

FOR THE CASE OF
Prevailing Wage Commission Meeting

TRANSCRIPT OF
Prevailing Wage Commission Meeting

November 17, 2014

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PREVAILING WAGE COMMISSION MEETING

November 17, 2014

9:30 a.m.

Department of Labor and Workforce Development

220 French Landing Drive

Nashville, TN 37243

Tennessee Conference Room

DEBORAH K. WATSON, RPR, CRR, LCR #446
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1 APPEARANCES:

2

CHAIRMAN BURNS PHILLIPS
3 COMMISSIONER R.T. SUMMERS
COMMISSIONER PETER HEIMBACH, JR.
4 COMMISSIONER WAYBURN CRABTREE

5

MS. SYDNE EWELL, LEGAL COUNSEL
6 MS. KIM Y. JEFFERSON, ADMINISTRATOR
MR. MARK FINKS, ASSISTANT ADMINISTRATOR

7

8

MS. CHRISTINA J. TUGMAN
Department of Labor and Workforce
9 Development

10

MR. KENT STARWALT
11 Tennessee Road Builders

12

Speaking Before the Commission:

13

MR. CHASE PENDERGRAFT
14 Executive Director, National Electrical
Contractors Association, East Tennessee
15 Chapter

16

MR. AJ PEARSON
17 Retired, National Joint Apprenticeship and
Training Committee (NJATC)

18

MR. JAMES N. STANSELL, JR.
19 Stansell Electric Company, Inc.

20

Also Present:

21

MS. CARLENE BENNETT

22

23

24

25

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1 P R O C E E D I N G S

2 MS. TUGMAN: Good morning, all.

3 I'd like to call to order the Prevailing Wage
4 Commission Meeting, November 17th, 2014, at
5 9:00 a.m., in the Tennessee Conference Room.

6 I'd like to do a roll call of all
7 the commission members. If you could, please,
8 state your name for the record.

9 COMMISSIONER SUMMERS: Robert
10 Summers.

11 COMMISSIONER HEIMBACH: Peter
12 Heimbach.

13 CHAIRMAN PHILLIPS: Burns Phillips.

14 COMMISSIONER CRABTREE: Wayburn
15 Crabtree.

16 MS. TUGMAN: Okay. Everybody is
17 present except for Mr. Wright.

18 This meeting is called to order.

19 Commissioner?

20 CHAIRMAN PHILLIPS: Okay. So
21 first, I guess we need to review and approve the
22 minutes from September 2nd.

23 Anybody here have any questions?

24 Do I hear a motion to approve?

25 COMMISSIONER CRABTREE: So I move

1 that it be approved as written.

2 CHAIRMAN PHILLIPS: So moved.

3 COMMISSIONER HEIMBACH: Second.

4 CHAIRMAN PHILLIPS: All right.

5 Christina?

6 MS. TUGMAN: We've already done the

7 conflict of interest disclosures. Does anybody

8 have anything new to declare?

9 CHAIRMAN PHILLIPS: No.

10 MS. TUGMAN: Okay. Old business,

11 we don't have any.

12 CHAIRMAN PHILLIPS: We don't have

13 any.

14 MS. TUGMAN: We're on to new

15 business.

16 CHAIRMAN PHILLIPS: New business.

17 2014 highway and bridge construction survey.

18 COMMISSIONER SUMMERS: I've looked

19 at the data, and one form jumped out at me, and I

20 asked Christina to pull it for me. It's Form

21 No. 2014-0157 from Hawkins Asphalt company.

22 I think there's an error in this.

23 I'm quite sure there is. They had one employee in

24 that quarter that worked 14,000 hours. He's

25 really a hard-working guy.

1 CHAIRMAN PHILLIPS: He certainly
2 is.

3 COMMISSIONER SUMMERS: I think that
4 there's just -- I don't know what they've done.
5 That's not the dollars. They've put Hawkins in --
6 prize put in another form -- I think it's the same
7 company or a sister company -- that was
8 appropriate. One employee worked 744 hours, the
9 other guy worked 600 hours for the quarter, which
10 is correct. But this -- what this one form did
11 was change five different classifications
12 dramatically. They had a majority of the hours in
13 five different classifications. They've made a
14 mistake on this.

15 We can do two things. I think we
16 should just reject this data as an error. We
17 can -- I think our rules say that we should let
18 them know that we're rejecting the data, and if
19 they wanted to resubmit it corrected before our
20 next meeting, they could do that. But I think we
21 have to reject this one form as error.

22 CHAIRMAN PHILLIPS: Anybody else?
23 Sounds logical to me.

24 Wayburn?

25 COMMISSIONER CRABTREE: I hate to

1 lose any data at all, but this is obviously some
2 kind of error, so . . .

3 CHAIRMAN PHILLIPS: That's clearly
4 a mistake of some sort.

5 COMMISSIONER CRABTREE: So they
6 still have the opportunity to resubmit.

7 COMMISSIONER SUMMERS: That would
8 be my recommendation is to notify them that we're
9 rejecting their data as submitted. If they would
10 like to resubmit on this one thing, even though
11 it's afterwards, if we're rejecting it -- I think
12 that we've done that before. And recalculate
13 the --

14 CHAIRMAN PHILLIPS: Do we need a
15 motion to do that?

16 COMMISSIONER SUMMERS: I think we
17 would.

18 MS. TUGMAN: Yes.

19 CHAIRMAN PHILLIPS: Okay.

20 COMMISSIONER SUMMERS: I would say
21 so.

22 COMMISSIONER HEIMBACH: I second.

23 COMMISSIONER CRABTREE: I would
24 second.

25 CHAIRMAN PHILLIPS: Wayburn

1 seconds.

2 Now, have you got what we need to
3 do in terms of contacting?

4 MS. TUGMAN: Yes. There are
5 actually four companies that we have to reject
6 their data. They were sent letters asking them if
7 they wanted to attend this meeting, to contact us
8 as soon as -- via fax. Had one company call. And
9 we had spoken previously about not being able to
10 use their data because they put it all together,
11 and they've been notified, and I would do the same
12 with this --

13 CHAIRMAN PHILLIPS: With Hawkins?
14 Okay.

15 MS. TUGMAN: -- with these as well.
16 So new information, if they want to come to the
17 December 1st meeting to -- we can do that.

18 CHAIRMAN PHILLIPS: Okay. Anything
19 else?

20 COMMISSIONER HEIMBACH: No.

21 CHAIRMAN PHILLIPS: Wayburn?

22 COMMISSIONER CRABTREE: No, sir.

23

24 CHAIRMAN PHILLIPS: Next item would
25 be: Set preliminary rates for 2015 highway and

1 bridge construction.

2 Comments, questions?

3 COMMISSIONER CRABTREE: I believe
4 that on the spreadsheet that we were sent
5 electronically, that there was some errors. I
6 didn't print it out and bring it in, but comparing
7 it to what is in the book, it looks to me like
8 what's in the book is correct.

