

STATE OF MINNESOTA  
Department of Labor and Industry  
Prevailing Wage Division

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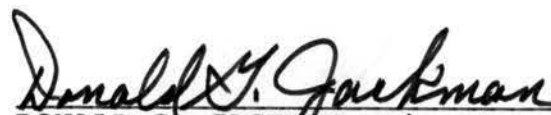
DEC 15 1983

ADMINISTRATIVE  
HEARINGS

In the Matter of the  
Proposed Amendment of Rules  
of the Department of Labor  
and Industry Governing  
Prevailing Wage Determinations

AMENDMENT TO THE  
STATEMENT OF NEED  
AND REASONABLENESS

Minnesota Laws 1983, Chapter 188 required an agency to fulfill several requirements when promulgating which have an impact on small business. Subdivision 2 required the agency to consider five methods of lessening the adverse impact on small business. The Department has considered all five but must reject implementation of any of them because to do so would violate the underlying statute, which required all involved employers to participate in the prevailing wage surveys. Subdivision 3 recognizes that implementation of the methods in Subdivision 2 may not be possible.

  
DONALD G. JACKMAN, Director  
Prevailing Wage Division  
Minnesota Department of  
Labor and Industry

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In the Matter of the  
Proposed Amendment of Rules  
of the Department of Labor  
and Industry Governing  
Prevailing Wage Determinations

SUPPLEMENTAL  
STATEMENT OF NEED  
AND REASONABLENESS

This Statement is submitted as a supplement to the Statement of Need and Reasonableness submitted to Hearing Examiner Peter Erickson on November 7, 1983 in preparation for the hearing held on December 2, 1983.

Minnesota Laws 1983 Chapter 188 require an agency to fulfill several requirements when promulgating rules which may affect small business.

Subdivision 1 permits an agency to include more employees than the 50 stated in Item C if necessary to adapt the rule to the needs and problems of small business. The department reviewed the rules and declines this option as none of the rules are dependent on the number of employees a company has on its payroll.

Subdivision 2 requires an agency to consider five methods of listing the adverse impact on small business. The department has considered each of the five methods and has reached the following conclusions:


A. Establishing less stringent compliance or reporting requirements. The department's position is that since the majority of contractors meet the definitions of small business and since contractors are only required to fill out a report when a survey is taken, less stringent requirements would be contrary to the statutory objectives because the department would not receive the information needed for its determinations of prevailing wage rates.

B. Less stringent schedules or deadlines for compliance or reporting requirements. The rules call for reports to be filed within 33 days of the date mailed. The 33-day requirement allows more than enough time for all employers to respond. Longer reporting times for small business would delay the certifications needed by other agencies when the object of the rules is to provide timely certifications.

C. Consolidation or simplification of compliance or reporting requirements. The department's position is that there is nothing contained in the rules on reporting or compliance requirements that can be consolidated or simplified. The reporting form itself is a one-page document requesting only the information needed to compile the data needed for determinations of prevailing wages.

D. Establishment of performance standards to replace design or operational standards. This method does not apply as there are no design or operational standards contained in the rules.

E. The exemption of small business from any or all requirements. This method is clearly contrary to the statutory objectives that are the basis of the proposed amendments to the rules.

  
DONALD G. JACKMAN DIRECTOR  
Prevailing Wage Division  
Minnesota Department of  
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Department of Labor and Industry  
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In the Matter of the  
Proposed Amendment of Rules  
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STATEMENT OF NEED  
AND REASONABLENESS

These proposed rules are amendments to existing rules of the Department of Labor and Industry governing Prevailing Wage Determinations. The overall need and authority to adopt rules of procedure for making prevailing wage determinations arises under the Commissioner's duties and responsibilities contained in Minnesota Statute §§ 177.41 through 177.44 (1978). The existing rules were originally adopted in April of 1977 and amended in March of 1980.

The 1980 amendments were adopted to provide clarification to the 1977 rules. A need was recognized for concise, consistent guidelines and rules of operation to govern all prevailing wage determinations, for specific steps to be taken in all surveys, and for a practical approach to wage determinations.

Since the 1980 amendments were adopted, several deficiencies have become apparent. Restrictions within the rules include wage rate determinations being based on outdated information. The rules also permit the prevailing rate for a class of labor for an entire county to be determined on the wage rate paid to one employee.

Additionally, the rules do not provide a method for consideration of adjustments to prevailing rates during the period of certification.

