

POWER DESIGN, INC

AND THE RACE TO THE BOTTOM: UNDERMINING GOOD JOBS IN THE D.C. CONSTRUCTION INDUSTRY

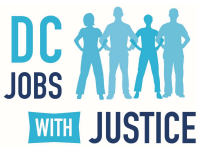


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TABLE OF CONTENTS

TABLE OF CONTENTS	1
WAGE THEFT IN THE DISTRICT OF COLUMBIA	2
THE D.C. ELECTRICAL INDUSTRY	3
WHO IS POWER DESIGN, INC?.....	5
Misclassification of Workers	5
FAIR LABOR STANDARDS ACT LAWSUITS AGAINST POWER DESIGN	6
OTHER ALLEGATIONS AGAINST POWER DESIGN	8
Negligence	8
Discrimination.....	9
THE IMPACT ON D.C. AND OUR ECONOMY	9
THE IMPACT ON OUR NEIGHBORS: WORKER STORIES.....	10
WHAT CAN BE DONE.....	12

This report was compiled by DC Jobs with Justice, a coalition of labor unions, community organizations, faith-based institutions, and student groups dedicated to protecting and advancing workers’ rights in the District of Columbia.



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WAGE THEFT IN THE DISTRICT OF COLUMBIA

Today, all over the District, our neighbors are being robbed by their employers when they are not paid the full wages they have earned. Despite long-standing efforts on the part of District government and advocacy organizations to put a stop to the practice of wage theft, the epidemic continues. A recent report by the Economic Policy Institute points out that *the total amount stolen nationwide in minimum wage violations alone dwarfs the amount stolen in robberies, car jackings, and burglaries.*¹ When our residents are not paid properly for their hard work, they are robbed of both their livelihood and any sense of dignity in the workplace. As the District experiences a boom in development, we must ensure it's not at the expense of workers. In the construction industry, DC has an opportunity to create good jobs and ensure that residents can benefit from redevelopment.

What is wage theft?

Wage theft is the failure to pay workers the full wages to which they are legally entitled. Wage theft can take many forms, including but not limited to:

- **Minimum wage violations:** Paying workers less than the legal minimum wage
- **Overtime violations:** Failing to pay nonexempt employees time-and-a-half for hours worked in excess of 40 hours per week
- **Off-the-clock violations:** Asking employees to work off-the-clock before or after their shifts
- **Meal break violations:** Denying workers their legal meal breaks
- **Pay stub and illegal deductions:** Taking illegal deductions from wages or not distributing pay stubs
- **Tipped minimum wage violations:** Confiscating tips from workers or failing to pay tipped workers the difference between their tips and the legal minimum wage
- **Employee misclassification violations:** Misclassifying employees as independent contractors to pay a wage lower than the legal minimum

Source: "Employers steal billions from workers' paychecks each year," Economic Policy Institute, 2017. Page 4.

The unanimous passage of the 2014 Wage Theft Prevention Amendment Act demonstrated the D.C. Council's commitment to ending the practice of wage theft in the District. So too did subsequent efforts to clarify the law and to ensure its robust enforcement via increased funding for the Department of Employment Services Office of Wage-Hour. Nevertheless, wage theft remains pervasive in the District of Columbia; far too many companies still fail to pay workers

¹ *Source: "Employers steal billions from workers' paychecks each year," Economic Policy Institute, 2017. Page 28.*

the minimum wage, fail to pay earned overtime, and fail to pay workers on time at their promised wage. Further, the practice of misclassifying workers as independent contractors continues despite the District's Workplace Fraud Prevention Act, and in some sectors, including the electrical industry, the practice which allows employers to avoid paying certain payroll taxes and leaves workers without protections, appears to be increasing. This study examines the practices, and potential impact, of Power Design, Inc. (Power Design), an electrical subcontractor with a history of accusations of worker misclassification, wage theft, unsafe working conditions, and discrimination. Power Design has a strong presence in the District and its business model which may hinge on illegal practices, negatively impacts jobsites and workers in the District and gives the company an unfair advantage against high road companies.

