

FOR THE CASE OF  
Prevailing Wage Commission Meeting

TRANSCRIPT OF  
Prevailing Wage Commission Meeting

December 1, 2014

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PREVAILING WAGE COMMISSION MEETING

December 1, 2014

9:30 a.m.

Department of Labor and Workforce Development

220 French Landing Drive

Nashville, TN 37243

Tennessee Conference Room

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1 APPEARANCES:

2

CHAIRMAN BURNS PHILLIPS  
Commissioner, TDOL

3

4

MR. R.T. SUMMERS  
Summers-Taylor, Inc.

5

MR. PETER HEIMBACH, JR.  
State Architect

6

7

MR. WAYBURN CRABTREE  
TDOT

8

MR. STEPHEN WRIGHT  
Wright Brothers Construction Co., Inc.

9

10

MS. SYDNE EWELL  
TDOL, Legal Counsel

11

MS. KIM Y. JEFFERSON, ESQ.  
Administrator, TDOL

12

13

MR. MARK FINKS  
Assistant Administrator, TDOL

14

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

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MR. KENT STARWALT  
Tennessee Road Builders

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MR. DANIEL BAILEY  
Attorney, TDOL

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I N D E X

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Call to Order and Roll Call .....4 2

Review and Approve November 17, .....4 22  
2014 Prevailing Wage Commission  
Meeting Minutes

Conflict of Interest Disclosures .....6 13

Old Business .....6 19

New Business - Set Rates for 2015 .....7 16  
Highway & Bridge Construction

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

2 CHAIRMAN PHILLIPS: So we'll call  
3 to order and roll call. Okay? And -- well, where  
4 is that?

5 You want me to do that?

6 MS. JEFFERSON: Yes.

7 CHAIRMAN PHILLIPS: So Mr. R.T.  
8 Summers, right?

9 MR. SUMMERS: Here, present.

10 CHAIRMAN PHILLIPS: Peter?

11 MR. HEIMBACH: Present.

12 CHAIRMAN PHILLIPS: Burns Phillips,  
13 here.

14 Wayburn?

15 MR. CRABTREE: Present.

16 CHAIRMAN PHILLIPS: Stephen?

17 MR. WRIGHT: Here, present.

18 CHAIRMAN PHILLIPS: So we have  
19 everybody here that we need, correct? Right? We  
20 do have a quorum.

21 MS. JEFFERSON: Yes.

22 CHAIRMAN PHILLIPS: Okay. So where  
23 do we go from there? Review and approve the  
24 minutes?

25 MS. JEFFERSON: Yes.

1                   CHAIRMAN PHILLIPS: Did everybody  
2 have a chance to look at these and read these?  
3 I'm assuming you did.

4                   MR. CRABTREE: Yes, sir, I did.

5                   CHAIRMAN PHILLIPS: Okay. Nicely  
6 done.

7                   MR. HEIMBACH: Appreciate having  
8 the transcript. It's nice.

9                   I do have one request on the  
10 minutes, and that is: Mr. Starwalt is listed as  
11 appearing, and I don't believe he spoke during the  
12 last meeting at all. And I would just request to  
13 move him to also present rather than appearing.

14                   CHAIRMAN PHILLIPS: Technicality,  
15 but get it right, yeah. All right. Do I hear a  
16 second on that?

17                   MR. SUMMERS: Second.

18                   CHAIRMAN PHILLIPS: Okay. Anybody  
19 opposed?

20                   Okay. So moved.

21                   MS. JEFFERSON: And just for  
22 clarification, since the transcriptionist, court  
23 reporter, has already prepared those and we've  
24 already paid for those minutes, did you-all want  
25 us to change that as it appears on the website for

1 the previous meeting, or just correct that going  
2 forward?

3 MR. HEIMBACH: I think it's just --  
4 we can just correct it going forward, I believe.

5 MS. JEFFERSON: Okay. Thank you.

6 MR. HEIMBACH: That's fine.

7 CHAIRMAN PHILLIPS: Any others?

8 Okay. Motion to approve the minutes?

9 MR. SUMMERS: So moved.

10 MR. CRABTREE: Second.

11 CHAIRMAN PHILLIPS: All right.

12 Second by Mr. Wayburn. So they are approved.

13 Conflict of Interest Disclosures.

14 MS. JEFFERSON: Ms. Tugman?

15 MS. TUGMAN: They're on file, so

16 there's . . .

