

PREVAILING WAGE ADVISORY COMMITTEE

Meeting Minutes

Thursday, March 12, 2009

International Union of Operating Engineers
555 East 1st Street
Gladstone, OR

Members Present

Daniel Bonham
Mark Holliday
Don Kool
Norm Malbin
Jim McKune
Patrick O'Brien
Carl Redman

Members Absent

Greg Miller
Shawn Miller
John Mohlis
Pete Savage

Staff Present

Christie Hammond
Lois Banahene
Kate Newhall
Ben DuPree
Mike Kern
Maggie Wilson
Denise Voll (Oregon
Employment Department)

The meeting was called to order at 1:30 PM.

Co-chair Jim McKune presented the committee with suggested "ground rules" for the conduct of meetings. The proposed ground rules include: start and stop on time, silence cell phones, be courteous to others, and stick to the subject.

Committee member Norm Malbin asked whether bringing up issues that the committee feels Commissioner Avakian should be aware of would be acceptable. Co-chair Don Kool stated he felt there are currently two pressing issues before the committee to advise Commissioner Avakian on; affordable housing and survey methodology. If the committee can get those topics resolved to everyone's satisfaction, then other topics important to members could be addressed.

Minutes of Last Meeting of February 27, 2009

The committee members present unanimously approved the draft minutes of the February 27, 2009 meeting as written.

Revised Draft Committee Operational Policies

Wage and Hour Division Administrator Christie Hammond summarized revisions made to the draft Committee Operational Policies based on the discussion at the last meeting. Ms. Hammond explained that the language relating to reappointments had been revised to clarify that members and co-chairs could only be reappointed once (serving two terms consecutively).

Committee member Norm Malbin suggested adding a rule that a committee membership is revoked after three unexcused absences. Co-chair Jim McKune agreed that such a rule might be appropriate, and recommended that this be considered and discussed at a later time.

Co-chair McKune said it was the intent to provide members with at least two weeks' notice of scheduled meetings. John Killin, of Associated Builders and Contractors and IEC, suggested the use of a website program to better schedule meeting times based on committee member availability. Mr. Killin said he would send possible website options to Christie Hammond to consider.

HB 2430 (relating to projects with affordable housing) and application of the PWR law to projects with residential construction

Christie Hammond gave an overview of issues relating to the application of the PWR law to projects with affordable housing, and summarized the provisions of a (March 2, 2009) proposed amendment to House Bill 2430.

Ms. Hammond explained that HB 2140 (2007) provided a new exemption in the prevailing wage rate law for affordable housing projects. However, the law did not specifically address mixed-use projects that have elements of both residential (affordable housing) and commercial construction. Ms. Hammond said that the intent of HB 2430 is to clarify under what circumstances these mixed-use projects (or parts of the project) should be exempt.

Ms. Hammond explained that the proposed amendments to HB 2430 would exempt affordable housing projects, as well as mixed-use projects of four stories or less with affordable housing, so long as no more than 20 percent of the square footage of the building is devoted to non-residential construction. On projects where more than 20 percent of the building space is devoted to non-residential construction, the non-residential portion would be subject to the PWR law, but the affordable housing/residential portion would still be exempt. Under the current law, Ms. Hammond said, the affordable housing exemption may not be applied to mixed-use projects with affordable housing, although multiple wage rates (residential and commercial) might be authorized for such projects.

Ms. Hammond pointed out that the proposed amendments to HB 2430 would allow either the state median income or the area median income (whichever is higher) to be applied in determining whether a project (or part of a project) qualifies as "affordable housing."

Ms. Hammond indicated that it was not completely clear in the proposed amendment what would be considered "incidental" to the affordable housing in a mixed-use project. She pointed out that the amendment defined as incidental such items as surfaces, enclosures, and other objects primarily intended to serve or be used by residents of the residential dwelling units, as well as lobbies, community rooms, play areas, recreational facilities and child care areas related directly to residents of the affordable housing. Ms. Hammond also said, however, that lawns and other landscaping, driveways, parking surfaces or structures, storage areas and work areas were also defined in the proposed amendment as "items incidental to residential construction" and it was unclear whether

these latter items would automatically be considered incidental to affordable housing (and thus exempt) on mixed-use projects, or there would be some kind of percentage of use-type test.

Ms. Hammond mentioned that HB 2430 contains a reference to a federal publication dated April, 1986, for determining the number of stories in a building. She said that although there is general agreement with the concepts in the publication, the publication is not readily or electronically available. She added that there has been talk of incorporating the substance of the publication into the language in the legislation itself instead of referencing a publication that is generally unavailable.

