Meeting Minutes Prevailing Wage Advisory Committee (PWAC) December 4, 2019 1:30pm - 4:30pm Tumwater, WA

Attendees: Jim Christensen, Laura Herman, Miriam Moses, Andrew Ledbetter, Andy Kapolowitz, Logan Bahr, Bruce Chattin, Heidi Jensen, Joe Gaylor, James Thompson, Joe Baca, Nicole Blackwood, Jerry Vanderwood, Josh Swanson, Lee Willeman, Mark Riker, Earl Smith, Monty Anderson, Joelina Siufanua, Scott Middleton, Stuart Sorrell, Jim Hernandez, Allison Drake, Troy Andrews, Billy Wallace, Matthew Erlich, Jack Knottingham, Mario Silva, Ivan Meyer, Derek Patches, Jim Webster, Susie Johnson, Joey Bolden, Tiffany Huff, Russ Hauss, Todd Templeton, Celesta Monahan, Harly Farey Megan Block, Barry Fulgham, Reasa Pearson, Chris Ellis, Megan Kistler, Bonnie Dressel, Sean Anderson, Cassie Langton, Michael DeGive, Tom George, Jim Kaltenbaugh, Jamie Blacksmith, Aaron Nelson, Chuck Ziegert, Kathleen Kline.

Agenda Item	Discussion
Opening Remarks	Jim Christensen – L&I
Introductions	Welcome
	Safety Topic
PWAC Draft Meeting	Jim Christensen – L&I
Minutes from June 14,	• Introductions – L&I is happy to meet with you in this advisory committee
2019	meeting. This meeting is a meeting between Prevailing Wage, Awarding Agencies
	and the Business representatives.
General Topics:	Jim Christensen – L&I
-Staffing Changes	Staffing Changes: Prevailing Wage has brought on two new Customer Service
-Performance Numbers	Specialists, Todd Grewell and Shyann Emmons. Susie Johnson is a new
-Residential Survey	investigator as well. Further, Gerald Sanchez left the Moses Lake office for a
-SB 5493	different position. Prevailing Wage has an IRA 3 and IRA4 position open, funded
-SB 5566	by 5035.
-New Rules	 Performance Numbers: Last time we had a PWAC meeting, Josh Swanson had
-PWIA	noticed that the number of debarments is an unusually small number. What we
-Training	had recently found out is that the strike / debar system are not working the way
-Intents & Affidavits	that we had initially intended. They are being added later in the process than we

PWAC meeting minutes Page 1 of 16

-Certified Payroll -Apprentice Utilization -IT System Updates

intended. We are working to get those contractors on the list as soon as possible when these instances occur. This is due to the system configuration as well as the reporting process needs to be streamlined.

Jolene Skinner - L&I

• We are looking to issue a fix in two weeks. It has been difficult to identify. 2009 is when the strike and debar system was implemented, and had worked since 2009. Developers are looking into it. Testers are testing it. The target date is in two weeks. Staff is on board to manage all of the violations that should have been reviewed retroactively. Next meeting we will have covered all of the retroactive strikes. The numbers will be reflective of those changes.

Josh Swanson – Local 302

• Can I ask a question about the numbers? There is a large differences between strikes between FY 2018 and 2019, is this due to timing or a difference in function?

Reasa Pearson - L&I

• This is due to timing between one fiscal year and another.

Jim Christensen – L&I

• **Residential Survey:** I have been wanting to get his survey out for a while, we had built a substantial mailing list. If you were not properly registered, unfortunately you did not receive a prompt for the survey. For example if you did not have an industrial insurance account, you cannot have employees or pay wages lawfully. How are we defining the work of which we want to receive data? We are using the new statuary definition of residential construction.

Nicole Blackwood - REBOUND

• We need three months, can we have three months? If not a guarantee of 30 days?

Jim Christensen - L&I

• I had the impression that the response time is within the 6 – 8 week neighborhood. Mr. Riker reached out this week to inform us of a 2 -3 months. Sean Corroborate this. I agree.

PWAC meeting minutes Page 2 of 16

A month is not long enough so we will be extending the timeline to 3 months. I would like to start calculating rates after 3 months.

Mark Riker - Washington State Building & Construction Trades

• I had affiliates in the coalition contact me about 1743 and they had thought it was too short of a timeframe. 3.57 months is about the standard time. WE support the 3 and a half months timeframe. It helps out affiliates.

