

PREVAILING WAGE ADVISORY COMMITTEE

Meeting Minutes

Thursday, April 9, 2009

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

Members Present

Daniel Bonham
Mark Holliday
Don Kool
Norm Malbin
Jim McKune
Carl Redman
Pete Savage

Members Absent

Greg Miller
Shawn Miller
John Mohlis
Patrick O'Brien

Staff Present

Lois Banahene
Christie Hammond
Mike Kern
Kate Newhall
Denise Voll (OED)
Maggie Wilson
Susan Wooley

The meeting was called to order at 1:30 PM. Co-chair Jim McKune reminded the committee members of the meeting "ground rules."

Minutes of Last Meeting of March 26, 2009

The committee members present approved the minutes from the March 26, 2009 meeting as written.

Quarterly Staff Reports

Wage and Hour Division Administrator Christie Hammond gave an overview of the Prevailing Wage Rate Unit's quarterly statistical reports. This included a summary of PWR enforcement activity, a summary of PWR education seminars for 2008-2009 conducted by Susan Wooley, a list of open PWR cases and coverage determinations, and a summary of actions being taken against contractors who failed to respond to the 2008 construction industry survey.

Approval of Residential Rates on "University Place" Project

Committee member Norm Malbin presented a brief overview of the issues relating to the University Place project. In January, 2009, the bureau authorized the use of residential wage rates on the residential floors of the "mixed-use" building comprised of four stories of residential space over one floor of commercial space. Mr. Malbin emphasized that this issue is a separate issue from HB 2430, currently pending in the legislature, which deals only with affordable housing projects under the PWR law.

Mr. Malbin expressed two concerns; first, his opinion that residential rates should never be applied on a five-story building, and second, that multiple wage determinations should not be issued on such a project. Mr. Malbin explained that under the federal Davis-Bacon Act, the definition of residential construction is limited to four stories. Also, he said, split wage determinations are not allowed under the federal law. Mr. Malbin opined that because Oregon's "little Davis-Bacon" law is modeled after the federal Davis-Bacon law, in the absence of legislative guidance to the contrary, Oregon should follow the federal law. All aspects of a project such as University Place would then be considered "commercial" construction under the PWR law.

Co-chair Jim McKune asked if the commissioner had used his authority to use another agency's guidelines in making this determination. Christie Hammond explained that the determination for the University Place project was based on OAR 839-025-0315, which provides authority to the commissioner to authorize the use of multiple wage rate determinations on projects comprised of more than one construction type.

Committee member Carl Redman expressed concern that the commissioner's discretion in making determinations should not be limited.

The committee members were asked to vote on two issues; the first being whether residential rates should ever be issued on buildings over four stories in height. Carl Redman voted yes, while the remaining six members present voted no. Second, committee members were asked whether residential rates should ever be issued on a mixed-use project of up to four stories in height. Carl Redman and Jim McKune voted yes, and the remaining five members present voted no.

Annual Construction Industry Survey

Christie Hammond presented the primary survey issues that were identified in comments received by email on the bureau's website from the public. The five main themes outlined for discussion included the complexity of the survey, problems related to surveying the "peak" week, whether the survey should be mandatory, consolidation of regions, and possible alternative survey methods. Other issues identified included whether instructions regarding how to report working supervisors should be clarified, whether zone pay should be included on the survey, the possibility of apprentice hours being reported, if there should be an auditing/oversight function for the survey, and whether data should be collected from temporary agencies.

Audience members were asked for their input regarding the survey. Frustration was expressed regarding too many worker classifications, too many regions, and difficulty in reporting non-union work. When asked why a breakdown of fringe benefits paid is necessary, Denise Voll of the Oregon Employment Department explained that this method was initially instituted to see exactly what was being included in the contractor's fringe benefit package. Ms. Voll said she was willing to consider a different approach in collecting fringe benefit information.

Committee member Carl Redman suggested using a program such as the OTTER program to collect data electronically from contractors. Ms. Voll explained that because such detailed worker information is requested in the survey, getting information from contractors in an electronic format

that matches up with the data collected in the survey would be very difficult. Committee members suggested the possibility of finding a way to design something like OTTER to gather survey information in the future.

Ms. Voll also agreed with audience and committee members that surveying temporary agencies has not proved to provide useful information and should possibly not be required in the future. She also noted that no data was reported by temporary agencies in the last survey.

Regarding peak week issues, audience members expressed concern that this method resulted in missing a significant amount of data for work done in regions outside the Portland metropolitan area. However, Ms. Voll explained that when collecting peak week data by region was tried, it was far too time consuming and complex for firms.

Ms. Voll said that choosing a peak week for contractors who do both residential and commercial construction is more difficult because they first have to isolate the hours worked in each of the two construction types and then select the peak week of construction from that information. Audience member John Killin agreed with this and added that trying to determine what is included in the fringe benefits is also what they find difficult.

The general consensus among audience and committee members was that if the survey was not mandatory, most companies would not complete it. However, the quality of the survey information reported was questioned. A possible solution suggested was that a third party audit the survey results. Another alternative method discussed was that instead of surveying every trade annually, surveys be sent to certain trades on a rotating basis. For example, trades might only be surveyed every three years, but staggered so a survey still goes out to a certain group every year.

Committee member Carl Redman suggested that overall, the complexity of the survey needs to be addressed to make it easier for contractors to complete. Co-chair Don Kool added that the accuracy of the information is also an important issue to tackle.

Next Meeting/Meeting Schedule

The next Prevailing Wage Advisory Committee meeting is scheduled for April 23, 2009, at the International Union of Operating Engineers in Gladstone.

The meeting adjourned at approximately 3:30 PM.