

**OREGON STATE APPRENTICESHIP AND TRAINING COUNCIL**

**RULES AND POLICY SUBCOMMITTEE**

**Meeting Minutes - March 4, 2009**

**Michael McFall, Chair**

**I. Call to Order**

Chair Mike McFall called the meeting to order at 9:47 a.m.

**II. Introductions**

Council members:

Jason Landon, Trades Employer  
Bob Rogers, Public Member  
John Rozell, Trades Employer  
Nelda Wilson, Trades Employee

Mike McFall, Industrial Employee  
Ken Fry, Trades Employee  
Bob Ferguson, Industrial Employer  
Paul Hill, Public Member

Staff members:

Stephen Simms, Director, Apprenticeship and Training Division  
Karen Dale, Apprenticeship Operations Manager  
Elaine Dibble, Internal Operations Manager  
Paul Joiner, Apprenticeship Preparation Project Manager  
Maureen Pointer, OSATC Recording Secretary  
Lisa Traynor, Office Specialist

Apprenticeship Representatives:

Richard Petersen, Portland  
Stacy Ozer, Portland  
Larry "Will" Williams

Tamara Boyd, Portland  
Elizabeth Farmer, Eugene  
Tony Cracolice, Eugene

**III. Member Reports – no reports from Council members**

**Budget:**

Director Simms summarized the Division's budget proposal for the next biennium. He stated that he would miss the Standards Review Subcommittee meeting this afternoon to testify at a Ways and Means Committee budget hearing.

BOLI is proposing to continue the Division's existing service level with 18 full-time employees (FTEs). It is also seeking funding for two option packages:

Option 1: Funding shift for the high school initiative project to the general fund for stability purposes

Option 2: Additional position for the high school initiative project with \$100,000 in funding for high school grants

The Governor's recommended budget maintains the current FTEs but does not include the two option packages.

Mr. Simms believes that every state agency will be required to take cuts this biennium, even though the Governor has recommended fully funding the Division. The Ways and Means Subcommittee is supportive of apprenticeship. The Division was required to submit a contingency plan to cut its overall operating expenses by 20%. It is possible that the Division will retain all nine current apprenticeship representative positions but only receive funding for seven. Mr. Simms is hopeful that all nine positions will be funded so the Division can be fully staffed beginning July 1, 2009.

**Legislative Update:**

Commissioner Avakian would like to continue working with the workforce development system in its efforts to be more responsive to employer needs and ensure proper worker placement. BOLI has worked with a coalition of individuals in developing two bills that were presented by the Workforce and Economic Development Subcommittee. These bills are still working their way through the Legislature.

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#### House Bill 2838:

Mr. Simms stated that the apprenticeship community should be aware of HB 2838. If passed, this bill will mandate that registered apprentices work at least 15% of all hours on any public works contracts in excess of \$750,000. Individual contracting agencies will be responsible for ensuring the apprenticeship hours are properly worked and reported. BOLI has not taken an official position but will address concerns with the Legislature.

#### Fiscal impact:

The bill gives the Council the authority to grant exceptions to the 15% requirement and directs the Bureau to develop plans to diversify the construction industry on prevailing wage projects. This could potentially create additional work for the Council and staff with no additional funding. If contractors are found in violation of the requirement, a \$20 penalty could be assessed for every hour the contractor is out of compliance. Penalty funds collected would go to the State Treasury to establish a State Apprenticeship and Training Education Fund. The interest-earning fund would be appropriated to the Council for competitive grants for youth programs, oversight and monitoring of apprenticeship programs, and other programs that support registered apprenticeship.

Mr. Simms reported that fiscal stability would be the top priority this legislative session.

#### IV. OSATC Task Force Reports

##### A. Affirmative Action Task Force (AATF) – Status Report

During Phase I, the AATF identified issues and concerns regarding diversity. Four key areas were targeted for additional work, with an estimated deadline of June 2009 to conclude Phase II:

- Cultural Diversity Competency
- Mentorship
- Outreach
- Apprenticeship Community Website

All four work groups are on target and plans for Phase III will be presented to Council for approval in **June 2009**. Time and funds will be the main obstacles during the Phase III implementation process.

