

Meeting Minutes
 Prevailing Wage Advisory Committee (PWAC)
 June 14, 2023
 1:30 – 4:00pm PPE and Zoom

Attendees: Josh Swanson, Bruce Chattin, Billy Wallace, Joe Gaylor, Kom Bus, Brian Walter, Jared Ross, Mark Wells, Jody Robbins, Yvonne Nemes, Bonnie Dressel, Reasa Pearson, Charles Ziegert, Sean Anderson, Ethan Whitener, Jennie Kordenat, Ellen Saline, Jolene Skinner, Jason Overbey, Maria Swinger-Innskeep, Chris Harmon, Max Martin, Andrew Ledbetter, Kim Lorelie Beeler, Todd Grewell, Alison Taylor, Ann Garcia, Ashley Warren, Ellen Saline, Shyann Emmons, Van Hurst, Brandy DeLange, Carolyn Logue, chelsea.buell, Chris Ellis, Christopher Herman, Craig Dyce, Gyorgyi, Heidi Jensen, Jamie Collins, John Lainhart, Lee Willeman, Mario Silva, Martha Emmerton, Matthew, Michael de Give, Mike Keith, Mike Leininger, Nicole Blacksmith, Paul Doerner, Ramona Christensen-Russell, Scott Middleton, Sean Anderson.

| Agenda Item | Discussion |
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| Opening Remarks/Roll Call, and Safety Tip | <p><i>Jody Robbins (L&I)</i> Welcomes everyone to the first in-person PWAC of the year. Goes over agenda. Roll call response: Josh Swanson, Maria Swinger-Innskeep, Chris Harman, Max Martin, Scott Middleton, Bruce Chattin, Andrew Ledbetter, Caroline Logue.</p> <p>For this meeting, please try to limit the questions to main committee members, once we get to Good and Welfare then the rest of the audience can ask your questions. During the last PWAC I announced that I would like our agents to get as much industry exposure as we can to increase their exposure with field work and processes. There is a training needs memo to pick up. Please notify us if you are able to assist with this. Chuck will track the list. We hope to start letting our agents build these experiences this summer. We appreciate your assistance in this regard.</p> <p><i>Reasa Pearson (L&I)</i> Safety Tip: Sun protection/exposure.</p> |
| PWAC Draft Meeting Minutes from 03.16.23 | <p><i>Jody Robbins (L&I)</i> Asks for approval of the March 16, 2023 meeting minutes. Does anyone have any additions, deletions, or corrections? Motions to approve. Anyone opposed to approval? Since no one is opposed, the minutes are approved.</p> |

General Topics/Program updates

Certified Payroll Enforcement:

Chuck Ziegert (L&I)

Focused enforcement is an Initiative we took on due to non-compliant Contractors. We previously took the list of the top 30 offenders, looked at 2 of their projects, and sent out notifications to them requesting them to file CPRs to be in compliance. We have completed this effort 3 separate times, and received 100% response to these notices. Harvey was the driving force on this, I will now take this over as Harvey has left the program.

Bruce Chattin (Washington Aggregates & Concrete Association)

These are great results. Can you explain what you are sending them?

Chuck Ziegert (L&I)

A combination of letters with a deadline.

Bruce Chattin (Washington Aggregates & Concrete Association)

Is this more so educational for the Contractors? Have you noticed any trends as to why some are not in compliance?

Bonnie Dressel (L&I)

Yes. We are focusing on the education. Many of the responses we received explain that they did not realize CPR filing requirements became part of the law. We have then been adding additional resources explaining this information in detail by sending over the laws, and the penalty information. So far everyone contacted has made quick efforts to be in compliance.

Bruce Chattin (Washington Aggregates & Concrete Association)

Are we satisfied that this education is enough to get Contractors in compliance?

Bonnie Dressel (L&I)

So far, yes. We did a lot of communication to Contractors before the law was implemented. We had Jolene pull the numbers and parties to contact. Now we are getting great results for each round of education.

