

# **PREVAILING WAGE ADVISORY COMMITTEE**

## Meeting Minutes

Thursday September 23, 2010

International Union of Operating Engineers  
555 East 1<sup>st</sup> Street  
Gladstone, OR

### **Members Present**

Mark Holliday  
Don Kool  
Norm Malbin  
Jim McKune  
Greg Miller  
Shawn Miller  
John Mohlis  
Carl Redman  
Pete Savage

### **Members Absent**

Daniel Bonham  
Patrick O'Brien

### **Staff Present**

Lois Banahene  
Christie Hammond  
Kate Newhall  
Selena Schryvers  
Steven Simms  
Susan Wooley

The meeting was called to order at 3:05 PM by PWAC co-chair Jim McKune.

### **Minutes of Meeting of April 1, 2010**

The committee members unanimously approved the minutes from the April 1, 2010 meeting as written.

Co-chair McKune presented a proposed committee meeting schedule for 2011 which was adopted.

### **Staff Reports**

Christie Hammond gave an overview of the PWR Unit's enforcement activities, current caseloads, and PWR seminars conducted fiscal year-to-date.

Ms. Hammond also provided a report from the Employment Department relating to the 2010 wage survey, which indicated that of approximately 5,000 surveys that were sent out, 65% had been returned, with over half of the respondents providing wage data. Ms. Hammond told the committee members that the survey deadline was September 16, and said that a reminder postcard would be sent out to non-responsive contractors on September 27, 2010. Ms. Hammond also advised the committee members that raw survey summary data would be provided to the committee members for their review sometime in November and that rate determinations would be made by the commissioner at the end of November.

Shawn Miller asked whether the Employment Department had reported any issues or differences in responses with the revised survey. Ms. Hammond responded that she had been advised that OED staff were receiving a lot more phone calls and questions, but they were so busy inputting data, they hadn't really had a chance to analyze any trends or issues at this point.

Mr. Miller suggested that a review of the survey might be a topic at the committee's next meeting.

### **Rule Revision Proposal by ODOT**

Staff from the Oregon Department of Transportation (ODOT) in attendance at the meeting were introduced to discuss a rule proposal to align the effective dates of state and prevailing wage rates on projects subject to both state and federal law. Ms. Hammond explained that under the state PWR law, the rates in effect on the date the bid specifications are first advertised are the applicable wage rates; but the federal Davis-Bacon Act has a different requirement. A PowerPoint presentation regarding the issue was made by ODOT staff.

Shawn Miller asked why, for consistency, the proposed rule shouldn't apply to ALL PWR projects; not just projects subject to both state and federal laws. Staff responded that the proposal as drafted was intended to be only an *option* for contracting agencies for projects subject to both state and federal law, and expressed concern about unintended consequences by amending the current requirements to apply to *all* projects. It was also noted that it was not clear that the agency had the statutory authority to extend the concept to all projects, and that such a change might require legislation.

Jim McKune stated that he believed most contractors doing ODOT work supported the concept of using a single date for purposes of determining the applicable wage rates—the date the project “bids” (bids are opened).

Shawn Miller said that he supported the proposed rule revision, but thought that the committee should consider whether the revision should be extended to all projects; not just those subject to both state and federal law. Other members expressed agreement for consistency. Staff agreed to research whether this could be accomplished by rule or would require legislation, and report back to the committee at the next meeting.

Co-chair McKune said he supported the intent of the proposed rule, but expressed concern about the language in the draft rule and its clarity. After further discussion, the committee members unanimously expressed support for the intent of the draft rule. The committee members were encouraged to submit clarifying alternative language during the rulemaking process.

### **PWR Apprentice Issue**

Christie Hammond advised the committee members that there were several issues relating to apprentices on PWR projects that basically boiled down to how apprentices should be classified and what rates they should be paid when they either do something outside the scope of their apprenticeship standards and/or established PWR occupational definitions.

Carl Redman provided an example involving inside electrical apprentices. Mr. Redman explained that the inside electrical apprenticeship standards include limited energy work--There is also a limited energy apprenticeship program--and noted that there is no work in the limited energy program that is not part of the inside electrical program. Mr. Redman explained that his company had employed inside electrical apprentices on a limited energy project, paying the apprentices at the applicable percentage of the published PWR journey rate for limited electricians, which he considered the “applicable” rate under the PWR law. Mr. Redman said that this was above the wage rate that would have been required under the limited energy apprenticeship program for the apprentices’ periods. Mr. Redman pointed out that journey inside electricians working on limited energy projects are not required to be paid as inside electricians under the PWR law, but may be paid at the classification of work performed; as journey limited energy electricians. He further said that paying inside electrical apprentices at their applicable percentage of the PWR inside electrical rate on a limited energy project would result in apprentices being paid a higher rate than journey inside electricians paid the journey limited energy rate who supervised them. Mr. Redman said nobody was paid below their apprenticeship wage rate for their program: The issue was whether or not they should be paid a percentage of the PWR inside electrical rate even though they were doing limited energy work.

Norman Malbin commented that the issue of what the apprentices were paid relative to their program was irrelevant--the issue was whether or not there is compliance with the PWR law under these circumstances. Mr. Malbin said this particular situation was somewhat unique and he thought there was a much bigger problem of employers taking their apprentices onto a job, and classifying them in occupations other than those to which they are indentured as apprentices to avoid supervision/ratio problems. Mr. Malbin provided the example of the apprenticeship programs for ironworkers and laborers, both of which include training for rigging. Mr. Malbin posed the question of whether an employer should be able to take their ironworker apprentice on to a PWR job, have them work under an individual classified as a laborer, and classify and pay the apprentice as a laborer apprentice because the work they are performing—rigging—is specifically contemplated in the standards for a laborer (as well as in the standards for an ironworker).