9 CHAIRMAN PHILLIPS: You're
10 referring to this one is incorrect?

11 COMMISSIONER CRABTREE: Yes, sir, I
12 believe so. Take, for instance, that one right
13 there.

14 CHAIRMAN PHILLIPS: Yeah.

15 COMMISSIONER CRABTREE: 1710 to 21
16 is more than 6 percent.

17 CHAIRMAN PHILLIPS: Are you talking
18 about the 6 percent, or the fact that it's such a
19 significant difference?

20 Mark, this is the one we were
21 talking about.

22 MR. FINKS: Yes, sir. You're
23 talking about Classification No. 5, Class C
24 operators?

25 CHAIRMAN PHILLIPS: Right, yes.

1 MR. FINKS: The way that was
2 figured, because the change was 30.94 percent, it
3 meets criteria of Note No. 1 at the bottom that's
4 an increase of more than 15 percent over the 2014
5 prevailing wage rate; therefore, the 2015
6 prevailing wage rate survey rate minus 6 percent
7 of the current prevailing wage rate. So we took
8 6 percent of 1710 --

9 COMMISSIONER HEIMBACH: I think
10 that's a mathematical error.

11 COMMISSIONER CRABTREE: Yeah.
12 That's a \$1.03.

13 MR. FINKS: \$1.03, and then we
14 subtracted that from 2239 to get 2136.

15 COMMISSIONER CRABTREE: I thought
16 you added it to the 2014 rate.

17 COMMISSIONER HEIMBACH: Yeah, not
18 subtract it from the survey rate but add it to the
19 previous year's rate.

20 MR. FINKS: That's one of the
21 issues that the auditors discussed in our last
22 audit, our most recent audit. And they said it's
23 the survey rate plus or minus 6 percent of the
24 2014 prevailing wage rate.

25 MS. TUGMAN: There's a copy of the

1 audit, if you'd like to look at it.

2 CHAIRMAN PHILLIPS: Evidently, it
3 has been miscalculated because there was a change
4 at some point in time on how it was calculated.
5 And we have since changed that, correct, --

6 MS. TUGMAN: Yes.

7 CHAIRMAN PHILLIPS: -- just
8 recently since the audit came out? So that is
9 calculated correctly, according to the way it
10 should be, to the audit.

11 COMMISSIONER CRABTREE: I don't
12 believe that's what's in the book, then.

13 COMMISSIONER HEIMBACH: Right.
14 It's not.

15 COMMISSIONER CRABTREE: In the
16 book, you added the \$1.03 to the -- \$1.03 to the
17 current 2014 rate.

18 COMMISSIONER HEIMBACH: Which was
19 1710, so it comes out to 1813.

20 MS. JEFFERSON: And if so, we need
21 to correct that.

22 CHAIRMAN PHILLIPS: If that's a
23 calculation error, then we'll correct it.

24 COMMISSIONER SUMMERS: In any case,
25 when we reject this Hawkins Asphalt form, that

1 rate is going to dramatically change because there
2 was 70,000 hours at \$25. And that's -- that's the
3 whole reason that that rate went up 30 percent.

4 CHAIRMAN PHILLIPS: Yeah, it's
5 because of that -- this one.

6 COMMISSIONER SUMMERS: Yes.

7 So there was -- the five
8 classifications on that Hawkins Asphalt form are
9 going to dramatically change. That's No. 5 and
10 No. 6.

11 COMMISSIONER HEIMBACH: That
12 accounts for 80 -- roughly 75 to 80 percent of the
13 dollar value, so yes.

14 CHAIRMAN PHILLIPS: Yeah, that's
15 going to -- absolutely, uh-huh.

16 COMMISSIONER SUMMERS: So, like,
17 No. 6 went up 10 percent just because of them.

18 CHAIRMAN PHILLIPS: Exactly.

19 MR. FINKS: When the auditors did
20 their audit report, they said if you subtract it
21 or add it to the survey rate, the 6 percent change
22 is added or subtracted to the survey rate, so it's
23 calculated based on the previous year's prevailing
24 wage rate, but it's added or subtracted to the
25 survey rate. So the numbers are going to change

1 because of what the -- action the Commission just
2 took, but as far as with the calculations that we
3 had, it's calculated -- I believe it's calculated
4 correctly according to how the auditors asked us
5 to calculate.

6 CHAIRMAN PHILLIPS: And per the
7 statute?

8 MR. FINKS: Per the statute, yes,
9 sir.

10 CHAIRMAN PHILLIPS: The
11 calculations are correct. The figures are
12 distorted because of the Hawkins issue.

13 MR. FINKS: Yes, sir.

14 COMMISSIONER HEIMBACH: Well, the
15 percentage in the piece that was sent out is
16 incorrect because it says percentage change from
17 2014 to 2015, which would not be 6 percent.

18 MS. TUGMAN: Are you talking about
19 what's in the book right here?

20 COMMISSIONER HEIMBACH: No. What
21 was in the spreadsheet. Either that, or that
22 column heading is wrong.

23 MR. FINKS: The statute talks about
24 a 6 percent change from the survey --

25 COMMISSIONER HEIMBACH: I

1 understand what the statute says, but 21.36 from
2 1710 is not a 6 percent change from the 2014 rate
3 to the 2015 rate. It's a 6 percent reduction off
4 the survey rate.

5 MR. FINKS: Yes, sir. That is
6 correct. But that's how -- our understanding is
7 the statute reads, that's how the auditors ask us
8 to calculate. You're correct. It's more than
9 a -- more than a 6 percent change based from the
10 2014 prevailing wage rate. But, of course, that
11 may be because of the data is --

12 COMMISSIONER HEIMBACH: Is soft,
13 right.

14 CHAIRMAN PHILLIPS: Okay. Kim, so
15 what -- we have to be able to post these by when?

16 MS. JEFFERSON: December the 1st.

17 CHAIRMAN PHILLIPS: Okay.

18 MS. TUGMAN: Well, they have to be
19 set by December 1st. They're not posted until
20 January 1st of 2015.

21 CHAIRMAN PHILLIPS: Okay.

22 MS. JEFFERSON: So we have to have
23 everything we need from the Commission by December
24 the 1st.

25 MS. TUGMAN: Before. December the

1 1st is when our meeting is, and so we'd have --
2 I'll be -- except for -- I will contact these
3 companies; I will send them a letter. If they
4 choose to resubmit their data, or if they don't
5 want to resubmit their data, then, you know, I'll
6 let the Commission know before the meeting, and
7 then we'll -- we can change the rate, anything
8 like that, that needs to be changed, and then it
9 will be sent out to them. And then we will set
10 the rates December the 1st at that meeting.

11 CHAIRMAN PHILLIPS: Okay. And
12 that's not an issue getting that done?

13 MS. TUGMAN: No, not at all.

14 CHAIRMAN PHILLIPS: Okay. All
15 right.

16 Everybody good with that?

17 COMMISSIONER SUMMERS: So you will
18 send out a -- once you take the Hawkins Asphalt
19 numbers out, you will send us a revised --

20 MS. TUGMAN: Yes.

21 COMMISSIONER SUMMERS: -- calculated
22 in this same manner?

23 MS. TUGMAN: Yes, sir.

24 MS. JEFFERSON: And we can send
25 that prior to the meeting to give them an

1 opportunity to provide feedback so that we can try
2 to make sure we have accurate numbers at the
3 December 1st meeting.

4 MS. TUGMAN: Uh-huh.

5 CHAIRMAN PHILLIPS: Everybody good
6 with that?

7 COMMISSIONER HEIMBACH: Uh-huh.

8 CHAIRMAN PHILLIPS: Wayburn?

9 COMMISSIONER CRABTREE: Yes.

10 COMMISSIONER SUMMERS: And this
11 will dramatically change, also, the State average
12 increase. Instead of 5.36 percent, I would -- I
13 would imagine it's going to be more in the 2 to 3
14 percent range. I didn't do the numbering, but
15 it's going to -- when those numbers change, the
16 whole thing will change. We'll have a spreadsheet
17 to take that into account.

18 CHAIRMAN PHILLIPS: The bottom line
19 is we just want to get it right, whatever it is.

20 MS. JEFFERSON: That's fine.

21 Absolutely.

22 And also, there were questions
23 about the asterisks at the bottom because the
24 Commission actually created Note No. 1 through
25 No. 4. But the division actually formulated those

1 asterisks because we had questions about those
2 items. We wanted to receive your feedback.

3 COMMISSIONER SUMMERS: Actually, in
4 my recollection, Note No. 1 should say increase or
5 decrease, which would take the first name of -- in
6 the past, I think that we have -- when something
7 has decreased or increased more than 15 percent,
8 we've adjusted it by 6 percent.

