

Approved

Date

Arthur Douville 4-287

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at  
Chairperson

9:09 a.m./~~p.m.~~ on March 25, 1987 in room 526-S of the Capitol.

All members were present except:

Representative R. D. Miller - Excused

Committee staff present:

Jerry Ann Donaldson, Research Department  
Jim Wilson, Revisor of Statutes' Office  
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Tom Marshall, Kansas Construction and Building Trades, Kansas City  
Bill Williams, Heavy and Highway Contractors, Kansas City  
Kathy Marney, Mechanical Contractors, Topeka  
Wayne Maichel, Kansas AFL-CIO, Topeka  
Stu Entz, Associated Builders and Contractors, Topeka  
Woody Moses, Kansas Read-Mix Concrete Association, Kansas Aggregate Producers  
Association & Kansas Land Improvement Contractors Association, Topeka  
Janet Stubbs, Homebuilders of Kansas  
Jim Yonally, NFIB of Kansas

Tom Marshall was recognized and presented his testimony, attachment # 1.

Bill Williams was recognized and presented his testimony, attachment # 2.

Kathy Marney was recognized and presented testimony, attachment # 3.

Wayne Maichel was recognized and testified in opposition to S.B. 112. He rebutted some of the testimony presented March 24, 1987, beginning with the construction at Emporia State University pointing out that because federal money was used in that job, federal prevailing wage was involved. In reference to the four million dollar cost overrun at Kansas State University, he contended that of that amount, the major portion was not wages. Next he referred to the Florida law and stated that while some construction dollars may have been saved, maintenance costs have risen considerably due to the poor quality of workmanship.

In response to Chairman Douville's question yesterday, Mr. Maichel reaffirmed Mr. Slattery's response that there are no rules and regulations in methodology 44-201 regarding surveys, but the AFL-CIO would support that as well as, some sort of appeal procedure in which contractors, labor organizations and governmental entities could be heard. Mr. Maichel said that his organization would also support an amendment to the law that would require surveys on a county by county basis rather than including surveys for first and second class cities as separate documents.

Stu Entz was heard by the committee, attachment # 4.

Chairman Douville asked if there would be two different bases involved for the two surveys and if federal funds were involved.

Mr. Entz replied that one indicates what the current costs for labor really are but the other indicates what the public will be assessed on a public building project.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,  
room 526-S, Statehouse, at 9:09 a.m. ~~p.m.~~ on March 25, 1987.

Mr. Williams, at the chairman's invitation, responded that there is a difference between residential and light commercial construction and public buildings and highways as the former utilizes less skilled labor. Citing painting as an example, Mr. Williams said that it required less skill to paint a house than to paint a bridge.

Chairman Douville asked Mr. Williams about the prevailing wage being in use on highway projects. He responded that in most highway projects federal funds were involved so the prevailing wage would be federal.

Woody Moses was recognized and testified that in the view of the organizations which he represents, the issue is an economic one. He contended that there can be as much as a 50% increase in the labor cost due to an artificial wage law imposed upon constraint, leaving less money for material and construction. His organizations would support any effort to have construction costs reflect their true value per square foot. Mr. Moses stated that they are in constant flux as to which wage rate should be paid and this is due to the material involved. He contended that protection for the worker is already present in the law through wage per hour, employment security and workers compensation.

Tom Marshall, the first conferee, pleaded with the committee to give careful consideration to repealing 44-201 and maintained that it still has merit, citing that it has seen increased activity.

Time constraints prevented Janet Stubbs and Jim Yonally from being heard. Chairman Douville invited them to submit written testimony to the committee, attachments # 5 and # 6.

Also distributed to the committee were two newspaper articles from Representative Hensley which referred to immigrant workers being used in the Johnson county area, attachments # 7 and # 8.

Jerry Donaldson distributed copies of the Ritchie paving case that had been requested by Representative O'Neal at the March 24, 1987, meeting of the committee, attachment # 9.

The meeting was adjourned at 9:58 a.m. with the chairman stating that S.B. 112 would be carried over to the next meeting.

The next meeting will be March 26, 1987, at 9:00 a.m.

Also received by the committee was a statement of support of S.B. 112 from the Kansas Association of Counties, attachment #10.

Attachment #11 is a handout entitled "Kansas Prevailing Wage Procedure" that was also distributed to the committee.

HOUSE COMMITTEE  
ON  
LABOR AND INDUSTRY

GUEST LIST  
City

DATE March 25, 1987

Name	City	Representing
Jim Yemally	Overland Park	NFIB/Kansas
Tom Catz	Topeka	Ass. Builders & Contractors
Don Williams	Wichita	Assoc. Builders & Contractors, Inc
Ray Anderson	Topeka	Assoc Builders & Contr. Inc.
John Cutler	Topeka	Ks. Contractors Assoc.
D. WAYNE ZIMMERMAN	TOPEKA	KANSAS CONTRACTORS ASSOC.
Kenn Robertson	TOPEKA	Ks. CONSULTING ENGINEERS
George Barbee	Topeka	Ks Consulting Eng.
Leroy Jones	Overland Park	B. L. E.
Ivan W. Wyatt	McPherson	Ks Farmers Union
George Barbee	Topeka	Ks Consulting Engr's
Dick Villiams	KC	HEAVY CONSTRUCTORS ASSOC.
RON CALBERT	NEWTON	U. J. U.
SKIP HECK	Topeka	KISHR
Jerry Powell	"	"
Ken Ben	Topeka	KIN
Jim DeHoff	Lamonia	K AFL-CIO
Harry D. Nelson	Wichita	"
Don Valle	Grantville	ME!
Ray Petty	Topeka	KACEH / DHR
Laurie Hutchinson	"	Ks Bar Association
Lady J. Marney	Topeka	MCAK
Janet Stubbs	"	HBK
Wayne Mank	"	76. AFL-CIO

BEFORE THE HOUSE LABOR AND INDUSTRY COMMITTEE

Testimony of Thomas H. Marshall, Attorney  
Blake & Uhlig, P.A.

March 25, 1987

RE: Senate Bill 112 (A Bill concerning K.S.A. 44-201)

Mr. Chairman, Members of the Committee, thank you for this opportunity to appear before you. My name is Thomas H. Marshall. I am an attorney practicing law with the firm of Blake & Uhlig, P.A. in Kansas City. Our firm has been involved in several items of litigation concerning K.S.A. 44-201, the Kansas prevailing wage law, and it has come to our attention that your Committee is presently considering Senate Bill 112 which proposes to repeal the very important safeguards of that law.

