

SENATE COMMITTEE ON LABOR

February 20, 1991                      Hearing Room 50 3:00 p.m.                      Tapes 18 -19  
MEMBERS PRESENT: SEN. GRATTAN KERANS, CHAIR SEN. LARRY HILL,  
VICE-CHAIR                      SEN. PETER BROCKMAN SEN. BOB KINTIGH SEN. BOB  
SHOEMAKER

STAFF PRESENT: ANNETTE TALBOTT, COMMITTEE COUNSEL ROBERTA WHITE,  
COMMITTEE ASSISTANT MEASURES CONSIDERED: EXECUTIVE APPOINTMENT, RUDOLPH  
S. WESTERBAND, WORKERS' COMPENSATION BOARD (PUBLIC HEARING AND WORK  
SESSION) SB 35, ADMINISTRATIVE REMEDIES FOR COLLECTING UNPAID PREVAILING  
WAGES (PUBLIC HEARING AND WORK SESSION) SB 36, APPRENTICESHIP (WORK  
SESSION) '

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in quotation  
marks report a speaker's exact words. For complete contents of the  
proceedings, please refer to the tapes.

TAPE 18, SIDE A

WITNESSES: MICHAEL J. TEDESCO, ATTORNEY THOMAS GUNN, AFSCME COUNCIL 75  
JERRY BRUCE, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 48  
MARILYN COFI EL, DIRECTOR, INTERGOVERNMENTAL RELATIONS, BUREAU OF LABOR  
AND INDUSTRIES VAL SALISBURY, LEAGUE OF OREGON CITIES SUSAN SCHNEIDER,  
CITY OF PORTLAND PAUL TIFFANY, ADMINISTRATOR, WAGE AND HOUR DIVISION,  
BUREAU OF LABOR AND INDUSTRIES KIM MINGO, ASSOCIATED GENERAL CONTRACTORS  
RUDOLPH S. WESTERBAND, APPOINTEE, WORKERS' COMPENSATION BOARD Sen~te C\_  
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001 CHAIR KERANS called the meeting to order at 3:20 p.m.

EXECUTIVE APPOINTMENT. RUDOLPH WESTERBAND. WORKERS' COMPENSATION BOARD -  
PUBLIC HEARING

WITNESSES: RUDOLPH S. WESTERBAND, APPOINTEE, WORKERS' COMPENSATION BOARD  
MICHAEL J. TEDESCO, ATTORNEY, SELF EMPLOYED THOMAS GUNN, AFSCME COUNCIL  
75

003 RUDOLPH S. WESTERBAND, APPOINTEE, WORKERS' COMPENSATION BOARD  
(EXHIBIT A) > Details Exhibit A. > He was asked questions by members of  
the committee on the following topics: · Workers' compensation law  
experience · His feelings of representing the public as a member of this  
board. · His ability to interpret legislative intent if it is not clear  
from the language. · How he would go about improving the public image of  
the Board during his tenure. · How he would like to be remembered at the  
end of his term of office. · How he would preserve due process for  
injured workers in a system which no longer honors those rights. · How  
he would bring himself up to speed to address worker's compensation  
issues. · What his long-range plans are for the future.

TAPE 19, SIDE A 220 MICHAEL J. TEDESCO, ATTORNEY > Testifies in favor  
of Mr. Westerband's appointment.

320 THOMAS GUNN, AFSCME, COUNCIL 75: > Testifies in favor of Mr.  
Westerband's appointment.

TAPE 19, SIDE 1 EXECUTIVE APPOINTMENT - WORK SESSION 376 MOTION:

SENATOR HILL: Moves for confirmation of Rudolph S. Westerband to fill the unexpired term on the Workers' Compensation Board with an "approval" recommendation.

VOTE: Hearing no objections, the motion carries.