9 MS. TUGMAN: So this would be
10 increase/decrease?

11 COMMISSIONER SUMMERS: Yes, ma'am.
12 That's to my recollection.

13 CHAIRMAN PHILLIPS: Yeah.

14 MS. TUGMAN: Okay.

15 COMMISSIONER HEIMBACH: And that
16 would be consistent with what's in Note No. 4.

17 CHAIRMAN PHILLIPS: Right.

18 COMMISSIONER HEIMBACH: That makes
19 sense.

20 So that should be increase or
21 decrease, and then also survey rate, plus or
22 minus. Is that what you're saying?

23 MS. TUGMAN: Plus or minus. Okay.

24 CHAIRMAN PHILLIPS: Yeah, it should
25 say plus or minus.

1 COMMISSIONER HEIMBACH: So it would
2 also be plus or minus 6 percent, same as the plus
3 or minus 3 percent, correct?

4 MS. JEFFERSON: Okay. Note No. 2.

5 MR. FINKS: Note No. 2 talks about
6 kind of what we were talking about before. The
7 ones with the -- the two asterisks -- the note
8 with the two asterisks is where the calculation
9 exceeds 6 percent of the 2014 prevailing wage
10 rate, but it was set at the survey rate, according
11 to statute and according to the auditor's
12 findings.

13 COMMISSIONER HEIMBACH: That would
14 make sense if you're adding or subtracting 3 to 6
15 percent off of the survey rate instead of off
16 the -- because it didn't exceed 10 percent.

17 (Discussion off the record.)

18 MS. JEFFERSON: Oh, I'm sorry.

19 I was just confirming that we were
20 doing 6 percent of last year's prevailing wage
21 rate.

22 CHAIRMAN PHILLIPS: Right.

23 MS. JEFFERSON: All right. Are
24 there any more questions about No. 2?

25 What about Note No. 3?

1 MS. TUGMAN: Are we talking about
2 Note No. 3 or the asterisk?

3 MS. JEFFERSON: Note No. 3.

4 CHAIRMAN PHILLIPS: Note No. 3.

5 MS. JEFFERSON: That's okay.

6 COMMISSIONER SUMMERS: Explain to
7 me: Like say, No. 15, we had painter/
8 sandblaster. We had four responses. Survey rate
9 was a little higher. But then we took it down. I
10 would have thought that the -- Note 3 would come
11 in there, that -- that when we get the state --

12 MS. TUGMAN: Well, what we -- in
13 these comments for plus and minus, we put how much
14 it would be plus and how much it would be minus.
15 So if you want to do plus the 5.3 percent -- which
16 is going to change, of course, when you --

17 COMMISSIONER HEIMBACH: That's
18 going to change when the average changes, so it
19 may work itself out if the averages do drop to the
20 2 or 3 percent range.

21 CHAIRMAN PHILLIPS: I think
22 wherever we are now is we're looking at some
23 figures that all of us can't even ask questions
24 about because of false assumptions. I mean, we've
25 got to get those -- an adjustment before we can

1 really see what it looks like.

2 COMMISSIONER CRABTREE: So that's
3 plus or minus 5.38 percent of the survey, not the
4 2014?

5 MS. TUGMAN: The 5.3 percent is the
6 State's.

7 MR. FINKS: Plus -- well, that one
8 was calculated based on the prevailing wage rate,
9 plus or minus 5.38 percent of the prevailing wage
10 rate added to the prevailing wage rate, because
11 the survey rate, there was insufficient responses
12 for the survey.

13 COMMISSIONER CRABTREE: Okay. So
14 that is in the 2014?

15 MR. FINKS: Yes, sir.

16 COMMISSIONER CRABTREE: Okay. Got
17 you.

18 COMMISSIONER SUMMERS: But the 5.38
19 percent is calculated off the survey, how much the
20 survey rate went up over our existing rate.

21 MR. FINKS: Yeah, how the 5.38
22 percent was calculated?

23 COMMISSIONER SUMMERS: Yeah.

24 MR. FINKS: Yes, it was calculated
25 at how much -- the average number. If you take

1 the -- let's see -- the average number of the
2 prevailing wage rate, the 2014 prevailing wage
3 rates, and average those all together and take the
4 survey rate and average those all together, the
5 prevailing -- the State change would be the survey
6 rate minus -- the average survey rate minus the
7 average prevailing wage rate divided by the
8 average prevailing wage rate.

9 COMMISSIONER SUMMERS: That is
10 hours adjusted, so it's hours times rates is a --
11 it's not just a numerical average of the . . .

12 COMMISSIONER CRABTREE: It's a
13 weighted average.

14 COMMISSIONER HEIMBACH: It's a
15 weighted average of hours.

16 MR. FINKS: I'm not sure about
17 that.

18 COMMISSIONER SUMMERS: It should be
19 a weighted average rather than an arithmetic
20 average.

21 MS. TUGMAN: I think that's how
22 they have it -- I mean, that's how we have it in
23 the system.

24 COMMISSIONER SUMMERS: I think it
25 is, but I just wanted to make sure.

1 COMMISSIONER HEIMBACH: Just total
2 number of dollars divided by total number of
3 hours, and then comparison.

4 MS. JEFFERSON: We'll verify. We
5 need to -- because we had to make some changes due
6 to the audit, you know, working with IT to get the
7 formulas correct. So we'll go back and verify.
8 Mark and I had talked about that earlier, and
9 "weighted" actually came up, and so we're supposed
10 to verify that. But we'll have that verified the
11 next time.

12 COMMISSIONER CRABTREE: Along that
13 same line, whenever you say the average -- survey
14 average, are you averaging in those that had fewer
15 than five responses into that average?

16 MS. TUGMAN: Yes.

17 MR. FINKS: Yes, sir.

18 COMMISSIONER CRABTREE: That seems
19 kind of contradictory there. You say on the one
20 hand there that if there are fewer than five
21 responses, then we're going to not consider it,
22 but yet we're using it in our average. Kind of
23 seems like we're . . .

24 CHAIRMAN PHILLIPS: That makes
25 sense to me.

1 MS. TUGMAN: We can take them out.

2 COMMISSIONER CRABTREE: It's
3 something we need to consider, whether or
4 not . . .

5 COMMISSIONER HEIMBACH: I can see
6 your point, but when you consider them in the
7 total number of hours when you're not -- when
8 you're looking at it, indiscriminate of class,
9 that may not matter arithmetically. But I see
10 what you're saying, that if you're calculating it
11 per class, it may skew it if those limited number
12 of responses are too far off.

13 COMMISSIONER CRABTREE: If we're
14 using a weighted average like we should be, it
15 probably would be a lot less, but if you're using
16 a numerical average, that could really skew it.

17 COMMISSIONER HEIMBACH: Right.

18 MS. JEFFERSON: Okay. We will make
19 sure that we're using a weighted average.

20 As far as the subtracting the
21 nonresponses, we do want some direction. Do
22 you-all want us to remove those from the average,
23 or do you want those in and included?

24 CHAIRMAN PHILLIPS: Is that
25 something that we determine, or is there some kind

1 of --

2 MS. JEFFERSON: I think -- there's
3 nothing in the statute.

4 MS. TUGMAN: No, you -- the
5 Commission has the right to determine that. I
6 mean, they can completely -- according to the law.

7 MS. EWELL: How do you rule you may
8 exclude the data?

9 MS. TUGMAN: Yeah, uh-huh.

10 CHAIRMAN PHILLIPS: So what would
11 it look like?

12 COMMISSIONER CRABTREE: I think it
13 would impact --

14 CHAIRMAN PHILLIPS: Yeah, I'd like
15 to see what it looks like with and without.

16 COMMISSIONER HEIMBACH: It's 13 --
17 if it's only the ones that are less than 5, it's
18 only 13 responses out of the total survey. I'm
19 going to say it probably is insignificant one way
20 or the other, so I would agree with leaving them
21 out.