I urge that this Committee reject this Bill at its earliest opportunity. The provisions of K.S.A. 44-201 were enacted in order to prevent the payment of wages on State projects at rates lower than those currently being paid in the particular city or county in which the public construction is to take place. The clear purpose and intent of 44-201 is to avoid the necessarily disruptive market effects of employers on State projects who are able to underbid their competitors by virtue of paying lower wages to employees who perform the work. Because the State is required to award its contracts to the lowest responsible bidder, a contractor can achieve the low bid by decreasing wages paid to employees on the project were it not for 44-201. This would force the State to award its contracts for

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construction to the contractors who are most willing to cut wages.

While I am fully cognizant of the desirability of conserving State funds and obtaining quality work for the lowest possible price, I strongly urge you to avoid imposing the burden of such budgetary economies only on working people who are involved in performing those construction projects for the State and its political subdivisions. Clearly, the people who work on those projects have the same interest in achieving a fair wage as any other worker in the State. 44-201 was adopted specifically for the purpose of avoiding a situation where those workers are left to experience all of the negative impacts of the competitive bidding process.

As you are no doubt well aware, the art in competitive bidding is not to deliver to the contracting owner all of the economies that a particular contractor can achieve during the course of constructing a particular project. Rather, the art in competitive bidding is to submit the lowest responsible bid by a few dollars on the particular project. Those who assert that the elimination of K.S.A. 44-201 will result in massive savings in construction costs on State projects are notoriously misrepresenting the true state of affairs. Contractors paying everything from minimum wage through union scale are all eligible, provided they meet certain threshold requirements, to bid on construction projects undertaken by the State. As you know, the low bidder is sometimes a contractor who is not limited by a collective bargaining agreement as to the wages which must

be paid while in other instances the successful bidder may be a contractor who is so limited. The addition of the statutory requirement of K.S.A. 44-201 to this process has been an attempt, in Kansas, to avoid any bidding advantage being enjoyed by those who pay extremely low wages to their employees on State construction. Rather than allowing the State to enter a particular market area and disrupt the existing wage structure in that area by giving such contractors an unfair advantage over other contractors in the same area, the provisions of the statute operate to limit the competition among contractors to those cost factors in the course of performing construction projects upon which all of them may compete fairly and equitably. It was to meet this specific concern that the legislature first adopted K.S.A. 44-201 in its original form in 1891.

There can be no question about the fact that as the wages of workers are depressed, the quality of workmanship, and therefore the quality of the completed construction must suffer. Generally, depressing wages paid to construction workers is most likely to result in less skilled employees performing work on State construction projects and the problems which necessarily result from that situation clearly cannot inure to the benefit of the citizens of the State of Kansas.

Those who urge that compliance with 44-201 results in the artificial inflation of construction costs in the State of Kansas are obviously seeking to enjoy advantages over their competitors by reducing the amount of money they must pay their workers on State projects.

Perhaps the most significant "evidence" of the value of K.S.A. 44-201 to working people in this state is the fact that the great majority of the testimony which you will hear will probably come from employers most of whom will speak in favor of repealing the Kansas prevailing wage law. Such a position by an employer can obviously be justified as a citizen speaking in self-interest. On the other hand, who is left to speak for the employees whose income will be adversely affected by the repeal of 44-201. No doubt there are others who will speak in opposition to this bill, however, I believe it is the duty of the legislature to consider not only the interests of those employers and some project owners who seek repeal of 44-201 but the very serious concerns of employees who, for a variety of reasons, are unable to appear before you today themselves to explain what a further decrease in their wages will mean in terms of their ability to remain productive citizens. Please give consideration to the interests of those working people and their families whose incomes will be directly affected if 44-201 is repealed. The simple repeal of this statute can do nothing but make more difficult the task of obtaining gainful employment on construction work in the State of Kansas.

Please kill this Bill so that workers who perform labor on construction projects for the State of Kansas and its political subdivisions may receive a fair day's wages for a fair day's work. Do not allow the burden of the budget constraints, under which the State is compelled to operate, to fall solely on the backs of those employees who will be expending their efforts

in the construction of such projects. Kansas workers should not be required to suffer the entire burden, as will surely occur, should the Bill currently under consideration be enacted into law.

I urge that you act fairly and equitably in this matter and table Senate Bill 112.

  
\_\_\_\_\_  
Thomas H. Marshall

THM:jd



Thank you for the opportunity to share with you our concerns on Senate Bill S112.

My name is Bill Williams. I live in Kansas City and represent the Heavy Constructors Association, a certified chapter of the Associated General Contractors of America.

Senate Bill S112 seeks to repeal the existing statute 44-201 which became law in the late 1890's. We are opposed to repeal of 44-201.

The statute sets a floor of wages paid by contractors on public projects. It was created for the benefit of employees, not contractors. It was, and is, an expression of public policy that payment of low wages shall not give a contractor an advantage in bidding or securing a public contract.

The Federal Government and numerous states, like Kansas, have agreed that prevailing wage laws are important. They are important because they provide crucial benefits to a number of different constituencies including workers, their communities, and the taxpayers themselves.

These laws were enacted to prohibit wage differentials

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from becoming a major competitive advantage in bidding on government construction contracts and to avoid a depression of local labor markets by outside contractors who paid low wages to imported laborers. They insured that the economic power of the government as an employer would not contribute to the depression of local wage conditions. Most of the reasons for mandating a prevailing wage law are still valid today, if the prevailing wage is fairly determined and is the actual wage paid in a community. The result of setting a fair prevailing wage by county should be a maintenance of the status quo for Kansas, neither causing an inflationary effect nor deflating the local labor market. The effect of not pegging a prevailing wage would be to invite some of the abuses which led to the original laws and to make wages a major determinant in the awarding of contracts.

If there were no prevailing wage rates, certain contractors would have every incentive to cut wages in order to become the successful bidder on public works jobs. In the construction industry work is awarded to contractors through a system of competitive bidding -- that is, the lowest responsible bidder will be awarded the project. Labor is one of the few components of construction costs which a contractor can exercise any significant degree of control.

Local communities and taxpayers also derive important protections from prevailing wage laws. The old adage, "you get what you pay for," certainly holds true in the construction industry. Construction projects -- particularly those

in the public sector such as dams, power plants, highways, and schools -- require highly skilled labor. There is no doubt, without prevailing wage laws, that wages of construction workers could be cut substantially by hiring unskilled people. Would this really save the taxpayers money? The answer is no. First, unskilled workers certainly take longer to do a job than skilled workers. Therefore, productivity would be reduced and the cost to the taxpayer would rise. Second, if the government wants quality construction projects, with fewer long-run maintenance costs, then it must utilize skilled workers. In order to use qualified, well-trained construction workers, it is necessary to pay no less than the local prevailing wage rate.

An argument often used against prevailing wage laws is that they are inflationary -- that they cause construction wages to rise more rapidly than they otherwise would, and drive up the cost of public construction.