THE D.C. ELECTRICAL INDUSTRY

As in other industries, labor standards in the construction industry have suffered from a race-to-the-bottom. Construction projects operate with a contracting chain, where the project developer brings in a general contractor that hires subcontractors for the various elements of the project (water/sewer, electrical, carpentry, etc.) the subcontractor then brings in a labor broker who hires the majority of the workers as independent contractors. In trades like drywall installation or brick masonry, what used to be living wage jobs with a direct employer have long been converted into low-paying independent contractor positions with a labor broker several steps removed from the top of the contracting chain.

By using workers hired by labor brokers, the subcontractor may be violating DC's Workplace Fraud Prevention Act, which states that which states that an employer shall not improperly classify an individual who performs construction services for an employer as an independent contractor. The law dictates that a worker may only be classified as an independent contractor if the worker is completely controlling how they perform the services and the entity who has hired them only specifies the end result, the worker is an "an independently established trade" and "the work is outside of the usual course of business of the employer for whom the work is performed." Oftentimes, workers hired by labor brokers to perform work for a subcontractor are supervised, disciplined, and ultimately directed by the subcontractor and should clearly be hired as employees.

By hiring workers through a labor broker, subcontractors suppress costs by avoiding unemployment insurance taxes, and workers' compensation premiums. They may also seek to avoid liability while implicitly promoting cost-cutting maneuvers by the labor broker including wage theft. Companies that misclassify workers have a competitive advantage when bidding against companies that are following the law and workers are left without protections including

family and medical leave, and unemployment insurance. These labor brokers tend to exploit vulnerable workers, many of whom do not have papers, speak fluent English, or know their rights under labor law.



For years, the electrical industry seemed safe from this race-to-the-bottom. Electrical workers were considered the most highly skilled workers on a job and they were paid as such. But now, thanks to companies like Power Design, the electrical industry has suffered the same bottoming-out as other construction trades. In Washington, D.C., this means that wage theft, misclassification, tax fraud, abuse of undocumented workers, and safety violations have become the norm on big commercial projects. *The luxury*

developments we see across the city are, oftentimes, illuminated by misclassified independent contractors making \$14/hour for what could be union jobs paying \$50/hour. Instead of benefiting long-term residents and workers, cost saving go directly to the contractor and developer executives, who may be headquartered out of state.

The Process of Construction: A Glossary of Key Terms

- **Developer** - A company, nonprofit, or public institution that designs, creates, and funds a construction project. The organization may be the property owner of the land developed, but are also hired by the landowner.
- **General Contractor** - A company hired by the developer to oversee the management, scheduling, and completion of the construction project. The general contractor hires subcontractors of each specific building trade needed for the construction project.
- **Subcontractor** - Companies specializing in one specific construction trade, such as painting, steel work, or carpentry. Subcontractors oversee all the workers who perform the work of that trade or sometimes hire other subcontractors or “independent contractors” to complete the work.
- **Labor Broker** - A company or oftentimes an individual hired by a subcontractor to recruit and supply workers for a specific trade. Though these workers brought on by the labor broker are usually paid and employed by the broker, they are directed, supervised, and disciplined by the contractor that hired the labor broker.

Adapted from: “Building Austin, Building Injustice-Working Conditions in Austin’s Construction Industry,” Workers’ Defense Project, 2009. Glossary. vi.

WHO IS POWER DESIGN, INC?

Power Design, Inc (“Power Design”) is a St. Petersburg, Florida-based company that does commercial electrical work in 28 states and the District of Columbia. For the better part of the past decade, it has expanded its market share in D.C., and has performed work on at least 16 different large-scale projects across the city just over the last couple of years and about 50 projects overall.