22 MS. TUGMAN: If we leave them out,
23 we're going to have to send them a letter letting
24 them know we're not including their data, so
25 that's going to be 13 companies that might want to

1 come --

2 COMMISSIONER HEIMBACH: Well, it
3 would only be excluding their data from the
4 calculation of the weighted average. You're -- by
5 nature of the fact that they have -- they're in a
6 category that has less than five responses, their
7 data is being excluded from the survey anyway.

8 MS. TUGMAN: Okay.

9 COMMISSIONER SUMMERS: I don't
10 think we've ever sent -- contacted the people that
11 we rejected because of insufficient responses.

12 MS. TUGMAN: I don't think we have
13 either.

14 CHAIRMAN PHILLIPS: If we're not
15 required, then why would we?

16 MS. TUGMAN: Okay. I'm just making
17 sure we have all of our I's dotted and T's
18 crossed.

19 COMMISSIONER HEIMBACH: I would
20 exclude them, as suggested, from the weighted
21 average.

22 CHAIRMAN PHILLIPS: Yeah, I think
23 that's good.

24 MS. TUGMAN: Is there a motion that
25 needs to be made?

1 MS. JEFFERSON: Yes.

2 CHAIRMAN PHILLIPS: Okay. We'll
3 make a motion.

4 COMMISSIONER CRABTREE: I move that
5 the responses that are fewer than five be excluded
6 from the weighted average for purposes of
7 calculating the overall weighted average in the
8 survey.

9 COMMISSIONER HEIMBACH: Second.

10 CHAIRMAN PHILLIPS: Okay. Got
11 that, Christina?

12 MS. TUGMAN: (Nodding.)

13 Okay. So for setting the
14 preliminary rates -- of course, we do all the
15 preparations, contact these companies before we
16 even make a motion to accept these, so we'll do
17 that first. Okay. I'm just making sure.

18 COMMISSIONER SUMMERS: I think we
19 need to make a motion to direct the staff to
20 calculate the preliminary rates according to what
21 we've said, rejecting Hawkins Asphalt, making
22 these other changes, and setting the preliminary
23 rates. And then we will set them finally on
24 December -- December 1. So I would --

25 CHAIRMAN PHILLIPS: So we would see

1 everything adjusted --

2 COMMISSIONER SUMMERS: I would make
3 that motion.

4 CHAIRMAN PHILLIPS: Okay. Second?

5 COMMISSIONER CRABTREE: (Nodding.)

6 CHAIRMAN PHILLIPS: And Wayburn
7 seconds that.

8

9 MS. TUGMAN: Okay. We -- for
10 additional business, we do have somebody who wants
11 to come up and speak with the Commission.
12 Mr. Pendergraft, are you ready, and your guest?

13 MR. PENDERGRAFT: Yes.

14 CHAIRMAN PHILLIPS: State your
15 name.

16 MR. PENDERGRAFT: Sure. My name is
17 Chase Pendergraft, and I'm the executive director
18 for the East Tennessee Chapter of NECA, which is
19 the National Electrical Contractors Association,
20 and I'll try to keep it as brief as I can.

21 Our chapter has been in East
22 Tennessee since 1957, and we have a number of
23 members, from electrical contractors to electrical
24 suppliers. Our contractor members perform
25 electrical work, from the dentist's office to TVA

1 nuclear facilities, so a variety of work, and some
2 of which do perform work under the highway
3 construction.

4 And as our association has tried to
5 familiarize ourselves with the State prevailing
6 wage rules and Davis-Bacon rules and educating
7 ourselves with that, we discovered or learned of a
8 classification that's used for highway
9 construction: specifically, the skilled labor pipe
10 fitter.

11 And we're not here to -- you know, I
12 guess we're here mainly just for -- see if we can
13 provide some education, some assistance. And
14 maybe we can participate in a way, however you
15 deem necessary, about this classification where
16 the electrician trade is a very high-tech,
17 high-skilled, safety-oriented trade. We think
18 it's one of the higher skilled, more knowledgeable
19 crafts, other than construction. I can't speak
20 for the other trades, but I can speak for
21 electricians.

22 But our specific concern is with the
23 skilled labor pipe fitter. And under the scope of
24 work that is allowed, it says that the skilled
25 labor pipe fitter can lay, connect, inspect, and

1 test underground telephone and electrical ducts --
2 electric ducts, or other utility manufacturers.

3 And it lays the -- defines the type of
4 pipe materials: plastic, clay, steel. And
5 specifically the one that we're concerned with is
6 conduit. And in our eyes, conduit is a pretty --
7 conduit laying, bending, testing is highly skilled
8 in our trade, and we're concerned that taking that
9 out of the hands of the electrician or the
10 apprentices learning under the electrician could
11 be a risk to safety, quality, and so on. And so
12 we just wanted to bring that to your attention.

13 And I brought along a colleague of mine,
14 AJ Pearson, and I'll let him tell you a little bit
15 more about the skills and knowledge and education
16 that goes in conduit bending and testing, because
17 he's a lot more knowledgeable than I am.

18 But before I let AJ talk, I just want
19 to -- he won't tell you all this, but AJ is the
20 retired executive director for the national
21 electrical apprenticeship training committee. And
22 they write curriculum for certified apprenticeship
23 programs, Department of Labor certified. AJ
24 worked there for many, many years, and he is from
25 Tennessee and retired here, and -- go Vols -- and

1 we're blessed to have him in our industry.

2 But I did bring AJ along because he
3 could definitely lay out a better picture than I
4 can. So with that, Ms. Tugman, I'd like to allow
5 Mr. Pearson to kind of fill in a little bit.

6 So AJ, if you don't mind.

7 MR. PEARSON: Chase, thank you.

8 Thank you, folks. I appreciate you
9 giving us some time, and I am glad to represent
10 our industry, and I am proud of those Vols.

11 The National Joint Apprenticeship
12 and Training Committee was, of course, working
13 closely with the Department of Labor over the
14 years, many years; and in the late Nineties when
15 the national skill standards were being
16 established, the National Electrical Contractors
17 Association competed for a grant to determine the
18 duties and skills and specifics of the trade with
19 the Department of Labor.

20 NECA -- and I oversaw that study.
21 Didn't direct it; oversaw it. We contracted with
22 the -- after we -- it was awarded the grant, and I
23 don't recall specifically. I think the grant was
24 probably about \$50,000 that we applied for.
25 Others that applied wanted \$500,000, this kind of

1 thing, but we said we're going to contribute to
2 this, too. And our NJATC, we probably invested in
3 excess of \$500,000 in that study. And the
4 Department of Labor even said, "Hey, we can match
5 some of these funds for you. We're glad to do it.
6 It's our trade, it's our industry."

7 And every year that NJATC, NECA,
8 contractors, contribute in excess of \$100 million
9 a year to invest in training for apprentices and
10 journeymen skill and improvement training. So we
11 didn't -- we wasn't anxious to get the money.

12 But we also had independent
13 contractors, nonunion contractors, that
14 participated in some of the meetings we had with
15 that. We felt that was important, critical. And
16 the Department of Labor wanted that as well.

17 So we contracted then with the American
18 Institutes for Research, who is well-known; write
19 more job descriptions, doing more industrial
20 psychology work than any group in the country,
21 perhaps.

22 Well, they will tell you that a good
23 sampling to determine job descriptions and things
24 should -- you need a sample of at least 50. We
25 had over 2800 people participating in this study,

1 and that was from probably every state. We had
2 some number of journeymen randomly picked,
3 journeyman apprentices, instructors in our
4 program, and directors of training from the
5 various programs.