In fact, the opposite is true. Wage increases are not driving up prices in the construction industry. The real increase in cost in the construction industry has been material, equipment cost, real estate, and interest rates. Therefore, it makes no sense to try to solve the problem of inflation in construction costs by repealing prevailing wage laws. Cost of living continues to rise despite strong lids on salaries, wages, and fringe benefits. There is an old adage, "If it's not broke, don't fix it".

Skill, Integrity and Responsibility is the motto of the Associated General Contractors. Free enterprise is working without the exploitation of the workers. Let's not penalize our citizens who have acquired their skills, purchased homes, raised their families in our state, by allowing employers to reduce the wages of the employees. Seldom do those reductions of wages benefit the taxpayer, only the employer.

Thank you.

TESTIMONY  
BEFORE THE  
HOUSE LABOR AND INDUSTRY COMMITTEE  
BY  
KATHY J. MARNEY  
MECHANICAL CONTRACTORS ASSOCIATION OF KANSAS  
MARCH 25, 1987

Mr. Chairman and Members of the Committee:

My name is Kathy Marney, Executive Director of the Mechanical Contractors Association of Kansas. I appear before you today to testify in opposition to S.B. 112, repealing of the Prevailing Wage. I know this is a very controversial issue and a difficult decision for you as lawmakers to make. I believe if you real take a close look at what this bill does, you might think twice before voting to repeal this law.

I think we need to look at what the Supreme Court which has held that K.S.A. 44-201 was not enacted for the benefit of the contractor, but rather to protect employees by fixing a floor under wages on public projects. The court has futher stated that K.S.A. 44-201 is an expression of public policy that payment of low wages shall not give a contractor an advantage in bidding for securing a public contract.

These laws were enacted to prohibit wage differentials from becoming a major competitive advantage in bidding on government construction contracts and to avoid a depression of local labor markets by outside contractors who paid low wages to imported laborers. They insured that the economic power of the government as an employer would not contribute to the depression of local wage conditions. Most of the reasons for mandating a prevailing wage law are still valid today, if the pre-

vailing wage is fairly determined and is the actual wage paid in a community. The result of setting a fair prevailing wage by district should be a maintenance of the status quo for Kansas, neither causing an inflationary effect nor deflating the local labor market. The effect of not pegging a prevailing wage would be to invite some of the abuses which led to the original laws and to make wages a major determinant in the awarding of contracts.

If the State of Kansas feels no obligation or concern for tax-paying construction workers to be paid a fair wage for their kind of work, then we should do away with the prevailing wage law. In fact, if economic is the sacred and only criteria with no other consideration, we can extend this rationale to importing foreign labor because it will save the taxpayers money in the short run. In the long run, in-state workers and construction companies pay their taxes in Kansas such as sales tax, property tax, taxes on cars and income taxes. Kansas Companies pay the corporate income taxes in Kansas and personal property taxes on all equipment in Kansas. It seems to me that the State of Kansas should have greater respect and concern for its construction workers than to allow the wage level to be set by the contractor paying the lowest wage. These contractors will eventually force all contractors to exploit their employees to the same extent in order to compete.

I urge you members of this Committee to vote no on S.B. 112. Thank you Mr. Chairman and Members of the Committee for allowing me to appear before you today.

To: House Labor and Industry Committee, March 25, 1987  
Re: SB-112  
From: Stu Entz, Associated Builders and Contractors

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KANSAS DOES NOT HAVE A PREVAILING WAGE LAW.

Kansas has the "Eight Hour Day" law (KSA 44-201, see attachment A) Efforts have been advanced, trying to transform the Eight Hour Law into a "prevailing wage" law without legislative action or consideration of the consequences.

Kansas's Eight Hour Day Law was passed to eliminate the impact on the local workman from the importation of Chinese labor. /1/ These foreign laborers were accustomed to working twelve to fifteen hours per day for very little pay. The Kansas Legislature in 1891 declared that it was the public policy of this State on public construction, to limit the work day to

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/1/ Topeka Daily Capital, February 18, 1891 quoted Robert Tompkins, speaking at a meeting of the Kansas Federation of Labor, "Before the exclusion law, when wages were higher, many American employers procured their supplies in the cheap labor markets of China and other foreign countries. This practice aggravated a trouble already serious and provoked a storm of indignation. . . . our own fair Kansas was in the track of its violence, and the exclusion of the Chinamen from the town in the southeastern part of the state was the source of litigation, incrimination and unpleasantness."

Remarks by Kansas U.S. Senator, John Davis, in the U.S. Senate, July 1, 1892 referenced the law passed "by our legislature in Kansas" tracing the rationale of the law to the impact of foreign labor, he stated "but after that comes along the cheap labor of Europe which underbid the American. . . .again comes the Chinaman, who can live off the offals of the cities, whose capacity for work is somewhat satisfactory on the forced subsistence."

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eight hours and, when the hours are reduced, the daily (per diem wage) would be at least that which workmen in the private sector were making for the same work. The term "prevailing wage" DOES NOT EVEN APPEAR in the Kansas law. Kansas does not have a prevailing wage law.

With the enactment of Federal Immigration Laws restricted wholesale importation of foreign labor and with changing construction techniques they rely upon the equipment rather than human labor. The whole purpose for the eight hour law disappeared. For this reason the statute remained largely dormant for eighty years. Just in the last few years, Congress has continued to strengthen the prohibition on the importation or use of foreign labor. There are now severe penalties for employers relying on illegal foreign labor. There is no chance that, by repeal of this old statute, the problem that it addressed will reappear.

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#### NON LEGISLATIVE ACTION TO TRANSFORM OLD LAW INTO PREVAILING WAGE STATUTE

Approximately six years ago certain special interests undertook efforts to transform this old statute into a state "prevailing wage" or "Davis-Bacon" type law without any action by the legislature or any consideration of the consequences on the working man and on the taxpayer.

The Kansas Legislature, 96 years ago, when enacted the Eight Hour Day Law was dealing with a specific problem. The law was passed FORTY YEARS before the Federal government enacted the Davis-Bacon law. Our Eight Hour Day Law existed forty years before the term "prevailing wage" ever came into being. Clearly the Kansas Legislature was not thinking about the "Davis-Bacon" concept or a "prevailing wage" concept in 1891.

In the last six years special groups have funded litigation to seek court interpretation transforming this old law into a "prevailing wage" law. Courts have been confused. They have tried to respond to these efforts with mixed results. When



judicial transformation proved unsuccessful, these efforts were then turned to the executive branch. There for obvious reasons, the request quickly accepted, first in the form of an Executive Order to conduct a wage study and then by unilateral action of the Department of Human Resources. Only in the last year have these efforts come together to actually impose specific wages on public construction with ominous consequences.

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#### IMPACT OF A PREVAILING WAGE ON PUBLIC CONSTRUCTION

If the Executive branch is not prevented from using KSA 44-201 as the basis for transforming an old public policy into a new public policy requiring prevailing wages in public construction, what will be the impact of such a public policy? Two major consequences come to mind.

