

Workers Try to Nail Down Back Pay

HUD Probing Alleged Violations at New Housing Project

By PAULA PARKER, Times Staff Writer

These are not good times for Mark Unterberg. The 28-year-old construction worker is facing eviction from his apartment for non-payment of rent. As he fights off bill collectors, anger and worry threaten to turn his dark, curly hair gray.

Until December, Unterberg and his friend Alan Samson worked as carpenters at Mariner's Cove, a 500-unit, federally subsidized apartment complex under construction on West Point Loma Boulevard, half a mile from Unterberg's Ocean Beach residence.

They were drawn to the project by the prospect of good wages at a time when unemployment was high and carpentry jobs hard to come by.

The U.S. Department of Labor guaranteed \$20.99-an-hour wages as part of the \$18-million project's construction financing arrangement. But Unterberg, Samson and several other carpenters who worked on Mariner's Cove were never paid at that rate by the subcontractor who hired them, Rainbow Construction Co. of Hemet.

On paper, Unterberg and Samson earned \$20.99 an hour and worked a 40-hour week.

In reality, however, they and seven other carpenters employed

by Rainbow were required to work far longer than they should have—anywhere from 10 to 30 hours or more a week in unreported overtime—in order to earn the weekly equivalent of that hourly wage, according to officials of the U.S. Department of Housing and Urban Development (HUD).

The carpenters, in written complaints filed at the office of Rep. Duncan L. Hunter (R-Coronado), accused Henry Rock, head of Rainbow Construction, of paying them anywhere from \$5 to \$15 below the federally guaranteed \$20.99 hourly wage and then falsifying payroll records so that they appeared to conform to HUD guidelines. In some cases, carpenters were listed as

laborers on Rainbow's pay sheets, moving them into a lower-paying classification so Rainbow could justify paying them below the guaranteed or "prevailing" wage, the workers said.

Not only was the pay not what it should have been, the carpenters said, but their paychecks from Rainbow frequently bounced and some never cleared the bank at all.

The Times has learned that as a result of complaints from Unterberg, Samson and other workers, HUD investigators and the U.S. attorney's office in San Diego are probing allegations of fraud by Rainbow and at least one other subcontractor at the Mariner's Cove site.

While constructed with private funds, the project is regulated by a federal labor law known as the Davis-Bacon Act that requires developers and contractors to follow predetermined wage guidelines. This is necessary because the federal government is guaranteeing most of an \$18-million construction loan to the developer. In return, low- and moderate-income occupants of 100 of the 500 units will receive federal rent subsidies under a HUD program called Section 8.

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"What is being investigated (are charges that) Rainbow misclassified employees, falsified the certified payrolls by under reporting the number of hours worked and misrepresenting what was actually paid" the construction workers, said Dan Oppermann, regional labor relations officer for HUD in San Francisco.

Oppermann said in a telephone interview that a total of at least \$67,000 is owed nine carpenters who were employed by Rainbow at the Mariner's Cove construction site late last year. A second subcontractor, Irri-Scape Construction Inc. of Escondido, owes \$43,000 to another group of construction workers who also worked at Mariner's Cove and were also shortchanged, he said.

Officials from Rainbow could not be reached for comment.

Oppermann said that two months ago, Rainbow paid HUD \$20,000 of the \$67,000 in back wages owed. But because Rainbow officials indicated they would appeal HUD's findings, Oppermann said, HUD has delayed distribution of that money to the workers.

A spokesman for Irri-Scape said that the \$43,000 it owes its workers has already been withheld by the general contractor for the Mariner's Cove project as part of a standard procedure whereby deposits are required of subcontractors as a safeguard against job performance problems. The spokesman declined to comment on the HUD allegations or to be identified.

Now, nearly three months after his Dec. 21 resignation from the Mariner's Cove job, and despite numerous complaints to HUD and other federal and state officials, Unterberg said he's still waiting for \$5,763 in restitution for bad checks and unpaid wages owed him by Rainbow. Samson was paid most of the money owed him but is waiting for a \$1,500 payment.