17 CHAIRMAN PHILLIPS: Okay. All

18 right. Very good.

19 Okay. Old business. We have some

20 old business, do we not, concerning the wage

21 rates?

22 MS. TUGMAN: That's -- I'm sorry.

23 The wage rates are under new business.

24 CHAIRMAN PHILLIPS: Under new

25 business?



1 MS. TUGMAN: Yes.

2 CHAIRMAN PHILLIPS: Okay. Any old  
3 business?

4 (Ms. Ewell entered the room.)

5 MS. TUGMAN: There's no old  
6 business.

7 Sydne, there's a seat up here for  
8 you.

9 MS. EWELL: I apologize.

10 CHAIRMAN PHILLIPS: Is there any  
11 old business to be taken care of?

12 MS. TUGMAN: I don't think so.

13 CHAIRMAN PHILLIPS: There's not?  
14 Okay.

15 New business?

16 MR. FINKS: Okay. Well, the new  
17 business is: We need to set the prevailing wage  
18 rates for the 2015 Highway and Bridge  
19 Construction. And we've got a list of some of  
20 the -- of the wages that -- prevailing wage rates  
21 as calculated, preliminarily, and so we would turn  
22 that over to the Commission for discussion.

23 CHAIRMAN PHILLIPS: All right. Are  
24 there still some that are not correct or have --

25 MR. FINKS: There are some that it

1 could -- the company, Hawkins & Price, that were  
2 found -- I believe were not actually removed from  
3 the -- from the calculations, even though we had  
4 notified that company that they were not going to  
5 be -- their data was not going to be included in  
6 the calculations. And I -- so if we take it out  
7 completely, these numbers will change some of  
8 the -- of the classification rates and also change  
9 the -- possibly change the state average.

10 MR. SUMMERS: I checked the  
11 minutes, and I made the motion and I -- actually,  
12 it's my fault. I referenced one particular form,  
13 and that's the main one that was taken out. But  
14 there was at least one other one that had 60,000  
15 hours of Class B operator on there that kept the  
16 Class B operator way up.

17 Looking at what they submitted, I'm  
18 not sure that what they submitted is even  
19 appropriate. They did not give a project title or  
20 contract number. They just listed a county, which  
21 is not according to our rules.

22 A brief description of a project:  
23 It's underground utilities. We don't survey  
24 utility projects so -- also, they said -- I mean,  
25 our mailing list knows, so I don't think they

1 liked doing it anyway.

2 (Laughter.)

3 MR. SUMMERS: This is before we  
4 started calling them.

5 I would -- I would like the  
6 Commission to consider taking all of the Hankins &  
7 Price [sic] data out, because I just don't think  
8 it's appropriate or correct.

9 MR. HEIMBACH: And in addition to  
10 what Mr. Summers is talking about, I believe our  
11 correspondence with Hawkins & Price indicated that  
12 we're not going to include any of their data, and  
13 I think that's what Mr. Finks is referencing.

14 MR. FINKS: Yes, sir.

15 MR. HEIMBACH: And so I would  
16 concur with what Mr. Summers is saying.

17 MR. SUMMERS: That will  
18 dramatically change the -- the only way it will  
19 really change a bunch is the Class B operator.  
20 Just by my rough calculations, it would take the  
21 survey rate from 18.48 down to about 16.85 or  
22 16.86. So it's going to take \$1.70, \$1.80 off of  
23 the survey rate which will put that back into a  
24 small increase, a 2 to 3 percent increase, which  
25 is very appropriate.

1                   So the other ones, the hours are  
2 not big enough to make much difference. They  
3 could run the calculations, but I don't think it  
4 will --

5                   MR. HEIMBACH: But that one change  
6 may change the state average?

7                   MR. SUMMERS: It very possibly  
8 could, because it's \$1,263,000 worth of -- of  
9 dollars.

10                  MR. HEIMBACH: Right.

11                  MR. SUMMERS: But it's 5 percent of  
12 the total dollars in the state.

13                  MR. HEIMBACH: Right.

14                  CHAIRMAN PHILLIPS: So is that a  
15 motion?

16                  MR. SUMMERS: That would be my  
17 motion, to take all of the Hankins & Price [sic]  
18 data from the written wage calculations.