##### IMPACT ON WORKMEN:

To simply "proclaim" high wages must be paid to certain workmen does not help these workmen. Consider what has happen in the last fifteen years to auto workers and steel workers who enjoyed high wages. To simply insist on high wages to certain destroy their jobs. High wages without work produces zero income to workmen. Forty years ago, ninety percent of construction workmen had predetermined wages. Due to the growth of competition between contractors who do not agree with labor organizations to a high "predetermined" wage, many of the old construction companies have gone out of business. Their workmen have lost their jobs. Now 70 % of all construction in the private sector is done by workmen who do not have predetermined wages. Their employers can remain competitive and preserve jobs for these workmen.

High predetermined wages preclude the hiring of inexperienced, young and minority workmen. It discriminates against those who have not had the opportunities to develop skills and productivity demanded of higher labor cost.

In the instance of predetermined wages, the most industrious workman is paid no more than the poorest workman doing the same kind of work. Predetermined wages "kill" initiative and penalize the good workman.

Finally, by setting a predetermined labor cost, the prevailing wage permits out-of-state contractors to compete equally with Kansas contractors. The research clearly discloses that predetermined wages greatly increase the number of out-of-state contractors. This destroys jobs for Kansas workmen and removes money from the State.

The prevailing wage hurts Kansas workmen and for that reason Kansas should not adopt such a public policy.

#### IMPACT ON TAXPAYERS:

If one wishes to estimate the impact of a prevailing wage policy on the Kansas taxpayer, they need only look to the Federal Davis-Bacon experience. A study conducted by Oregon State University in 1982, under a grant from the American Farm Bureau Federation, concluded that the cost to the taxpayers of the prevailing wage is 26% to 38% (see attachment B). Many other examples exist which reach these same general conclusions. If the state is "strapped" for money, it is inconceivable why this legislature would want to add 26% to 38% in construction costs on public construction. Attachment C suggests that a "prevailing wage" is not going to help the state agencies either.

As noted above the Executive Branch, without any authority has declared the public policy of this state to provide for a "prevailing wage". Since 1984 it is has been busily "cooking-up" this "hit" on the taxpayers.

Just as you might imagine, the Department of Human Resources is leading the Kansas taxpayers to the same "scalping" as the Federal taxpayers get under Davis-Bacon. The irony of this devastating result is highlighted by the fact that the Department conducts two wages surveys. One surveys is conducted to provide information to potential business interests. It provides a survey of what the labor market is

like in Kansas. It is done by locality and by job. A single comparison of this survey to the one that the taxpayers must pay under the purported "state prevailing wage" is a direct affront to every Kansas taxpayer.

The first Department of Human Resource survey (Attachment D) for 1986 declares that a majority of the Carpenters in Johnson County are paid \$9.76 to \$10.74 per hour. However, under our purported "prevailing wage law" (KSA 44-201) as the Department of Human Resource interprets it, taxpayers must pay the same Carpenter in Johnson County, \$19.17 per hour. Human Resources tells out-of-state interests that a majority of Electricians in Johnson County are paid \$8.86 to \$9.75 per hour. The taxpayers must pay on public construction, the same Electrician \$20.92 per hour. The same unbelievable disparity between surveys is reflected between the Painter wage of \$8.86 to \$9.75 per hour versus the "taxpayers" rate under the prevailing wage law of \$17.31 per hour.

Indeed, if Kansas is to have a "prevailing wage" the taxpayers are doomed to suffer the same fate as that of Federal taxpayers.

These considerations do not even take into account the bureaucracy needed to create the wages and enforce these provisions.

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SB112 SIMPLY REPEALS AN OLD STATUTE THAT IS NO LONGER NEEDED AND PREVENTS IT FROM BEING TRANSFORMED INTO A PREVAILING WAGE STATUTE

SB-112 does not repeal a "prevailing wage", it repeals the old Eight Hour Day Law. This old law has simply been used as a "spring board" for creating a "prevailing wage" in Kansas without legislative action. This is its sole purpose. There is no reason to "amend" SB112 unless one wants to formally establish a "prevailing wage". If this is done, the workmen of Kansas and the taxpayers of Kansas will be dealt a severe injustice.

SB-112 should be passed expeditiously before another state project or school building is bid at a cost of 26% to 38% more to the taxpayers than is necessary. If another job is bid with predetermined wages it will bring in out-of-state contractors just like the first project bid under the misinterpreted KSA 44-201 (Bramlodge Coliseum). The money to be spent on that project at Kansas State University is going out-of-state and jobs for Kansas workmen were lost thanks to the Kansas Department of Human Resources purported prevailing wage determination.

No employer shall require a provision made void and unenforceable by this section as a condition of employment or continuing employment.

(c) If an employment agreement contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer shall provide, at the time the agreement is made, a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless:

(1) The invention relates directly to the business of the employer or to the employer's actual or demonstrably anticipated research or development; or

(2) the invention results from any work performed by the employee for the employer.

(d) Even though the employee meets the burden of proving the conditions specified in this section, the employee shall disclose, at the time of employment or thereafter, all inventions being developed by the employee, for the purpose of determining employer and employee rights in an invention.

History: L. 1986, ch. 186, § 1; July 1.

Cross References to Related Sections:

Trade secrets, see 60-3330 et seq.

## Article 2.—EIGHT-HOUR DAY ON PUBLIC WORK

**44-201.** Eight-hour day; exceptions; payment of current rate of per diem wages where work performed. "The current rate of per diem wages" for the intents and purposes of this act shall be the rate of wage paid in the locality as hereinafter refined to the greater number of workmen, laborers or mechanics in the same trade, occupation or work of a similar nature. In the event that it is determined that there is not a greater number in the same trade, occupation or on similar work paid at the same rate, then the average rate paid to such laborers, workmen or mechanics in the same trade, occupation, or work shall be the current rate. The "locality" for the purpose of this act shall be the county wherein the physical work is being performed: *Provided*, That where

cities of the first or second class are located in said counties, each such city shall be considered a locality.

Eight hours shall constitute a day's work for all laborers or other persons employed by or on behalf of the state of Kansas or any municipality of said state, except in cases of extraordinary emergency which may arise, in time of war, or in cases where it may be necessary to work more than eight hours per calendar day for the protection of property or human life. Laborers or other persons so employed, working to exceed eight hours per calendar day, shall be paid on the basis of eight hours constituting a day's work. Not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers or other persons so employed.

And laborers and other persons employed by contractors or subcontractors in the execution of any contract or contracts with the state of Kansas or any municipality thereof shall be deemed to be employed by or on behalf of the state or such municipality so far as the hours of work and compensation herein provided are concerned.

