

PREVAILING WAGE COMMISSION MEETING
NOVEMBER 30, 2009
MINUTES

PRESENT: Robert Henningson, Deputy Commissioner
R.T. Summers
Mike Fitts
Randy Lovett
Brent Hall
Mary Grace
Additional Attendees (See attached sign-in sheet)

Recorded by: Christina J. Tugman

Please note this transcript is not a word-for-word account. Some general discussions and comments have been omitted for the sake of brevity.

Deputy Commissioner Robert Henningson called the meeting to order at 1:00 p.m. with all Commission Members or their designees present.

First order to business is to review the minutes from the November 19, 2009, meeting.

There were several editing issues with the November 19th, 2009 minutes that needed to be adjusted. The last page of the minutes where stated "the motion made by R.T. Summers moved that all Crafts with four or fewer responses be deleted" should state that "the data from those Crafts should be deleted." Additional corrections included "All Crafts that show an increase will be adjusted down to increase by 2%" it should read "Craft 1,11,16, & 22 would stay the same and 8, 12, 15, & 19 would also stay the same because there was no data, anything that went over 15% would decrease by 6%, and all others plus 2%". There was additional talk over removing 3 companies' data because it could not be verified. There was a recommendation to lower craft (?) Two Axel from \$13.90 to \$13.40 making it a \$.50 an hour difference which would put it under 8%. Mary Grace stated that she only applied 2% to this rate. Additions to the ---- would be Off Road Trucks and that there was discussion to set a rate. This craft was surveyed for and the rate came out as \$12.98.

**Motion was made by R.T. Summers to approve the minutes from the November 19th, 2009 meeting with the corrections mentioned.
Mike Fitts seconded the motion,
All approved. Motion was passed.**

The announcement of visitors was made:

Edward Barnes – Stones River Electric
Rita Ash – Stones River Electric
Joey Wilson – Wilson & Associates
Larry Smith – Eli Smith & Associates

New Business

Review of the data from the 2009 Hwy and Bridge Construction Survey

Mr. Larry Smith from ESA has concerns regarding Survey Instrument Operators. Mr. Smith stated that our department has the correct information regarding the survey and our company paid our employees to perform the jobs but they are not classified as those positions within our company. An example is the Transportation Engineer that has worked with TDOT and has been in the industry for many years with several degrees, he is classified a little above an estimate man. When he is out on the job site TDOT has informed us that our company must report everyone on the jobsite in a reportable position. The certified payrolls only use to pertain to non-salaried positions, within the last 6 months TDOT had informed us that everyone must be on the payroll and they must be in a position even if they are salaried. TDOT stated that we could not put the word “salaried” down they must be in a classification. We understand that this action has skewed the numbers for this survey but we are following TDOT’s directions.

Mr. Joey Wilson with WA stated that his company deals with the same issues as Mr. Smith and that the numbers are skewed and that he has seen a rise in the Survey Instrument Operators rates. We (SIO) should not be classed within Prevailing Wage Rates because we do professional services such as doctors, lawyers, accountants, insurance agents, others that are on the job site that do not have a classification. We as professionals pay different types of taxes and met different criteria other than the Prevailing Wage rate. However there is a significant increase in the Prevailing Wage Rate it is the highest adjustment on the board at 16%.

Mr. Wilson asked if all that data is gathered from the surveys, Ms. Grace stated yes it was. Mr. Wilson stated the last time that there was an issue with a getting a cross section of people surveyed. The increase, when we have already negotiated within a contract on last years wages, will put us at a competitive disadvantage within our own industry and outside of our industry as well.

Mr. Summers stated we have standards regulated by FLSA and that he doesn’t understand why TDOT wouldn’t allow salaried persons to be classified as salary on certified payroll.

Mr. Lovett asked Mr. Smith if employees were put incorrect classifications.