To date in D.C., the company has specialized in large, private projects. Power Design has worked on or continues to work on the following projects, to name a few:

- Art Place at Fort Totten; developed by Cafritz Foundation and Bozzuto
- Howard University Sherman Avenue Apartments; developed by RISE and CBG
- 77H (Walmart mixed-use building); developed by JBG
- District House Student Residences; developed by George Washington University
- Line Hotel; developed by Sydell Group
- Bower at the Yards; developed by PN Hoffman

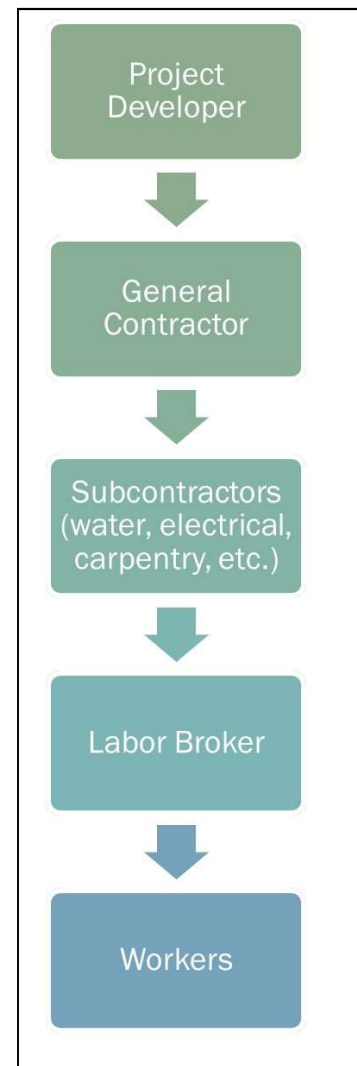
Power Design has been the defendant in multiple lawsuits alleging violations of the Fair Labor Standards Act, both here in D.C. and around the country. The pattern of violations alleged in those lawsuits, and found by organizers here on the ground, suggest that Power Design utilizes a business model of undercutting its competition by misclassifying employees, stealing wages, and exploiting low-paid workers.

Misclassification of Workers

Power Design relies on often unlicensed labor brokers and their misclassified workers to perform everything but the managerial duties on a worksite.

According to Power Design’s own internal document, these “installation crews” that are hired by the labor brokers are “...part of the team. The Installation Team practice is simply a method of pay.²” The document states the Power Design Foreman, “Trains, manages and evaluates the Installation Crew on a daily basis...” and

² Power Design, Inc. Labor Management. Installation Teams Chapter.



that the crew, “Follows [Power Design] policies, procedures, and meets outlined expectations.”³ It further states that Power Design will supply all necessary safety equipment and may supply tools. Worker testimonies and lawsuits against Power Design clearly outline that the company outfits workers in Power Design equipment, directs their work, and disciplines them. However, workers on Power Design job sites are often misclassified as independent contractors and paid in cash or personal check by their labor broker. As the DC Workplace Fraud Prevention Act clearly outlines, to be considered an independent contractor the worker must, among other requirements, completely control their own work and “[f]urnishes the tools and equipment necessary to provide the service.”⁴

General contractors and developers, in turn, have come to rely on Power Design’s artificially low bids and thus entrenched this “race-to-the-bottom” strategy by awarding Power Design plum contracts on projects throughout the District.

FAIR LABOR STANDARDS ACT LAWSUITS AGAINST POWER DESIGN

Research into Power Design revealed at least 13 lawsuits against the company for wage theft. In the majority of these cases⁵, the workers were hired by a labor broker and classified as independent contractors. In the six cases where settlements are recorded in the courts, Power Design and its co-defendants paid approximately \$701,148 to plaintiffs, including \$184,726 representing unpaid wages.

In Washington, DC, there have been two wage theft lawsuits against Power Design, both involving multiple plaintiffs. In 2016, Isaac Bonilla⁶ filed a lawsuit on behalf of himself and approximately 15 other electricians alleging that they were not paid at least minimum wage for all the hours they worked and were not paid overtime pay while regularly working 48 hours a week at a George Washington University project [See Box below]. This case was settled for a total of \$25,000. In *Rivera et al v. Power Design, Inc. et al*, 5 plaintiffs allege on behalf of themselves as well as other similarly situated workers, that they were not paid the D.C. or federal minimum wage or overtime for approximately one month for work at a condominium

³ Power Design, Inc. Labor Management. Installation Teams Chapter.

