the forum notes that Vincent was NACC’s corporate president
16 and secretary, Johnson was NACC’s corporate vice president and construction
17 manager, and there was no evidence that anyone else, with the possible exception of
18 Bernard Woodard, had any authority to act on NACC’s behalf.

19 The forum concludes that Johnson knew the amount of prevailing wage rates
20 applicable to NACC’s workers on the Sweet Home and Deschutes Projects based on
21 his position as construction and payroll supervisor on those Projects, his extensive
22 conversations with Jones concerning Oregon’s prevailing wage rate laws, and his

24 ³ The Commissioner has already ordered NACC to be placed on the List of Ineligibles through a Final
25 Order on Default issued after NACC failed to file an answer and request for hearing in response to the
Notice of Intent in this case. See Finding of Fact 3 – Procedural, *supra*.

⁴ *Id.*

1 signature on NACC's certified statements that correctly note the prevailing wage rate for
2 the majority of NACC's workers.

3 There is no evidence that Vincent had actual knowledge of the amounts of the
4 applicable prevailing wage rate on the Sweet Home or Deschutes Projects. Whether
5 Vincent "should have known" is a different story. The phrase "should have known" is
6 synonymous with constructive knowledge or notice. In the case of *In the Matter of Jet*
7 *Insulation, Inc.*, 7 BOLI 133, 140 (1988), the forum relied on an Oregon Supreme Court
8 decision, *American Surety Co. of New York v. Multnomah County*, 171 Or 287 (1943),
9 for a definition of "constructive notice." The forum stated "The general rule that
10 pervades the whole doctrine of notice is that, whenever sufficient facts exist to put a
11 person of common prudence upon inquiry, he is charged with constructive notice of
12 everything to which that inquiry, if prosecuted with proper diligence, would have led."
13 *Jet* at 140. See also *In the Matter of Larson Construction Co., Inc.*, 22 BOLI 118, 164-
14 65 (2001).

15 Here, Vincent was NACC's corporate president and secretary and signed the
16 paychecks for NACC's workers. Her corporate responsibilities were such that a person
17 of common prudence would have inquired into the type of jobs NACC was performing
18 and the wage rates to which NACC's workers were entitled on the Sweet Home and
19 Deschutes Projects. Under the *Jet* standard of constructive notice, it does not matter
20 whether Vincent actually made these inquiries and the forum concludes that she "should
21 have known" the amount of the prevailing wage rate applicable to NACC's workers on
22 the Sweet Home and Deschutes Projects.

23 Based on the foregoing, the forum concludes that Vincent and Johnson were
24 both "responsible" for NACC's failure to pay wages required by ORS 279.350 on the
25 Sweet Home and Anderson Projects that were subsequently paid by Anderson

1 Construction and Merrill on NACC's behalf. The only remaining question is the length of
2 time Vincent's and Johnson's names should remain on the List of Ineligibles.

3 ORS 279.361 provides that debarment shall be for "a period not to exceed three
4 years." Although that statute and the Agency's administrative rules interpreting it do not
5 explicitly authorize the forum to consider mitigating factors in determining the length of a
6 debarment, the commissioner has held that mitigating factors may be considered in
7 determining whether the debarment of a contractor or subcontractor should last less
8 than the entire three-year period allowed by law. *In the Matter of Labor Ready*
9 *Northwest, Inc.*, 23 BOLI 156, 219 (2002). Aggravating factors may also be considered.
10 *Testerman*, 20 BOLI at 129. The aggravating circumstances considered may include
11 those set forth in OAR 839-016-0520(1). *Labor Ready* at 219.

12 In this case, there are no mitigating factors.

13 Vincent and Johnson's responsibility for NACC's intentional violations is
14 aggravated by several factors.

15 First, they both knew or should have known that NACC had not paid its workers
16 the prevailing wage rate on the Sweet Home and Deschutes Projects. OAR 839-016-
17 0520(1)(e).

18 Second, Johnson and Vincent could have kept NACC in compliance with ORS
19 279.350(1) simply by paying NACC's workers the money that Anderson Construction
20 and Merrill had paid to NACC for NACC's work on the Projects. OAR 839-016-
21 0520(1)(c).

22 Third, NACC's violations were serious. OAR 839-016-0520(1)(d). The
23 seriousness is underscored by the legislative policy behind Oregon's prevailing wage
24 rates laws and the penalty for violations. ORS 279.349 includes the following relevant
25 language:

1 “The Legislative Assembly declares that the purposes of the prevailing
2 wage law are:

3 “(1) To ensure that contractors compete on the ability to perform work
4 competently and efficiently while maintaining community established
5 compensation standards.

