

**OREGON STATE APPRENTICESHIP AND TRAINING COUNCIL
RULES AND POLICY SUBCOMMITTEE**

Meeting Minutes - September 2, 2009

9:30 am

Michael McFall, Chair

I. Call to Order

Chair Mike McFall called the meeting to order at 9:50 a.m.

II. Introductions

Council members:

Bob Ferguson, Industrial Employer
Mike McFall, Industrial Employee
Nelda Wilson, Trades Employee

Bob Rogers, Public Member
Ken Fry, Trades Employee
Paul Hill, Public Member

Staff members:

Stephen Simms, Director, Apprenticeship and Training Division
Karen Dale, Apprenticeship Operations Manager
Paul Joiner, Apprenticeship Preparation Project Manager
Maureen Pointer, OSATC Recording Secretary

Apprenticeship Representatives:

Tamara Boyd, Portland
Stacy Ozer, Portland
Tony Cracolice, Eugene
Richard Petersen, Portland

Elizabeth Farmer, Eugene
Larry 'Will' Williams, Portland
Roseanna Ayres, Medford

III. Welcome

IV. Member Reports - None this quarter

V. OSATC Task Force Reports

A. Affirmative Action Task Force – Status Report

Status of Phase II recommendations approved by Council June 2009:

- Independent Apprenticeship Website: Bids for design and development proposals are due by September 21, 2009.
- Cultural Competency/Diversity Training: As part of related training, all committees are required to have training in place by June 30, 2010. The work group will be reconvened to discuss minimum requirements for such training. In the interim, discussions have taken place with the Office of Community Colleges and Workforce Development (CCWD) regarding possible assistance and support to deliver the training.
- Mentoring: Each program will adopt one mentoring strategy as a part of its affirmative action plan by January 1, 2011. The mentoring work team and core group will meet on September 14 to discuss the recommendation.
- Outreach: Common branding and logos will be developed that all programs can use to promote apprenticeship. The outreach and website work groups will likely reconvene in the next month to review progress.

Next Affirmative Action Task Force Meeting: September 25, 2009, 2:00 p.m., location TBA.
Committees were urged to contact Mr. Simms if interested in hosting the meeting.

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B. Administrative Rules and Policy Task Force

i. Administrative Rules Revision – Status Report

Public hearings were delayed due to difficulties in complying with the Secretary of State's formatting requirements. The intent is to hold public hearings in Eugene, Pendleton, and Portland through mid to late October and have the rules ready for approval by November 15, 2009.

VI. Staff Reports

A. Legislative and Budget Update

The state budget shortfall resulted in staff reductions for many state agencies. BOLI lost a total of 14 positions in the Legislatively Approved Budget, but 8 were restored at the end of session. The Bureau lost three positions in Medford, including an ATD office specialist, leaving a sole apprenticeship representative as the only BOLI position in the Medford office. Recruitment for the 2 vacant apprenticeship representative positions in Bend and Portland will begin mid-September. Interested individuals were encouraged to contact ATD staff for application information.

B. Internal Review

OAR 839-011-0084(f) requires certified curriculum for new standards and Council previously approved staff review of existing curriculum during the compliance process with a requirement that certification would be obtained by the next compliance review. The Internal Review work team suggested that curriculum certification also be required when revised standards are submitted that include related training revisions.

There was considerable discussion regarding certification requirements. Documentation of certification needs to be submitted with the curriculum. Programs involved in the community college degree programs already have approved curriculum through the Office of Community Colleges and Workforce Development (CCWD). Additional approval would be required only for requested curriculum revisions. Programs not involved in the degree program could still utilize the Department of Education or nationally recognized industry associations to assist with certification.

The importance of qualified instructors was also noted. Most international training organizations include instructor qualifications in their curriculum and apprenticeship programs are expected to live up to those standards. Community college curriculum also includes instructor certification. The revised 29 CFR 29 regulations taking effect January 2011 will require that all instructors be certified at a level meeting or exceeding industry or state educational agency expectations.

There is also a need to strengthen the evaluation of related classroom training, not only to confirm that all requirements contained in the standards have been completed with quality instruction, but to prepare staff for observation and evaluation of classroom training. The division has taken preliminary steps in analyzing related training but additional work is needed. Methods need to be developed to scrutinize curriculum and instructors for programs that do not use an internationally or state approved curriculum.

Mr. Simms stated that he believes that the Council action taken in September 2006 already includes revisions and asked the subcommittee to reaffirm their action.

