

# Boston Employment Commission Special Hearing Minutes / Sanction Determinations

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A **special hearing** of the Boston Employment Commission (**BEC**) was held virtually on Zoom, February 1, 2023.

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

**Hearing Begins: 1:05 PM**

Andre Lima, Director, Department of Supplier and Workforce Diversity gives overview of the sanctioning process as it relates to appeals.

In the event there is a determination vote to sanction and a fine is assessed, a notice will be sent within 24 hours of the decision.

Per Section 8-9.8 2(d) of the BRJP Ordinance, once a determination vote has been held, any party may appeal a vote to issue a fine for reconsideration by the Commission. Such appeal must be made in writing and must include a memorandum on not more than five (5) pages explaining why the Commission’s decision should be reversed. Such appeal must be received by the Commission within thirty-five (35) days from today. Upon receipt of a timely appeal the Commission will schedule the appeal for a hearing and send notice to the appealing party, in this case the general contractor and the assigned compliance monitor. At the hearing, the appealing party and the assigned compliance monitor may present additional relevant evidence. At the conclusion of the hearing, the Commission shall determine whether to vacate its initial findings based on the evidence presented on appeal.

There are 3 projects being recommended for sanctions (The order of the projects as public noticed has been changed):

- **JJ Carroll / GC, Dellbrook JKS**
- **7186 - Brighton High School Locker Room / GC, Northern Contracting Corp.**
- **9 Leyland Street / GC, Kaplan Construction**

The Commissioners will begin with Opening statements.

**Commissioner Burton:** As a member of the general contracting community and a resident of Boston, it is concerning to hold this hearing for sanctions and the Boston Employment Commission doesn’t take this process lightly. We’re here to look at administrative negligence as it pertains to payroll submissions. While it is the intent of the BRJP Ordinance to address the creation of jobs for Boston residents, People of Color and Women, it is also important that the timely submission of payrolls be adhered to for the purpose of the project being monitored accordingly.

**Commissioner Watson:** The history of the BRJP ordinance began as an advocacy for job creation for black workers in the construction trades. Commissioner Watson referenced various people(referenced the efforts of the late Councilor Chuck Turner) involved and the trajectory of this concern that evolved into Boston residents, people of color and women to appease politicians and white union workers. Commissioner Watson referenced a vast amount of history regarding this concern and spoke to the timeliness of it being the first day of Black History month and it still remains a serious concern that the construction workforce is still racially inequitable. Commissioner Watson believes the sanctions policy misses the intent of the ordinance and creates a distraction with the administrative penalization of late payrolls. He further stated that he understands the hesitancy to sanction on the actual intent of the ordinance has been because of the legal ramifications that other programs in other cities have encountered with dismantling of their program. Hold Boston Building trades accountable, he states and emphasized that he’s not anti-union, he is pro wealth building for equitable accountability. He believes there should be a baseline with the unions to determine the demographics of its membership. Only then, can you determine growth and need, he stated.

**Commissioner Flint:** Agreed with Commissioner Watson's remarks.

**Commissioner Burton:** The first recommendation for a sanction is:

**JJ Carroll / GC, Dellbrook JKS (Open Shop)**  
**Project started 9/2021 and ends 2/2023 (95% complete)**  
**Overall: 25% BR, 54% POC, 5%F**  
**Subcontractor, General Air**  
**36%BR, 43%POC, 7%F**  
**154 days late payroll submission = \$46,200**