Mr. Smith stated that they are not put in correct classifications and they are **paid at a much lower rate than what their certification is deemed.**

Mr. Wilson asked the committee can we eliminate the classification. As professional services we classify our employees as hourly, because we could run the risk of yo-yoing our people in/out in a technical position. We find it is more effective to even out their salaries to make sure that they get a minimum amount of hours worked per year. Our profession does not run seasonal as construction for the fact that we cannot layoff a massive amount of people due to technical discipline of our field. Mr. Wilson stated that this why he argues that we should stay at the level of professional services. "We do not build anything and we not bond anything, we not participate in the big bonds like the contractor does, we have no product at the end of the day to show for other than here's our data.

Mr. Smith stated that we could resubmit our forms and striking out who was an estimate man, who was a surveyor's helper, and who was legitimately salaried but until we get TDOT to go along with this it wouldn't be official.

Mr. Summers stated that you don't necessarily have to submit the same data to us that you submit to TDOT on your certified payrolls. We want to know what you're paying your employees in these classifications.

Ms. Grace stated that there may be a problem when we review the payrolls.

Bob Henningson stated that data is sometimes eliminated based on highs/lows of the survey in order to achieve a normal distribution.

There was further talk about how other states collect and read data.

Mr. Smith again asked if they could be excluded from having to submit this information and stated that they could not afford to take this \$3.00 hit.

R.T. Summers stated that the data that has been collected is the only thing that this committee can work with and the 6% up/down is our leeway. The rates have been dropped the 6%. The committee has the authority to throw the data out for Eli Smith and Associates that is flawed but when I look at the data for your company it will make the rates go up and not down.

R.T. Summers stated that he doesn't believe that this is a good survey, but we are locked down.

Mike Fitts gave a hypothetical on a situation that discussed if someone from Mr. Wilson's company was not classified in a specific class and the company was short a line man and they had to put them in their place what would he be classified and what would he paid and would that pay classify as a Prevailing Wage Rate.

Mary Grace stated that when our department looks at the payroll we are concerned with the hours that the employee is performing the craft and that the employee is paid at least the craft rate for those hours. So if the employee salary is \$500 a week and the employee is performing a craft that would bring him more than that then our department would say that you as the employer would need to pay the additional money.

Randy Lovett stated that usually there is an issue of overtime and there is a minimum set with FLSA but most exceed it. When putting someone in a classification that isn't classified for a particular job for 1 hour within a 40 hour work week that shouldn't distort the Prevailing Wage.

Mary Grace stated that it will if you report it as such, taking the total hours divided by.....

R.T. Summers stated that there is no requirement that you report on every job to Prevailing Wage Commission. You can report this job and not that job and you're totally within your rights to report it.

Mary Grace agreed that this survey is voluntary but unless the commission receives enough data we cannot set a rate. We sometimes have contractors that will submit on one job and that will be the lowest job that they've had and they have had 20 other jobs that they choose not to report on because the rate required is the higher rate. We need a reflection of the entire industry. Prevailing Wage is to be the average hourly wage paid in the industry or any given craft that we survey for. It's very hard to say that these rates are not skewed.

Mr. Wilson asked why we couldn't let the market conditions dictate what the employee is to be paid.

A committee member stated that we have federal and state laws that we must comply with and that majority of this is federal law that we must abide to. There has to be a prevailing wage on every DOT contract set. The state must comply with that as well.

Mr. Smith stated that we work in various states and our professionals are not counted in with prevailing wage reporting. And our professionals weren't counted here until this year and even if they did manual labor. TDOT audits our records and of course we make sure they are paid above the wage rates. We always assure that our people that are within that job are meeting the prevailing wage.

Mr. Smith stated that his main issue is that how he was told to fill out the Certified Payrolls. He wants everyone (state dept/TDOT) to look at the same set of numbers because we know that you audit our payrolls.

R.T. Summers stated that you are not required to send in data that you believe does not represent what your company is paying your employees, to our department. You of course cannot falsify but you have the right not to submit that information if it does not pertain to prevailing wage data.

Mary Grace stated that at one time we did not have this classification and now it's been added.

R.T. Summers stated that we have state laws that regulate what we can do or what we can't do, stating what the law and the rules are and we can't stray from those laws.