6 2800 and some surveys were made. Job
7 descriptions were written. They were recorded
8 with the Department of Labor. Conduit bending --
9 "conduit fabrication," we referred to it -- is the
10 work -- clearly the work of an electrician. And
11 that study showed -- they looked -- with that
12 survey, they looked to see, establish the job
13 duties, determine those job duties, look at the
14 frequency of how often they performed those duties
15 and the importance of it, rated anywhere from a
16 zero to a five.

17 Well, you'll find in that study -- and I
18 wish I had brought 10 or 12 copies of them. I'll
19 leave that with you and I'll get you whatever you
20 might want or have an interest in for the benefit
21 of our statement.

22 But it clearly says that -- that the
23 electricians dig the ditches; sometimes they're
24 dug for them. But they lay them out, they dig the
25 ditches, they lay, they prep. They get the racks

1 made, the supports properly made for laying the
2 conduit, installing the conduit, fabricating it to
3 specific codes and standards.

4 I can tell you -- I don't have it with
5 me; should to bring it up, I suppose. But I have
6 seen photographs and I've actually seen the
7 conduits that have been dug up that was actually,
8 as opposed to being bent and centrically or to the
9 proper radius, that were bent on the back of a
10 backhoe truck or heated with the torch hot enough
11 to bend it and destroying the integrity of the
12 conduit.

13 So I'm not suggesting that anyone can't
14 learn to do that. I think I can make incisions
15 for open heart surgery, but you don't want me
16 doing it, and you dang sure don't want me in when
17 I get beyond that point.

18 But this study is real concise, precise,
19 and it was used with the Department of Labor in
20 establishing those job descriptions. It's really
21 only reaffirmed the work that -- but even when you
22 look at one in here for traffic signal --
23 planning, installing raceway systems: 97 percent
24 reported that they did that daily.

25 You get over here to installing and

1 repairing traffic signals, outdoor lighting, and
2 outdoor power feeders, 71 percent of those people
3 indicated they had done that work occasionally.
4 Some of these things are daily, they're doing it
5 every day; sometimes occasionally.

6 Personally acquainted with the
7 contractor -- work with him weekly -- in Knoxville
8 that's doing this work every day in traffic and
9 lighting, outdoor lighting, and stuff.

10 And it's clearly, in my reading, my
11 study and my many years of experience with working
12 industry and with the Department of Labor on this,
13 that conduit fabrication, conduit installation,
14 getting it done right -- right the first time, we
15 claim, on budget, and it's the work of an
16 electrician.

17 And I think to fragment trades -- folks,
18 I mean this from the bottom of my heart: The
19 dignity of the worker is going to hades in this
20 country. I had 300 and some people tell me, up
21 till January of this year, that they're going to
22 apply for apprenticeship. By the time they made
23 application, it was actually under 100.

24 There's pride in being able to do any
25 work -- carpenter work, electrical work,

1 whatever -- and I don't think fragmenting it and
2 dissecting and bisecting is good for any trade,
3 any profession.

4 And it is a profession. Not everybody
5 can be an electrician. Not everybody can be a
6 heart surgeon. It takes certain KSAs --
7 knowledge, skills, and abilities -- to do that.

8 We even went on from this study and
9 developed an aptitude test because of one the
10 Department of Labor had used for years, the GATB
11 test, had become invalid. Said, "If you're going
12 to use a tool for screening applicants" -- and I
13 agree with this 100 percent -- "then that should
14 be validated."

15 We validated the importance of persons,
16 applicants, being able to read at a certain level,
17 perform certain math functions in order to succeed
18 in the trade. The predictability of this study
19 was .98. 1 is excellent. 1 is it. .98
20 predictability on all this stuff that we put
21 together for this job description.

22 So that's -- let's just protect any
23 worker and every worker. Anybody can learn to
24 bend conduit -- no, no. Most people can learn to
25 bend conduit, but it needs proper training. It's

1 not just -- and I hear this all -- "Oh, anybody
2 can screw a pipe together."

3 Well, there's more to it than screwing
4 the pipe together. If that telephone conduit is
5 not bent on a 48-inch radius, we ask the people
6 that was supposed to know, "Why do you think they
7 have that 48-inch radius?"

8 And the response was, "Well, it's
9 because that's what the specs say."

10 And I agree you have to go by the specs,
11 but why do you think, then, it's written into the
12 specs? Well, if it's not, if it's too short, it
13 will actually blow out that cable. The
14 communication to signals and stuff can actually
15 blow out the -- there's reasons for this. We
16 study this. We spend 1,000 hours in classroom
17 training and 5 years of schooling and a minimum of
18 8,000 hours to learn to do this.

19 And I promise you that there's a good
20 2,000 hours -- at least 2,000 hours, possibly
21 more. But raceways, conduits, conduit,
22 fabrication, installation, that we have two
23 sessions -- two sections in our curriculum. First
24 year, we have Conduit Bending 1, Conduit 2, 3, and
25 then we don't stop at that.

1 It's critical to this trade. And it's
2 important that conduits be properly selected,
3 properly installed. And it ought to be installed
4 with the class that's been determined to have that
5 responsibility.

6 I thank you, and I apologize. I want to
7 leave this one with you, this one copy of this.
8 And if you want more of them, we'll be obliged to
9 furnish them to you.

10 Thank you very much.

11 CHAIRMAN PHILLIPS: I have a
12 question, and forgive my ignorance. So there are
13 pipe fitters, and then there are . . .

14 MR. PEARSON: Well, this is pipe
15 layers they're referring to, I think.

16 CHAIRMAN PHILLIPS: And again,
17 forgive my ignorance, but I don't know. So you've
18 got pipe layers and conduit. Where do the
19 individuals come from to move into this
20 occupation? What is their background in terms of
21 education and training?

22 MR. PEARSON: Into our trade? A
23 lot of people -- a lot of people today come from
24 the high schools. They're required to be a high
25 school graduate, have your algebra, and to be able

1 to meet many minimum math and reading skills to
2 enter into the trade.

3 CHAIRMAN PHILLIPS: Major cognitive
4 skills. Right.

5 MR. PEARSON: All of our
6 apprentices -- in '95, I worked with Pellissippi
7 State. A good friend of mine was over there,
8 Chuck Wright. He's still there. That -- I wanted
9 to get college credit for apprentices.

10 And backing up just a little bit
11 before that, we were the first craft in 1990, I
12 think, with the American Council of -- what is it?
13 ACE. American Council on Education. They
14 recognized our apprenticeship, and they award,
15 currently, 57 semester hours of recommended
16 credit.

17 So I wanted more than a
18 recommendation. We went to Pellissippi.
19 Pellissippi -- now, all of our apprentices in
20 Knoxville and Oak Ridge are enrolled with
21 Pellissippi. They receive 45 semester hours of
22 college credit from Pellissippi.

23 In 2001, a few years before I
24 retired, I went to Middle Tennessee State. We
25 signed an agreement there, the National did, for

1 individuals then that finish -- complete their
2 associate degree at Pellissippi, and transfer to
3 Middle Tennessee State, earn a four-year degree in
4 construction management.

5 We have two or three people in
6 Oak Ridge that's already got their four-year
7 degree, and a couple or three in Knoxville that's
8 got it, at least two or three in Knoxville. And
9 we're not the only one doing the college credit.
10 I know the Chattanooga JATC does that, too.

11 We have probably 100 people since
12 about 2008 that have earned an associate degree.
13 And I think that adds to the integrity of the
14 craft and the trade.