⁴ Council of the District of Columbia. (2018). Code of the District of Columbia: § 32–1331.01. Retrieved from: <https://code.dccouncil.us/dc/council/code/sections/32-1331.01.html>

⁵ In *Dalby v. Power Design, Inc* the plaintiff was a Contract Administrator and not an electrician. In the cases of *Moise v. Power Design, Inc. et al* (Florida, 2010), *Plouffe v. Power Design, Inc* (Florida, 2005), and *Rosales v. Power Design, Inc., et al* (Florida, 2003) it appears that the plaintiffs were directly hired by Power Design. In the following 9 cases, the worker plaintiffs were hired by a labor broker: *Mejia et al v. Power Design, Inc* (Louisiana, 2018); *Anderson v. Power Design, Inc.* (Texas, 2017); *Bonilla v. Power Design, Inc., et al* (2016, Washington, DC); *Rivera et al v. Power Design, Inc. et al*, (2014, Washington, DC); *Amaya et al. v. Power Design, Inc*, (Maryland, 2016); *Garcia v. ES&R Construction, Inc. et al*, (Maryland, 2014); *Alcantara et al v. DPL Construction, Inc et al* (Florida, 2018); *Linares v. ES&R Construction, Inc. et al* (Maryland, 2015); *Mayor et al v. Power Design, Inc.* (Florida, 2016).

⁶ *Bonilla v. Power Design, Inc. et al*

development project at 460 New York Avenue NW. This case was settled for \$35,000 with each worker receiving between \$600 and \$3600 for their claims of unpaid wages.

In Maryland, Power Design has faced at least three wage theft lawsuits. *Amaya et al. v. Power Design, Inc* includes 23 plaintiffs alleging that they were “routinely required” to work over forty hours each week and to arrive at the jobsite fifteen minutes early each day to prepare the site but were not allowed to sign in until the official start time. They further allege that they were not paid “all wages owed for each hour worked” or overtime at time-and-a-half, as required under the FLSA while working at a federally funded project at the National Naval Medical Center in Bethesda. The parties reach a settlement that Power Design would pay 30 plaintiffs a total of \$159,020.83, representing all of their asserted unpaid wages plus 40% of liquidated damages. Power Design further had to pay to the plaintiffs’ attorneys fees of \$347,655.53 plus \$7,571.71 in costs. Other cases from Maryland include *Garcia v. ES&R Construction, Inc. et al*, from 2014, whereby Garcia states that he did not receive overtime pay and *Linares v. ES&R Construction, Inc. et al* who claimed to have not received at least minimum wage for all hours worked or overtime pay⁷.

Bonilla

In 2016, Isaac Bonilla filed a lawsuit on behalf of himself and approximately 15 other electricians against Power Design, Inc. (“Power Design”), DDK Electric, Inc. (“DDK”), and Clark Construction. Bonilla alleged that while doing electrical work at 2121 H St NW, a George Washington University student housing building, he and other electricians were working 48 hours per week. They allege they were not paid for all hours worked and did not receive an overtime premium for hours worked over forty (40) in each workweek and were misclassified as independent contractors. Mr. Bonilla filed claims under the Fair Labor Standards Act, the D.C. Minimum Wage Act Revision Act, the D.C. Wage Payment and Collection Law, the D.C. Wage Theft Prevention Amendment Act, and the D.C. Workplace Fraud Act.

In the lawsuit, Bonilla makes a case that he and other electricians should be considered joint employees of Power Design and DDK Electric. They state that an employee of Power Design directs the electricians work and has the power to hire and fire electricians, to correct work, and sets the time for breaks and beginning and ending the work day. Plaintiffs also state that Power Design provides the electricians’ tools, other than hand tools, equipment, and hard hats. Power Design also provided the electricians’ time sheets which read “Power Design Installation Team Hourly Sign-In Sheet.” These are all indicators of direct employment, not independent contractor status. The plaintiffs state that an employee from DDK, an unlicensed labor broker, recruited the workers and serves as a pass-through for wages by providing paychecks to the employees with no withholdings.

In a Memorandum Opinion and Order, a Judge held that Bonilla had adequately alleged that Clark Construction is vicariously liable under two D.C. statutes for wage violations by Power Design and DDK Electric. This case was settled in September of 2016. Bonilla and the other workers received \$8750 to settle their claim for back wages plus an additional \$8750 for “liquidated damages” and \$7500 in attorney plaintiff’s attorney fees.