The amendments proposed at this time are intended to correct these deficiencies by expanding the sources of information from which data may be gathered and permitting reasonably current information to be used in determining prevailing rates. The amendments also give the department, in some instances, the ability to recognize collectively bargained rates.

The proposed amendments include titles to subparagraphs. The titles are housekeeping in nature and are intended to clarify the rules.

8 MCAR 1.8003  
Paragraph B  
Commercial Type  
Construction

The amendment proposed in paragraph B would prohibit the department from issuing commercial wage certifications that are over six months old. The current rules specify a twelve-month certification period.

The rule is needed because the twelve-month restriction is too long a period of time to expect the certifications to remain valid. The proposed rule permits the department to certify wage rates that more accurately reflect changes in the construction labor market since the date of the last determination..

Certification of wage rates for commercial projects are made upon the request of a state agency. It is therefore reasonable that the department provide that agency with wage rates that are currently prevailing in the area.

8 MCAR 1.8003  
Paragraph C  
Information  
Required for  
Certification  
Request

Paragraph C is a new rule that requires a state agency to furnish the department eleven items of information when requesting wage rates for a contemplated project.

In order to carry out the duty of providing wage rates for "contemplated projects" (8 MCAR 1.8003), the department must be informed of the type of project the agency contemplates and its exact location to survey the appropriate area. Information on the cost of the project and its general description will provide a basis on which the department will select similar projects for comparison and the classes of labor for which wage rates are to be determined (8 MCAR 1.8004).

Information concerning the start of construction and completion of the project must be ascertained to establish the time frame for which the certified rate will be in effect and to determine future adjustments to the certified rates as provided by 8 MCAR 1.8007. The rule further prescribes the length of time advance notice must be given by an agency to allow the department sufficient time to make determinations.

The rule is needed to implement the amendments proposed in 8 MCAR 1.8004 through 1.8007 and is essential to the determination of accurate prevailing wage rates. It is reasonable because the information

is readily available to the state agency.  
Additionally, the rule is modeled on a rule used  
successfully by the State of Wisconsin since 1967.

8 MCAR 1.8003  
Paragraph E  
Survey Data  
Recent

The amendment proposed in paragraph E changes  
the time frame from which wage information is  
collected. The proposed language allows the  
department to base its surveys on work performed in  
the twelve months preceding the date the survey is  
commenced.

The rule is needed and reasonable to meet the  
objectives of Minn. Stat. § 177.41 which states  
that wages on state financed projects should be  
comparable to wages paid for similar work in the  
community as a whole. The present rule restricts  
the department to the use of information concerning  
wages paid in the previous calendar year. When  
the information collected from a previous calendar  
year is compiled near the end of the current year,  
it is probable that the rates determined in this  
manner are nearly two years out of date. To issue  
such rates as prevailing for a project that may  
not be constructed until the next year clearly con-  
travenes the intent of Minn. Stat. § 177.41.

Wage rates determined by the proposed rule  
would better reflect wages being paid for similar  
work in the community as a whole because the



information is no more than twelve months old, regardless of the date the survey is commenced. Although this change may increase the department's day-to-day workload, access to data processing equipment will greatly assist the department in managing the incoming information.

8 MCAR 1.8003  
Paragraph G  
Public Hearing

The proposed amendment deletes the words "State Office of Hearing Examiners" and replaces them with "Office of Administrative Hearings" to reflect a change in the title of the department.

8 MCAR 1.8004  
Paragraph B  
Labor Classes

The proposed amendments to paragraph B are intended to separate the two types of certifications that will be issued by the department. For Highway and Heavy projects, the department will issue wage determinations for all classes of labor commonly and customarily used on those projects. For projects other than Highway and Heavy, the department will issue, when requested, wage determinations for the classes of labor expected to be used on the contemplated project.

The rule is reasonable because it closely follows the language of Minn. Stat. §§ 177.44, subd. 3 and 177.43, subd. 4. The rule is needed to eliminate the unnecessary amount of time and effort spent on surveying areas in which projects other than Highway and Heavy are not being con-



templated and in issuing wage determinations for classes that are not expected to be used.

8 MCAR 1.8004  
Paragraph C  
Projects to  
be Surveyed,  
Criteria

The amendment proposed in paragraph C identifies the criteria to be used in the determination of wage rates for state construction projects. The rule requires the department to select projects of a character similar to the project for which the prevailing wage rate is being determined. The term "character similar" refers to the nature of the project and the major classes of laborers utilized in its construction. As proposed by 8 MCAR 1.8004 C and supported by 8 MCAR 1.8002 the department shall, for survey purposes, categorize projects into either Highway and Heavy, Commercial, or Residential/Agricultural.