That the contracts hereafter made by or on behalf of the state of Kansas or by or on behalf of any county, city, township or other municipality of said state with any corporation, person or persons which may involve the employment of laborers, workmen or mechanics, shall contain a stipulation that no laborer, workman or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight (8) hours in any one calendar day except in cases of extraordinary emergency (as defined in this act); such contract shall contain a provision that each laborer, workman or mechanic employed by such contractor, subcontractor or other person about or upon such public work shall be paid the wages herein provided: *Provided further*, That the provisions of this act in regard to hours worked per calendar day shall not apply to the construction, reconstruction, maintenance, or the production of local materials for: Highways, roads, streets, and also the structures and drainage in connection therewith; sewer systems; waterworks systems; dams and levees; canals; drainage ditches; airport

*Effect of the  
Davis-Bacon Act on  
Construction Costs in  
Non-Metropolitan Areas  
of the United States*

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Martha Norby Fraundorf  
John P. Farrell  
Robert Mason

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*Department of Economics  
Oregon State University  
Corvallis*

*January 1982*

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**AUTHORS:** Martha Fraundorf is Assistant Professor of Economics; John P. Farrell is Associate Professor of Economics; and Robert Mason is Professor of Sociology, Survey Research Center, Oregon State University.

**ACKNOWLEDGEMENTS:** A number of individuals made important contributions to this project. Lafayette G. Harter, Professor of Economics, assisted in the development of the project and in the review of literature; Lyle Calvin, Professor of Statistics, developed the sampling procedures and assisted in statistical consultation; Pamela Bodenroeder of the Survey Research Center, worked on all aspects of the interview schedule, coordination of interviewing and in data coding. Special thanks are due Kenneth C. Fraundorf, Assistant Professor of Economics, who acted as a sounding board for our ideas and made many valuable suggestions. Harold Pritchett and George LaBaun, Professor and Associate Professor of Civil Engineering, provided valuable advice on the construction industry and construction methods. Barbara Finlay, Assistant Professor of Sociology, and Dianne Farrell, Assistant Professor of History, helped with the permit search and design of the interview schedule. Much gratitude is due as well to the many volunteers who conducted interviews and to the contractors who agreed to participate in the study.

The research was completed under a grant from the American Farm Bureau Federation. The conclusions, findings, and views expressed in this publication are the authors' alone and do not necessarily represent the views of the AFBF.

## CHAPTER 5. SUMMARY AND CONCLUSIONS

Does the Davis-Bacon Act raise construction costs? Almost all empirical studies have dwelt on the wage effect, ignoring the more fundamental and difficult questions of the law's overall effect on costs. While it is fairly clear that the law results in higher wages, it does not follow that the law therefore raises overall costs. Higher productivity of workers engaged on Davis-Bacon projects may more than offset the associated higher wage and administrative costs. Only an empirical study of total costs can get at these issues.

To get data to estimate the effect of Davis-Bacon on costs, we interviewed contractors who built selected non-residential buildings. The buildings were chosen from a list we compiled—based on permits issued and federal funding granted during 1977 or 1978—of construction projects located in a randomly-selected sample of 100 rural counties. From this list we selected a sample of 537 similar federally-funded and private projects. After eliminating those which additional information showed were not appropriate, we located contractors on 385 of these projects. We then interviewed contractors to obtain information about costs and project characteristics. Useable information was returned for 215 projects, of which 113 were projects to which the Davis-Bacon Act applied, and 102 were privately-funded and not subject to any prevailing wage requirements.

Our data show some support for the argument that, contrary to original intentions, Davis-Bacon is not preserving jobs for local contractors. The majority of contractors on both private and public projects were not from the county in which the project was located. However, contractors on public projects were significantly more likely to come from outside the county. Contractors on Davis-Bacon projects also were significantly more likely than those on private projects to come from urban areas.

A number of studies have provided illustrations of the effect of Davis-Bacon on wage rates. In our sample, contractors on 28 projects (24.8% of the public projects) said they had to raise wages above the normal rate due to Davis-Bacon. The average increase due to Davis-Bacon was 34.1% for carpenters and 45.2% for laborers. In addition, other low-wage contractors may have been discouraged from bidding on the project. The effect was that wages were significantly higher on the Davis-Bacon projects. Depending on the trade, wage rates ranged from 12.9% to 23.2% higher on the public projects. Wage rates paid supervisors were not significantly different.

Although the main effect of the Davis-Bacon Act seems to be to raise costs by raising wages, it is alleged to affect costs in other ways as well. There is certainly a difference in the costs of the public and private projects in our sample. The 113 federally-funded projects cost an average of \$708,075 while the 102 private projects cost an average of \$360,504. The public projects also were larger: 19,350 square feet on average, compared to an average of 14,203 for the private projects. Not all the cost difference should be attributed to the effect of the Davis-Bacon Act. Differences in the physical characteristics of the buildings and their regional location may account for some or all of the difference. To examine the effect of the Davis-Bacon Act while

holding other things constant, we used an ordinary least squares regression of cost on scale, building characteristics, regional location, and Davis-Bacon variables. Changing the particular form of the model changed our results. However, in nearly every case the Davis-Bacon variable was significant at the 5% level or better. Based on our regression results, we estimate that nationally the Davis-Bacon Act increases construction costs in rural areas by between 26.1% and 37.7%. Regional estimates were less successful. The Davis-Bacon variable was not significant in some regional regressions, such as the South, while it was highly significant in others, such as the North-Central. A possible explanation is that the Act has little effect on cost in rapidly growing regions, where labor markets are likely to be tight.

These cost differences seem to stem not only from an increase in the wage rates that must be paid to workers in a given trade but also from the assignment of work to a particular trade for purposes of applying the posted prevailing wage rate. If more work were classified as done by "general building mechanic" and paid at the prevailing wage for that category of worker, the cost of public projects would be likely to more closely approximate that of similar private projects built by the mostly non-union contractors operating in rural areas.

Some caution should be used in interpreting or applying our results. First, our estimates are only for the impact of Davis-Bacon on the cost of non-residential buildings in rural areas. One cannot conclude that the effect for all construction is identical. The impact of Davis-Bacon on the cost of projects in urban areas or of other types could conceivably be quite different. The likelihood of such differences is strongly suggested by the different size effect we observed when separate estimates were made for the different building types and regions. A second caveat is that while our model discriminates among projects via a host of technical characteristics, it does not include every possible component or alternative method of construction. Omitted characteristics may have an effect and may be correlated with the applicability of the Davis-Bacon Act, possibly affecting our estimates. In addition, based on our analysis of the different cost components, we think at least a part of the cost effect our model attributes to the Davis-Bacon Act is in reality due to other government programs, such as affirmative action, or different standards for quality and safety. These effects can not be disentangled readily from that of Davis-Bacon. Whenever one applies, so do the others. Furthermore, if the Davis-Bacon Act were repealed, it would not mean a 26.1% decrease in costs unless state prevailing wage laws (which would still apply to many, but not all, projects) also were repealed.

