



STATE OF TENNESSEE

MINUTES

PREVAILING WAGE COMMISSION  
THURSDAY, SEPTEMBER 3, 2009  
10:00 A.M. (CST)  
1<sup>ST</sup> FLOOR, TENNESSEE ROOM  
220 FRENCH LANDING DRIVE  
NASHVILLE, TENNESSEE

**Minutes recorded by: Carolyn Sherrod.**

**Please note that transcript is not a word-for-word document. Some comments have been omitted for conciseness.**

- I. **CALL TO ORDER - (2)** - The meeting was called to order at 10:00 a.m. (CST) by Chairman, Commissioner James Neeley.
- II. **CONFLICT OF INTEREST REPORTS - (3)** - Conflict of interest statements were completed by the Commission members in attendance with no conflicts of interest cited.
- III. **CALLING OF THE ROLL - (5)** - The calling of the roll was omitted as Chairman Neeley stipulated for the record that all Commission members were present. Board members present: Commissioner James Neeley; R.T. Summers; Wayburn A. Crabtree; Brent Hall and Mike Fitts. Tennessee Department of Labor and Workforce Development employees present: Arthur Franklin; Dart Gore; Michael Dattilo; Mary Elen Grace; Carolyn Sherrod; Sydné Ewell; Daniel Bailey and Jimmy Pinson. Guests present: Kent Starwalt and J. Alan Robertson.
- IV. **APPROVAL OF THE MINUTES OF THE PREVAILING WAGE COMMISSION REGULARLY SCHEDULED COMMISSION MEETING HELD DECEMBER 1, 2008 - (27)** - Chairman Neeley asked for a motion to approve the December 1, 2008 minutes as written. The motion was made by Mike Fitts; seconded by R.T. Summers and the Commission voted their approval.
- V. **OLD BUSINESS - NONE**
- VI. **NEW BUSINESS: ITEM (1) - DISCUSSION AND CLARIFICATION OF OFF -THE - ROAD TRUCK CLASSIFICATIONS AND VEHICLE CLASSIFICATION PARTICULARLY TRUCK DRIVER FIVE - (30)** - R.T. Summers begins the discussion by pointing out that the information listed in the Rules is not really current. Koehring doesn't make a dumpster anymore, Euclid back dumpsters are not being made and International Payhauler is not in business so these three references are to pieces of equipment 50 years old and is not appropriate. He continued by stating that this is two classifications....it talks about the (5-axle truck driver) which is a tractor-trailer driver (3-axle tractor/2-axle trailer)...it doesn't mention them at all so as far as the rock moving equipment you could take it out starting at such as and through payhauler, etc. and just say rock moving equipment (heavy duty off-road or rock moving equipment and just remove the references to those three old pieces and I think it would still make sense. Language needs to be added regarding operating a 5-axle on the road truck because it's just not off the road - it's 5-axle on the road plus it's the heavy duty off-the-road.

Labor Standards Director, Mary Ellen Grace presented Labor Standards Inspector, Jimmy Pinson to give the Commission an explanation of the problem.

Jimmy Pinson stated that when they go to the reference payhaulers, etc. is a rigid truck and the rigid trucks all say 50, 60, 70 tons and then they have the articulated trucks (30 tons or whatever) the articulated trucks do not require a lot of experienced driving; whenever they turn over it just turns the bed over but the truck but rigid truck when it turns over, it turns the whole thing over. Some of the employees say that you should make more money driving the rigid truck than you should driving the articulated truck. That's the problem that I've run into and I didn't know how to handle it. In response to R.T. Summers' question as to what the contractors was paying the employee Pinson stated that for the 2-axle (articulated) truck driver the pay was \$12.76 and for the rigid \$15.62 (or whatever the rate is). An employer was paying \$14.96 to a B Operator; \$12.76 to an articulated truck operator and \$15.24 to a truck driver of 5 axles or more/off road. Pinson also points out that they now have laser systems on their kits and there are going to be some questions about that down the road...it's gonna take a whole lot of experience to operate one if it has a laser system on it. Pinson presents the picture of a rigid truck and an articulated truck for the Commission's review.

Chairman Neeley suggested that a Class B Operator classification would be an easier interpretation for the crew than a truck driver. There should be a distinction made between over-the-road and hauling dirt on the job.

R.T. Summers suggested placing the off-the-road truck drivers in the Class B operator classification possibly simplifying things for both the contractors and the inspectors as well.

Mary Ellen Grace offered that now would be a good time to do the sanction since the new rules are being worked on.

Sydné Ewell referred the Commission members to Rule 20 ("Truck Driver – 2 axles"); Rule 21 ("Truck Driver – 3 or 4 axles") and Rule 22 ("Truck Driver – 5 or more axles/Heavy Duty off-the-road").