Both men said that HUD has repeatedly assured them that their complaints would be investigated and any pay owed them would be forthcoming. On several occasions, they said, HUD officials gave specific dates on which they could expect to receive their money.

But as far as Unterberg is concerned, it's still a case of "the check is in the mail."

"I'll believe it when I see it," he said when told by a reporter that Oppermann said late last week that the long-delayed checks—which represent only part of what the workers are owed—should arrive within days. "I want to have some hope but I've been let down so many times before that I'm trying not to get too hopeful."

Oppermann said HUD is well aware of the problems at the nearly completed Mariner's Cove project. So is Roland Camfield, an attorney for PBMC Inc., the general contractor overseeing construction at Mariner's Cove.

Although Rainbow and Irri-Scape are the targets of the HUD probe, federal officials say PBMC Inc. of Foster City, five miles south of San Francisco, has final responsibility for assuring that workers are paid in accordance with federal guidelines.

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Oppermann said the HUD investigation has determined that "there seemed to be no collusion on the part of PBMC to instruct Rainbow to falsify the payroll, or Irri-Scape, for that matter." However, federal investigators think there may be more subcontractors who may have violated the Davis-Bacon Act, and "there may be additional investigations opened," Oppermann said last Friday.

PBMC's attorney, Camfield, said in Los Angeles that his company "has absolutely nothing to hide" and is cooperating with HUD. "We've covered every rubber check (paid workers by the two subcontractors) that we know of," he said.

However, the matter appears far from settled.

Oppermann said HUD has received the \$20,000 that HUD investigators initially determined Rainbow owed the workers. But neither Rainbow nor PBMC has yet to forward an additional \$47,000 in wage shortages and bad checks that further investigation revealed the nine Rainbow workers were owed. Thirteen other carpenters worked for Rainbow at Mariner's Cove, but it is unclear whether they are owed money also, Oppermann said. HUD investigators are trying to reach them by mail and telephone to determine if they were underpaid.

In February, PBMC was given 30 days to pay the additional \$47,000, but the March 5 deadline has passed and the payment has yet to be made, Oppermann said.

Camfield said his client is waiting for HUD to make a

"final determination" of how many people were affected by the alleged payroll abuses and how much in back pay they are owed before it writes any more checks. "We want a final determination of what's owed by Rainbow to its employees for violations of the Davis-Bacon Act," Camfield said.

Camfield said PBMC is willing to pay the \$47,000, but if HUD's continuing investigation determines that much more is owed the workers, then PBMC must make a "business decision" on whether to pay up or appeal HUD's findings to a labor appeals board, which it is entitled to do under federal law.

But appeals could tie up the construction workers' payments for months. According to Samson, who is in touch with most of the Rainbow employees who filed complaints with Hunter's office, many of the men have given up hope of ever seeing their money.

Samson has written letter after letter to state and federal labor officials, politicians and news organizations pleading for action—not only for himself but also for his fellow workers.

But the delays, coupled with the mountain of debts that are piling up, explain why Samson has a bitter, weary look in his eye and Unterberg's hair is turning gray.

"I've had a 30-day notice posted on my door and I've had to beg my landlord to let me stay," Unterberg said. "My phone's been shut off twice and my power's been shut off." It was turned back on after he obtained one of several personal loans from friends and relatives.

Samson said he has begun to suspect that word of the complaints he raised about Rainbow and Mariner's Cove has reached other contractors and that he is being blacklisted for other construction jobs.

He has bought \$300 worth of law books trying to "figure out what our rights are and what we should do."

"The way the law reads, this should be a very simple matter," he said. "HUD takes care of it."

"HUD didn't take care of it."



LORI SHEPLER / Los Angeles Times

Carpenters Mark Unterberg, left, and Alan Samson helped build Mariner's Cove homes in background.