That the Davis-Bacon Act increases the cost of public non-residential buildings in rural areas is fairly certain from our estimates. While the exact size of the impact is still uncertain, our results show that it is likely to be between 26% and 38%. This is larger than earlier empirical studies based on wage data for urban or national samples have suggested, and is likely to include the impact of other government programs as well.



## Finding construction funds full-time job at KSU

By DANA MULLIN  
Capital-Journal state staff writer

MANHATTAN — As construction continues on two state-funded, multimillion dollar projects on the campus of Kansas State University, officials are working to get funding to meet present and future facility needs.

That means acquiring adequate funding from the state, which is a full-time job for George Miller, KSU's vice-president for administration and finance.

"When people come on campus and see the construction of the new chemistry/biochemistry facility and the addition to Weber Hall, they have to realize that money was committed several years ago.

"We have to plan now for projects in the future," Miller explained. "It could appear to some people, 'Why are we constructing when the enrollment has basically stabilized and when the economy is not the way it should be?'"

But Miller said the \$7.2 million Weber Hall project will pump money into the state's major industry, agriculture, through its state-of-the-art beef processing and research facilities.

"And we have the opportunity in the area of chemistry and biochemistry to make good contributions (to the state)," he said. "In that (\$11 million) project, we are essentially mov-

ing people and equipment out of a building that is woefully inadequate and is potentially hazardous, in terms of the fumes and other sorts of things."

Those two projects were high priority items for KSU, but as soon as state funding was secured for them, efforts to get more support

**"The nickel-and-dimeing attitude so typical of the Midwest is killing higher education."**

— Larry Garvin, director, KSU facilities planning

for other serious needs were under way, Miller noted.

"We're in there fighting for everything we can get. We have to make sure they (legislators) understand the investment they have here in this university. This is the land grant university and it is the university that will make the basic contributions to the state's economic development," he said.

Miller admitted times are tough for KSU and for all institutes of higher education in the state.

In my view, there simply is not enough money to go around. What the future holds, I really don't know. But the needs are there, not just here at Kansas State but I'm sure at other institutions," he said.

Because KSU is one of the nation's oldest land grant institutions, many buildings on the campus need renovation, said Larry Garvin, director of facilities planning.

Changes in program requirements, upgraded fire and safety codes, handicap accessibility and roof repairs have resulted in "a multimillion dollar backlog in maintenance on campus that has so far gone unattended," Miller said.

How much further can KSU tighten its financial belt?

"We're hurting, there's no question about that," he said. "There are things that make it even more difficult for us.

"For example, more recent and stringent regulations on animal care have caused this to be an extremely high priority here at Kansas State," he said. "We have got to move ahead on construction in that area and that of course is going to require us to defer even other more important renovations on campus.

"I just feel very uncomfortable about doing that because we have some basic, primary constructional needs."

Garvin had heavy criticism of the current state funding system for higher education.

"For instance, we (KSU) have nearly \$1 million backlog in deferred maintenance and the legislature appropriated \$1.8 million in deferred maintenance for all regents institutions for this year," Garvin noted.

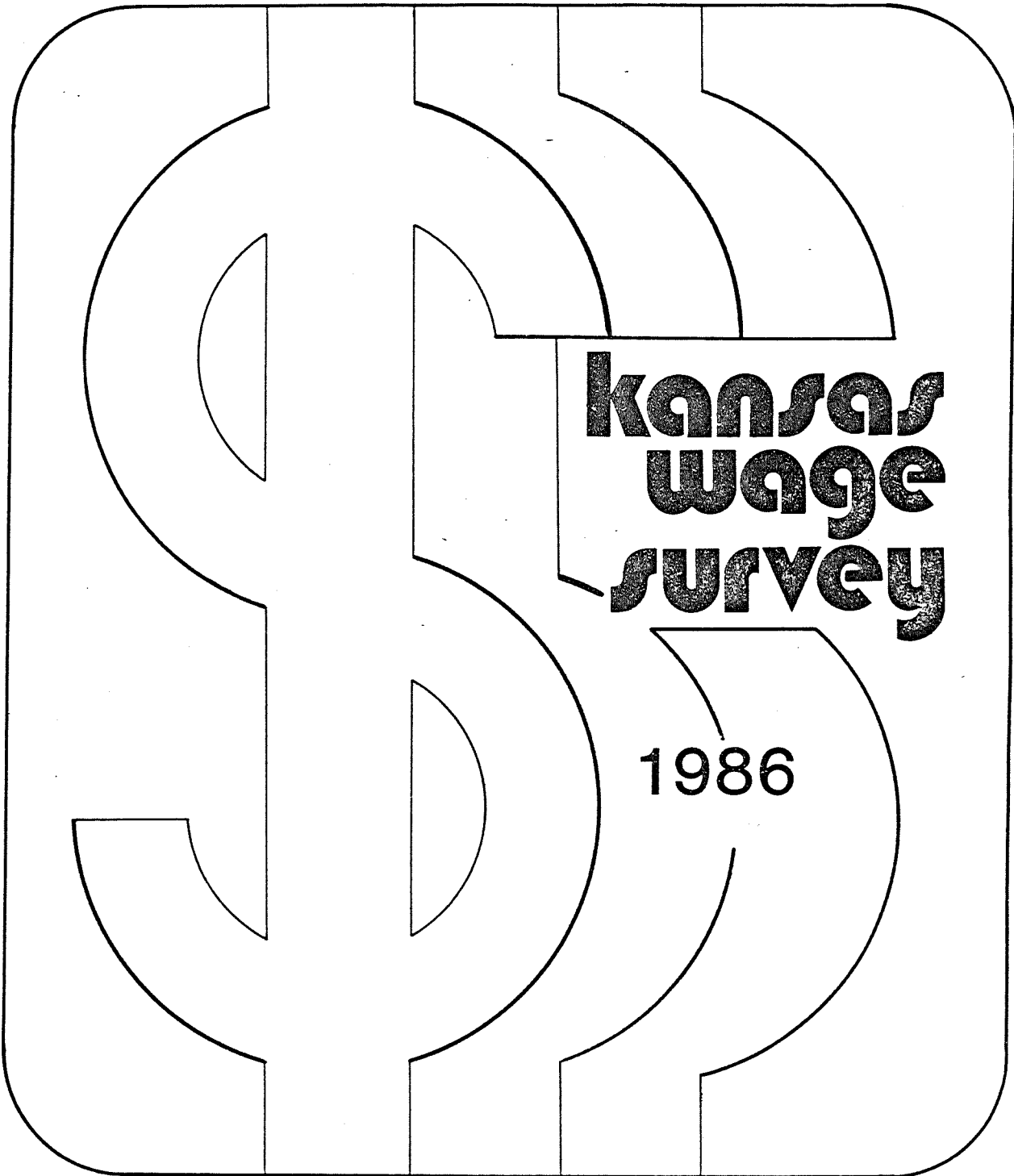
"So for all they say about you can wear hair shirt or cut back or whatever, the fact of the matter is the state is funding this system in a way that will send it all back to dust. The financial crunch has increased the competition among the regent institutions, Garvin said.