15 But yeah, a pipe fitter --
16 pipe fitter, pipe layer, I mean, sometimes we, you
17 know, call things -- people by different names,
18 but pipe fitters have certain jurisdiction over
19 gas/water lines, this kind of thing. Electricians
20 are doing conduits and duct banks that may be PVC,
21 plastic pipes, or rigid metal conduits, steel
22 conduits. That's clearly, clearly, clearly the
23 work of the electricians.

24 CHAIRMAN PHILLIPS: And again,
25 forgive me. You know, my interest, beyond what

1 we're talking about here in this department, is
2 labor and workforce development. Okay? So what
3 we're focused on is workforce development. So I'm
4 kind of getting outside the parameters what we're
5 talking about here. But this is very interesting
6 to me, so forgive my questions if they seem a
7 little strange.

8 It's very important to us to
9 understand the pathway somebody takes for any
10 occupation, any profession, and that's why I was
11 trying to educate myself, as pointed out by the
12 young man.

13 MR. PEARSON: Some of the programs
14 do things currently. Currently, we -- we
15 announced, November the 1st, just for example, in
16 Knoxville. I work with both the Knoxville and the
17 Oak Ridge program and work a little bit with the
18 Y-12 program in Oak Ridge, but we announced on
19 November the 1st: Here's twelve dates in January
20 that you can register to come attend an
21 orientation application session.

22 And at that time, we go over the
23 information, give them an overview of the program.
24 They can read on our website about it as well.

25 But they come, then, in January and

1 make application. We schedule them then for the
2 aptitude test. If they qualify on the aptitude
3 test or qualify based on previous experience,
4 they've got 4,000 hours, and we can waive that but
5 still give them an interview.

6 Then we conduct an oral interview.
7 Six people -- three labor, three management
8 people -- sit around the table. I introduced the
9 candidate, one at a time, to them, and they spend
10 usually about 15 minutes. But -- and they've got
11 some overview of what we're going to expect in
12 there. They tell us about their background and
13 try to demonstrate their interest.

14 Those six individuals have --
15 individually evaluate them, give me their results
16 at the end of each 15-minute session or whatever,
17 then we enter those into the computer. And if
18 we've interviewed 200 people, at the end of that,
19 after all are interviewed, then those are ranked 1
20 through 200, and then we're prepared to offer 35
21 positions like we did this year.

22 35 positions: Five people who had
23 just interviewed a few weeks before turned it
24 down. Two failed drug tests. Our policy is one
25 and done. And safety is critical to us.

1 And so then those people then do a
2 little more orientation, sign indenture forms. We
3 register them through the Department of Labor, and
4 they begin their related training, classroom
5 training at night two nights a week, and work 40
6 hours on the job, get paid. Earn about \$175,000
7 over five years, probably, and have 45 semester
8 hours of college credit.

9 Dignity in the worker is critical,
10 important. Especially we see -- when so many of
11 them are going on and getting that associate
12 degree, and a few even went on, getting their
13 four-year degree from it. But it's . . .

14 CHAIRMAN PHILLIPS: Very
15 interesting. And I don't mean to take up a -- you
16 know, this commission's time with that, but I'd
17 like to speak with you further about that in a
18 different capacity.

19 THE WITNESS: I'd love to do that.

20 CHAIRMAN PHILLIPS: Sorry, Kim. I
21 got off.

22 MS. JEFFERSON: No.

23 I wanted to ask a question, if
24 that's okay. So we're trying to actually transfer
25 these existing employees from one classification

1 to another. Is that why we're here today?

2 MR. PEARSON: Saying that those
3 people, if they're not classified as an
4 electrician apprentice, properly registered with
5 the Department of Labor -- we register all of ours
6 with the BAT here in this state. We're a BAT
7 state, not an SAC state.

8 So all of our apprentices
9 throughout the IBW, NECA programs in this state --
10 Memphis, Knoxville, Nashville, Memphis,
11 Oak Ridge -- they're registered with the
12 Department of Labor and work on a wage-an-hour
13 job. You have to be, as you know, a skilled
14 journeyman, classified as a journeyman, or a
15 registered -- indentured and registered apprentice
16 with the Department of Labor; otherwise, you pay
17 them journeyman's pay.

18 It's not the first time we see
19 people how we get this done, but we'll call it
20 this and we'll call it that.

21 I really am confused, and I'm sure
22 you've got answers for it. I'm not asking you
23 questions. It's not my place to do that. But I
24 don't know how you take a piece of an established
25 trade and give it another classification.

1 COMMISSIONER SUMMERS: And you have
2 to understand: You're hearing one side here.
3 You're only hearing one side of the issue right
4 here.

5 MR. PENDERGRAFT: And to elaborate,
6 we're not wanting to change classifications.
7 We're just wanting to specify that that electrical
8 work that is allowed by the State of Tennessee for
9 skilled laborers to do be put back into the
10 responsibility of the electrician and the
11 electrical apprentice.

12 COMMISSIONER CRABTREE: Was it
13 there before? You said "put it back."

14 MR. PENDERGRAFT: Well, I don't
15 know when the change occurred or when it took
16 place. I know that under -- nobody likes the
17 Federal Government telling us what to do, but
18 under Department of Labor, Davis-Bacon rules, that
19 their skilled labor is not allowed to do that work
20 for those types of projects, and I don't know what
21 the other states do. But in Tennessee --

22 COMMISSIONER CRABTREE: But it
23 never was -- the way it reads now is the way that
24 it's always read, as far as we know? That's not
25 something that was changed back when --

1 MR. PENDERGRAFT: I don't know the
2 history of it.

3 COMMISSIONER CRABTREE: -- when the
4 crafts were rewritten a few years ago?

5 COMMISSIONER SUMMERS: No.

6 MS. JEFFERSON: So the difference
7 in the rates -- if we're looking at skilled labor,
8 I mean, we realize that these rates are incorrect.
9 But just looking at our information here, if you
10 just take a look at, for instance, the survey rate
11 for skilled labor, 15.35, versus the electrician
12 rate which is 24.20, so that means there is a
13 significant increase. So I can understand why
14 someone would want to be an electrician versus a
15 skilled laborer.

16 So what is the other argument,
17 Mr. Summers? You said that this --

18 COMMISSIONER SUMMERS: Well, our
19 company has put in, in the last two or three
20 years, I don't know how many miles of conduit.
21 Our pipe layers lay gas pipe and weld it up, lay
22 water pipe, lay sanitary sewer pipe, and they lay
23 conduit. And he says our folks wouldn't be
24 qualified to lay conduit, but you take a conduit
25 bank of six or nine pieces of pipe, and you put it

1 in, and you're putting in 3 miles of that.

2 Our folks are capable of doing
3 that, and we do it every day. If they can weld
4 gas pipe and water pipe and test it, I think they
5 can lay conduit, plastic conduit for telephone
6 lines, electrical lines, cable lines.

7 What we're talking about is
8 underneath the road, on the side of the road when
9 we're doing utility work in connection with a
10 widening job. And our folks are totally capable
11 of doing that. And they are pipe layers, which is
12 a skilled labor job.

13 Same guys lay waterlines. You want
14 them to be installed properly just like you want a
15 natural gas line to be installed properly,
16 so . . .

17 I can understand why they would
18 rather have electricians doing this work. And as
19 far as pulling the conduit -- I mean, pulling the
20 wire inside the conduit and hooking it up and
21 everything like that, that is obviously
22 electricians, obviously. But laying the conduit,
23 I don't think, is.

24 And in our -- in the road building
25 industry, is that it's not and never has been.

1 MR. PEARSON: I'm curious to know
2 how the people would get their training. I think
3 belittling any craft, any trade -- your workers,
4 our workers -- I think is -- I think it's a
5 disgrace and a shame. You've got -- we've got
6 people that would -- I call some of the -- not
7 this. Certainly not you. I don't mean that.