Mario Silva - Cement Masons and Plasterers of the Northwest

• So that would be March 4.

Jim Christensen – L&I

• Yes, that is an appropriate amount of time to process the results.

Josh Swanson - Local 302

• Are you also calculating that under the same inflation? With a wage index.

Jim Christensen - L&I

• Most of our Prevailing wage agreements are established by collective bargaining agreements. For the others, would it make sense for the agency to make a wage index for these rates.

Mark Riker – Washington State Building & Construction Trades

• I would have to have the data in front of me.

Jim Christensen - L&I

• I agree, most of the CBAs are not traditional building and construction trades. Indexing them into construction industry wages offer the potential for those to raise per each survey. This is a concern I have been aware of for a while. Wage escalator indexes could be viable, the legislature has endorsed such.

Josh Swanson - Local 302

• I don't see a downside, if the rate remains stagnant, keeping pace with inflation is a good thing. For example, power industrial vacuum will not have surveys very often. Eventually minimum wage will catch up and become the inflator.

PWAC meeting minutes Page 3 of 16

• What can you tell me about the departments plan to use the statuary definition of "residential construction"?

Mark Riker - Washington State Building & Construction Trades

• This correction to 5493 was intended to effect only certain things. Homelessness shelters, domestic abuse homes. 5493 has effected residential in ways we did not intend, the survey was not established to effect anything other than those very tight definitions.

Jim Christensen - L&I

• If anything falls outside of the definition of the residential, it would be applicable to a collective bargaining agreement. Is that a problem?

Mark Riker - Washington State Building & Construction Trades

• I don't see the issue.

Laura Herman - L&I

• We had reviewed prior determinations on residential construction issues, applying this same logic retroactively, would it affect the outcome for more "closer calls?" In doing so we had deduced that it would've arrived at the same outcome, using the statutory defining rather than the rule definition. That alleviated some stress on the topic. It included things about residential that we had been "Borderline" about. Coming to that conclusion put my mind to rest.

Jim Christensen – L&I

• The old definition had a provision that is missing in the new. "Solely for permanent residences" doesn't exist in the new one. That phrase would allow us to identify in some cases what is residential. The new one specially discusses the facilities added on. For example first floor retail, second floor low income housing.

Mark Riker - Washington State Building & Construction Trades

• I don't think you are reading that correctly, these facilities added are intended for homelessness, treatment facilities. That was a compromise made, but only addressing that narrow definition.

PWAC meeting minutes Page 4 of 16

Laura Herman - L&I

• We had thought "would that effect our definition of Student Dormitories?" we had concluded that it would not. Mark makes a good pint that 1743 is talking about residential structures. We still have questions about "mixed use buildings" which we don't' have a lot of new ground, it just says "residential structures."

Mark Riker - Washington State Building & Construction Trades

• The clause says "in the following categories" if the following categories are not listed, then it will not fall under residential.

Laura Herman – L&I

• These is going to require some more scrutiny. I believe there were some we did allow and others we didn't in relation to analyzing the validity of permanent residence. It is a tough case-by-case analysis. Specific fact set.

Jim Christensen - L&I

• We have had investigations that involved a live-work space like an artist gallery as well as apartment. When I looked at that fact set, I had wondered if the builder had called it a live/work space to comply with residential spaces but also providing the retail.

Plumber

• The plumbing code calls it "residential multi-family."

Mark Riker - Washington State Building & Construction Trades

• I don't think those definitions fall under residential housing. We had a number of meetings to establish the very narrow defining of residential.

Joey Bolden - NWlecet

• Can you include data from a private apartment complex with no ties to affordable housing?

Jim Christensen - L&I

• It is possible that privately funded projects could fall under "affordable Housing", "Weatherization" and "homelessness and domestic abuse"

PWAC meeting minutes Page 5 of 16

Laura Herman - L&I

• Affordable housing including allows the addition of other definitions. It is not clear that there are no excluding clauses. We need to study this.

Mark Riker - Washington State Building & Construction Trades

• I don't agree with it, it doesn't expand the definition for "for the purpose of service delivery."

Laura Herman – L&I

• This is going to take study.

