

Statehouse Beat: Prevailing wage subpoena latest misstep by legislative leaders

The new legislative leadership continues to be a riches of embarrassment, with their latest faux pas being to subpoena documents they, evidently, already had in their possession.

That was the latest salvo in the GOP leadership's extreme displeasure with the way WorkForce West Virginia is recalculating the state's prevailing wage rate for major state-funded construction projects.

Apparently, their concern is that a statewide survey of the actual wage rates for construction workers will come up with a scale that's not dramatically different the prevailing wage rate that expired as of June 30, not the wage cuts they apparently envisioned.

That this was the first public subpoena by legislative leadership in 26 years is evidence that in the past, more experienced and time-tested legislative leaders have been unwilling to take the Legislature's subpoena power lightly. It was last used in 1989 against A. James Manchin, when the then-state treasurer refused to provide documents for the Legislature's impeachment investigation.

This time, the subpoena smells more like a publicity stunt, complete with a joint press release from President Bill Cole, R-Mercer, and Speaker Tim Armstead, R-Kanawha, contending that WorkForce West Virginia was withholding documents they claimed would show how "outside interests" – specifically the Affiliated Construction Trades Foundation -- were influencing the wage-setting process.

However, unlike A. James, there's no evidence WorkForce West Virginia or Department of Commerce officials were refusing to release any documents. In fact, on June 17, the agency electronically shipped all documents and correspondence it has received on prevailing wage going back prior to passage of the bill, literally thousands and thousands of pages of documents. (This I know because I currently have stacks of documents two feet high at my feet.)

(On Friday, WorkForce West Virginia acting director Russell Fry sent a letter to Cole and Armstead, along with a flash drive of all documents relating to prevailing wage, stating that all the documents contained therein had previously been provided to the Legislature on June 17.)

If the ACT Foundation was trying to influence the wage-setting methodology, evidently so were a lot of building contractors, businesspeople, agency officials (both in-state and as far away as Oregon), legislators and others who sought input into the process, according to the documents.

Of course, again, this is a case where the narrative can trump reality.

Prevailing wage, like unfunded pension liability or budget deficit, is one of those important issues that makes most people's eyes glaze over. However, toss in the word "subpoena," and that conjures up negative connotations in many people's minds – perhaps in order to taint in advance whatever wage rates WorkForce West Virginia ultimately determines are accurate.

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Ironically, had the leadership not made a fuss, it's likely no one would have sought out the documents

submitted by the ACT Foundation, which for the most part are pretty innocuous stuff: summaries of how prevailing wage is calculated in other states, and some academic research.

However, it also included a transcript of congressional testimony from Erica Groshen, commissioner of the U.S. Bureau of Labor Statistics, explaining why BLS data is basically not usable for setting prevailing wage rates – seemingly blowing away GOP leadership’s demands that BLS be used primarily, if not exclusively, to come up with the new West Virginia rates.

Another tidbit among the documents are emails noting a conference call on April 22 at the request of Cole and Armstead to have the WorkForce researchers update the leadership and legislative counsel on the status of the new prevailing wage methodology -- which is some six weeks before the Joint Committee on Government and Finance meeting June 8, when leadership seemed taken aback to learn that the Workforce team was going to rely on contractor surveys to come up with new wage rates.

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Finally, it was probably not too much of a coincidence that the day the Legislative leadership subpoenaed WorkForce West Virginia, the Pew Charitable Trust’s Stateline news service posted an article entitled, “Labor Battles Heat up in State Legislatures.”

It noted that two dozen state legislatures pursued right-to-work and/or legislation to repeal or roll back prevailing wage laws.

“The battles this year over the legislation — perceived as free-market initiatives by proponents and anti-union by foes — reflect the tremendous power that Republicans have gained in state capitols following November’s elections and the declining political clout of organized labor in many states,” the article noted.

Ultimately, it noted, only two states passed right-to-work laws (and Missouri Gov. Jay Nixon vetoed the legislation in that state) and only three repealed or rolled back prevailing wage laws (Indiana and Nevada, along with West Virginia; Virginia passed a prevailing wage repeal law, but it was vetoed by Gov. Terry McAuliffe).

The article, again not coincidentally, repeatedly quotes ALEC’s Michael Hough as advocating both right-to-work and prevailing wage repeals.

It references a “national anti-union agenda being pushed by groups such as ALEC,” quoting Wisconsin state Rep. Chris Taylor, saying, “You have a very empowered far-right contingent that has captured the Republican Party in Wisconsin. They are on a mission to really gut unions and decimate their political power.”

(The article also references the prevailing wage rollback here, quoting Sen. Craig Blair, R-Berkeley, the bill’s sponsor, and Senate Minority Leader Jeff Kessler, D-Marshall, who said the battle over wages has been “a real wake-up call to the labor unions.”)

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