

PREVAILING WAGE ADVISORY COMMITTEE

Meeting Minutes

Thursday July 19, 2011

International Union of Operating Engineers
555 East First Street
Gladstone, Oregon

Members Present

Dee Burch
Greg Held
Mark Holliday
Kevin Jensen
Donald Kool
Norman Malbin, Co-chair
James McKune
Shawn Miller, Co-chair
John Mohlis
Carl Redman

Members Absent

Patrick O'Brien

Staff Present

Lois Banahene
Christie Hammond
Rachelle Herbert
Selena Schryvers
Susan Wooley

The meeting was called to order at 3 PM by Co-chair Norman Malbin.

Minutes of Last Meeting of June 23, 2011

The June 23, 2011 minutes were unanimously approved as written.

Staff Reports

Christie Hammond reviewed the *Summary of PWR Enforcement Activity* report for the 2009-11 biennium, which ended in June. The report contains data on the total number of investigations, violations and prevailing wage back wages collected. A record amount of \$2,294,209 was collected during the biennium.

As requested by member Patrick O'Brien at the previous meeting, a section on the type and number of violations was added to the report. Co-chair Malbin requested that the additional information continue to be included in future reports to the committee if it was not too difficult. In response to a question, Lois Banahene confirmed that amounts collected include liquidated damages and overtime. Further clarifications included that penalties are collected on only a small portion of cases; violations shown on the report are just for the 2010-11 fiscal year, whereas wages collected are for the 2009-10 biennium; and that back wages collected are all distributed to employees.

Mr. O'Brien had also asked for a report on the amount collected by case but Ms. Hammond reported that it was currently not feasible to produce a report with that information from the current database. Ms. Hammond said that an improved PWR database will be launched in the next few months that may be better able to produce data by case. Co-chair Malbin proposed a

discussion of the desired content of future statistical reports as an agenda item for the next meeting.

Ms. Hammond next reviewed the *Open PWR Cases* report, which lists open cases currently assigned to PWR Compliance Specialists.

Ms. Hammond also reviewed PWR TA Coordinator Susan Wooley's *Summary of PWR Education Seminars for Fiscal Year 2010-11* report. The report lists the dates, locations and attendance of each seminar Ms. Wooley held over the course of the last fiscal year. Forty-four Contractor seminars were attended by 892 contractors and 17 Public Agency seminars were attended by 254 public agency representatives.

Appropriate Classification for Erection and Removal of False Work

Committee members were provided several documents relating to the issue including:

- BOLI's draft proposed classification definition changes
- Information provided by the Carpenter's Union supporting its position
- Information provided by the Ironworker's Union supporting its position
- A summary of responses relating to the issue from other states with prevailing wage laws
- Information regarding US Department of Labor (US DOL) area practice surveys
- A letter from Associated General Contractors (AGC) regarding the issue

Ms. Hammond explained the process used by BOLI to propose changes to the PWR occupational classification definitions and how the issue concerning false work arose.

Ms. Hammond indicated that when BOLI updates the occupational definitions, the proposed changes are normally sent to any applicable labor unions for review/concurrence. In this case, Ms. Hammond said, BOLI had viewed the proposed modifications as a *clarification* of the occupational definitions, as opposed to being a substantive change, based on BOLI's understanding that false work constructed in support of ironwork was appropriately classified as Ironworker. When the proposed definitions were sent to the Prevailing Wage Advisory Committee members for review, however, two of the PWAC members notified her that some contractors disagreed with the proposed changes.

Ms. Hammond noted that at one time, BOLI had no classification definitions, but due to questions that arose regarding the appropriate classification for specific work duties performed on PWR projects, definitions for each occupation had been developed. Ms. Hammond explained that as additional classification issues are identified, BOLI continues to attempt to clarify the definitions. Ms. Hammond further explained that confusing or inadequate information in the definitions is sometimes brought to BOLI's attention during the course of its investigations, and that occasionally, clarification of a definition will be requested by a trade. Ms. Hammond said that if a change is requested by a trade that the agency believes might potentially affect another trade, the bureau attempts to obtain agreement between the trades regarding proposed revisions. Ms. Hammond stated that BOLI only proposes revisions when confusion or a necessary clarification about a trade is brought to its attention. In this case, she said, the changes were not initiated by the Ironworkers, but by the agency itself as the result of cases it had investigated involving the work in question.

Regarding the *Summary of Responses from Other States*, Ms. Hammond noted that of the 32 states that have prevailing wage laws, only 10 responded regarding the classification of false work in their state. Of those responses, she said, several did not provide a clear answer. Five states responded that the work in question would be classified as “ironwork.” West Virginia responded that the trade that the false work supports would dictate how the work would be classified. Mr. Malbin indicated that he interpreted this response to mean that if the false work is supporting carpenter work it would be classified as carpenter, and if supporting ironwork, it would be classified as ironwork. Ms. Hammond indicated that California’s Ironworker and Carpenter scope of work definitions both included false work, and that the state indicated it therefore did not take a position since both trades claim the work. Ms. Hammond also noted that the State of Washington’s Ironworker definition also includes false work in the scope of work, but that the state did not definitively indicate that the work would be classified as “Ironwork.”

