Indiana
Department of Labor

"Working to make Indiana businesses clean and safe, and wages fair and competitive."

MITCHELL E. DANIELS, Jr., GOVERNOR
Miguel R. Rivera, Sr., Commissioner

402 W. Washington St., Room W195
Indianapolis, IN 46204-2751

Phone (317) 232-2655
Fax (317) 233-3790

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To Whom It May Concern

Re: Functioning of Common Construction Wage Committee Meetings

Dear Fellow Hoosier:

I have had the pleasure of meeting many of you personally. For those of you whom I have not yet met, I look forward to the pleasure. As the new Commissioner of Labor I am learning about matters that you all are much more familiar with than I. Please bear with me as I explore the areas of my responsibility and work to improve the process.

One of those areas of inquiry is the Common Construction Wage process. All of you are either directly involved or indirectly involved with the State's Common Construction Wage committee processes, I.C. 5-16-7-1 *et seq.* My goal as Commissioner is to insure that the Common Construction Wage process is managed in a smooth, honest, fair and public manner. I want everyone that comes before these committees to be heard and for their information and data to be considered fairly. To that end, this letter outlines processes and procedures for conducting committee meetings that I suggest be followed as we move forward. I appreciate your attention to what follows.

Notice and Scheduling of Meetings

The Department of Labor ("Agency") has the expertise, personnel and commitment to insure that all meeting notices are timely published. I suggest that you work with our Agency to insure timely notice of all meetings. The Agency will publish notice of meetings on our web site and in accordance with the statutory and regulatory requirements. Public notice of the date, time and place of any meeting must be given at least forty-eight (48) hours (excluding weekends and legal holidays) before the meeting. Public notice must be given by posting a copy of the notice at the principal offices of the awarding agency or at the building where the meeting is held if there are no principal offices; and, to all news media which have requested such notice. It will be the Agency's policy to consider void all actions taken by a Committee in violation of the notice or open door rules.

The Agency is happy to be responsible for scheduling all meetings and meeting locations. Please work with us so that we can help make these administrative functions easier for everyone involved.

The Committee's Membership and Objective

Committees are not standing, but *ad hoc* committees formed by appointment as follows:

- A **labor representative** appointed by the president of the state federation of labor. Usually a representative from the AFL-CIO;
- An **industry representative** appointed by the awarding agency;
- A **representative of the Governor** appointed by the Governor. Usually a member of the Department of Labor.
- A **taxpayer representative** who pays the tax that will fund the project, who lives in the county where the project will be performed, appointed by the awarding agency; and
- A **taxpayer representative** who pays the tax that will fund the project, who lives in the county where the project will be performed, appointed by the county legislative body.

The Committee generally votes on a chair person. The Agency suggests that, since our personnel are very experienced in chairing the meetings and are familiar with the law and the processes, the Department of Labor representative serve as chair person. The Committee is however free to elect anyone as the chair person.

The Committee's objective is to:

- Meet in accordance with Indiana's Open Door Law;
- To take evidence and hear testimony from the public regarding wages paid in the county; and
- To determine, in writing, the most common wage, including fringe benefits, for each classification and level of job skill required by the project.

In doing this, the Committee must consider county specific data from the Department of Workforce Development. Generally, members of the Committee and the public may submit other data including wage data resulting from collective bargaining agreements in the county. The Committee should consider this data as well. The Committee is not obligated to consider any data not submitted at the time of its meeting.

Evidence and Testimony Considered by the Committee and Weight to be Given to Evidence

By statute, the Committee must consider the evidence of common wage submitted by the Department of Workforce Development. This evidence is usually presented to the Committee by the Agency. In addition to this evidence, the Committee may consider evidence given to the Committee by the public and other members of the Committee. It is routine for the labor representative on the Committee to submit wage evidence to the Committee. It is also typical that members of the public submit wage evidence to the Committee.

In evaluating the weight to be given to the evidence presented to the Committee, the Committee should consider whether the evidence is:

- In written form;
- Documented with sufficient supporting evidence to be considered reliable, e.g. affidavits in support, credible testimony in support;
- Detailed enough not to be simply conclusory in form; and
- Broad enough in scope to be considered regular and routinely paid in the County, not irregular or rarely paid in the County.

Oral testimony, standing alone, should not be given the same weight as documentary evidence. The Committee should feel empowered to ask questions of witnesses and to discuss and question documentary evidence in making its determination. The Committee should be careful to distinguish data regarding wages paid for residential construction as apposed to commercial, industrial and public works projects.

Standard for Determining "Common"

The Common Construction Wage statute defines "Common Construction Wage" as follows:

> [A] scale of wages for each class of work....that is not less than the common construction wage of all construction wages being paid in the county where the project is located...

The key factors to consider in applying this definition are: (1) the wage must be determined for each class of work; (2) must consider all construction wages being paid in the county; (3) the wages considered must presently be paid in the county; and, (4) only wages paid in the county where the project is located should be considered.

The Courts have interpreted the statute as well. The Indiana Appellate Court in the *Union Township* case has ruled that the "common" construction wage is:

> [T]hat which is customary, takes place daily, is widely used, or is generally known…in mathematical terms, this constitutes the mode.

When seeking to determine what the common construction wage is in the county for a given project, the Committee should look at evidence that helps it determine what is customarily paid for construction work in the county. What salaries are widely used for the given job classification. The Court's use of "mode" is instructive. The "mode" is that number in any series of numbers that appears the most often. It is not the average. Certainly it would help the Committee to know how many people for any given classification of work were actually getting paid the suggested salary in the county at that moment. Written evidence of these numbers with explanatory testimony would be best and most helpful to the Committee.

The *Union Township* case also determined that "wage" includes both the hourly wage actually paid *and* the fringes paid. This is important for the Committee to keep in mind when making its determination.

Suggested Agenda for Committee Meetings

The following agenda is suggested for all Common Construction Wage Committee meetings:

I. ELECTION OF COMMITTEE CHAIR PERSON
II. CALL TO ORDER BY COMMITTEE CHAIR PERSON
III. INTRODUCTION OF COMMITTEE MEMBERS
IV. STATEMENT OF COMMITTEE'S PURPOSE
V. OVERVIEW OF THE LAW
VI. PROJECT OVERVIEW
VII. PRESENTATION OF DATA AND TESTIMONY
    a. Indiana Workforce Development data
    b. Awarding Agency data
    c. Data from Labor Representative
    d. Data from the Public
VIII. QUESTIONS AND DISCUSSION
IX. DETERMINATION AND ADOPTION OF WAGE SCALE
    a. Determination of Job Classifications
    b. Evaluation and discussion of data
    c. Adoption of wage scale
    d. Signing of wage scale
X. CLOSING COMMENTS
XI. ADJOURNMENT

The Committee meeting should be conducted in conformance with Robert's Rules of Order. It will not normally be the Agency's role to make motions or second motions that are made. The Agency will only vote in the event of a tie. The Agency representative will take a record of the proceedings and maintain this record for six months.

Conclusion

As the Commissioner of Labor it is my duty to insure that all Common Construction Wage Committee meetings are conducted in compliance with state common and statutory law. It is my duty to insure that these meetings are conducted in a fair and even handed manner. I will audit the committees' processes and decisions with the goal of insuring fair, open, adequate processes that are in compliance with all state laws.

Please feel free to contact the Agency should you have any questions. It is our mission to, "make Indiana businesses clean and safe, and wages fair and competitive." Thank you for your attention.

Very truly yours,

Miguel R. Rivera, Sr.
Commissioner