Ms. Hammond also explained that the exemption for affordable housing would also apply to the *conversion* of a non-residential building into affordable housing under HB 2430. Committee member Norm Malbin mentioned the Rose Quarter hotel renovation project as an example of a project that would be exempt from prevailing wage law under the proposed legislation.

Ms. Hammond told the committee members that language currently in the statute allows the Commissioner to consider alternate definitions for residential construction if there is a local ordinance or code or prevailing practice of a particular trade that differs from the standard definition of residential construction. She explained that one of the reasons for this language was to provide the commissioner with greater flexibility to recognize different region or trade practices. For example, electrical licensing provisions prohibit electricians with residential licenses only to work on projects over three stories. Ms. Hammond said that she understood that additional language would be proposed clarifying this intent, specifically stating that the payment of residential rates to electricians would only be allowed for up to three stories instead of four.

Ms. Hammond emphasized that the primary issues regarding HB 2430 before the committee to consider are the proposed limited exemption of non-residential construction in mixed-use projects with affordable housing, as well as application of the law to items defined as “incidental” to residential construction.

Co-chair Jim McKune suggested the committee take time to review the current law and led a discussion of the current provisions of the law, particularly with regard to mixed-use projects.

Mark Holliday said that he has talked to Michael Anderson of the Oregon Opportunity Network, and understood that his only interest is exempting affordable housing; not commercial construction. Norman Malbin agreed that this was his understanding as well.

Co-chair Don Kool stated his opinion that a mixed-use building is a commercial project, and the residential portion should not be exempt. Committee member Norm Malbin agreed with Mr. Kool, and summarized concerns he has about HB 2430 as follows: One, the bill is being presented as correcting a drafting error from last session, though he believes there is significant evidence that it is an expansion of HB 2140. Two, Mr. Malbin disagrees with expanding the definition of affordable housing (currently defined as the construction, reconstruction, major renovation or painting of single family houses and apartment buildings) to include conversion projects. Three, the 20 percent exemption for commercial construction is not acceptable he said--It is not about which wage

schedule to apply, but is a total exemption under the law. The proposal also means that elements historically thought of as commercial would now be viewed as incidental to affordable housing and, therefore, be defined as “residential construction,” exceeding 20 percent of the project. Four, the proposed language allowing the commissioner to expand the definition of residential construction is a problem. And five, the use of multiple-wage rates, with commercial on the first floor and residential on the 2nd-4th floors, would mean components connected to more than one floor might all be considered residential.

John Killin expressed a couple of his concerns to the committee. Mr. Killin said he has worked extensively on this bill with others and noted that they thought residential construction could be defined as whatever the local ordinances said. However, they discovered local ordinances are different all over the state. Second, Mr. Killin advised the committee that typically, it is not government entities, but non-profit organizations leasing commercial space in mixed-use projects with affordable housing. Mr. Killin said that often, these projects start out as non-prevailed and become subject to the law after receiving public funds.

Co-chair McKune noted that there seemed to be consensus by the present committee members that an exemption should never be applied to a building over four stories total.

Committee member Daniel Bonham asked for clarification regarding how the provisions of HB 2430 would apply to a building with two stories of heavy concrete underground parking, one story of commercial space above (less than 20 percent of the total square footage), and three stories of affordable housing above that. Christie Hammond said that it was her understanding that such a project would be exempt from the PWR law under HB 2430.

Co-chair Jim McKune asked if the legislation confined commercial space in an exempt mixed-use project to the first floor. Christie Hammond responded that although the first floor being commercial space is typically the model that is usually discussed, it would not be a requirement under the current provisions of HB 2430.

Committee member Pat O’Brien commented that he believed consideration should be given to the impact the PWR law has on whether affordable housing occurs. Mr. O’Brien and Carl Redman expressed their support for the existing law, with modifications for some allowed commercial work, but possibly not 20 percent.

Christie Hammond asked the committee members if there was any sort of consensus on whether the affordable housing exemption should ever apply to a project with up to 20 percent commercial construction that is unrelated to the affordable housing part of the building, i.e., None of the project should be exempt, all of the project should be exempt, or just the affordable housing portion should be exempt.

The committee members agreed that a consensus on application of the law to mixed-use projects with affordable housing was not going to be reached. Co-chair Jim McKune asked the committee members to email the co-chairs with their opinions on the topic to put together for the commissioner.

Next Meeting/Meeting Schedule

The next PWR Advisory Committee meeting was scheduled for March 26, 2009, at the Portland State Office Building.

The meeting adjourned at approximately 3:40 PM.