The rule requires determinations to be based on two or more projects. In selecting projects of a character similar to the contemplated state project, all projects of a character similar will be used to provide wage rate data, but in no event will determinations be based on less than two projects.

Paragraphs 3 and 4 of this rule are similar to paragraphs 3 and 5 of the current rules. They retain a prohibition against certifying wage rates for a class of labor where no work was performed in

the area surveyed. They also retain the requirement that when projects from adjacent counties are used, all workers in the sought after class of labor in all of the adjacent counties be totaled and used in the determinations.

The rule is needed and reasonable because the requirement of using at least two similar projects for purposes of determinations will eliminate a weakness in the present rule. The present rule allows rates to be certified as prevailing with data taken from a single project. Wage rates certified as prevailing should be measured on a comparative basis. A single rate on one employee provides no information other than what that person was paid. It provides no information as to the wage paid to the largest number of workers.

8 MCAR 1.8004  
Paragraph D  
Frequency of  
Determination

The amendment proposed to paragraph B is needed to permit the department to certify wage rates for additional classes of labor within the six month limitation placed on certifications proposed by 8 MCAR 1.8003 paragraph B.

Proposed rule 8 MCAR 1.8004 allows the department to certify rates for only those classes of labor expected to be used on a project. Should the need arise for wage rates for additional classes of labor not previously certified, the department must be able to certify rates for those additional classes and not be in conflict with rule 1.8003 B.

8 MCAR 1.8006  
Paragraph A  
Survey Procedures  
Scope

The proposed amendment to this rule is house-keeping in nature and is intended to parallel the rules proposed in 8 MCAR 1.8004.

8 MCAR 1.8006  
Paragraph B  
Wage Reports

The amendments proposed in paragraph B allows the department to regularly request from contractor organizations, labor organizations or other interested persons, on forms available from or approved by the department, reports of construction wage rates paid by contractors, and other information. The forms must be signed by the organization or individual attesting that the information submitted is true and correct.

The purpose of the department's prevailing wage rules is to determine prevailing wage rates for state agencies contemplating projects. In order to provide accurate determinations, it is imperative that the department be allowed to collect as much data as possible. The last determinations of prevailing wage rates made by the department were based on information supplied by only 10 percent of the employers contacted for the commercial survey, and less than 15 percent of the employers contacted for the Highway and Heavy survey. Although the department may audit payroll records for the purpose of collecting wage data, the size of the department's budget and time constraints on providing rates preclude any serious attempt to collect information in that manner.

Since all sections of the construction industry are affected by the department's actions, a rule to allow all sections of the construction industry to participate in providing the necessary information is both needed and reasonable. This rule is similar to the Federal method of wage information gathering, "As a rule, the interested parties who must be contacted (for a survey) are those who might be affected by the determinations," Section II, subd. D, titled, "Survey Contacts" of the Federal Construction Wage Determinations Manual of Operations.

8 MCAR 1.8006  
Paragraph C  
Union Wage  
Reports

Paragraph C is a new rule that requires the department to collect information concerning construction union labor agreements and the number of members working within the area covered by the agreements.

The rule is needed to certify collectively bargained rates and future rate adjustments to those rates if the requirements of 8 MCAR 1.8007 paragraphs C and E are met. The rule is reasonable as the information is readily available and it provides accurate information on wage and fringe benefit rates, the number of workers, and the names of contractors working within the geographic areas of the agreement.

The information acquired is to be used as reference material only and will not be used for wage rate determinations.

8 MCAR 1.8006  
Paragraph D  
Mailing Lists

The amendments to paragraph D set forth the mailing lists the department is required to keep and maintain. The rule is similar in nature to the rule presently in effect. It is amended to parallel the change in rule 8 MCAR 1.8006 paragraph C.

8 MCAR 1.8006  
Paragraph E  
Notification  
of Survey

The proposed amendments to paragraph E set forth the notice procedures to be followed by the department when conducting a survey.

The proposed amendment specifies the people to be notified, the length of time allowed for reply to the request for information, and the information to be provided. It further specifies that incomplete or unsigned forms, or reports not timely received by the department shall not be used in making wage determinations.

The rule is needed to provide clear and concise guidelines for the department to use when conducting surveys. It also provides clear notice to those surveyed of the requirement they must meet in order to have their input considered.