⁷ These cases were dismissed by the court.

Lawsuits nationally suggest that Power Design has brought these practices from their work in other states. Researchers found six wage theft lawsuits from Florida (*Dalby v. Power Design, Inc., Mayor et al v. Power Design, Inc., Moise v. Power Design, Inc. et al, Plouffe v. Power Design, Inc., Alcantara et al v. DPL Construction, Inc et al, and Rosales v. Power Design, Inc., et al.*) where Power Design is headquartered. The case of *Mayor et al.* is a collective action suit brought by 7 named employees on behalf of other similarly situated employees which alleges failure to pay overtime and failure to pay at least minimum wage. *Moise*, a collective action lawsuit, *Rosales*, and *Plouffe* allege failure to pay overtime. Court documents show that the cases of *Mayor*, *Moise*, and *Rosales* were settled for a total of \$126,900⁸. In Texas, *Anderson v. Power Design, Inc.*, which was brought on behalf of similarly situated employees, accuses Power Design of failure to pay overtime and purposeful poor record keeping⁹.

In both D.C. cases, as well as wage theft cases against Power Design nationally, a pattern is evident whereby Power Design relies on unlicensed labor brokers who hire workers as independent contractors, in an apparent attempt to outsource liability and avoid costs.

Numerous lawsuits¹⁰ detail the practice whereby Power Design oversees the employees, includes hiring and firing electricians, correcting work, managing schedules, and supplying equipment. Despite Power Design's level of involvement, workers are technically hired by a labor broker who then classifies workers as independent contractors and pays workers in cash or personal check in is an apparent violation of the D.C. Workplace Fraud Act (and Maryland's Workplace Fraud Act). As explained in *Rivera et al v. Power Design*, this scheme allows Power Design to evade federal and local taxes, unemployment insurance taxes, workers compensation insurance, and other labor laws.

OTHER ALLEGATIONS AGAINST POWER DESIGN

Negligence

Two lawsuits from Maryland against Power Design detail unsafe work practices and conditions, mirroring what labor organizers have found locally. In *Hanover R.S. Limited Partnership v. Power Design, Inc. et al*, plaintiffs allege that negligence caused a fire and in *Schoen v. Power Design, Inc.*, the plaintiff alleges that negligence caused an explosion which injured an electrical engineer carrying out an inspection. The plaintiffs in these lawsuits state that Power Design employees or contractors did not exercise reasonable care and Hanover details that Power Design failed to adequately instruct, supervise, and or train employees, and failed to retain

⁸ In the case of *Dalby v. Power Design, Inc* the parties reported to the court that they reached a settlement and case was dismissed. The settlement is not on record.

⁹ This case is on-going and is scheduled for jury trial in November 2018.

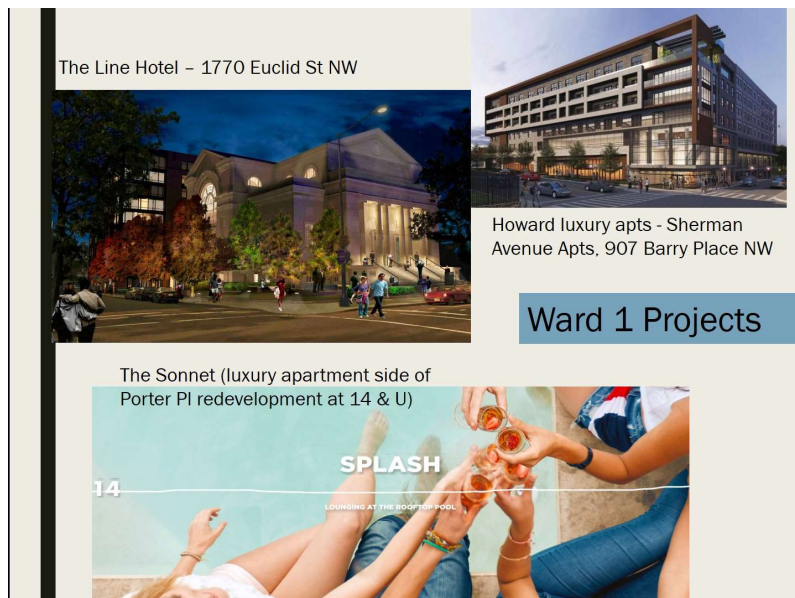
¹⁰ *Mejia et al v. Power Design, Inc* (Louisiana, 2018), *Anderson v. Power Design, Inc.* (Texas, 2017), *Bonilla v. Power Design, Inc., et al* (2016, Washington, DC), *Rivera et al v. Power Design, Inc. et al*, (2014, Washington, DC), *Amaya et al. v. Power Design, Inc.* (Maryland, 2016), *Garcia v. ES&R Construction, Inc. et al*, (Maryland, 2014)