**Commissioner Watson:** taking all things into consideration, General Air is a Boston-based, Black union signatory contractor. 4% of the city's construction spending (according to the city's disparities study). We should find ways to help and not hurt. It is my understanding that GCs are including in their contracts that fines are passed to the offending party. **Commissioner Howell:** Appreciated Commissioner Watson invoking his mentor the late Councilor Chuck Turner for being one of those who played a valuable role as an advocate and activist for creating jobs for Black workers on union construction jobs. While I understand the concept of my mentor (Chuck Turner), if we're not ultimately getting to the goal of the ordinance, it's insufficient. **Commissioner Flint:** It's sad we have to look at it from this administrative perspective. The contractors are Black owned. How do we do this so that it is fair. There's no win-win. **Commissioner Burton:** To the staff, do we know if Dellbrook was providing support to General Air for this administrative issue? **Commissioner Watson:** This being an open shop project, it's a mix of non-union and union. **Commissioner Burton:** This is a residential project? **BRJP Staff:** yes. **Commissioner Burton:** I recommend this project be sanctioned with a fine of \$10. **Commissioner Watson:** What are the final workforce numbers on General Air? **Robert Woodson (BRJP Monitor):** I will follow-up with the Commission on that information. **Commissioner Flint:** Commissioner Burton, why \$10? **Commissioner Burton:** My thought process is what would be the amount the GC would not pass on to the subcontractor. I want to make certain that Dellbrook would help their subcontractors and take this issue seriously. **Commissioner Flint:** The fact that they are doing good in their numbers is what matters. We're concerned about the people not the paperwork. **Commissioner Watson:** I don't recommend dinging someone on these stipulations and I'm not in favor of sanctioning. **Commissioner Howell:** I agree with a very small sanction or no sanction at all.

**Commissioner Burton:** Can I have a vote on whether to sanction or not sanction?

**3 No** (Commissioners Howell, Watson, and Flint)  
**1 Yes** (Commissioner Burton)

**Determination = No sanction for JJ Carroll due to General Air's outperformance on project.**

**Commissioner Burton:** The second recommendation for a sanction is:

**7186 - Brighton High School Locker Room / GC, Northern Contracting Corp. (Open Shop)**  
**Project started 9/2022 and ends 3/2023 (90% complete)**  
**Overall: 15% BR, 38% POC, 5%F**  
**Northern Contracting (self-perform) 225 late payroll submission**  
**PJ Dionne 75 late payroll submission**  
**Richard Lorsordo 240 late payroll submission – 43%BR, 46%POC, 8%F**  
**Front Line Inc. 327 late payroll submission – 32%BR, 77%POC, 38%F**  
**867 days late submission = \$260,100**

**Commissioner Watson:** I'm not comfortable dinging someone for administrative process. For the most part their numbers are well above average. **Commissioner Flint:** They need back-office support. The rubric needs to be looked at. I was a part of the initial creation of the administrative terms and was not in agreement then, but I was out voted. **Commissioner Burton:** Subcontractors that are outperforming the project overall (32%BR, 54%POC, 6%F). Historically, Northern Contracting's 3 1/2 year performance has been 24/25%BR, 39%POC, 4%F. **Commissioner Howell:** To be consistent with the last project, I would agree with the vote taken. However, there should be a look at why the turnaround for administrative submissions was almost a year late (*there was a misunderstanding with the calculations and Andre Lima clarified*). **Commissioner Watson:** I

recommend that the city create back-office support for the subcontractors. It would help get through the noise/distraction and prepare for the ultimate goal/intent of the ordinance. **Manuel Barbosa (BRJP Monitor):** The project started 9/2022 and there seems to be a discrepancy on the 327 days. **Andre:** All the days of late payrolls is a combination of 4 contractors.

**Commissioner Burton:** Can I have a vote on whether to sanction or not sanction?

**5 No** (Commissioners Howell, Watson, Flint, Burton and Broomstein)

**Determination = No sanction for 7186 - Brighton High School Locker Room or the subcontractors in question.**

**Commissioner Burton:** We are at the third and last recommendation for sanction, Commissioner Watson is recusing himself as his employer, MHIC provides funding for this project (9 Leyland Street). Based on our own precedent, can we agree to take out of the equation the contractors that meet or come close to meeting the numbers?