"If Kansas State gets the funding for a major project, that means that much less for the other institutions," he said.

"The legislators begin to talk about the necessary investment in education to improve the economy, but they're not willing to do anything about that apparently ... the investment must be made in education. The nickel-and-dimeing attitude so typical of the Midwest is killing higher education."

Both Miller and Garvin stressed the importance of keeping a strong grip on future plans and needs, despite the current financial pinch.

"When things are tight, it's a good time to plan because there is time to look to the future," Garvin said. "Unfortunately, I've observed no one's looking far enough to the future. The state has to make a long-term investment in higher education and let the system run."



KANSAS



DIVISION OF EMPLOYMENT AND TRAINING  
RESEARCH AND ANALYSIS SECTION  
APRIL 1986  
REPORT SERIES NUMBER 15

DEPARTMENT OF HUMAN RESOURCES



SERVICE DELIVERY AREA III (continued)

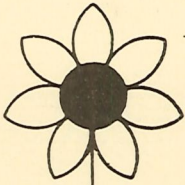
Occupations	Majority Range Per Hour		Complete Range Per Hour	
	\$	\$	\$	\$
Clerk, Shipping & Receiving	6.64	7.30	3.35	13.02
Clerk, Stock	6.03	6.63	3.35	14.33
Computer Operator	6.64	7.30	3.35	16.63
Construction Worker I	8.05	8.85	3.70	18.00
Data Entry Operator	6.64	7.30	3.70	14.42
Drafter	8.86	9.75	4.08	23.26
Electrician	8.86	9.75	4.96	14.33
Electronics Assembler	4.96	5.46	3.35	11.83
Foundry Worker, General	6.64	7.30	4.96	7.30
Industrial Engineer	10.75	11.83	4.96	21.00
Industrial Truck Operator	8.86	9.75	4.50	14.33
Inspector or Tester	7.31	8.04	4.08	19.23
Janitor	6.03	6.63	3.35	13.02
Keypunch Operator	6.03	6.63	3.70	14.33
Line Supervisor	8.86	9.75	4.96	20.74
Machine Operator	7.31	8.04	4.50	13.02
Machine Repairer, Maintenance	8.05	8.85	5.47	14.33
Machine-Tool Operator	7.31	8.04	3.70	14.33
Machinist	8.86	9.75	5.47	13.02
Maintenance Electrician	10.75	11.83	5.47	21.00
Manager, Office	10.75	11.83	4.96	35.71
Material Handler	7.31	8.04	3.70	13.02
Meat Packing Laborer		INA		INA
Mechanic, Automobile	9.76	10.74	3.70	14.63
Mechanic, Diesel	9.76	10.74	4.96	15.54
Mechanic, Maintenance	9.76	10.74	4.96	16.79
Metal Fabricating Supervisor	11.84	13.02	8.86	14.91
Millwright	10.75	11.83	6.03	14.33
Operating Engineer	10.75	11.83	6.03	17.56
Packager, Hand	6.03	6.63	4.08	9.75
Packager, Machine	6.03	6.63	3.35	10.74
Packer	5.47	6.02	3.70	9.75

SERVICE DELIVERY AREA III (concluded)

Occupations	Majority Range Per Hour		Complete Range Per Hour	
	\$	\$	\$	\$
Painter	8.86	9.75	4.96	17.14
Painter, Spray	6.64	7.30	4.08	11.83
Pipefitter, Maintenance	11.84	13.02	11.84	20.13
Plumber	11.84	13.02	8.05	16.61
Printing Press Operator	9.76	10.74	4.96	18.34
Production Scheduler, Coordinator	8.86	9.75	3.70	18.99
Production Superintendent	11.84	13.02	4.96	25.48
Programmer	9.76	10.74	5.47	17.37
Punch Press Operator	6.64	7.30	6.03	10.74
Purchasing Agent	9.76	10.74	4.96	23.81
Receptionist	5.47	6.02	3.35	11.83
Secretary	6.64	7.30	3.35	14.33
Sewing-Machine Operator	INA		INA	
Systems Analyst	11.84	13.02	6.64	29.86
Tool & Die Maker	9.76	10.74	4.08	14.33
Truck Driver, Heavy	8.86	9.75	5.47	15.54
Truck Driver, Light	6.64	7.30	3.35	14.33
Typist	5.47	6.02	3.70	9.75
Warehouse Supervisor	9.76	10.74	4.96	21.00
Welder, Combination	8.05	8.85	5.47	15.31

Percentage of firms reporting selected fringe benefits and policies:

Require Physical Examination	Yes	20	No	80
Require Aptitude Test	Yes	21	No	79
Sick Leave Policy	Yes	71	No	29
Medical Insurance			Yes	61
			No	10
			Other	29
Vacation Policy After One Year			One Week	47
			Two Weeks	50
			Other	3
Vacation Policy After Five Years			One Week	3
			Two Weeks	63
			Other	34



# HOME BUILDERS ASSOCIATION OF KANSAS, INC.

Executive Director  
JANET J. STUBBS

TESTIMONY BEFORE  
HOUSE LABOR & INDUSTRY  
MARCH 25, 1987  
BY

JANET J. STUBBS, EXECUTIVE DIRECTOR  
HOME BUILDERS ASSOCIATION OF KANSAS

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Topeka  
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## PAST PRESIDENTS

Lee Haworth 1965 & 1970  
Warren Schmidt 1966  
Mel Clingan 1967  
Ken Murrow 1968  
Roger Harter 1969  
Dick Mika 1971-72  
Terry Messing 1973-74  
Denis C. Stewart 1975-76  
Jerry D. Andrews 1977  
R. Bradley Taylor 1978  
Joel M. Pollack 1979  
Richard H. Bassett 1980  
John W. McKay 1981  
Donald L. Tasker 1982  
Frank A. Stuckey 1983  
Harold Warner, Jr. 1984  
Joe Pashman 1985  
Jay Schrock 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: MY NAME IS JANET STUBBS, EXECUTIVE DIRECTOR OF HBAK AND I AM APPEARING IN SUPPORT OF SB 112.