Chuck Ziegert (L&I)

In our current outreach events we are also focused on presenting this CP requirement for public works.

Jody Robbins (L&I)

We are going to continue to go down this list. We are picking up where Harvey left off to continue the effort. Note that so far 100% have returned on investment. The Contractors are going back in and fixing all CPRs. We are also issuing NOVs to those who are non-responsive.

Josh Swanson (IUOE Local 302)

Is there a phase two planned?

Jody Robbins (L&I)

Currently we will continue this same process going down the list.

Bonnie Dressel (L&I)

We want to go over the newer **4/10 compliance** process. As soon as we get interested party request forms, we are sending education to the Contractor that 4/10s are part of the CP requirements and request they upload them by a deadline stated in the email. Then we download their payroll and 4/10s, and will send this over to the interested party. This should help avoid erroneous 4/10 complaints when authorizations do exist.

Josh Swanson (IUOE Local 302)

Is the 4/10 requirement in the system a checkbox for the Contractors, or are 4/10 authorizations being upload to the projects?

Bonnie Dressel (L&I)

Actual 4/10 authorizations.

Jody Robbins (L&I)

Yes and, If the 4/10 is within a CBA, we have them upload the applicable pages.

Chuck Ziegert (L&I)

This is also being emphasized in the contractor trainings as well.

IT System/Legislative Update

Jolene Skinner (L&I)

Goes over the **budget package**. Over the last year we've been working on prototypes and designs. We have completed some testing with feedback to make sure these will meet what our stakeholders need. We are getting ready to implement live. We will be moving forward into a full-blown IT project.

Before we get into this, we will cover the bills that were passed during the last legislative session. Presents bills with IT impact. HB 1050 is expanding apprentice utilization on projects, the system will need to accommodate for this to verify compliance. HB 1323 involves training certifications for fire-resistant materials, our system needs to accommodate for new strikes and debarments. SB 5088 involves adding contractor registration and licensing references to workers comp, public works, and prevailing wage, the system also needs to accommodate for new strikes and debarments here. SB 5268 modifies small works roster requirements. The system needs to accommodate for new small works thresholds, and will need updates to include new contract types and combined forms in our system. We are also having to do some rulemaking.

Reasa Pearson (L&I)

Small works threshold is changing from \$2,500 to up to \$5,000. Rulemaking will include updating intents and affidavits and removing cross reference to threshold amounts. Hoping to have expedited rulemaking. Plan is to file that in September, and 45 days later do the permanent rulemaking, should come into effect July 1, 2024.

Jody Robbins (L&I)

We are putting together a small works roster tool kit for AAs to manage this space as effectively as the rules and laws will allow. If the AAs set it up right it's easy for the business owners. If not, it can be a struggle for the Contractors. We are going to launch this on the Kitsap peninsula. As we have more resources and time, we will have more coming on that.

Jolene Skinner (L&I)

We are coordinating training efforts with MRSC as well on this.

Jolene Skinner (L&I)

Presents **system & project updates**. For our large IT project, 2.9 mil was funded for this effort for the next 2 years. On the top of the list is the IP portal. The bills also have to take precedence. Provides charted timeline. First we will get HB 1050 tools in place, download all CP options for AAs and Contractors, new reports for AAs to better manage utilization. Then new strike and debarments HB 1323 & SB 5088, various updates for HB 5268. Next, we'll be implementing the interested party portal. Once we have it ready to be tested, we will reach back out to you all in order to gather feedback around the first part of next year. This is a 3-year project. In 2025 we will ask for the remaining funding.

Josh Swanson (IUOE Local 302)

The sick leave bill passed. Where does this fall in?

Jody Robbins (L&I)

We are looking at this. We are trying to get some guidelines around what's being reported as benefits. If the benefit satisfies state sick leave law, then some of these are ok for PW. We are trying to figure out where the lines are when it's allowable or not like vacation pay being diverted. We are currently working with our legal team now to verify this information.