8 But I think people just looking for
9 cheaper, and cheaper ain't always better. I look
10 at our competition's training, look at it all the
11 time. I evaluate some of the -- many of the
12 programs coming out of some of these programs that
13 have a very difficult time coping with first-year
14 material. I just don't think you ought to nitpick
15 and choose, pick and choose, and do that just for
16 the purpose of getting it done with cheaper labor
17 costs. I think it belittles the worker.

18 COMMISSIONER HEIMBACH: What do you
19 see as the difference between bending a white
20 schedule 40 drain waste -- drain waste bent pipe
21 versus a schedule 40 gray conduit?

22 MR. PEARSON: I don't know that --
23 don't know that there would be a lot of difference
24 in your calculations and things that -- but
25 experience, you learn by doing. You learn by

1 doing through meaningful repetition. I can hire
2 people off the street, as he can, or as anyone
3 can, and get them to -- "Here, screw this pipe
4 together. Just screw it together. Somebody will
5 tell you how to do this."

6 I ain't into "monkey see, monkey
7 do," and I don't think we should be. We should be
8 about training people to skill levels that allow
9 them to have dignity in life.

10 COMMISSIONER HEIMBACH: All right.

11 MR. PEARSON: And in their work,
12 pride.

13 COMMISSIONER HEIMBACH: I guess I'm
14 like Mr. Summers. I see the difference between
15 what goes in the pipe versus putting the pipe
16 together itself more than I see a difference
17 between assembling two different kinds of pipe.

18 THE WITNESS: Well, it can be
19 critical. I've seen up to 48-inch radius --
20 actually, the last job I worked on is, I left
21 teaching at UT and went back to work with the
22 trade as an electrical superintendent. I actually
23 saw a couple of guys that I didn't think they were
24 very-well trained. I actually think they quit the
25 job, so we have something that -- I think they

1 actually quit the job. That 48-inch radius sticks
2 to me because it was telephone cable, and it has
3 to be bent to that minimum radius. And I think
4 they actually quit because they maybe didn't want
5 to admit that they didn't know how to do it.

6 Training is important for any
7 worker, any job.

8 COMMISSIONER HEIMBACH: I would
9 have the same objection to a person bending a
10 drain waste bent pipe with a backhoe and a torch
11 as I would a conduit, so I think the same level of
12 skill is required.

13 MR. PEARSON: We had pictures of it
14 that it happened.

15 COMMISSIONER HEIMBACH: I think
16 your point: The bending radius, because of the
17 pulling the wire through rather than the -- than
18 any fluid going through a pipe, does make a slight
19 difference, but I don't know that it makes enough
20 of a difference to --

21 MR. PEARSON: No, I think you could
22 take a skilled electrician and teach them to do a
23 water pipe. I think you could take the
24 pipe fitter and teach him to do conduit, but the
25 identity of the trade, there's a lot of pride in

1 that -- should be. Afraid we destroy it.

2 COMMISSIONER HEIMBACH: Are we
3 making any decision today, or are we just
4 hearing --

5 CHAIRMAN PHILLIPS: I think we're
6 just hearing today.

7 MR. PEARSON: How long is the --
8 may I ask: Anybody know how long have we had a
9 pipe layer as a craft, as a trade?

10 COMMISSIONER SUMMERS: It's in the
11 original law, which was, man, whenever that was
12 written. I don't know, but it's been a long time.

13 THE WITNESS: I honestly didn't
14 know. But how does it -- how does the prevailing
15 rate, the job description at the Department of
16 Labor not supersede that? If there are Federal
17 monies involved, how would it not -- how would the
18 Federal not supersede that?

19 COMMISSIONER CRABTREE: I read
20 through that letter, and I was kind of in
21 agreement with what the letter was saying till I
22 got to that preemption part, and I got over my
23 head real quick there, I got into that preemption
24 stuff. I think TDOT complies with that in that we
25 pay the higher of the two wage rates whenever both

1 Federal and State rates are in the same contract,
2 but then you start extending that out to the
3 description of the different crafts. I got over
4 my head right there. I don't know.

5 MR. PEARSON: I know if I have a --
6 I can take a person that -- that's not a
7 registered apprentice; maybe if you had a
8 pre-apprenticeship-type thing. If I had them on
9 the job -- on a job where there was state or
10 prevailing rate, and that individual was not
11 properly registered with the BAT in this state and
12 the Department of Labor, or was not a skilled
13 craftsman, they would have to pay that person --
14 if they had been paying them 7 or 8 bucks, they've
15 got to now pay them the journeyman's rate.

16 COMMISSIONER SUMMERS: You're
17 talking about apples and oranges. Our
18 classifications, our rates, are all approved
19 through the -- or submitted through the -- to the
20 Federal Highway Administration, Federal Department
21 of Labor. They agree with our rates and our
22 classifications. We're not talking about vertical
23 building. We're talking about horizontal
24 building. We're talking about roads and bridges.

25 So your classifications do not

1 apply to the highway. And they just -- they just
2 don't.

3 COMMISSIONER CRABTREE: That's
4 where I kind of broke down trying to understand --

5 MR. PENDERGRAFT: There is no
6 electrician, electrical apprentice classification
7 under the highway construction; is that right?

8 COMMISSIONER CRABTREE: I'm not
9 agreeing or disagreeing. I just didn't understand
10 it.

11 MS. JEFFERSON: And for the
12 interest of time, we'll need to move on.

13 So are you-all going to consider
14 this today and just consider it until the next
15 meeting?

16 CHAIRMAN PHILLIPS: I mean, these
17 gentlemen have far more knowledge. I mean, I
18 don't have a background in this, so --

19 MR. PEARSON: If I may: Installing
20 and repairing traffic signals, outdoor lighting
21 and outdoor power feeders, 71 percent of the
22 electrical, which means at least 10 percent of
23 them had to be doing that, and they're doing that
24 work occasionally.

25 CHAIRMAN PHILLIPS: What I think we

1 should do is take what information we have, and I
2 need to educate just a little bit more, and then
3 we'll take it up the next time.

4 COMMISSIONER SUMMERS: There's a --
5 Mr. Stansell, do you want to speak to the
6 Commission or --

7 MR. STANSELL: If you'd like for me
8 to, I would.

9 CHAIRMAN PHILLIPS: Sure.

10 COMMISSIONER SUMMERS: He's a
11 Tennessee electrical contractor that does signal
12 work.

13 CHAIRMAN PHILLIPS: Absolutely. If
14 he would like to, certainly. More information is
15 better.

16 MR. PENDERGRAFT: Thank you, very
17 much. We appreciate the opportunity.

18 MR. STANSELL: My name is James
19 Stansell, Jr. I'm an electrical contractor in
20 Nashville, Tennessee, and we do highway electrical
21 construction from Memphis to Johnson City.

22 We have -- we have an
23 apprenticeship program in our company, and we're
24 registered with the Department of Labor. And
25 whenever anybody is doing electrical work, if --

1 if they're doing electrical work, they have to
2 either be a registered apprentice with the
3 Department of Labor and would have to approve
4 that, and then they -- if they're not, and they
5 do -- someone does some electrical work, they're
6 paid the electrical scale, just like he said.

7 Anybody that does a job and a
8 classification, they're paid that rate.

9 Just to talk about the installation
10 of conduit, it's -- we use electricians, skilled
11 laborers. People that are trained to do this, we
12 use them. And it's inspected, it's supervised by
13 an electrician, and we -- we do -- it's -- I view
14 this as a sort of a claiming of work, is what
15 these gentlemen were saying.

16 And it's just like the pouring of
17 the concrete. If you have to have an electrician
18 form and pour concrete, generally they're not
19 trained like that in the electrical apprenticeship
20 program. We have people in our company that
21 that's what they do all day every day is form and
22 pour concrete. But yet, if it's for a traffic
23 signal, I would think that they would want to
24 claim that work for the electricians.