M/S/C by unanimous voice vote to recommend reaffirmation of OAR 839-011-0084 and Council action taken in September 2006, noting that the requirement for certified curriculum applies to both new and revised standards submitted to Council.

If approved by Council, this action will help to ensure that all programs are treated equally.

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C. Affirmative Action – Expectations re: goals & timetables

The subcommittee reviewed the guidelines adopted by Council in December 2007 for establishing affirmative action goals and timetables:

- Utilize 2000 census data for workforce composition
- Establish the workforce goal for women at 50% of the workforce population
- Use two pathways in developing goals and timetables based upon current minority/female participation:
 - Statewide occupational average – used as the target for programs whose minority and/or female participation falls below the occupational average
 - Workforce population – used as the target for programs whose minority and/or female participation meets or exceeds the occupational average

These guidelines were based upon 29 CFR 30 requirements and should not be undermined. Subcommittee members agreed that program goals should increase annually and commended staff for developing a methodology for establishing goals that is fair, progressive, and realistic.

M/S/C by unanimous voice vote to recommended continued use of the goals and timetables expectations adopted at the December 2007 Council meeting.

VII. Follow-ups from Previous Council Meetings

A. Calculation of Average Journey Wage – Discussion

ORS 660.137(3) requires committees to determine the average journey worker wage annually but does not mandate how the average is to be calculated. Committees have used different strategies in determining their average, which can result in a wide range of outcomes.

Subcommittee members reviewed a division report that included examples of different calculation methods, a comparison of wage results based upon these calculations, and analysis of factors to consider. Staff requested guidance from the Council with respect to proposed guidelines.

Subcommittee recommendations:

- Eliminate journey workers in a supervisory capacity
- Include prevailed wages in the wage survey
- Include all approved training agents in the wage survey, with committee action to withdraw approval of training agents who have not trained an apprentice for 2 years
- Clarify in writing the wage to be reported when collective bargaining agreement(s) are in place
- Define formula(s) to be used to determine the average, with possible limitation to one or two. Check with the Oregon Employment Department regarding available formulas that would provide the most accurate information.
- Define the data to be used in the calculation.
- Separate programs with CBAs from open and mixed shop programs.
- Form a small task force to review and evaluate the issue; make recommendations to the Council

Public comments/concerns:

- Prevailed wages: Problematic to include as rates differ from area to area. Only private jobs should be included. Including prevailed wages would impact smaller employers and possibly prevent them from participation in apprenticeship.
- Include fringe benefits in average?

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- Eliminate the highest and lowest wage, average remaining wages without fringe
- Include all training agents except traveling training agents
- Stay with the higher wage to attract good applicants
- Use the Employment Department statistics to assist in determining the average

Staff will incorporate this information into guidelines for subcommittee review in December 2009.

B. Selection Methods – Update

i. Use of Exceptions/Alternating Employer Choice

There was general consensus at the June 2009 subcommittee and Council meetings that the alternating employer choice process does not promote affirmative action, works against diversity, and is unfair to applicants on the top of the ready for employment list. Staff will continue its research the issues:

- Determine how elimination of this process would impact smaller committees if eliminated;
- How to work with committees to demonstrate its disparate impact on affirmative action
- Identify other evaluation tools committees could use in selecting applicants

ii. Use of GED and High School Diploma as minimum qualifications and scoring criteria

The division's analysis of apprentice entrance and completion rates provides no objective evidence that a high school diploma is better than a GED. It was noted that years of education, including up to two years of college, is a better measure of success than a diploma or GED.

The division is waiting for comprehensive gender and ethnicity demographics from the Department of Education for high school graduates and individuals who successfully passed their GED. These statistics will be compared to the division's analysis to determine the significance of a diploma or GED and a report will be provided at the December 2009 subcommittee meeting. Recommendations to the full Council are expected in March 2010.

C. Unemployed Apprentices – Proposed parameters for new registrations

The Division has received requests from committees with unemployed apprentices asking to register new apprentices to maintain their related training schedules. The Division believes the concept has merit, but is concerned about the impact on the individual apprentices, existing and new.

If new apprentices are brought in without employment it strays from the premise of apprenticeship, that is an "earn while you learn" program. Staff is proposing guidelines for what committees need to do in terms of forecasting future employment needs, maintaining the integrity of the selection and ranking process, reemployment procedures, financial assistance for related training, and registration and activation of new apprentice without employment.