competent employees. The case of *Hanover* was “dismissed with prejudice” while in the case of *Schoen* a jury ruled in favor of Schoen in the amount of \$82,006.21 in 2011.

Discrimination

Research into Power Design also turned up multiple lawsuits alleging discrimination. In *Dalby v. Power Design, Inc.*, Dalby, a Contract Administrator for Power Design in Florida, alleges wage theft and Family Medical Leave Act (FMLA) interference and discrimination for asserting her right to family medical leave. Dalby states that after she took FMLA permitted time off to care for her sick father, she was only paid \$1,500 of a \$10,000 earned bonus and was pressured to work during her leave. In this case, parties reported to the court that they reached a settlement and the case was dismissed¹¹. Another FMLA related lawsuit, *Ramirez v. Power Design, Inc.* in Georgia, further alleges sex and pregnancy discrimination. The plaintiff states that Power Design fired their only remaining female site manager four hours after she reported that she would be taking FMLA leave after giving birth¹².

In addition to these, two other suits deal with alleged discrimination on the part of Power Design, *Godby v. Power Design, Inc. et al*¹³ in Florida alleges sexual harassment, which the plaintiff describes as “company culture,” and *Lynch v. Power Design, Inc. et al* in Georgia which alleges anti-Muslim harassment¹⁴.



THE IMPACT ON D.C. AND OUR ECONOMY

Power Design has, unfortunately, been given the green light by D.C. developers and even D.C. government to continue its current business practices. During the last year, Power Design has had over 17 large projects in the District and received certification for its apprenticeship program in June of 2017.

Power Design acted as the electrical subcontractor on these high-end projects in Northwest DC.

¹¹ Parties reported to the court that they reached a settlement and case was dismissed.

¹² This case was dismissed in court.

¹³ This case was administratively stayed for arbitration in August of 2017

¹⁴ This case was dismissed in court.

Alerted of the company's track-record and apparent business model, Attorney General Karl Racine multiple times notified the DOES leadership of concerns. Despite this and the company's history of lawsuits accusing them of wage theft, the D.C. Apprenticeship Council, a regulatory board comprised of 11 members appointed by the Mayor and confirmed by the DC City Council, approved Power Design's apprenticeship program. This opens the doors for the company to bid on and likely win tens of millions of dollars of publicly-funded work.

Our city is booming with high-end development, but not everyone is sharing in that prosperity. Longtime residents are getting pushed out by the cost of living and working-class people can't afford to live here. If our city is going to be a place where everyone can thrive, not just the wealthy, we must protect and build on the good jobs we have. Letting companies like Power Design drive a race-to-the-bottom in a solid, middle-class industry will only do the opposite.

 City Paper
@wcp Following

Councilmember, others call foul after D.C. "rolled out the red carpet" for a company accused of wage fraud.
washingtoncitypaper.com/news/loose-lip ...



8:58 AM - 27 Jul 2017

THE IMPACT ON OUR NEIGHBORS: WORKER STORIES

Carlos Oliva is a father of two, grew up in the Mt. Pleasant neighborhood of Washington, D.C., and has been an electrician for 18 years. He has been a union electrician for 17 of those years, but when work was hard to come by last year, he took a job with Power Design in November 2016.

"The job is under Power Design, so the responsibility falls with Power Design."
- Carlos Oliva

Since Carlos was an experienced union electrician, Power Design hired him directly to oversee its subcontractors. He worked on a project at George Washington University where Power Design had been contracted to do the electrical work on a new dormitory for students. Carlos was paid well as a foreman for Power Design, but could not help but notice the vastly different treatment of those employed by Power Design's labor brokers.

