

GOP lawmakers subpoena prevailing wage documents; state says it's turned over everything

By Phil Kabler

In a highly unusual move, legislative leaders subpoenaed the acting director of WorkForce West Virginia on Tuesday, demanding documents they contend show the state agency relied on data “provided by outside labor interests” to develop a new methodology for recalculating the state’s prevailing wage rates.

But a spokeswoman for the state Department of Commerce said Tuesday the key documents the administration is accused of withholding were actually sent to the Joint Committee on Government and Finance via email in June.

In a letter accompanying the subpoena, Senate President Bill Cole, R-Mercer, and House Speaker Tim Armstead, R-Kanawha, accuse WorkForce West Virginia of failing to provide all “documents and communications” related to the development of the prevailing wage methodology.

In particular, Cole and Armstead contend that the administration withheld a “series of emails” from Lesly Messina, research director for the Affiliated Construction Trades Foundation, to Jeff Green, director of WorkForce’s research division. Cole and Armstead said the emails criticize using federal Bureau of Labor Statistics data to calculate prevailing wage.

“As Messina is an employee of the Affiliated Construction Trades Foundation, it appears WorkForce West Virginia chose not to provide documents evidencing communications between a private entity clearly attempting to influence the methodology for calculating the prevailing wage,” Cole and Armstead said in the letter to Russell Fry, the agency’s acting director.

In a statement, Cole added, “It’s incredibly troubling to me that this agency has chosen to be less than forthright in fulfilling our legal request for information, and because of this action, I have grave concerns about the objectivity and legitimacy of their work.”

However, Department of Commerce spokesman Chelsea Ruby said Tuesday that the ACT Foundation documents, along with “thousands of pages of documents and emails” regarding prevailing wage methodology, have already been submitted to the Joint Committee.

“Throughout this process, numerous people and interest groups offered input, including but not limited to members of the Legislature, legislative staff, labor groups and business groups,” Ruby said. “It is clear that the agency has complied with the statute, and WorkForce West Virginia will continue to comply with the law.”

Asked to respond to Ruby’s statement, state Senate spokeswoman Jacque Bland said Tuesday evening, “We stand by the subpoena issued earlier today.”

The subpoena is the latest salvo in a battle by Republican legislative leaders against the Tomblin administration agency over implementation of a law passed in March (SB361) to recalculate wages paid to construction workers on larger publicly funded projects.

During a heated committee meeting in June, legislative leaders accused WorkForce West Virginia of defying their mandate to use federal Bureau of Labor Statistics figures to set prevailing wage rates.

Instead, WorkForce West Virginia is proceeding with methodology that will also rely on the results of wage rate surveys of more than 5,000 state contractors and subcontractors, a process expected to be completed this fall.

Also Tuesday, the Tomblin administration and ACT Foundation Executive Director Steve White each provided the Gazette with what they said were all the emails the foundation sent to WorkForce West Virginia.

Those emails include attachments outlining how prevailing wage is calculated in Ohio and in Pennsylvania, and two reports by economics professors at Colorado State and Utah detailing why employment statistics such as the BLS data are not applicable to calculating prevailing wage rates.

An additional attachment includes 2013 congressional testimony from federal BLS Commissioner Erica Groshen explaining the limitations of using BLS statistics to calculate prevailing wage rates, including reliance on broad geographic areas and lack of differentiation between full-time and part-time employees.

“The BLS has no role in setting prevailing wages, nor in determining what data ... should be used for that purpose,” Groshen stated.

“If it wasn’t so serious it would almost be funny,” White said of the legislative subpoena. “We sent public testimony from the head of BLS saying their data was not appropriate for prevailing wage use. If they want to get mad at someone, they should contact BLS.”

White said legislative leaders are being disingenuous in saying the law requires WorkForce West Virginia to rely strictly on BLS data, noting that the House amended the legislation to allow the Joint Committee to extend the current prevailing wage rates through Sept. 30 if the new methodology was not complete when the previous rates expired as of July 1.

“Why did they build in more time if it not for the possibility of a (contractor) survey?” asked White, who noted surveys are used to determine average wages in 31 of the 32 states with prevailing wage.

On a partisan vote, the Joint Committee on June 8 rejected a motion by Senate Minority Leader Jeff Kessler, D-Marshall, to extend the prevailing wage rates through Sept. 30. That means there currently is no state prevailing wage for public contracts in effect until WorkForce West Virginia submits the new rates this fall.

“The thing that’s frustrating to us is that there’s some accusation that we didn’t live up to the deal somehow, and that’s not true,” White said.

Although legislators regularly threaten to use subpoenas, public subpoenas issued by the Legislature are rare.

The last public subpoena was in 1989, when prior to impeachment hearings, then-state Treasurer A. James Manchin refused to release documents to the Legislature without a subpoena, according to Legislative Auditor Aaron Allred. Manchin subsequently resigned a day before his impeachment trial was to begin in the state Senate.

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