TAPE 18, SIDE B SB 35 - ADMINISTRATIVE REMEDIES FOR COLLECTIVE PREVAILING WAGES - PUBLIC HEARING

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WITNESSES: JERRY BRUCE, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 48 MARILYN COFL EL, DIRECTOR, INTERGOVERNMENTAL RELATIONS, BUREAU OF LABOR AND INDUSTRIES VAL SALISBURY, LEAGUE OF OREGON CITIES SUSAN SCHNEIDER, CITY OF PORTLAND PAUL TIFFANY, ADMINISTRATOR, WAGE AND HOUR DIVISION, BUREAU OF LABOR AND INDUSTRIES KIM MINGO, ASSOCIATED GENERAL CONTRACTORS

001 ANNETTE TALBOTT, COMMITTEE COUNSEL (EXHB ITS B AND C): > Details Exhibits B and C. 062 PAUL TIFFANY, ADMINISTRATOR, WAGE AND HOUR DIVISION, BUREAU OF LABOR AND INDUSTRIES: The "-4" amendments reflect what we understand to be the current federal language. Basically what the amendments do is to provide that the contracting agency shall make funds available to pay claims for labor from any portion of the funds that are available on the contract, that are due the contractor or to be coming to the contractor. What that means basically is that they have some funds and they are ready to pay out, and they haven't paid out yet to the contractor. They haven't made a progress payment, they haven't paid it into retainage, they haven't made a final payment. They can divert those funds for paying labor claims. 095 SUSAN SCHNEIDER, CITY OF PORTLAND > Our preference is for "-5" amendments, with the Attorney General's changes. We're concerned that the bill as written casts a wider net than it needs, and seems to be geared now to fixing a problem where we're not sure there is one. > It's shifting some responsibilities to the City where I think we have demonstrated good faith over the years, and I'm not aware that this has resulted in a problem for the workers. 114 VAL SALISBURY, LEAGUE OF OREGON CITIES: > The League would support the "-5" amendments, which basically preserves the status quo. It allows the Bureau to request the contracting agency to pay prevailing wage claim. And it allows the City the flexibility to pay it out of retainage, to pay it out of any other funds that it might have, to pay it out of its own pocket and collect later if it elects to do that. 149 KIM MINGO, ASSOCIATED GENERAL CONTRACTORS: ~ Our association would support the "-5" amendment and that it stays with the status quo. > Would the Bureau be able to go after the retainage of a contractor for other violations?

163 JERRY BRUCE, BUSINESS REPRESENTATIVE, IBEW: > There have been problems in the past with the Attorney General's Office. > The Bureau of Labor needs as much power as it can be given. ~ The IBEW is in support of the "-4" amendment of this bill. 219 CHAIR KERANS: Mr. Tiffany, in amendment " 511, if we use the word "may", the opposite

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of may is may not - could be maybe. What could you do if we adopt the  
"-5" if we said on page

2, line 9, "may pay the commissioner". What is your fall-back position,  
because we are going to have to choose one side or the other in the  
context as far as the amendments are concerned. 247 TIFFANY: We're  
left basically where we are now when we attempt the same thing under the  
current statute. If the contracting agency is not going to cooperate, we  
are left to our traditional wage collection devices, and that is legal  
law suit, execution on judgment, etc. That takes a long time.

' SENATOR SHOEMAKER: No one has mentioned a performance bond as a  
course of action. TIFFANY: Two of the defendants in a current law suit  
are bonding companies that put up a performance bond. SENATOR SHOEMAKER:  
But the bond can protect against a defendant who cannot respond because  
they haven't got the resources. At least the resources are there.

271 TIFFANY: We have 120 days to file a claim in order to preserve  
our claim, and 2 years to file a law suit. If labor is still going on,  
you can't make a claim. So that's one problem you might look at. The  
bond is there to take care of contract breaches of all kinds. SENATOR  
SHOEMAKER: Does BOLI have any resources it can draw upon to front the  
wage claim so that the worker doesn't have to wait for the period of  
time that it takes to pursue the bond? TIFFANY: If the employer ceases  
doing business - goes bankrupt or something like that - there is the  
wage security fund that is available for workers who have earned up to  
\$1,000 in the previous 60 days of employment and then the employer goes  
out of business and fails to pay them. That's the only thing that we  
have. SENATOR SHOEMAKER: How often do these cases fall on that side of  
the line so that fund is available. TIFFANY: In prevailing wage cases,  
virtually never. 323 SENATOR SHOEMAKER: The debate is who is going to  
take the rap here. In the case where there is not enough retainage to  
both cover the wage claim and to cover non-performance by the  
contractor, that is the problem. The contractor is going to have to  
respond one way or another ultimately, and we're not letting him off.  
CHAIR KERANS: The question is who is going to come into balance, and how  
we are going to do that. BRUCE: All we are asking for the state to be  
able to do is what is already provided in the federal Davis-Bacon Act:  
pay the employees in a timely fashion. We have to be able to protect the  
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TAPE 19, SIDE B

018 SENATOR SHOEMAKER: If we adopted "-4" amendments, the City would  
have an interest in ensuring that wages were paid on all jobs with them.  
Could you ascertain that those have been made as you complete the  
contract? At least, could you do that before you reach the end of the  
contract and reach the retainage?