19                  MR. CRABTREE: Second.

20                  CHAIRMAN PHILLIPS: Anybody have  
21 any other discussion on that?

22                  MR. CRABTREE: I think there was a  
23 question last time about whether this was a  
24 weighted average or whether it was an arithmetic  
25 average. Did we verify --

1 MR. FINKS: It was a weighted  
2 average, yes, sir.

3 CHAIRMAN PHILLIPS: A weighted  
4 average?

5 MR. FINKS: And that's why, once  
6 they've taken out 60,000 man-hours, would -- could  
7 make a difference in the state weighted average.

8 CHAIRMAN PHILLIPS: Any other  
9 comments?

10 Okay. Everybody in favor?

11 IN UNISON: Aye.

12 CHAIRMAN PHILLIPS: Okay. Opposed?  
13 Motion carried.

14 MR. FINKS: With the Commission's  
15 action on that matter, we would need to change the  
16 ones that fall under Comment No. 3 if the state  
17 average changes. In fact, all of Note 3 -- the  
18 classifications that are affected by Note 3 would  
19 be changed also.

20 CHAIRMAN PHILLIPS: Just those  
21 four. Yeah, those four would be changed.

22 MR. FINKS: Yes, sir.

23 CHAIRMAN PHILLIPS: Okay.

24 MR. FINKS: And then it would  
25 also -- it could also affect Classification No. 4,

1 17, 23, and I think those are the ones.

2 CHAIRMAN PHILLIPS: Okay. Any  
3 other questions or comments?

4 MR. SUMMERS: You know, 17 and 23,  
5 with the number of hours they had and the number  
6 of hours across the state, are not going to  
7 change. It's just really No. 4 is the only thing  
8 that would change.

9 MR. FINKS: Do you want us to go on  
10 and run the calculations, and if it does change --

11 MR. SUMMERS: I guess we should.

12 MR. FINKS: Okay.

13 MR. HEIMBACH: You're probably  
14 correct arithmetically, but just to make sure.

15 MR. FINKS: And what we can do,  
16 since we've got to publish these rates today, we  
17 can send -- get the computer programmers to run  
18 these numbers again with taking the Hawkins &  
19 Price data out, and we would have to send the  
20 Commission members an e-mail today making sure  
21 that within the changes -- with whatever changes  
22 were shown, and get your approval by e-mail -- by  
23 e-mail today.

24 CHAIRMAN PHILLIPS: Is that  
25 problematic, number one, doing that, and number

1 two, everybody being able to respond today?

2 MR. FINKS: I believe we can get  
3 that done today. We should be able to get that  
4 done computerwise today. It may be this  
5 afternoon, but we should be able to get it done  
6 before close of business today.

7 MR. WRIGHT: It is Hawkins & Price  
8 and Hawkins Asphalt? There's really two  
9 companies?

10 MS. TUGMAN: Yes.

11 MR. WRIGHT: Okay.

12 MR. SUMMERS: Hawkins Asphalt is  
13 already out. That's one we took out before.

14 MR. HEIMBACH: Do we need to go  
15 ahead and approve the rates in this meeting  
16 exclusive of the seven rates that might change,  
17 then?

18 MS. TUGMAN: That's usually what  
19 happens.

20 CHAIRMAN PHILLIPS: You want to do  
21 it exclusive of those? Okay.

22 MS. TUGMAN: And then once, you  
23 know, you approve the rates, according to what you  
24 guys have -- I'm sorry -- the Commission has a  
25 motion, then we send you the changes. And that's

1 usually how it happens. It's -- there's a motion  
2 that is made to go ahead and approve them with the  
3 changes.

4 MR. FINKS: I guess we could do it  
5 contingent upon the changes that the Commission  
6 has approved.

7 MR. HEIMBACH: I move that we  
8 accept the rates with the exception of Rates 4,  
9 17, and 23 that may change due to calculation of  
10 removing Hawkins & Price information; and then  
11 exclusive of Rates 1, 8, 15, and 16 that may  
12 change due to the recalculation of the state  
13 average.

14 CHAIRMAN PHILLIPS: Second?

15 MR. CRABTREE: Second.

16 CHAIRMAN PHILLIPS: Okay. Any  
17 discussions on that?

18 Okay. So moved.

19 MS. JEFFERSON: Should we wait to  
20 hear back from everyone? Will everyone be able to  
21 respond before we publish this? We'll have to  
22 have a response before the end of business day  
23 because our deadline to publish this is today.