R.T. Summers offered that **all three** truck driver definitions are incorrect making the interpretation confusing. Taking the truck driver 2 axles and correcting it to read one who drives a 2 axle truck for transporting construction materials, etc. would basically say anyone who drives a 3 or 4 axle truck and basically have the same type of definition.

Brent Hall asked that regarding the proper sanctioning on Rule 21 where would a small axle dump truck (when they pull a backhoe trailer behind them) be classified? R.T. Summers further stated that it would be classified as a 2 axle truck.

Chairman Neeley suggested that Ms. Grace come forward with a better clarification to be mailed to the Commission members for review. The members would then have a clearer definition relative to the Commission's enforcement of the sanctions regarding the drivers. The Commission members offered their agreement.

Mary Ellen Grace offered to research what used to be the Dictionary of Occupational Titles is now (O\*Net) along with suggestions from Mr. Summers and/or Ken Starwalt (Road Builders Association).

**VII. NEW BUSINESS: ITEM (2) – DISCUSS THE HIGHWAY SURVEY AND BRIDGE SURVEY FOR 2009 - (433) -** Chairman Neeley expressed his concern that on fifty-nine (59) responses to the 2008 survey had been Received...if there is a broader mailing list, then it needs to be utilized.

Wayburn Crabtree agreed to supply a list of pre-qualified contractors or everyone who did work in 2008 and a list of contractors who are doing work at this time or are eligible to bid on highway contracts. He explained that the pre-qualification list changes continuously so Ms. Grace suggested that a mailing date be chosen and the survey will be mailed on that specific date.

Ms. Grace explained to the Commission that the problem lies in getting the contractors to respond to the survey. Possibly, says R.T. Summers due to the fact that some contractors don't want anyone to know

what they're paying. However, it is public record reminds Summers. According to Ms. Grace, they received quite a bit of data on the older jobs...most of them were paying right at the prevailing wage. Also, scales are a little different across the state; the rates are higher in Nashville and Memphis.

Regarding the survey form, Kent Starwalt acknowledged that the Road Builders Association sends it out to all of their members...another 350 companies. Ms. Grace suggested that Starwalt remind his members that in order to file online, they will need to contact the Labor Standards Division for the specific password number which can only Labor Standards can supply. The surveys mailed out from Crabtree's list will already have pre-assigned password numbers.

**VIII. NEW BUSINESS: ITEM (3) – REVIEW OF THE SURVEY FORM - (579)** – Chairman Neeley asked if entering heavy off-road truck driver in the brief description under the Class B Operator classification would resolve the question relative to what they would be paid. Also, then you have the descriptions of the 2, 3, 4 and 5 axle that are understandable.

Mary Ellen Grace explained that nowhere on the form was the definition on a 5-axle vehicle broken out into an actual classification...possibly making it confusing for the contractors attempting to submit data when it just says 5-axle...heavy duty off-road is omitted from the form. Chairman Neeley suggested re-formatting the survey to include the heavy duty off-road definition under the Class B operator and simply adding the 2-axle, over 1-ton, 3/4 axle and 5-axle trucks would/should make the distinction immediately recognizable. R.T. Summers mentioned a possible problem with sending the survey out in this format due to the possibility that if contractors have not been paying the operators according to that rate, the change in the survey format would cause them to add employees that they hadn't paid in the past; if changes can be made as we go forward...nothing can be changed on the present form in order to receive an accurate response.

Mike Fitts posed the question as to what point would the updated survey form be utilized which followed with discussion suggesting that the point of initiation start with the new rates. Mike Fitts further emphasized that whenever the survey form goes out; the responses will be incomplete for maybe the first year. Mary Ellen Grace suggests that the classification of heavy duty off-road truck be added for the sole purpose of surveying. For clarification, Brent Hall asked if the plan is to survey the articulated truck in particular. Discussion continued among the members to add another line to the survey form to encompass the heavy duty off-road truck classification.

Sydne Ewell explained to the members that the class numbers are excluded from the rules to eliminate confusion; the class numbers are only on the survey form. Chairman Neeley asked Ms. Ewell if the Commission has the authority to add language to the form. Sydne Ewell explained to the Commission that this should cause no conflict.

Mary Ellen Grace requests and receives the Commission's agreement to condense the wording on the general classification under unskilled laborer.

Chairman Neeley asked for a motion to add the heavy duty off-road truck classification as category 25 on the survey form. The motion was made by R.T. Summers; seconded by Mike Fitts and the Commission voted their approval.

After a brief discussion regarding suitable dates, it was unanimously decided that the Commission would meet on Thursday, November 19, 2009 at 10:00 A.M. to review the data and again on Monday, November 30, 2009 at 1:00 P.M. to set the rates.

**IX. MEETING ADJOURNMENT – (1110)** - Chairman Neeley asked for the motion to adjourn the meeting. The motion was made by R.T. Summers; seconded by Mike Fitts and the Commission voted their approval.