Mr. Malbin requested that BOLI Apprenticeship and Training Division Director, Steve Simms, address this issue, and said he understood the matter had recently been reviewed by the Rules and Policy Subcommittee of the State Apprenticeship Council.

Mr. Simms said that the council subcommittee was cognizant of the situation described by Mr. Redman; where it was possible that apprentices might be required to be paid more than journeymen on a PWR project when there was a sub-classification of work as was the case in the example Mr. Redman provided. Mr. Simms said the subcommittee considered whether the work performed was within the scope of the PWR classification and the scope of the apprentice’s standards and tentatively concluded that they thought apprentices should be paid the rate pursuant to the standards to which they were registered because the work falls within the standards, regardless of the rate paid to journeymen on the project.

Co-chair Don Kool posed another scenario involving plumber apprentices who are backfilling, digging, fine grading, and working with a shovel on a project, which could be considered laborer work, but is also work that is incidental to the work of the plumber classification. Mr. Kool questioned whether it would be appropriate for the plumber apprentices' employer to pay laborer classification rates in these circumstances, and said that it was his opinion that the apprentices should be paid pursuant to the plumber's apprenticeship program in which they are enrolled.

Mr. Simms pointed out that this was another example of differences between application of the PWR and apprenticeship laws. Under the PWR law, a plumber performing work classified as "laborer" work may be paid as a laborer: Under the apprenticeship law, such work would be considered "incidental" to the apprentice's work as a plumber apprentice, and the apprentice should continue to be paid as such. If a plumber apprentice spent a whole day performing laborer work, however, Mr. Simms said, such work would likely be viewed as more than "incidental" and might be a violation of the apprenticeship agreement.

Christie Hammond presented the committee members with draft proposed rules intended to address how apprentices should be classified and paid on PWR projects under various scenarios.

Mr. Kool questioned how the number of hours worked at a sub-classification within an apprentice's program, e.g., a plumber performing laborer work, should be reported on the apprentice's apprenticeship progress report. Mr. Simms responded that this was another issue that had been identified, and said that there had been instances where there were conflicts between certified payroll reports being filed under the PWR law and an apprentice's progress reports in reporting the type of work performed.

Mr. Kool said he believed that apprentices should be "protected" under the terms of their standards from being required to perform work at a lower classification and paid a lesser rate outside of their program.

Mr. McKune asked whether it was permissible for a registered training agent to pay an apprentice the applicable journey rate for a different classification on a PWR project, e.g., pay an inside electrical apprentice the journey rate for limited energy work. Christie Hammond responded that she believed that this would be acceptable under the PWR law, but questioned whether this would be in compliance with the apprenticeship law, particularly if the rate was lower than the rate for the program to which the apprentice was registered. Norman Malbin opined that this would not be in compliance. Mr. Redman said he believed that the current laws were not clear in this regard and that contractors were confused.

Mr. Malbin suggested that the committee not debate the clarity of the rules at the meeting, but come to agreement about the appropriate classification/pay rates of apprentices on PWR projects, and then address whether the rules should be modified to make them clearer.

After further discussion, it was agreed to defer action relating to the draft proposed rules, and that a subcommittee of the Prevailing Wage Advisory Committee and Apprenticeship Council should be formed to review and make recommendations to both the PWAC and Apprenticeship Council

regarding application of the PWR and apprenticeship laws to apprentices on PWR projects. The committee members agreed to this proposal. PWAC members Don Kool, Carl Redman, and Norman Malbin volunteered to serve on the committee.

Mr. Redman said he believed there were three distinct issues to be addressed; how the law applies under the following circumstances:

1. An apprentice working in an unrelated craft; for example, an indentured apprentice performing work as a journeyman in another trade that is completely outside the scope of the apprentice's program;
2. An apprentice working in a program that wholly encompasses another program, such as inside electrical and limited energy work; and
3. Apprenticeship programs with "overlapping" scopes of work.

Mr. Redman suggested that the rules make clear that apprentices must be paid according to the apprenticeship program to which they are indentured, and that they may not be paid as an apprentice in any other program. Mr. Malbin said that would be a "bright line" rule, but expressed concern about a practice by some contractors of reclassifying workers in classifications outside of their apprenticeship standards as journey workers in order to avoid ratio and supervision requirements, while continuing to report the hours worked as being within the standards on the apprentice's progress reports as part of the apprentice's program.

### **Proposed Draft Rules Relating to Apprentices and Multiple Wage Rate Determinations**

Ms. Hammond summarized the issue relating to the issuance of multiple wage rate determinations under the PWR law, the history of previous discussions relating to this matter by the committee, and the provisions of a draft proposed rule pertaining to this matter. Co-chair McKune suggested that because the meeting was past its scheduled time, the committee take up this matter at the next meeting.

Christie Hammond asked the committee members whether there was consensus regarding the proposed rule amendment requiring that contractors be "registered training agents" in order to pay sub-journey wage rates to apprentices employed on PWR projects. Mr. McKune clarified that this requirement did not apply to workers enrolled in skill training programs certified by the U.S. Secretary of Transportation under the Federal-Aid Highway Act. Mr. Simms and Ms. Hammond confirmed that it did not. The committee unanimously agreed that the rules should be amended in this regard.

### **Next Meeting**

The next Prevailing Wage Advisory Committee meeting is scheduled Thursday, January 20, 2011.

The meeting adjourned at approximately 4:52 PM.

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