Jody Robbins (L&I)

Ironworkers plan is in and qualifies. They have setup a system that has passed legal muster as one example.

Staffing/Hiring:

Jody Robbins (L&I)

Presents hiring list. Breakdown of what's left includes 1 IRA4 supervisor, 1 IRA4 policy, 1 IRA3 citations admin, 2 IRA2 investigations, 1 Data Consultant 2. The IRA2s are in interviews this week. Trying to get the data consultant moved to data consultant 2 instead of 1, which will be posted within the next couple of weeks. Please spread the word for us. As you know, Ramona is now working with Reasa at the policy level for the program.

Trucking and Travel Time:

Reasa Pearson (L&I)

We are drafting the travel time policy. As soon as we have a final draft we will share it with PWAC members and the public in order to receive feedback. We'll share more information as soon as possible with our timeline.

Jody Robbins (L&I)

Yes. We had to pull in a lot of information for this project, it's a large effort. We've had to pull all previous answers to travel time questions for example, and are trying to get this approved with the legal team. We will take as much time as needed for the public comment phase of the project. The biggest problem we see is good record keeping. Lack of records does not serve Contractors in reference to travel time. We will default to the highest rate due to lack of evidence.

Bruce Chattin (Washington Aggregates & Concrete Association)

Will we create a checklist or some sort of example of good record keeping for travel time/trucking policy?

Jody Robbins (L&I)

We can look into coming back with some examples of good record keeping.

Josh Swanson (IUOE Local 302)

Is there any conversation about true stockpiles in the policy?

Jody Robbins (L&I)

Absolutely, it's amazing how many people have stockpiles.

Complaints/Investigations:

Jennie Kordenat (L&I)

We have 2 IRA4 supervisors right now and we are hiring another. This has helped to provide more oversight, and answers to technical issues quickly. The supervisors have also helped implement a cleaner process for training and assistance for agents. We have a new case closure process, involving submittal to us prior to closure, then presenting the closure at our weekly complaint triage meeting. This helps to make sure investigations aren't closed prematurely and look thoroughly at all possibilities. Our new training involves using the pre-prod system to help new investigators get up to speed before assigned actual investigations. In late July we have a week long training in Wenatchee.

Ethan Whitener (L&I)

Presents data for case closures, wages collected, and strikes/debarment. We've made progress by restructuring. Cases resolved have almost doubled for 2023 1st quarter. We've also been able to wrap up some older cases. Next time we meet we should see higher wages collected. Finally you can see the open cases on the first day of the month. This will give you an idea of the open cases. Each investigator has between 10-15 cases at a time. We should be able to turn them over quicker once we have more staff. We are also strategically assigning cases to the best investigator for the complaint. We are streamlining the process. Please reach out to Jennie or I with any concerns.

Jody Robbins (L&I)

The PW program used to answer to a regional admin, they did not answer to the industrial statistician. If I asked to speak to the PW investigator, they were not linked with the program. We are now out of that division, and everyone in PW has full coverage and full authority over the staff. By creating these teams, we have eliminated languishing cases, and are able to be more proactive in terms of investigating.

Strikes and Debarments:

Reasa Pearson (L&I)

Adding back in the plumber statute, the number of strikes and debarment will increase.

Josh Swanson (IUOE Local 302)

For penalty waivers, Contractors can waive the first strike, but then not the second. Is that the same here?

Reasa Pearson (L&I)

The strikes on here are not. We must not have had any NOVs that were final and binding. This is in regards to the actual strikes, not contractor's choice, which is what you are talking about for penalty reduction.

Mario Silva (Cement Masons and Plasterers of the Northwest)

Regarding the investigative teams, is that based on regions? Or how were the teams divided?

Jody Robbins (L&I)

We divided them out by mixing together senior & newer staff for the teams.

Mario Silva (Cement Masons and Plasterers of the Northwest)

So you are still looking for 1 supervisor? Also, do you have an investigator in Spokane?