Ms. Hammond advised the committee that the US DOL provides no nationwide standard classification definitions under the Davis-Bacon Act. If the appropriate classification for a DB-covered project is unclear, or if there is a dispute regarding the appropriate classification, the US DOL conducts an “area practice survey.” Concern was expressed by some relating to this methodology.

Co-chair Shawn Miller acknowledged AGC’s letter stating the Prevailing Wage Committee was not the appropriate forum for resolution of a jurisdictional dispute. Committee member Dee Burch noted that he had 30 years of bridgework experience and said that when AGC polled its members on the issue, they generally agreed that false work is typically done by carpenters. Mr. Burch acknowledged that there are some cases where union contractors use ironworkers to do false work, and commented that the use of workers in different crafts to perform work under different and multiple classifications on projects can sometimes result in wage claims if a project is audited. Mr. Burch said that the point of the AGC letter was to state its position that the PWAC is not the proper forum in which to resolve jurisdictional disputes, and that “ironwork” is not the proper classification for the work at issue.

Co-chair Malbin agreed with the principle that BOLI and the Commissioner should not be involved in resolving jurisdictional disputes between crafts, but pointed out that BOLI, in enforcing the PWR law, must be able to classify work duties in the appropriate classifications of work. Mr. Malbin further stated that contrary to AGC’s letter, he did not believe that the Ironworkers had presented the issue to the committee as a jurisdictional dispute to be resolved. Committee member Kevin Jensen (of the Ironworkers) agreed, and stated that he was offended by AGC’s letter. (Later in the meeting, committee member Greg Held also expressed his disappointment in AGC taking the position that false work is properly classified as carpenter work, saying laborers also do work in connection with false work.)

Donald Kool said he thought the documents characterizing the issue as a jurisdictional dispute “missed the mark,” and reminded the committee that the prevailing wage law simply requires that the worker be paid the correct wage for the classification based on the type of work being performed; not on the worker’s title or union membership. Mr. Kool said he felt that the materials used by workers are irrelevant as well.

Committee member Jim McKune suggested that maybe it use of the term “false work” was the problem. After further discussion, the Committee members agreed that use of the term “false work,” which many associate as being within the carpenter’s scope of work, was the issue, and that it was not a jurisdictional matter.

The Committee discussed alternative terms used for “false work” (temporary support) by the different trades. Ken Stroup of the Carpenter’s Union stated that the photo examples of support work for the Sauvie Island Bridge presented by the Ironworkers depicted “cribbing” (stacking wood blocks to support steel), “dunnage,” and “jacking mechanisms” as opposed to what the Carpenters consider to be “false work.” Similarly, he said the supports shown in photos of work done at Matthew Knight Arena were examples of steel structures, and not what he/the Carpenters considered false work. Mr. Jensen agreed that Ironworkers historically have not used the term “false work” and instead typically use terms such as “temporary support,” “support steel,” “shoring,” and “dunnage.”

Committee member John Mohlis asked whether the Carpenters had any examples of erecting steel support, and said he believed there was agreement on the appropriate classification for structural steel erection—and that the problem was referring to this type of work as “false work.” Mr. Mohlis also said he believed there was no jurisdictional dispute in this area.

After further discussion, the committee came to a consensus that the term “false work” is appropriate within the Carpenter’s classification definition, but to replace the term “false work” with “temporary support” in the Ironworker’s definition. It was agreed that the term “temporary steel support” would not be used in the Ironworker’s definition, since materials used in the future cannot be predicted.

It was further agreed that BOLI will distribute a draft of the revised classification definitions with the modifications agreed upon during the meeting, and that committee members should advise staff of any concerns by August 15 in order to allow enough time to resolve any remaining issues before the next classification definition publication is issued in January.

Mr. Burch suggested that in the future, BOLI not rely only on labor unions for definition clarifications, and said that affected contractors should also be included in reviewing proposed definitional revisions. It was suggested that BOLI could identify appropriate contractors through ODOT and AGC for bridge work. Co-chair Miller suggested that BOLI use the PWAC as a resource for assistance in identifying contractors.

Next Meeting

The next regularly scheduled Prevailing Wage Advisory Committee meeting date was changed from September 22 to September 29.

Time: 3-4:30 pm

Date: Thursday September 29, 2011

Place: International Union of Operating Engineers, Gladstone, Oregon.

Agenda items:

- Discussion of desired content of future PWR statistical reports.
- Review process used to revise BOLI classification definitions.

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Mr. McKune said that he'd like a future agenda item to be a discussion on whether the PWR law should require the provision of benefits as opposed to allowing cash amounts to be paid to workers in lieu of providing such benefits.

It was also suggested that committee member Carl Redman provide a report regarding his recent experience with the legislative process (e.g., what worked/didn't work).

The meeting was adjourned at 4:28 pm.