##### B. Administrative Rules and Policy Task Force

- i. **Administrative Rules Revision – Status Report** – *none this quarter*
- ii. **Council Policies – Status Report** – *none this quarter*

#### V. Staff Reports

##### A. Internal Review Work Team

Apprenticeship Representative Petersen reported the team's concerns regarding disparities in scoring systems used by some committees that give applicants more points for high school graduation as opposed to obtaining a GED. Staff believes that as both documents are supposed to demonstrate the same marker of academic achievement, the practice may have a negative effect on affirmative action with respect to women and minorities for the following reasons:

- Higher points for high school graduation than for GED
- Credit given for a GPA of 3.0 or higher with no similar credit for high GED scores

Council Member Hill stated there is clear evidence that minority students in Oregon graduate from high school at lower rates than Caucasian students and noted that awarding different points for different types of high school completion will automatically have a negative impact on minorities. He added that it is imperative to address this issue promptly if the goal is to increase diversity in apprenticeship programs.

After much discussion Director Simms recommended that the subcommittee move cautiously as any action will have a substantial impact on program's selection methods. Long-term issues to consider:

- Should the Council require that high school diplomas and GEDs receive the same score in standards that are submitted for approval?
- Why are points awarded for high school diplomas, GEDs and GPAs?

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- Do these criteria have any validity in determining whether an individual will be a good apprentice?
- A valid connection should be demonstrated between identified criteria, how they are applied, and the skills and knowledge needed to succeed in a program.
- More objective evaluation tools, such as the Career Readiness Certificate should be explored.

Short term solution: Require that high school diplomas and GEDs with passing scores be valued the same in new and revised standards. An end-date should also be designated for all standards to be updated, to ensure that all programs and applicants are treated consistently.

**M/S/C by unanimous voice vote** to direct staff to conduct an analysis of the impact of high school diploma and GED requirements on acceptance and completion rates, reporting to the subcommittee **June 2009**.

#### B. Compliance Work Team

The compliance report format has been modified to a single page checklist, with narrative information to be included on subsequent pages; additional modifications may be needed after implementation. A standards checklist will be completed with every review. Staff will begin scheduling reviews in April 2009. A few reports will be ready for Council review in June 2009.

Council members would like to review the statistical analysis with the compliance report.

#### C. Website Work Team

Apprenticeship Representative Ozer reported on the Division website's new look. Feedback is welcome and can be given to any staff member via phone or e-mail. Information and upcoming events related to apprenticeship can be submitted for posting, which takes approximately two weeks from the date of submission.

ATD (Division) website vs. AATF website:

The ATD website is the official state website pertaining to apprenticeship. The AATF website will be community-based, with information pertaining to apprenticeship and affirmative action.

#### D. BCD Enforcement Sweeps

Apprenticeship Representative Cracolice reported that the Division participated with the Building Codes Division (BCD) and other agencies in a multi-agency enforcement sweep of construction sites in January 2009. This is the third sweep ATD has participated in, with representatives from BCD, Workers Compensation Division, Department of Revenue, and other BOLI divisions. The team visited 18 worksites and interviewed more than 140 journey-level workers and apprentices in Lane County. They found no violations, issued no citations and observed no apprentices working unsupervised or out-of-ratio.

BCD will continue conducting multi-agency sweeps and all participants agree that having agency representation on the team is crucial. ATD will continue to participate as often as staffing will allow.

### VI. Follow-ups from Previous Council Meetings

#### A. Committee Meetings – Teleconference, Fax, and E-mail – Report

The issue was first raised in September 2008 with additional discussion at the December 2008 subcommittee meeting. Draft guidelines were distributed at the January 2009 Council meeting; no public comment has been received.

**M/S/C by unanimous voice vote** to recommend approval of the guidelines for electronic meetings.

#### B. Calculation of Average Journey Wage – Report

Pursuant to ORS 660.137 and .142, committees conduct journey wage surveys to determine the average rate for the apprenticeship wage. When all participating training agents are signatory to a collective bargaining agreement, the contract wage becomes the survey.

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Mixed committees or those with only non-signatory training agents must conduct a wage survey. Division policy allows committees to use a variety of mathematical measures to arrive at the average as long as it accurately reflects the journey wages paid by training agents. These include straight, weighted, mean, median or mid-point averages.

Prior to approval, the Division looks at a variety of factors to determine whether the proposed average wage is a reasonable approximation of the journey wage for the occupation.

Some committees have used practices that extend beyond averages, such as only including the wage of first year journey workers in the calculation. Staff believes that the statute requires a clear average of all journey wages, excluding foremen, supervisors, and management.

**M/S/C by unanimous voice vote** to direct staff to develop guidelines for the calculation of average journey wages for review at the **June 2009** subcommittee meeting.

#### **C. Use of Exceptions – Statistical Report with List of Exceptions**

The Affirmative Action Task Force was directed to look at exception usage but this is not a part of the current Phase II work. There was general consensus at the September 2008 Council meeting that action is needed on this issue now.