24 MR. FINKS: Is today.

25 MS. JEFFERSON: So that means that



1 we actually need a -- instead of the close of  
2 business day, would it be more proper to say by  
3 noon?

4 CHAIRMAN PHILLIPS: We have to have  
5 our response back before the end of the business  
6 day.

7 MS. JEFFERSON: Well, we have to  
8 have IT --

9 MR. WRIGHT: When is the end of  
10 your day?

11 MS. JEFFERSON: I'm sorry?

12 MR. WRIGHT: When is the end of  
13 your day?

14 MS. JEFFERSON: End of our business  
15 day is about 5:00 today. However, we have to give  
16 it to IT so that they can actually recalculate and  
17 do all the things that they need to do. So I was  
18 thinking that we receive the information from  
19 you-all by noon, if we could possibly do that by  
20 noon, we could give it to them, and they would  
21 have time in order to make the changes, and so we  
22 can actually have this posted by the end of -- we  
23 have to post it by the end of business day.

24 CHAIRMAN PHILLIPS: And it really  
25 turns on when you get us the --

1 MS. TUGMAN: Well, the rates have  
2 to be sent by today, of course, but -- of course,  
3 they don't go into effect until June the 1st of  
4 2015. And, of course, we send out letters and so  
5 forth to any participants so they know what the  
6 rates are.

7 MS. JEFFERSON: So Christina, do  
8 you think that obtaining the information from the  
9 members before the end of the business day today  
10 is sufficient?

11 MS. TUGMAN: I think so. I think  
12 that once this information is taken out, Hawkins &  
13 Price -- because I've already sent an e-mail to  
14 Doris letting her know before the meeting that we  
15 have new information, we need to get it done  
16 today. She can take that out and recalculate  
17 everything, and then we can -- we'll have the  
18 percentages, the change in the percentage, and  
19 they can be recalculated. And we can send it out,  
20 I'm guessing, by noon, 1:00 or 2:00. Probably the  
21 latest, 1:30, because -- she can do it pretty  
22 quickly because it's only two forms that are going  
23 to be taken out.

24 And then it'll change the  
25 percentage, and it'll show up, and she'll come

1 down and -- with the information on the computer,  
2 and we can go from there. It shouldn't take that  
3 long.

4 MS. JEFFERSON: That's fine. I was  
5 just trying to make sure we were statutorily  
6 compliant.

7 MR. WRIGHT: I'm traveling most of  
8 the day, so if you need a response from me and do  
9 not get it, please call my cell phone, and I will  
10 stop and find a place with Wi-Fi and respond to  
11 you.

12 MR. SUMMERS: Or as long as three  
13 of us --

14 MR. HEIMBACH: Right.

15 MR. SUMMERS: As long as we have a  
16 quorum that responds, I think that's sufficient.

17 Now, Sydne, if we -- if the  
18 Commission decides by 5:00 today and sets the  
19 rates, doesn't that comply with the law rather  
20 than when they're published?

21 MS. JEFFERSON: Yes, I think --

22 MR. HEIMBACH: That was going to be  
23 my question, is: What's the actual statutory  
24 requirement? That they have to be set by the end  
25 of the day today? Is it the end of the business

1 day? Is it the end of the calendar day?

2 MS. TUGMAN: They have to be set by  
3 December 1st. That's what the law says.

4 MR. SUMMERS: They have to be set,  
5 but I'm not sure that IT has to put them on the  
6 website today.

7 MS. JEFFERSON: Well, that's true.

8 MR. HEIMBACH: Whether or not they  
9 have to be posted, I think, is the question.

10 MR. BAILEY: The statutory language  
11 says the Commission shall determine the prevailing  
12 wage rate pursuant to the terms of this part and  
13 give notice thereof on or before December 1st of  
14 each year.

15 MS. JEFFERSON: Oh, okay. I knew I  
16 saw that December 1st somewhere. We have to --  
17 actually, you-all have to set and we have to  
18 publish. So that was -- that's what I was  
19 concerned about. I wanted to make sure we did  
20 everything statutorily compliant. So today is the  
21 day for us to set the rates and to publish.  
22 Christine?

23 CHAIRMAN PHILLIPS: Okay. So go  
24 back over the steps. As soon as this meeting is  
25 over, what's going to take place?

1 MS. TUGMAN: Once we leave this  
2 meeting, we will have Ms. Doris Burnett, who is  
3 with IT, we will have her delete Form 20140 -- I'm  
4 sorry -- 20140151 -- I'm sorry. I have all these  
5 forms in front of me.