Jim Christensen - L&I

• It is the agency's intention to only take data that fits the definition of "residential" Also mark has asked "what if a project falls outside these definitions?" then it will be a commercial prevailing wage and Mr. Riker is comfortable with that. Is all the data going to publicly funded? What if you have private projects that fit this definition? Would those other values influence the survey? Yes.

Billy Wallace - Laborers District Council

• Can anyone call any project affordable housing?

Mark Riker - Washington State Building & Construction Trades

• We asked the department to support data for the development of 1743?

Laura Herman - L&I

• Affordable housing means residential housing for occupancy, of no more than 30 percent of the families' income.

Billy Wallace - Laborers District Council

• Would you use the state formula for low income?

Jim Christensen - L&I

• Yes.

PWAC meeting minutes Page 6 of 16

Laura Herman - L&I

• Yes.

Mark Riker - Washington State Building & Construction Trades

• I don't have it on the top of my head.

Josh Swanson - Local 302

• If you get no data, will you maintain the existing rate? So it's critical you get data?

Jim Christensen - L&I

• Yes, and then we become open to escalating wage scale.

Jim Christensen - L&I

• **New Laws: 5493,** what went right and wrong? We addressed Landscape Construction and residential. All other effected rates are now at a CBA rate. How's it working? Any problems that need to be fixed?

Mark Riker - Washington State Building & Construction Trades

• The only one is for the industrial painter matter that is outside of the lawsuit (AGC?) CCTV is a non-bargained rate, what if someone added that to an agreement, does it now fall under 5493 parameters?

Jim Christensen - L&I

• Interesting Question.

Billy Wallace - Laborers District Council

• That's why we have multiple crafts.

Josh Swanson - Local 302

• Good point.

Jim Christensen - L&I

• We have a lawsuit going on. The lawsuit alleges that 5493 allows the agency and the labor leaders can massage the CBAS. Prevailing for a manipulative purpose.

PWAC meeting minutes Page 7 of 16

If folks are imagining that 5493 allows them to steal work from other crafts, you are going to make everything more difficult. WE can tell the difference between a sincere and manipulative agreement.

Josh Swanson - Local 302

• That's fair.

Jim Christensen – L&I

• Contractors will report that they need costs to be known. That's a legitimate concern.

Jim Christensen – L&I

• **5566**, intent and affidavit fee. Budget proviso for current biennium. Forms are 20 instead of 40 dollars. Starting July 1 2021, the fee will change to something different. I can tell you the fund is healthy. The number is yet to be determined.

Jim Webster - Secretary of State

• You are changing the cost of filing combined forms to 40 dollars. Is that correct until 2501 dollars?

Jim Christensen - L&I

• That is correct

Laura Herman – L&I

• The first combined form was the up to 2500 form. That has not and will not have a fee. However the statute over the last 8 years has been modified to add limited public works. In those limited public works project, the limit was increased from 35,000 to 50,000 dollars. Because it can be up to 50,000, that form is applicable as long as it is procured under that aforementioned method. Before it was 40 for the intent and affidavit. 80 total.

Jim Webster – Secretary of State

• The website still says 80.

PWAC meeting minutes Page 8 of 16

• The great thing about the system, is that it will prompt you correctly.

Jim Christensen – L&I

• Application of penalties directs LNI to look into willful violators. We are figuring out how to enforce that.

Laura Herman – L&I

- **New Rules:** Housekeeping was difficult. It was a concern. LNI's website has changed completely. If you want to find public works, look under "licensing and permits." And then you'll see the "public works: listing. Here you can lookup wage rates and preview intents and affidavits. You can also find rules under "rule making activity" and type in "296-127." Housekeeping process started more than a decade ago. We got close to finalizing the rule, and we had to roll it back.
- This is where you go to look at rulemaking. This is how you can look into rules that effect Prevailing Wage. August 23rd they came into effect. Landscape maintenance had come into effect 11/1/2019 due to third emergency rule.
- Also, the rules that are being reviewed are: Unpaid prevailing wages, unpaid usual benefits, rate of contribution, inadvertent filing or reporting error and WAC 296-127-010(9) definition of residential construction. We are not sure that we are ready to make those changes however it is always good to be aware of the potential changes that may happen. We know that we are not ready to change the rules for residential construction. We will benefit from experience. ALSO: Effective date, survey methodology, filing a complaint, Investigation of complaint, Notice of violation, payroll records and other rules in 296-127 WAC. 5035 may affect all of these. With this rulemaking, there is more clarification needed. We are in the information gathering stage rather than the rulemaking stage.