All exceptions to the selection method should work with the committee's affirmative action plan to increase female and minority participation. Statistical analysis of 2007 gender and ethnicity data shows a significant decrease in minority and female participation when employers have free choice of applicants.

Although some exceptions have improved diversity, the percentage of minorities and women entering apprenticeship programs through exceptions falls below the percentages attained when selecting only from a ranked list.

The subcommittee discussed possible recommendations to the full Council, and whether committees using the exceptions should be engaged in an interactive discussion.

Apprenticeship Representative Williams noted that there may be an advantage in differentiating new training agents from returning training agents (Exception #3). In some cases, a small employer may select and train an apprentice under this exception, wait for two years, then return as a newly active training agent and select another apprentice under the same exception without going to the applicant pool. He also noted that the alternating employer choice during the placement process seems to be the exception that stands out the most. He added that the Veteran's Exception (#12) also seems to consistently under perform with respect to affirmative action. This could be the result of poor outreach to veterans or a reflection of the types of training the veterans are receiving while in the military and how they relate to registered apprenticeship.

Council Member Fry suggested forming a Council subcommittee to review the issues and recommend a list of exceptions that would be expected to have a positive impact on affirmative action, including those that are required for legal reasons, with a recommendation to eliminate the remaining exceptions.

A motion was made to form a subcommittee to review and recommend a list of exceptions, limiting the number of exceptions to three. The motion died due to a lack of a second.

After further discussion a motion was made to establish a subcommittee comprised of Council and ATD staff members to develop a core list of exceptions that identify affirmative action and federal and state statute, and report to full Council with their recommendations.

Mr. Simms recommended there be representation from apprenticeship committees on the subcommittee as well.

He added that alternating employer choice accounts for almost as many entrants as all of the other exceptions combined, with uniformly worse results from an affirmative action standpoint. He suggested sending a notice to all employers utilizing this process, provide them with the statistics, and ask them to the June 2009 subcommittee meeting to justify why they should be allowed to continue utilizing it.

The motion was withdrawn.

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**M/S/C by unanimous voice vote** to direct staff to contact committees utilizing the alternating employer choice exception, advise them of the statistics tied to use of that exception, notify them that the Council is considering eliminating this exception and ask them to submit in writing, their reasons for continuing to use the exception.

Council Member Hill recommended that once formed, the subcommittee should broaden its scope to evaluate how exceptions interact with the ranking process.

Cindy Regier, Apprenticeship Coordinator - IEC, expressed concerns regarding selection when a committee is unable to place the highest ranked applicant due to a felony background. She stated there are many restrictions for committees regarding drug testing and felony background checks and inquired if legal advice can be obtained with respect to handling these situations.

Mr. Simms responded that this is an ongoing issue, noting that discussion regarding felony background checks is being deferred until June 2009. A distinction must be made between eligibility for apprenticeship and eligibility for employment and whether the criteria employers use for employment are legal. Technical assistance for committees and employers is needed in this area.

Kristen Lewis, MA 1100, asked the subcommittee to consider that the AATF has been assigned to review the issues regarding exceptions and ranking during Phase III. She suggested that interested individuals become more active in AATF efforts instead of forming another subcommittee.

#### **D. Kliewer Request for Hearing – Status Report**

An apprentice requested review by the full Council for the termination of his apprenticeship. The review will be conducted by a subgroup of the Rules and Policy Subcommittee on March 24, 2009, 10:00 a.m., Portland State Office Building. There are currently two subcommittee members in the subgroup. Mr. Simms will contact subcommittee members to secure a third member. Detailed information will be provided to participating subcommittee members in advance.

#### **E. Out-of-Work Apprentice Process – Report**

This issue was carried over from the December 2008 subcommittee meeting.

All standards require that out-of-work apprentices in good standing be offered the opportunity for reemployment before new apprentices are registered. Additionally, federal regulations state that committees have an obligation to assist apprentices in advancing through the program in a timely manner.

All committees must have a policy for out-of-work apprentices and the Division has allowed programs to adopt individual procedures. While some committees actively engage in placing their unemployed apprentices, others do not. Frequently, apprentices are expected to find their own work.

The Division believes that committees who do not take an active role in placing out-of-work apprentices are failing in their obligation to ensure that apprentices have the opportunity for timely advancement.

With current high unemployment rates, it is important for committees to have an objective plan to help out-of-work apprentices get back to work.