Mary Grace asked Mr. Lovett if TDOT had to come under a federal statute to put this person (classification) out there on the reporting list for prevailing wage.

Randy Lovett said he that the Copeland Act requires that this is checked and/or monitored to make sure that the salary is correct. Also we must meet the requirements for Davis Bacon. There is a considerable amount of pressure to make the payrolls correct.

Mary Grace stated that she will research the minutes to see when the Survey Instrument Operator was submitted to be classified as Prevailing Wage. This classification had been dropped then it was added again.

Rand Lovett stated that TDOT has moved away from this classification and has contracted it out and ended up using a survey crew. It was considered a more efficient way to do the job.

Someone mentioned that SIO is less than 1% of total contract it may be that this classification is no longer necessary for such a small percentage. Typically engineering services are about 1% of total contract offers.

R.T. Summers stated that we in the department could work with TDOT to come to a resolution to fix this issue.

Looking at the statistical outliers would it be prudent to look at your average increase on all the skills and say that there is an anomaly here, there being a 16% increase on one skill is not normal.

A committee member stated that when looking at our "yellow book" that we can only go 6% up or down from the old rate. We can adjust the rate that came in from the survey but that's all that we can do. This is an imperfect system but that's what we have to deal with and that's why we implement the 6%.

R.T. Summers made a motion to except the Preliminary Rates for the 2009 Building Prevailing Wage Rates. Brent Hall seconded the motion. All in favor, the motion was passed.

Edward Barnes introduced himself and Ms. Rita Ash, both from Stones River Electric; Mr. Barnes gave a brief background of the company. They are a full scale electrical maintenance company and a full scale lighting retro fit/maintenance company as well. The scope of our company is that we have been a regular vendor on the statewide contract 174 for maintenance of state buildings; we are also on the Metro Nashville contract for maintenance of lighting on all the bridges. And also work with non-state/non-metro entities. Our company works prevailing and non-prevailing wage jobs as well.

Mr. Barnes wanted to petition the committee to consider a classification for Certified Lighting Technician. This type of work specifically deals with the maintenance and the installation of lighting retro fits, which are the typical work done for energy conserving lighting projects. Are request is based upon what other states have adopted, so there is recognition of the skill set for what lighting technicians do as a separate skill set from what electricians do. Another aspect is that when we run a crew from prevailing wage jobs to non-prevailing wage jobs their pay scale is going to go from \$12 to \$21 and vice versa. We would like to get rid of the inconsistency.

There are many jobs being classified under electrician when it should be classified as lighting technician because of the type of work done. As a point of reference there is a NAICS code 561790 which is for lighting technician but does not show up in any prevailing wage separation as far as categories. Using the state Connecticut as an example they have an electrician's rate and then there is a general maintenance rate which is not necessarily saying that they are highlighting a lower form of electrician but they are giving a bracket which has a contractor doing the work; we would be able to slot our technicians at that lower rate.

Mr. Barnes gave other examples from other states and their rates. Mr. Barnes stated that he brought these examples of other states because it indicates that these states have recognized the value of having a separate classification. We (Mr. Barnes and Ms. Ash) feel that there is room within the jobs of prevailing wage variety for this classification based on the skill set and the job that needs to get done. And as energy efficient upgrades come about this will increase the need for this classification.

Mr. Barnes poised the question to Mary Grace asking whether they could continue this idea with her further in the form of a written summary.

Bob Henningson asked Mr. Barnes for an outline or bullet points regarding this classification.

R.T. Summers asked Mr. Barnes if he could come up with a classification definition.

Mary Grace stated that Mr. Barnes and Ms. Ash would need to submit a written report to her and she would submit this report to the Prevailing Wage Commission for their review, prior to the next meeting. The commission would need to consider as to what classification they are going to survey.

Brent Hall stated that the task would be to obtain data on this type of classification.

Bob Henningson asked that Mr. Barnes and Ms. Ash put together a report and submitting to Mary Grace that would be prudent.

Brent Hall made a motion to adjourn. Mike Fitts seconded the motion. All in favor, motion was passed