6 “(2) To recognize that local participation in publicly financed
7 construction and family wage income and benefits are essential to the
8 protection of community standards.

9 “* * * * *

10 “(4) To encourage employers to use funds allocated for employee fringe
11 benefits for the actual purchase of those benefits.”

12 The legislature has deemed that a subcontractor’s intentional failure to pay the
13 prevailing wage rate is so serious that it has *required* the Commissioner to debar⁵ any
14 subcontractor who intentionally fails to pay the prevailing wage rate. BOLI Compliance
15 Specialist Jones articulated additional reasons why these violations were so serious.
16 First, a subcontractor’s failure to pay the applicable prevailing wage rates and fringe
17 benefits on a public works project works a hardship on the workers and families of the
18 workers who are not paid correctly. Second, it defeats the legislative policy of creating
19 a “level playing field” for contractors and subcontractors by enabling dishonest
20 subcontractors to obtain an unfair advantage in competitive bids and to obtain an unfair
21 profit by taking advantage of its workers. Third, it puts a hardship on prime contractors
22 who are liable for any prevailing wages that the subcontractor does not pay its workers.
23 Fourth, it denies workers the right to a fair living wage.

24 Finally, NACC’s violations were of considerable magnitude. OAR 839-016-
25 0520(1)(d). NACC’s workers did not receive their full wages for several months after
those wages became due. There were at least 26 workers involved on the Sweet Home
and Deschutes Projects. NACC underpaid its workers approximately \$70,000, and

⁵ “Debar” and “debarment” are terms used by the Agency to refer to placement on the Commissioner’s List of Ineligibles.

1 Anderson Construction and Merrill lost substantial sums of money because they had to
2 pay wages and fringe benefits to NACC's workers that it had already paid, in whole or in
3 part, to NACC. Finally, Jones, a BOLI employee, had to spend 75 hours of investigatory
4 time in resolving this matter.

5 Under these circumstances, three years is an appropriate period of debarment
6 for both Vincent and Johnson.

7 **ORDER**

8 NOW, THEREFORE, as authorized by ORS 279.361, and as a result of North
9 American Construction & Consulting, Inc.'s intentional violation of ORS 279.350(1) and
10 the payment of amounts owed by North American Construction & Consulting, Inc.
11 pursuant to ORS 279.350(1) by two contractors on behalf of North American
12 Construction & Consulting, Inc., the Commissioner of the Bureau of Labor and
13 Industries hereby orders that Respondents **Keith Johnson** and **Venus Vincent** and
14 any firm, corporation, partnership or association in which they have an interest shall be
15 ineligible to receive any contract or subcontract for public work for a period of three
16 years from the date of publication of their names on the list of those ineligible to receive
17 such contracts maintained and published by the Commissioner of the Bureau of Labor
18 and Industries.

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20 DATED this _____ day of _____, 2003.

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22 _____
23 Dan Gardner, Commissioner
24 Bureau of Labor and Industries
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JUDICIAL REVIEW NOTICE

Pursuant to ORS 183.482, you are entitled to judicial review of this Final Order. To obtain judicial review, you must file a Petition for Judicial Review with the Court of Appeals in Salem, Oregon, within sixty (60) days of the service of this Order.

If you file a Petition for Judicial Review, YOU MUST ALSO SERVE A COPY OF THE PETITION ON the BUREAU OF LABOR AND INDUSTRIES and THE DEPARTMENT OF JUSTICE - APPELLATE DIVISION

AT THE FOLLOWING ADDRESSES:

**BUREAU OF LABOR AND INDUSTRIES
HEARINGS UNIT
1025 STATE OFFICE BUILDING
800 NE OREGON STREET #32
PORTLAND, OREGON 97232-2162**

**DEPARTMENT OF JUSTICE
APPELLATE DIVISION
400 JUSTICE BUILDING
SALEM, OREGON 97310**

If you file a Petition for Judicial Review and if you wish to stay the enforcement of this final order pending judicial review, **you must file a request with the Bureau of Labor and Industries**, at the address above. Your request must contain the information described in ORS 183.482(3) and OAR 137-003-0090 to OAR 137-003-0092.

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL
AND OF A WHOLE THEREOF.