All local committees have been requested to provide information on the current number of out-of-work apprentices and a brief description of their out-of-work procedure. The Division will compile this information and prepare a report for review in **June 2009** to include:

- Current number of unemployed apprentices for each program
- Reemployment procedures utilized
- Completion rates
- Length of time needed to complete the programs
- Correlation to gender and ethnicity

**Action deferred** to the **June 2009** Council cycle.

#### **VII. 29 CFR 29 Amendment – Status Report**

A detailed report of required changes will be provided to Council in **June 2009**. Statutory changes are not required until **January 2011**.

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### VIII. Multi-State Reciprocal Agreement – Status Report

Participating agencies appear to be close to executing a revised reciprocal agreement that will truly allow reciprocity for apprentices in the licensed trades.

Council Member McFall will be stepping down from the Reciprocity Committee and a new representative is needed. Interested Council members should contact Mr. Simms.

### IX. Prevailing Wage Rate Diversity – Discussion

HB 2101 required BOLI to provide an annual report to the Legislature indicating what could be done to use the prevailing wage law to increase diversity on prevailed projects. An analysis of the findings in the first annual report indicates that contractual requirements for prevailed work have had a very positive impact on selection decisions made by committees.

The Legislature has approved BOLI's tentative plans for the second year report. The Bureau should meet with developers, prime contractors, subcontractors, and apprenticeship committees and review the current information on the underutilization of women and minorities. The Bureau should also present this group with information on the impact of prevailing wage work on the utilization of women and minorities along with evidence of strategies that may correct this problem. The Bureau should then collaborate with developers, contractors and apprenticeship committees in the development of a suitable plan.

A second annual report will compile industry responses to these issues and will be submitted to the Legislature in January 2010. The third report will include a new review of the statistics to see if these new plans have made progress towards addressing the disparity in participation for women and minorities. This information and the Bureau's own recommendations and conclusions will be submitted to the Legislature as a comprehensive plan. The Council will need to make some final decisions as to what the plan should be at that time.

### X. Out of Ratio Apprentice Hours

The subcommittee was asked whether apprentices should receive credit for hours worked when apprentices are in violation of the apprentice to journey worker ratio. The general consensus was "no". Discussion points:

- Is it fair to punish apprentices when the employer is at fault?
- How does an apprentice know if the contractor is out-of-ratio?
- Which apprentice would receive the credit? In essence, none of the apprentices are receiving quality training.
- Should the apprentice receive journey level pay when working out-of-ratio?
- The reason for ratio is safety and training; the apprentice cannot be trained if there is no supervision.
- The committee is responsible for ensuring the employer has an adequate number of journey workers on the jobsite before dispatching an apprentice.

Mr. Simms stated that the discussion confirmed the Division's belief that OJT hours do not count if training agents do not work their apprentices in accordance to program standards. Mr. Simms reported that the Division will be drafting guidelines regarding out-of-ratio apprentice hours for approval by the Council.

In summarizing the foregoing discussion, Mr. Simms stated that it was neither the Council's nor the Division's intent to "punish" apprentices when they are worked out of ratio. The inequitable situation was created by the training agent, who like the apprentice, has a copy of the program standards and should be aware of the ratio. Both the contractor and the apprentice should be aware of the appropriate ratio. Should an apprentice fear for his or her own job should the directive to work out of ratio be reported, the apprentice should report the situation to an employee member of his or her apprenticeship committee, as opposed to knowingly work out of ratio.

In a prevailing wage situation where apprentices are found to be out of ratio, all apprentices on the job are paid the journey wage, as none of them were properly supervised. By analogy, when apprentices are worked out of ratio, none of them should receive any apprentice hours, as none of them were properly supervised per program standards.

The guidelines will be mailed to contracting agencies noting that the Council considers out-of-ratio or unsupervised work as having been done contrary to the terms and conditions of the apprenticeship standards, that the apprentice has been put at risk for safety and training, and that the apprentice will not be awarded those hours.

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Chris Davis, MA 1015, stated that when working on ODOT projects, ODOT has made an agreement with the committee to notify all JATCs and coordinators of the training responsibilities per contractor on the job and ahead of the project.

Staff will have draft guidelines for review at the **March 19, 2009 Council** meeting.

**XIII. Correspondence** – *All correspondence attached to submissions and in Council packets.*

**XIV. Council and Subcommittee Meeting Dates**

Standards Review Subcommittee will meet at 1:00 p.m.

Council meeting: March 19, 10:00 a.m., Local 16 Sheet Metal Training Center, Portland, OR.

**XV. Good of Apprenticeship**

Director Simms thanked Dr. Hill and Mt. Hood Community College for hosting the meeting. Dr. Hill welcomed everyone, and sent greetings from the college president.

Lisa Traynor, a new Office Specialist II in the Portland office was introduced.

**XVI. Adjournment**

The meeting was adjourned at 12:14 p.m.