Mr. Rogers asked how many committees were making the requests and expressed his concerns that bringing in new apprentices without work is very misleading to apprentices.

Mr. Simms responded that there are between 5 – 10 committees who would like to engage in this type of practice. Committees have expressed concerns about their contracts to maintain related training schedules and worry that instruction cannot be provided unless new apprentices are enrolled in school. He added that he believes the Division is obligated to establish criteria that would help committees keep their related training intact.

Mr. Fry stated that there is a need for creative ways to keep programs moving, protecting the existing apprentices while also protecting the training agents and the programs by maintaining a pool prepared for future demands. He suggested adding a few new apprentices to the bottom of the out-of-work list to maintain their related instruction schedule and keep the program moving.

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Chair McFall agreed, adding that there definitely needs to be a limit on the number of new apprentices to ensure they receive adequate training and that if too many are added they may be more than half way through the program prior to getting any OJT training, resulting in no correlation between OJT and related instruction.

Council Member Ferguson responded that many individuals need hands on training in order to understand the theory behind the related training.

Mr. Simms noted the need for guidelines to protect everyone, the apprentice, the training agents and the program, and the need for committees to have reemployment procedures in place. Staff will continue to work on the issue and come back to the September Council meeting for further direction.

D. Kliewer Hearing – Report

The matter was reviewed by an Ad Hoc Subcommittee to the Rules and Policy Subcommittee on June 29, 2009. The ad hoc group concluded that the termination was in accordance with the rules and regulations of the committee, that the apprentice was given adequate opportunity to correct his performance deficiencies, and that the committee erred in not giving the apprentice his accumulated on-the-job training and classroom instruction hours, recommending that Mr. Kliewer be awarded 4810 OJT hours and 598 related training hours towards the completion of his apprenticeship and that the decision to terminate his apprenticeship should stand. The Division asked that Rules and Policy Subcommittee accept the recommendation from the Ad Hoc Subcommittee and that the matter be referred to the full Council for approval.

M/S/C by unanimous voice vote to accept the recommendation from the Ad Hoc Subcommittee and refer the matter to the September Council for approval.

E. Muhoberac Request for Reconsideration

Mr. Muhoberac's termination of his apprenticeship agreement was reviewed at the June 2009 Council meeting. The Council determined that the Stationary Engineer's Joint Apprenticeship and Training Committee did not violate any rules, policies or procedures in terminating Mr. Muhoberac.

An e-mail from Mr. Muhoberac was received by the Division on July 31, 2009 requesting reconsideration of the Council's decision.

There is no specific statute governing agency response to petitions for reconsideration in other than contested cases and there is no formal statutory requirement for the content of a motion for reconsideration. In the absence of details about specific allegations where the Council may have made mistakes it is difficult for staff to make any recommendations other than to forward the request to the subcommittee.

Mr. Simms spoke with Mr. Muhoberac regarding where he believes the Council's prior decision was in error and summarized these for the subcommittee. Council members were provided with the details of Mr. Muhoberac's allegations and the subcommittee's options in the matter.

If the Council believes that the issues were not fully addressed when the matter came before it in June 2009, it should grant the petition for reconsideration. If the Council believes that it has adequately addressed all issues in the case, it should either deny the petition or take no action. If no action is taken the request for reconsideration shall be deemed denied on the 60th day following the date the petition was filed.

Mr. Muhoberac was not present to address the subcommittee.

M/S/C by unanimous voice vote to recommend to the full Council that it take no action on Mr. Muhoberac's request for reconsideration.

VIII. Fringe Benefits & PWR

- 1) Under Oregon's prevailing wage rate (PWR) regulations, apprentices are entitled to be paid the full amount of fringe benefits on prevailing wage jobs as stated in the prevailing wage rate book. The fringe benefits

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can go to a defined employee benefit program, such as health, welfare, insurance, or apprenticeship training. If it does not go into a defined benefit program the fringe goes directly on to the apprentice's check. Pursuant to administrative rule, the only exception to this requirement states that a trade or occupation may approach the Labor Commissioner to make a determination that the prevailing practice in the trade or industry is not to pay the apprentice the full fringe benefit, but rather the percentage of the benefit based upon the apprentices status in his or her program. This exception is not contained in any apprenticeship standards, only the prevailing wage regulations and handbook.