Jody Robbins (L&I)

Yes. We don't have one in Spokane right now, but a few in Kennewick.

NOVs/Cases on Appeal:

Chuck Ziegert (L&I)

We have 4 cases on appeal. Appeal process only happens when an NOV is issued. Language states the Contractor has the ability to appeal the NOV. Appeal has to be submitted to the director within 30 days of the date of the letter.

For most of the cases under appeal, a lawyer is involved, and usually the attorneys wait until the end to get back to us. We had 1 considered untimely as it was missed by a day recently. Once an appeal is received and considered timely, it may take a couple days from the Directors office to the PW program. A case file is then assembled, and transferred to the AG's office. Their process is to review and an assistant AG is assigned to the case to represent the program. It's not a quick process once it's received. The AG works with the Contractor or their attorney to resolve the case. We often see some degree of negotiation through that process. We have some that get stalled in negotiation. If there is a lien in place, it is also the AGs office that perfects the lien to retain funds. It is a legally involved process at that stage.

Josh Swanson (IUOE Local 302)

The 4 that you have, are they in the AG process? Also are you able to share those or no?

Jody Robbins (L&I)

Since the cases are open we cannot disclose information. I have been involved in the negotiation for some. We will be less likely to negotiate with repeat offenders. If it's not a repeat offender, it may take more time to look at settlement agreements. We are trying to step up our efforts on repeat offenders.

Josh Swanson (IUOE Local 302)

Are there any updates for the CBA bill?

Jody Robbins (L&I)

We know we can use CBA, the Supreme Court remanded constitutional conflict. In the lower courts opinion we have two competing statutes. Survey data for counties, vs. just using the CBA, which does not include county data, so there was a conflict. We have petitioned Supreme Court to review that. We have been put on the schedule on the petition. More to come in September.

Residential Survey Plans:

Sean Anderson (L&I)

Current survey methods ask for 2 types of info. The type that the legislature told us to gather which includes affordable housing, weatherization, and homeless shelters. In 2019 we only looked at this data, for many counties and trades we gained no data. As we are sending out more surveys for all 20 residential trades, we are asking for more information. The residential construction definition limits what is considered residential for both categories. We started our first round of surveys this year in January for 3 trades: plumbers, refrigeration mechanics, and sprinkler fitters. We are running into a problem.

We wanted to highlight that Adams county sprinkler fitters is at WA state minimum wage, and we are not receiving any new survey results. This is the 3rd time for Adams that we've surveyed and received no responses. Surveys are voluntary. It is possible there was nothing going on that year, or Contractors did not report for us. We are considering alternate methods to set rates when a residential rate has sat at minimum wage for years.

Jody Robbins (L&I)

These languishing PW rates are a concern. The response to date is to put a bump in our IT systems to make sure the rates don't go below minimum wage when changed in the system. However, the rules give us a number of options when setting rates when we don't have survey data. We can look in our PWIA system for example, look to industrial insurance, etc. There are a number of alternatives to survey data. My intent is not to let rates like this sit at minimum wage. We are looking at instituting procedures that eliminate the ability for rates to sit at minimum wages. We may come back in September with better metrics to give you. We will make some changes to at least reflect what's going on in the areas.

Mark Riker (Washington Building Trades)

How are these surveys done?

Sean Anderson (L&I)

They are voluntary. Labor unions are allowed to fill them out. Or Labor unions can also find data on non-signatory Contractors and use data they found on public documents.

Mark Riker (Washington Building Trades)

Wondering if workers themselves are ever approached to make sure employers aren't inaccurately reporting rates?

Jody Robbins (L&I)

We have contractor lists we pull from. We can look at them in ESD and make sure the data is accurately being reported.

Sean Anderson (L&I)

Later this summer we will launch another survey for carpenters, painters, and trades they participate in. Hoping to get that out at the end of the summer with deadlines. Round 3 in early 2024, and a final round in summer 2024 to cover all left over of the 20 trades that have residential rates. We've been told to survey all residential trades on a 5 year basis.