The requirements are reasonable because they require only necessary information and provide ample time for reply.

8 MCAR 1.8006  
Paragraph F  
Report and  
Attestations

The amendment proposed in paragraph F provides civil or criminal prosecution for willful falsification of information required in wage and employment reports.

The amendment is needed to insure proper enforcement of the rules by providing an effective method of processing untrue and incorrect reports.

The rule is reasonable because the amount of state funds expended on construction projects is significant and requires a data base that contains factual information.

8 MCAR 1.8006  
Paragraph G  
On-Site Vists

The amendment proposed in paragraph G replaces the current wording of the first sentence "In addition to the mail procedures described in paragraph 5" with "In addition to receiving and compiling the information described in B through F." In all other respects, the language of rule F is the same as the current rule 7. The amendment is needed and reasonable to bring the rule into conformity with the amendments proposed in B through F, and to provide continuity to the rules.

8 MCAR 1.8007  
Paragraph B  
Procedure

The proposed amendments to paragraph B replaces some of the numbers and symbols with words. The amendment is housekeeping in nature and does not change the intent of the paragraph.

8 MCAR 1.8007  
Paragraph C  
Collectively  
Bargained Rate

The amendment proposed in paragraph C would permit the department under certain conditions to recognize a collectively bargained wage rate as the prevailing wage rate. This rule is modeled on a similar rule used with success by the State of Wisconsin since 1967.

In order to certify a collectively bargained rate, the prevailing rate for a class of labor must first be determined according to the rules prescribed in paragraphs A and B of 8 MCAR 1.8007. The rules require the prevailing rate for a class of labor to be determined by the wage paid to the largest number of workers.

After determinations have been made but before a rate is certified, the department will review all union agreements in the area covering the sought after class of labor. If the rate determined is listed in an agreement, the current rate contained in the agreement would be certified as the prevailing rate.

The rule is similar to the Federal method of certifying union contract rates that have been determined to prevail in an area. Section II



subd. 48 titled Negotiated Rates in Wage Decisions, Page 29A states in part, "When a determination has been made that negotiated rates prevail, collective bargaining agreements are used as a resource to ensure that the rates are accurately reflected in the wage decisions."

The rule is needed to permit the department to recognize collectively bargained rates when they prevail. The rule is reasonable because the ability to recognize a contract rate will ensure that the prevailing rate certified will be the rate paid for similar work when the state project is constructed.

8 MCAR 1.8007  
Paragraph D  
Noncollective  
Bargained Rate

The amendment proposed in Paragraph D is a clarification of the intent of paragraphs C and E of this rule. The rule is needed and reasonable to state in clear language that if the rates determined by the department (under the applicable statutes and rules) is a noncollectively bargained rate, then that is the rate that will be certified.

8 MCAR 1.8007  
Paragraph E  
Change in Rate

The amendment proposed in paragraph E permits the certification of future adjustments to prevailing rates. The rule recognizes changes in wage rates due to collective bargaining agreements that occur in the twelve-month period following the

date of certification. The rule applies only to those classes of labor, whose rates have been certified, as proposed in 8 MCAR 1.8007, as collectively bargained.

Since a survey of the area has already established that the prevailing rate for the area is a collectively bargained rate, then it is needed and reasonable to recognize any future adjustments to those rates as they occur during the twelve-month period following certification. If the adjustments to wage rates are not taken into account, the wage rates determined for the state project would no longer be comparable. Minn. Stat. § 177.44, subd. 4 mandates that in addition to current wage rates, the certifications shall include future rates when they can be determined. Collectively bargained agreements are negotiated for a definite period of time, and clearly define the dates and amounts of future adjustments. By recognizing these changes at the time of certification, the department will carry out its obligations as prescribed in the Statutes.

This rule is modeled after a similar rule that has been successfully used by the State of Wisconsin since 1967. It is also similar to the Federal method of wage certification as outlined in the Federal Construction Manual of Operations, Section II, subd. 42, titled, "Keeping Determinations Current."

This completes the Department's Statement of Need and Reasonableness. In summary, the new rules and amendments to existing rules proposed for adoption are necessary to fulfill the department's obligations and duties under the provisions of the Prevailing Wage Law and to assure that the wages of laborers engaged in state projects are comparable to the wages paid for similar work in the community as a whole. The proposed rules are similar to both Federal and the State of Wisconsin rules which are being used effectively. It is the opinion of the department that failure to adopt these rules will prevent the accurate determination of current prevailing wages.



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