**NHK Electric, Lynco Fire Protection, Inc., CMP Plumbing & Heating, Kaplan Construction, All in One & Moore, Conneely Excavation, Division 15 Hvac, Inc., Elite Metal Framing & Construction, Father & Sons Carpentry and S&F Concrete.**

**9 Leyland Street / GC, Kaplan Construction (Open Shop)**

**Project started 1/2022 and ends 6/2023 (50% complete)**

**Overall: 20% BR, 78% POC, 3%F**

**1331 late payroll submission = \$399,300.00 (this total includes the contractors that were taken out of the equation)**

<b>Form Up Foundations</b>	<b>157 late payroll submission = \$47, 100 (54%BR, 78%POC, 54%F)</b>
<b>Sea &amp; Shore Contracting</b>	<b>11 late payroll submission = \$3, 300 (57%BR, 23%POC, 0%F)</b>

<b>Bridgeline GC</b>	<b>39 late payroll submission = \$11,700 (0%BR, 100%POC, 0%F)</b>
<b>Dykeman Welding &amp; Fabrication</b>	<b>30 late payroll submission = 9,000 (0%BR, 57%POC, 0%F)</b>

**Commissioner Burton: Dykeman and Bridgeline GC are not meeting administrative or goal requirements.**

**Commissioner Burton:** Can I have a vote on whether to sanction or not sanction?

**2 No** (Commissioners Burton and Broomstein)  
**2 Yes** (Commissioners Howell and Flint)  
**1 Abstain/recused** (Commissioner Watson)

**Commissioner Burton:** Commissioners Howell and Flint do you want to explain your votes and maybe convince myself and Commissioner Broomstein to change ours? **Commissioner Howell:** I considered the number of goals not met and not meeting the administrative requirements. **Commissioner Flint:** I also factored not meeting the numbers or the administrative requirements. **Commissioner Broomstein:** I change to a Yes. **Commissioner Burton:** We have to do a revote.

**Commissioner Burton:** Can I have a vote on whether to sanction or not sanction?

**1 No** (Commissioners Burton)  
**3 Yes** (Commissioners Howell, Flint and Broomstein)  
**1 Abstain/recused** (Commissioner Watson)

**Commissioner Burton:** What should the dollar amount of the fine be? **Commissioners Howell and Flint:** the maximum for each. Bridgeline GC = \$11,700 and Dykeman Welding & Fabrication \$9,000. **Commissioner Broomstein:** If their performance with the city has been consistently in non-compliance, the maximum fine should be applied. **Commissioner Burton:** with those comments, the caveat for this determination is these subcontractors history performance across the city. We will look to the BRJP staff to follow-up with that information.

Commissioner Watson rejoined the hearing and expressed that he will abstain from weighing in on any comments that relate to 9 Leyland Street.

**Shadiff Lopez-Garcia, the payroll compliance officer from Northern Contracting Corp** (7186-Brighton High School Locker Room project) expressed that they are submitting payrolls on time. The new Salesforce program implemented by BRJP has issues with transitioning from one system to another. She questioned how the meetings are conveyed because this was their first time hearing of any concerns with this project. There was a lot of information shared today that she was not aware of. She had a sidebar conversation with the BRJP Monitor, Manuel Barbosa “Manny” and they will work out the discrepancies. She referenced Commissioner Howell’s comment about the 7 day payroll turnaround submission being somewhat restrictive and perhaps should be extended. **Marquita Kelly (Kaplan):** tried to make a comment but was having technical difficulty with her mic. Kim Odom, BEC Coordinator left her BRJP office number and email contact information in the chat for her to reach out, if she wanted to. **Nate Peck (Kaplan):** A lot of the subcontractors are smaller. We spend a lot of time helping with back office operations. Oftentimes it’s a matter of limited time, energy and the restrictive time-frame of 7-day submission (I believe Marquita wanted to speak on that). Regarding Bridgeline GC, They have just done 10% of their scope of work and it’s premature to judge their worker hours. They have 1-2 people on site and are leading to full mobilization. Their trade is in exterior wall waterproofing and siding system.

**Commissioner Burton:** This hearing on sanctioning was lengthy. It was the first. As Andre Lima mentioned in the beginning, there is an appeals process for those who would like to do so. Is there a motion to adjourn? Commissioner Broomstein motioned and Commissioner Howell second. All I’s.

Meeting adjourned at 3:02pm

**KO/BEC Coordinator**