

MINUTES

PREVAILING WAGE ADVISORY COMMITTEE Thursday, June 3, 2004

Committee Chair Norman Malbin called the meeting to order at 1:35 PM.

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff Present</u>	<u>Guests Present</u>
Mark Holliday	Daniel Boldt	Dan Gardner	Jeff Dean, ABC
Norman Malbin	Jessica Harris-Adamson	Christie Hammond	John Killin, IEC
Shawn Miller	Dan O'Brien	Lois Banahene	Ed Glad, PNWRCC
Jay Minor		Susan Wooley	Greg Miller, AGC
John Mohlis		Denise O'Farrell (OED)	
Bob Shiprack			
Dick Springer			

Minutes of the Previous Meeting

The minutes of the April 8, 2004 meeting of the advisory committee were reviewed and accepted.

Committee Membership/Vacancies

Staff reported that committee members Robert Bachofner and Tim DeGan had submitted letters of resignation since the last meeting. Labor Commissioner Dan Gardner said that after taking office in January, 2003, he had requested that all existing committee members continue to serve on the committee. Commissioner Gardner also said that he was considering formalizing committee membership and implementing "term limits." It was noted that ORS 279.380 provides that the committee be comprised of members from "labor" and "management," but also provides that the commissioner may appoint "other interested parties" to serve on the committee.

Chair Malbin reminded the committee that it had implemented a rule in which members who have three consecutive unexcused meeting absences be removed from the committee.

Jay Minor recommended to the commissioner that an equal number of union and non-union representatives be appointed to the committee.

Staff Reports

Christie Hammond presented a summary of BOLI's PWR enforcement activities, including actions taken against firms that failed to respond to the 2003 annual construction industry wage survey, and PWR educational seminars.

Review of Committee Rankings of Suggestions Pertaining to Survey and Rate-Setting Guidelines

A summary was presented of the rankings by the committee members pertaining to recommendations/suggestions for improvements to the annual construction industry survey and guidelines for rate-setting process. It was noted that with one exception, there was not unanimous agreement with any of the recommendations/suggestions.

Commissioner Gardner said that he would like to schedule discussions of each of the recommendations at future committee meetings.

Discussion of “Heavy/Highway” Survey Methodology and Value of Separating “Heavy/Highway” and “Building” Data

The committee discussed the first three recommendations on the list of suggestions pertaining to survey and rate-setting guidelines; all of which deal with the issue of whether “Heavy/Highway” and “Building” construction should be surveyed separately, and different rates published for these construction types.

Mark Holliday said he recommended against surveying these construction types separately because the data collected for each type had not produced significant differences.

Norman Malbin indicated that historically, “Heavy/Highway” rates had reflected union rates since most Heavy/Highway work was performed on public works projects subject to the PWR law, in which union rates had prevailed in the past.

Jay Minor said that he believed “Heavy/Highway” and “Building” construction should be surveyed separately, because they represent different “markets,” and different contractors perform work in these categories.

Shawn Miller said that most of the contractors he represents believe that the construction types should be combined and surveyed together.

Committee guest John Killin stated that he believed most contractors do both types of work and that it is not reasonable to separate construction types in the survey.

Committee guest Ed Glad indicated that he believed there were differences in contractor practices in performing “Heavy/Highway” and “Building” construction in urban and rural areas of the state.

Denise O’Farrell responded to a question regarding data accuracy in the reporting of these construction types, saying that she believed the quality of the data would improve if “Heavy/Highway” and “Building” data was consistently collected separately over several years.

Norman Malbin requested that staff research the history and “rationale” for surveying “Heavy/Highway” and “Building” construction separately by the U.S. Department of Labor.

Discussion of Geographical Related Recommendations

The next several recommendations on the list of suggestions pertaining to survey and rate-setting guidelines relate to geographical issues, and under what circumstances if any, data from the fourteen legislatively-established districts should be combined.

Differences of opinion were expressed regarding the commissioner's authority to consider data from other districts in determining rates for a district in which insufficient data has been collected.

Shawn Miller said that this was a "major issue" for his clients and that they were against combining regions. Miller indicated that he believes that ORS 279.348 requires strict adherence to the established districts, and that the commissioner does not have the discretion to combine data from districts in making wage determinations.

John Mohlis said that he thought geographical areas should be considered in establishing rates, particularly when "prevailing" districts, and that the creation of "islands" in adjacent areas of the state where rates were substantially higher or lower should be avoided.

Jay Minor agreed that it creates problems for employer contractors when their employees work in multiple districts with varying rates, and that most contractors end up paying the higher rate for consistency so as to avoid increasing and decreasing an employee's wage rate according to the district in which the employee is working. Minor also stated that he did not believe the currently established districts made sense "market" wise.

Denise O'Farrell commented that she believed that consolidating the current districts into a fewer number would improve the data collected and make completion of the survey easier for contractors.

Commissioner Gardner requested that committee members make recommendations for revisions to the currently established districts and said that he believed the legislature would be receptive to changes if the committee agreed on appropriate redistricting.

Other

Greg Miller (AGC) stated that a public contracting group in which the AGC participates had identified concerns about BOLI's interpretation of which rates apply when there is a Construction Manager/General Contractor ("CM/GC"), and requested that a sub-committee be formed to review this issue.

Commissioner Gardner responded that he was willing to convene a sub-committee to look at this issue if it could be shown that a problem existed with more than one contracting agency, and that to date, this had not been demonstrated to him. Commissioner Gardner further explained that although he had previously been advised that CM/GC's typically perform construction work as part of their CM/GC contract with a public agency, he had not been provided with evidence of this as requested.

Committee Chair Malbin expressed his concern that CM/GC's are not required to comply with subcontractor bid documentation as are construction contractors.

It was requested that Mr. Miller present to the committee at its next meeting issues of concern relating to the application of the PWR law to CM/GC's, with specific examples of problems.

Next Meeting Date/Agenda

The next meeting of the Prevailing Wage Advisory Committee will be held on Thursday, July 29, 2004 at 1:30 PM at the International Union of Operating Engineers, 555 East 1st Street, Gladstone, OR.

Committee members were asked to come prepared to discuss their recommendations for revisions to the current legislatively-established districts used to survey and make PWR wage determinations.

The meeting adjourned at approximately 3:00 P.M.

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