036 SALISBURY: Short of going out and contacting individual workers,  
I'm not aware of a way to do a survey. I assume that if it doesn't  
happen, people like Mr. Tiffany's agency and labor organizations will be  
told before we're told.

056 TIFFANY: It is the public agency's contract. The agency is  
certainly aware of the items that it requires from its contractors -  
such as the amount of gravel it's going to use, the thickness of the

concrete, or how much rebar, etc., and they have for the most part inspectors on the job that do those kind of things to make sure that the contract specifications are met. The contract specifications are required to contain the prevailing wage rates. They are a matter of contract. The federal Davis-Bacon Act recognized that and requires that be part of the contract. Our own "little Davis-Bacon Act" requires the same. Why shouldn't the contracting agency be responsible for the contract?

094 MARYLYN COFFEL, DIRECTOR, INTERGOVERNMENTAL RELATIONS, BUREAU OF LABOR AND INDUSTRIES: I want to make one comment. The whole point of our function here is to make sure that the workers get paid the wages they earned. Under the federal law their wages have first priority, even ahead of the IRS. The workers get paid first. SENATOR SHOEMAKER: Is there anything to prevent a worker from being asked if he is getting paid? 110 BRUCE: The City of Portland on capital jobs requires that the certified payrolls are turned in to them and they do check them. The problem I'm having is on smaller contracts that aren't capital investments. 162 CHAIR KERANS; I would be in favor of the "-4" amendments. If this becomes a problem to public contracting agencies, the remedies are solely and wholly within the present powers of the public contractor. If we were to pass this law it would be incumbent upon contracting agencies to take responsibility. If we find that the public contracting agencies, having done their best, find themselves in trouble with this, and people have gone and done this as a matter of course before it should have happened, I think they would have an excellent case to come back before us and say we were wrong. The adoption of "-5" is simply repassing the status quo. 207 SALISBURY: Can you give us additional protection and raise the retainage amount from 5% and allow us enough out of the contract to protect the ability to pay and complete the contract. 226 TALBOTT: The cities were concerned that on page 1, line 26, subsection 2 of section 2, speaks to "upon failure of the agency to pay the amount specified", I think that we need to make clear for the record that this is only if the agency fails to insert the required clause in their contract speaking to the payment of prevailing wages. That would be the only time where they would become subject to payment at this point, and this in no way expands any of their obligations.

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Also the State Court Administrator's Office, on Page 2, line 5, in reference to where a county clerk lien record is found, it should be of any "county of this state", not of "court of this state".

TAPE V, SIDE B SB 35 - ADMINISTRATIVE REMEDIES FOR COLLECTING PREVAILING - WORK SESSION

308 MOTION: CHAIR KERANS moves that the "-4" amendments presented by staff to SB 35 (Exhibit B) subject to review by legislative counsel. 312 VOTE: Hearing no objection, the motion carries. 349 MOTION: SENATOR SHOEMAKER moves the bill as amended to the floor with a "do pass" recommendation. VOTE: Hearing no objection, the motion carries.

SB 36 - APPRENTICESHIP - WORK SESSION 373 MOTION: CHAIR KERANS moves the "-2" amendments presented by staff to SB 36 (Exhibit C) subject to review by legislative counsel. VOTE: Hearing no objection, the motion carries. 410 MOTION: SENATOR KINTIGH SB 36 as amended to the Senate Committee on Rules with a "do pass" recommendation. VOTE: Hearing no

objection, the motion carries 429

Meeting adjourned at 5:08

Submitted by:      Reviewed by: Roberta White      Annette Talbott  
Assistant          Committee Counsel

EXHIBIT LOG:

A - Testimony on Confirmation of Workers' Compensation Board Member -  
Rudolph S. Westerland - name - 17 pages B - Draft Amendments on SB 35  
and 36 - Staff- 3 pages C - Revised Fiscal Analysis on SB 35 -  
Legislative Fiscal Office - 1 pages

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