25 So we would have electricians out

1 driving backhoes, trenchers, putting in the
2 conduit, operating the cranes to raise the
3 lighting poles and everything else. And that's
4 not the way we operate. We separate it up into
5 classifications of workers. And there's always an
6 electrician when there's electrical work being
7 done. That's what we do.

8 CHAIRMAN PHILLIPS: Again, I don't
9 have the background that these gentlemen do.
10 We're not talking about whether -- it's not an
11 issue of pay. If somebody does the work, they are
12 paid accordingly, correct?

13 MR. STANSELL: Yes.

14 CHAIRMAN PHILLIPS: So it's really
15 more of a matter of, as the previous gentlemen
16 said, dignity in what they do, but it's not a
17 matter of pay. If somebody is doing that type of
18 work -- is that right -- they're getting paid for
19 that now regardless?

20 MR. STANSELL: Yes.

21 So I would contend that the -- to
22 wrap all types of work that have anything to do
23 with an end product that has electricity involved
24 with it, to say that an electrician has to do it,
25 that's what I'm hearing. And if I were -- if I

1 were trying to protect people as electricians and
2 have them do work, I might go the same way, but
3 I've -- in my career, I have done it both ways.

4 And it really boils down to a union
5 issue.

6 MR. PEARSON: No.

7 MR. STANSELL: Well, it was a union
8 issue with my company. I'll put it that way. But
9 I don't want to get into a contest about that.

10 CHAIRMAN PHILLIPS: No, we don't.

11 COMMISSIONER SUMMERS: Thank you.

12 MS. JEFFERSON: Thank you.

13 CHAIRMAN PHILLIPS: Okay. Do
14 you-all have any comments?

15 COMMISSIONER SUMMERS: This would
16 be a major, major change, and I think --
17 personally, I think that we would have to go back
18 through the rule-making process to change
19 classifications; is that right?

20 MS. EWELL: Correct.

21 COMMISSIONER SUMMERS: She's real
22 quiet over here, but she'll tell you what she
23 knows.

24 But I think this would be a major
25 thing if we ever tried to change this. We'd have

1 to go through the rules and . . .

2 CHAIRMAN PHILLIPS: I agree,
3 because it's not really a pay -- the issue is not
4 pay.

5 COMMISSIONER HEIMBACH: There is an
6 issue of pay to it, because as I understand it
7 right now, the wire that's run through it is run
8 by an electrician, which is at \$24 an hour, plus
9 or minus. The conduit itself is laid by a skilled
10 laborer, which is \$15 an hour under the --

11 COMMISSIONER CRABTREE: Well,
12 Mr. Summers taught me that's true, but I've asked
13 other people, and at least one has told me that
14 they dig the trench and put the bedding in, and
15 the electrician comes and installs the conduit,
16 and the backhoe operator covers it up.

17 COMMISSIONER HEIMBACH: By the
18 prevailing wage law, they're allowed to exceed;
19 they're just not allowed to be less than. So
20 there would be nothing that would prevent someone
21 of a greater classification that is properly
22 qualified and trained to install it. And if an
23 electrician is qualified and trained, they would
24 be paid the \$24 or \$25 an hour to do that work,
25 but they could also allow a skilled laborer, under

1 their authority, to lay that conduit at \$15 an
2 hour, or greater.

3 COMMISSIONER CRABTREE: That wasn't
4 the way I read it, but . . .

5 CHAIRMAN PHILLIPS: I thought you
6 said we paid -- TDOT paid --

7 COMMISSIONER CRABTREE: Yeah,
8 between Federal and state. That was the
9 preemption part. We're required to pay the higher
10 of the two rates if there's both Federal and
11 state --

12 COMMISSIONER HEIMBACH: But I think
13 what they're asking is to move that portion, the
14 skilled labor portion description out of skilled
15 labor and into electrician, thereby raising the
16 minimum rate for that by almost \$10 an hour. And
17 that's what Mr. Summers was --

18 MS. JEFFERSON: That's the way I
19 understand it.

20 COMMISSIONER HEIMBACH: And I would
21 be concerned about changing that grade as well.

22 CHAIRMAN PHILLIPS: I don't think
23 this is anything that requires any type of
24 decision today. So we'll --

25 COMMISSIONER HEIMBACH: Not if it

1 needs rules.

2 CHAIRMAN PHILLIPS: But I would
3 like to educate myself more about it, so . . .

4 We thank each of you for coming.
5 It never hurts to get more information.

6 So is everybody comfortable with
7 that?

8 COMMISSIONER SUMMERS: Uh-huh.

9 CHAIRMAN PHILLIPS: Okay.

10 MS. JEFFERSON: Hearing's scheduled
11 for Wednesday, November 19th at 9:00 a.m.,
12 Legislative Plaza, Room 16, and the chair will be
13 answering all of the questions.

14 CHAIRMAN PHILLIPS: That's
15 Mr. Summers.

16 COMMISSIONER SUMMERS: I haven't
17 been subpoenaed.

18 MS. JEFFERSON: The next thing I
19 wanted to say is that Christina Tugman recently
20 received a promotion, and we all know how valuable
21 Christina is on the board, as well as helping us
22 with all the functions she helps us with in the
23 program, labor standards unit program. She
24 received a promotion, and she's going to serve as
25 an investigator. So she's being promoted, so I

1 want to congratulate her on that.

2 (Applause.)

3 MS. TUGMAN: Thank you.

4 MS. JEFFERSON: And at the same
5 time, Carlene Bennett, who is in the background --
6 Carlene, would you stand?

7 Carlene Bennett serves as the
8 secretary for the board of boiler rooms as well as
9 the elevator and amusement device safety board, so
10 Carlene will be stepping into this role, so we're
11 grateful to have Carlene.

12 (Applause.)

13 COMMISSIONER SUMMERS: We've got
14 Christina really well-trained. We had her
15 well-trained, and now she's leaving us.

16 CHAIRMAN PHILLIPS: Okay. Any
17 additional business besides that?

18 MS. JEFFERSON: The only other
19 thing are the rules that we talked about, so we're
20 considering those anyway, and you-all will receive
21 information so we can obtain feedback after the
22 first of the year.

23 COMMISSIONER SUMMERS: Which rules?

24 MS. JEFFERSON: The change in the
25 prevailing wage rules. We're still working on

1 those.

2 COMMISSIONER SUMMERS: Okay.

3 That's -- that's to make them comply with the
4 legislature --

5 MS. EWELL: Right. The current law
6 you received in an e-mail. And Mark is in the
7 process of working on those in terms of
8 classifications.

9 COMMISSIONER SUMMERS: Right.

10 CHAIRMAN PHILLIPS: Make sure it
11 complies with the statute. Still working on that.

12 MS. EWELL: Well, generally the
13 definitions are taken from the dictionary
14 occupational titles, or O*Net, and I sent Mark the
15 references and the links to get the data.

16 So the rules were adopted in 2006,
17 and so the information on the website may be
18 updated and may exclude the information that they
19 are requesting. We don't know. Just depends on
20 what the department decides to do in terms of
21 changing the definitions.

22 CHAIRMAN PHILLIPS: Anything else?

23 Motion to adjourn? Mr. Summers?

24 COMMISSIONER CRABTREE: Second.

25 (Meeting adjourned at 10:09 a.m.)

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STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

I, Deborah K. Watson, RPR, CRR, LCR# 446, a
Notary Public in the State of Tennessee, do hereby
certify:

That the within is a true and accurate
transcript of the proceedings taken on the 17th
day of November, 2014.

I further certify that I am not related to
any of the parties to this action, by blood or
marriage, and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 24th day of November, 2014.

Deborah K. Watson, RPR, CRR, LCR# 446
Notary Public State at Large
My commission expires: 9/20/2016

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