Federal prevailing wage law states that the full amount of the fringe benefit will be paid directly to the apprentice unless stated otherwise in the standards. The decision was made in Oregon a long time ago that apprenticeship standards would not include fringe benefits. An issue recently arose with a committee where the approved practice in the occupation was to pay only a percentage of the fringe. The contractor in that instance was working on a federally prevailed project. The contractor was informed by Federal Wage and Hour Division (WHD) that they must pay full fringe benefits even though Oregon rules hold differently.

Some committees are now requesting to modify their standards to include fringe benefit language, that apprentices will be paid fringe benefits in accordance with the collective bargaining agreement or pursuant to the appendix to the Oregon BOLI PWR Handbook, whichever is greater. Mr. Simms and the WHD have discussed and agreed upon the proposed revisions.

Mr. Simms urged committees adopt the proposed fringe benefit language into their standards if they have an order from the Labor Commissioner that states that they may pay apprentices a percentage of the fringe benefit. Staff will notify affected committees.

2) WHD has inquired why fringe benefits are not included in Oregon's apprenticeship wage surveys. Mr. Simms responded that Oregon has an established system, consulting the PWR handbook and believes that WHD does not have jurisdiction over Oregon State Apprenticeship and Training Council (OSATC) to determine what should be included in the standards. The division is asking OSATC to review its position in this matter.

Apprenticeship committee members have also asked why fringe benefits are not included. Mr. Simms response has been that not all of the approved training agents offer a fringe benefit package or do not offer a package until the apprentice has been employed for a period of one year. These issues create a problem when trying to determine a basic fringe for all training agents participating with a committee to include in the standards when there is no standard basic fringe that applies to all of the contractors.

Mr. Ferguson stated that the definition of fringe benefits is "a non-wage payment of benefit for pension plans, profit sharing, program vacation pay, etc." He believes that that "non-wage" is the key and that apprenticeship should focus on wages and program quality.

Mr. Fry believes that additional discussion is needed on the issue and requested updates from the Division as more information becomes available.

IX. Team Awareness Training

1) The Division has been working with the Department of Human Services (DHS), WorkHealthy Oregon regarding ways to decrease worker compensation rates and to increase efficiency at work. DHS approached the Division about adopting their Team Awareness Training program.

Team Awareness is an overall approach that addresses the general health of a worker, drug and alcohol issues, safety issues, team work, and workplace ethics. The course is a very comprehensive program and has been delivered in a variety of venues for approximately five years. This is not a typical workers safety program but is a more comprehensive approach based upon team building, personal responsibility and awareness. Some apprenticeship programs are already participating in the program and DHS is looking to recruit 2-3 additional apprenticeship programs to adopt the Team Awareness program. DHS would deliver the training as a part of a committee's related training for at least the first year and would train JATC instructors to continue offering the training. Some of the program is also offered online.

Mr. Simms highly recommended the program to committees.

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2) As a part of Team Awareness, DHS has every organization develop its own "code of excellence" and asked if the Council would be interested in adopting its own code of excellence. Mr. Simms believes that it would be a good reminder of what the Council stands for and that it would help the Council focus its work on its ultimate goals.

3) DHS and the Oregon Nurses Foundation have developed a Young Workers Program which is a comprehensive program aimed at preparing young people for the workplace, focusing on personal health and safety. DHS has secured federal grants to deliver this program to interested parties.

X. 29 CFR 29 Amendment – Status Report

Mr. Simms met with the US Department of Labor last week regarding OSATC's amended statute to adopted 29 CFR 29 and assured them it would be submitted prior to the deadline for the new federal rules going into effect.

XI. Multi-State Reciprocal Agreement – Status Report

There is still interest in holding a meeting in the near future. Additional information will be forwarded to Council members as soon as possible.

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

XIII. Council and Subcommittee Meeting Dates

Standards Review Subcommittee meeting: Scheduled to start at 1:15 p.m.

Council meeting: September 17, 2009, 10:00 a.m., Superior Aircraft Maintenance, Inc., Medford. Tours of the facility will be available before and after the meeting.

Proposed 2010 meeting dates are included in Council packets. Council members are to notify staff if the proposed dates present scheduling conflicts.

XIV. Good of Apprenticeship

Mr. Simms recognized Apprenticeship Representative Larry 'Will' Williams who was recently credited as a co-author and presented a report in San Francisco, CA regarding the relative merits of different types of apprenticeship programs and different ways of conducting those programs.

Apprenticeship Representative Ree Ayres was welcomed back to ATD after her 24 hour exile.

Chair Mike McFall was welcomed back after his leave of absence.

XV. Adjournment

The meeting was adjourned at 12:10 p.m.