Nicole Blackwood - REBOUND

• Is there place to find the rules with strikeouts and underline for 296-127 on the website?

Laura Herman – L&I

• I can help you find those after PWAC.

PWAC meeting minutes Page 9 of 16

Jim Christensen - L&I

- We have a wage recovery action ongoing, with the premise being that the client doesn't fall under the definition of "contractor" LNI could be given some more effective tools through rulemaking if we had the opportunity to do so.
- We can talk about rules that clean up potential issues. Landscape Construction workers have experienced the third emergency rule.

Laura Herman – L&I

• We are drawing closer to coming to a resolution on the matter.

Mark Riker - Washington State Building & Construction Trades

• We are fairly close to coming to a resolution.

Jim Christensen - L&I

• Later this week I will see the draft of the rule filing.

Jim Christensen - L&I

PWIA: PWIA has effected the course of PW since its implementation in 1999. I know there are some concerns, thinking the system is terribly broken, however every single labor leader is a proponent of the PWIA system. Jolene will show you the improvements.

Jolene Skinner - L&I

• We have a suite that is more than the contractor portal. External Applications. Contractor portal, agency portal, state auditor office portal, wage lookup tools, public search and dashboard, strike and debar and wage survey. There are also internal applications for Internal Applications, Compliance tool, Training Tool, Debar, and Retainage review and release tool. These functions ease the burden on all parties involved. The compliance tool is brand new. It is new manage complaints and wage investigations prior to October, that tool wasn't in this suite. It's integration provide a centralized location for all of the pertinent data. That avoids data entry, paper systems. Managing those investigations is much easier with the database pulling the information for you.

Mario Silva – Cement Masons and Plasterers of the Northwest

• Is this info available to the public? Can they provide the status of the investigation?

PWAC meeting minutes Page 10 of 16

• Yes, users will be able to review that information.

Jolene Skinner - L&I

TRAINING

- 1487 have completed training
- 357 in person.
- 1112 online
- 12,173 exempt companies. This doesn't mean they're still doing public works, however they are exempt by merit of 3 + filings.

Jolene Skinner - L&I

- The prime will have to choose from a number of contract types. The bid and award date have different implications depending on which project is chosen.
- Housing acts of 1937 projects can now be filed online so certified payroll can be filed as well.
- We are identifying the agencies that could also be listed under a HUD act project. When reviewing that form, the CSS will review the agency to ensure that this is a HUD act project. There will be more scrutiny but we will allow them to submit less than Prevailing Wage rates.

Lee Willeman - Seattle Housing Authority

• These happen about 100 times per year.

Mario Silva - Cement Masons and Plasterers of the Northwest

• So we will see Davis bacon rates on Certified Payroll?

Lee Willeman - Seattle Housing Authority

• The issue with referencing those numbers is that they change regularly. Our contractors are trying to figure out what to do starting January 1.

Jolene Skinner - L&I

• There is a solution, however it will not be ready by January. In two weeks, all of our systems will be ready for the filing of all those projects. Other agencies have third party vendors that verify those certified payroll information's.

PWAC meeting minutes Page 11 of 16

Lee Willeman - Seattle Housing Authority

• LCP Tracker

Josh Swanson - Local 302

• Is LCP the only one?

Jolene Skinner - L&I

• Yes.

Mario Silva - Cement Masons and Plasterers of the Northwest

• For compliance purposes can we use your system to find CP records?

Jolene Skinner - L&I

• Yes, everything will be able to be filed in our system. You can pull forms from the public site and you can also submit a records request.

Jolene Skinner - L&I

• Starting January 1, we will accept no paper forms. This is why combined forms and housing act forms are able to be filed online as well. So those contractors can be in compliance. A few paper affidavits are still in circulation as the project started before the cutoff date.

Jim Christensen - L&I

- **Certified Payroll:** As of October we have 5498 contractors that file in our online system. This is about 70 percent of users.
- 46 percent like it, 25 percent need training and 30 percent have had issues.

Miriam Moses - REBOUND

• I had a contractor that couldn't tell if she was doing it correctly. She was told there was no training.