These workers hired through labor brokers were unprepared and untrained for the electrical work they were assigned, so Carlos had to carefully supervise them and help fix their mistakes. And though they wore Power Design uniforms, used Power Design tools, and were directed by Power Design employees like Carlos, these workers were not paid as Power Design employees. They were paid by fly-by-night companies, sometimes as 1099 contractors.

After about a year at Power Design, Carlos left the company and returned to work at only union electrical companies. Asked why, he explained it was because of how Power Design “treats you and the subcontractors.” He said, “That’s not me. I don’t abuse people and my power.”



“This affects the community because if we can’t maintain the level of this profession, that will affect other jobs and people won’t be able to find good jobs.”

Ariel Ladima, electrician

Ariel Ladima is from Puerto Rico and lives in Clinton, Maryland. He worked directly for Power Design as an electrician for one year. Ariel made \$30/hour and stresses that he was never treated poorly by the company. But he saw firsthand the company’s scheme of farming out electrical work to the under-trained and exploited workers of labor brokers.

At Power Design, Ariel worked on Howard University’s Sherman Avenue Apartment development and a dormitory for George Washington University. An experienced electrician, he would direct roughly 10 workers hired through a labor broker with guidance from a Power Design foreman. At the Sherman Avenue Apartments, Ariel and the foreman were the only two Power Design direct employees on the entire project. Ariel estimated that only 30 percent of the workers were prepared or trained enough to do the job well.

“This is a skilled profession and I want to maintain the standards of the profession. It’s a craft. You work so hard to learn the trade.”

- Ariel Ladima, Electrician

The labor broker’s workers made between \$10 and \$16 per hour, said Ariel, and they were paid either in personal checks or in cash. All were misclassified as 1099 independent contractors and their timesheets were labeled with Power Design’s insignia. All the subcontracted workers were Latino, Spanish-speaking, and they were treated disdainfully by their labor broker. “I can testify to that,” Ariel said. “It’s just ‘push, push, push’ all day.” If a worker got hurt on the job, he would be sent to urgent care. The urgent care bill would be paid by the labor broker, but that worker would be fired.

Alberto Martinez came to the US from Venezuela with his wife to seek better medical care for her during her pregnancy. Once he arrived, he settled in Maryland and worked for Power Design via its subcontractor K&K Electric from May 2016 to May 2017. Alberto attempted to work directly for Power Design, but was shuttled over to the subcontractor instead. He believes that Power Design channels those without papers and those who only speak Spanish to work for subcontractors, hiring only a few employees directly. Alberto estimates he was one of 50 workers or so contracted on Power Design job sites through K&K Electric.

Working for K&K Electric, Alberto was paid \$15/hour with no health insurance and was offered no training before starting on a job site in Tysons Corner. He worked overtime for a couple weeks, but was never paid time-and-a-half for those hours. Working for low wages without benefits, Alberto had to take a second job doing landscaping to provide for his family. He slept on a sofa at his mother's home because he could not afford the high cost of housing in the area.

After a year working on Power Design jobs, Alberto left and became an IBEW union member. The main reason he stopped working for K&K and Power Design, he said, was to get health insurance and benefits. "Thank god I did not get sick before," he said.

WHAT CAN BE DONE

We need to stop these low-road companies from driving a race-to-the-bottom in our industries. The Mayor and the DC government should hold companies like Power Design accountable, by investigating their business practices and violation and enforcing DC laws. The government must carry out strong oversight and strategic enforcement, particularly where there are companies with a history of violating workers' rights, and ensure that workers are not retaliated against when they cite abuses. The Department of Consumer and Regulatory Affairs should regularly inspect worksites for safety and quality and penalize companies that violate the law. Tax dollars should not be used, or tax abatements granted, for projects where wage theft or hazardous conditions are found. Developers like PN Hoffman and builders like Clark Construction must ensure high standards throughout their contracting chain and stop using bad actors. Institutions like Howard University, Cafritz Foundation, and George Washington University must stop using companies like Power Design for their buildings. Workers in the District are depending on it.