Jody Robbins (L&I)

That is our survey efforts on the residential side. If we prevail a residential rate that is a CBA rate, then those rates get bumped over the 5 years we have between surveys. This adds an extra dynamic.

Good and Welfare:

Jody Robbins – (L&I)

Any comments or questions?

Jared Ross

Speaking on Employers not turning in CPRs, and NOV's are issued, does that count towards strikes?

Chuck Ziegert (L&I)

Yes they can contain strikes.

Jared Ross

On the strike and debarment data, is there a way to separate to PW failure to file and false filing numbers?

Reasa Pearson (L&I)

Yes, but it is the same law and penalty so they are not reported that way.

Jared Ross

Failure to file is one thing, but false filing is a separate violation.

Jared Ross

For the residential definition, is it 4 stories total or aboveground?

Sean Anderson (L&I)

4 stories including a basement.

Chuck Ziegert (L&I)

We've started attending some trade shows, and the program has invested in some items like pens and rulers to get the word out. Go ahead and take some.

Jody Robbins (L&I)

Yes and we ran out of PW booklets, per popular demand we have more supply coming. People did not want us to just go digital with the booklets so we readjusted and will continue having the “green-book” available.

Ethan Whitener (L&I)

On the investigative side of the house, I want to give a shoutout to the agents themselves working through their caseloads. Also kudos to the CSS crew. They are our front line, fielding complaints, and doing a lot of front faced work.

Jennie Kordenat (L&I)

Yes and thank you to the IRA3 leads as well, they’ve done a fantastic job.

Jody Robbins (L&I)

We also have 2 more CSS’s to join the crew next. What I want to do is move our focus up to the intent side to focus on catching anomalies at the front gate instead of allowing those problems to go through.

Next Meeting – Virtual or In Person:

Jody Robbins (L&I)

In the Fall we are looking at Wednesday 9/27/2023 or Thursday 9/28/2023. We will also ask if we want to stay with virtual or in-person attendance. If people are inclined to stay in the office, we can go back to a virtual platform. It allowed for participation from all over the state. It’s extremely efficient for us as well. I will send out a poll with these questions.

Brian Walter

I think several people did not receive the email notice for PWAC.

Jody Robbins (L&I)

We have a PWAC distribution list, sent to all gov delivery groups. Get us your email and we will sort it out.

Heidi Jensen (WSDOT)

I did intend to be there today, I do understand virtual is much easier, either way is fine with me.

Bruce Chattin (Washington Aggregates & Concrete Association)

In favor of in person

Josh Swanson (IUOE Local 302)

In favor of in person

Billy Wallace (NW Laborers)

In favor of in person

Jody Robbins (L&I)

Thank you for the answers. We only have Tukwila for hybrid meetings or headquarters instead. We will put a poll out to members to see where we're at.

Josh Swanson (IUOE Local 302)

We can see things are changing, and appreciate the hard work.

Jody Robbins (L&I)

Thank you. As a side note, we have a case that is approaching 1mil owed. Any wages owed accrue interest from when the money was owed until the case is resolved. We will assess penalties at the end as well.

Mario Silva (Cement Masons and Plasterers of the Northwest)

Is it worth filing a complaint on a contractor already debarred? This is regarding a project for Spokane airport.

Reasa Pearson (L&I)

Yes, they can receive another strike which could extend the debarment. However, we cannot remove the employer from a project they are already working on.

Mario Silva (Cement Masons and Plasterers of the Northwest)

Thank you. I'll get you this information.

Adjourn:

Jody Robbins (L&I)

If there are no more questions, any motions to adjourn the meeting?

Josh Swanson (IUOE Local 302)

Motioned.

Bruce Chattin (Washington Aggregates & Concrete Association)
Seconded.

Jody Robbins (L&I)
Appears no one is opposed, so we will adjourn.