6 Okay. Let's do this again. Delete  
7 Form 20140150, and also 20140149. And then once  
8 that is deleted, it will, of course, change the  
9 percentage and change the number of responses.  
10 And the percentage changes will, of course, change  
11 from column to change 2014 to survey, and change  
12 from 2014 to 2015. And we will make the necessary  
13 changes and recalculate everything. And then we  
14 will send it to the Commission for approval, and  
15 once it has been approved, then the rates will be  
16 set.

17 They will be posted, of course, not  
18 in this format, but the regular format that is --  
19 that we have for that form for each  
20 classification. Those will be posted on the  
21 website.

22 MR. SUMMERS: So they had --  
23 Hawkins & Price had three forms?

24 MS. TUGMAN: They actually had  
25 four.

1 MR. SUMMERS: And Hawkins Asphalt  
2 had one?

3 MS. TUGMAN: I'm sorry. You're  
4 right. That is correct.

5 MR. SUMMERS: So this will take all  
6 of them out?

7 MS. TUGMAN: All of them out, yes,  
8 completely.

9 CHAIRMAN PHILLIPS: Any others?

10 MR. STARWALT: Can I just make a  
11 recommendation to y'all? And that would be: Your  
12 motion was to approve with the exception of?

13 MR. HEIMBACH: Yes.

14 MR. STARWALT: What about if y'all  
15 considered approving the rates pursuant to the  
16 change that they're going to make, and then a  
17 communication could be sent out to you with, "Here  
18 are the new rates," rather than have to approve  
19 them again through an e-mail?

20 And so, therefore, you're going to  
21 get the new rates, and then if there is a -- and  
22 then maybe the e-mail would say: "If there's  
23 objection to these, e-mail back with what the  
24 concern is."

25 That way, you're not having to take

1 another vote online or by e-mail --

2 MR. HEIMBACH: So the e-mail would  
3 be a vote without objection?

4 MR. STARWALT: Yes.

5 CHAIRMAN PHILLIPS: And the motion  
6 would be contingent upon --

7 MR. STARWALT: The motion would be  
8 approved pursuant to the changes. And so,  
9 therefore, once the changes are made, you're  
10 basically accepting the rates. You're going to  
11 get an e-mail back potentially if you decide to do  
12 this, and if there is something wrong, then you  
13 all sort of e-mail back and say, "Hey, this is  
14 still wrong." And then you raise the objection at  
15 that point.

16 MR. HEIMBACH: Right. That might  
17 be more consistent with the Sunshine law as well.

18 CHAIRMAN PHILLIPS: So you want to  
19 change the motion?

20 MR. HEIMBACH: So, yeah. Change  
21 the motion to where the seven rates that I quoted  
22 are accepted contingent upon revision by staff and  
23 without objection by the members via e-mail.

24 CHAIRMAN PHILLIPS: Second on that?

25 MR. WRIGHT: Second.

1 MR. SUMMERS: Sounds good.

2 CHAIRMAN PHILLIPS: Okay. Great.

3 MR. HEIMBACH: Thanks, Kent.

4 MR. CRABTREE: I have a question.

5 Once the rates are set, can they be amended?

6 MR. SUMMERS: We have, in the past,  
7 set rates, and the final calculations have been  
8 done after the rates. We've done this before,  
9 where at the last meeting, there had been some  
10 change to the rate that we didn't have the final  
11 calculation done but that the arithmetic followed  
12 our -- basically followed our motion.

13 And that's what we're asking now --

14 MR. CRABTREE: But maybe next week,  
15 if somebody found a mistake or something after the  
16 amended --

17 MR. SUMMERS: I don't think we'd  
18 have another shot at it. I think they have to be  
19 done today.

20 MS. JEFFERSON: It said today.

21 CHAIRMAN PHILLIPS: Anything else  
22 on that? Everybody good with that?

23 What's left, Kim? Anything?

24 MS. JEFFERSON: No, that's it.

25 That's all we have.



1                   CHAIRMAN PHILLIPS: All right. So  
2 a motion to adjourn?

3                   MR. CRABTREE: So moved.

4                   MR. HEIMBACH: Second.

5                   (Meeting adjourned at 9:52 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 1st day  
of December, 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 11th day of December, 2014.

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

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