Jolene Skinner – L&I

• As of 3 days ago there are training videos on Youtube.

Miriam Moses - REBOUND

• That is good, I had sent it to her.

PWAC meeting minutes Page 12 of 16

• Yeah all videos are short, bulk upload is the longest. Anyone can check it out. For each step there is a link to a direct video that addresses those.

Joey Bolden - NWlecet

• Is an entire contractor portal tutorial in the works?

Jolene Skinner - L&I

 Yes. If not filed online LNI must approve an alternate method for the CP to be filed. Jim Reasa and myself sat down and deduced the most viable way to do it, because CP is mandated for a reason and feeds into Apprentice utilization. Prime contractors and Agencies need to view those values, alternatively owner operators will have the alternate option to file (upload) a paper document scan to our system.

Josh Swanson - Local 302

• The initial draft had debate about the agency piece, the alternate method was in consideration for LNI's role. To give necessary flexibility. You are on the right path.

Jolene Skinner – L&I

• February there will be federal affirmation for joint funded projects. Additional Customer-requested enhancements will be added as time and recourses allow. For example, retaining information that was previously input, this will mitigate any difficulties.

Tom George - NWFCA

• Interested parties could make requests to the agency, is there any plan to just view them on request rather than engaging with someone in the office?

Jolene Skinner – L&I

• We will be exploring that.

Jolene Skinner - L&I

• **Apprentice Utilization:** There are 706 projects currently.

PWAC meeting minutes Page 13 of 16

 Systems of record for apprentice utilization, because CP will be mandated, contractors and Agencies will have a live look into the utilization of their apprentices. A final Utilization percentage can be viewed once the project is completed.

Jim Christensen - L&I

• Prime contractors and Awarding agencies monitor that during the project, correct?

Jolene Skinner - L&I

• That is correct.

Jim Christensen – L&I

• Then the system is functioning correctly. Communicating the intention of utilization will often help those target numbers to be met.

Jolene Skinner - L&I

• Mr. Jim Kaltenbaugh will be reviewing compliance Jan 1 2020, also the agency will be able to monitor the utilization as well providing a monetary incentive and or penalty for target numbers.

Jim Kaltenbaugh - L&I

• There are other standards for a good faith effort as well, but we will leave that call up to the awarding agencies involved.

Jim Christensen - L&I

• L&I is not charged under the law with the monitoring of good faith efforts.

Jolene Skinner - L&I

• Jim and I have met with agencies where utilization is required, trying to ensure that they are aware our system functions and abilities. Like School districts combined are predominantly the leader in Utilization and public projects.

Mario Silva - Cement Masons and Plasterers of the Northwest

• Who will be monitoring step progression?

PWAC meeting minutes Page 14 of 16

• Apprenticeship.

Mario Silva - Cement Masons and Plasterers of the Northwest

• And at what rate?

Jolene Skinner - L&I

• This rate is set by Prevailing Wage.

Jim Christensen – L&I

• L&I generates a journey level rate, and then calculates apprentice rates from that value. PW calculates the values. The apprentice and the apprenticeship program will be responsible for step progression. Each program has autonomy.

Jolene Skinner - L&I

• No additional reporting will be needed for contractors or AAs. Apprenticeship will begin verifying compliance on all required, completed projects with a bid due date on/after February 1.

Jolene Skinner – L&I

- **IT System Updates:** There are real-time reports that you can reference for Affidavits and Certified Payroll reports.
- The compliance tool was launched in October, it manages wage complaints and investigations, allows agents to concentrate more on the actual investigation, easier implementation of 5035 and coming this month we are streamlining the payment process for workers. If it wasn't functional agents would have to report them manually, for every single instance.

Josh Swanson - Local 302

• Is there a release or disclaimer?

Jolene Skinner - L&I

• Yes there is.

PWAC meeting minutes Page 15 of 16

	Laura Herman – L&I Some had a question about accessing the rules, and anyone else that needs those, I can supply them.
PWAC 2020 Meeting Schedule -March 25 – Tukwila -June 29 – Tumwater -October 1-Tukwila	Jim Christensen – L&I Next meeting in March. Anything further for the good of the order? Thank you.
Wrap Up/Adjourn	

PWAC meeting minutes Page 16 of 16