ALTHOUGH HOME CONSTRUCTION CONTRACTORS ARE NOT USUALLY INVOLVED IN PUBLIC WORKS CONTRACTS, THE HBAK HAS A LONG STANDING POLICY STATEMENT IN SUPPORT OF THE REPEAT OF K.S.A. 44-201 DUE TO THE ECONOMIC IMPACT OF THIS STATUTE ON THE STATE BUDGET THUS IMPACTING ON ALL TAXPAYERS IN KANSAS. IN ADDITION, WE BELIEVE IT HAS AN IMPACT ON RESIDENTIAL CONSTRUCTION LABOR RATES WHICH MUST COMPETE TO OBTAIN AVAILABLE QUALIFIED LABOR AND SERVICES.

WE BELIEVE K.S.A. 44-201 ET SEG, WAS ENACTED BACK IN 1891 TO ESTABLISH AN EIGHT (8) HOUR WORK DAY AND PROTECT WORKERS FROM A VERY DIFFERENT SET OF CIRCUMSTANCES THAN EXIST IN TODAY'S WORKING ENVIRONMENT.

THE APRIL 1986 LEGISLATIVE POST AUDIT REPORT ON THE "WAGE RATES FOR CONSTRUCTION OF THE COLISEUM AT KANSAS STATE UNIVERSITY" STATES, "IT (K.S.A. 44-201) DOES NOT REQUIRE THE STATE TO DEVELOP OR USE SCHEDULES OF SPECIAL PREVAILING WAGES FOR STATE PROJECTS. THE DEPARTMENT OF ADMINISTRATIONS CURRENT PRACTICE OF INCLUDING RATES DEVELOPED BY THE DEPARTMENT OF HUMAN RESOURCES IN STATE BUILDING CONTRACTS IS THE RESULT OF EXECUTIVE ORDER NO. 84-68. THIS PRACTICE HAS NOT BEEN CODIFIED OR MANDATED BY LEGISLATION."

WE URGE THIS COMMITTEE TO REPEAT K.S.A. 44-201 AND ALLOW THE FREE MARKET SYSTEM TO OPERATE.

Attachment #5  
House Labor and Industry  
March 25, 1987





NFIB® National Federation  
of Independent Business

The Guardian of Small Business.

TESTIMONY BEFORE THE HOUSE COMMITTEE ON LABOR AND INDUSTRY  
IN SUPPORT OF SB 112

Mister Chairman and members of the committee, my name is Jim Yonally, Director of Governmental Relations for the Kansas Chapter of the National Federation of Independent Business. I am pleased to speak in support of SB 112, on behalf of the nearly 8,000 small businesses in Kansas who are members of our organization. As you know, our legislative program is determined by a vote of our membership. On a recent ballot, 70% of those members responding, supported repeal of the state's prevailing wage statute, which is the purpose of SB 112.

Our members believe this law, with the action of the executive branch a couple of years ago, now causes the state and local units of government to spend more on construction projects than would be spent on similar projects done by the private sector. This translates into higher tax requirements being placed on the public. We feel this is not only unnecessary, but a burden that should not continue.

The recent example of construction being performed at Emporia State University, which necessitated an increase in state funding to complete the project after "prevailing wage" requirements were imposed on the contractors, is a perfect illustration of the impact of the current law. We believe that wages for construction workers should be determined by the market-place and not by some artificial standard set by government bureaucrats.

We urge you to put an end to this waste of taxpayer's dollars by passing SB 112. We thank you for allowing us to speak on behalf of small businesses in Kansas on this issue.

Attachment #6  
House Labor and Industry  
March 25, 1987

...reached between owners and players in the day-old major-league baseball strike. Commissioner Peter Ueberroth announced today.

A spokesman for Ueberroth said a news conference would be held in New York at 5 p.m. Eastern time (4 p.m. Central time).

A union source said the agreement included changes in eligibility for salary arbitration, a form of revenue sharing for financially troubled teams, increases in owner contributions to player pensions and no salary cap. These issues had

meeting held this morning. Don Fehr, the acting executive director of the Major League Baseball Players Association, and Lee MacPhail, the president of the Major League Baseball Players Association Committee, started meeting this morning at 10 Eastern time. An hour after the meeting started, the commissioner's office announced that the two sides were meeting with Mr. Ueberroth for the first time in these negotiations. And, shortly after noon, the "tentative understanding" was announced.

Mr. Fehr said, "The commissioner's

too late to save today's 12 scheduled major-league games. The Cincinnati Reds-San Diego Padres' game in Cincinnati, scheduled to start at 12:30 p.m. Eastern time, was called off earlier in the day, and the Cleveland Indians, scheduled to play at 1 p.m. Eastern time against the Yankees in New York, canceled their morning flight to New York.

"It's tentative, unwritten agreement," said Royals player representative Dan Quisenberry, who canceled his plans to fly to New York today. "Once it's in writing we will have an agreement. I don't know any of the particulars; all I'm

will resume T are scheduled at 7:35 p.m. at

Royals Press office received announcing th ing" but that r He said tonight would not be pl

A union plea asked not to tentative agree ● No cap awards.

## Two death sentences are upheld

By Gregory S. Reeves

**J**efferson City—Rejecting a recent federal appeals court ruling that critics said would prevent executions in Missouri, the Missouri Supreme Court today upheld death sentences in two cases.

The state high court cleared the latest legal hurdles in the death sentences of Emmett Nave, a rapist and murderer from Jefferson City, and Kelvin Shelby Malone, sentenced for the robbery-murder of a suburban St. Louis cab driver.

In its decisions, the court said it was not bound by a ruling of the U.S. 8th Circuit Court of Appeals in St. Louis that said persons opposed to capital punishment could not be excluded from juries in potential death penalty cases.

The appeals court ruling, issued in January, is being challenged by Missouri and several other states, and has been ignored in previous Missouri Supreme Court rulings.

Ellen Suni, an assistant professor of law at the University of Missouri-Kansas City, said the state high court in today's rulings appeared to be following U.S. Supreme Court positions on death penalty juries rather than the 8th Circuit opinion.

"Most commentators believe the 8th Circuit opinion is inconsistent with U.S. Supreme Court pronouncements on

See Sentences, pg. 8A, col. 1

## Officers raid site to seek illegal aliens

By Sean Holton

staff writer

**M**ore than 60 law enforcement officers raided an Overland Park construction site today, intending to arrest 40 to 50 illegal aliens believed to be working there.

Shortly after 9:30 a.m., 11 agents with the U.S. Immigration and Naturalization Service served a search warrant at the Skyler Ridge fourplex development south of 115th Street and west of Metcalf Avenue.

Police said early this afternoon that they had taken 20 of the workers into custody. The investigation was continuing at the construction site.

Surrounding the 35-building complex were officers and police dogs from Overland Park, Lenexa, Shawnee and Merriam and the Johnson County Sheriff's Department.

As a helicopter hovered, officers moved into the site from wooded areas. Several construction workers began running west toward an open field. They were intercepted by police, some of whom were wearing fatigues.

See Alien, pg. 8A, col. 4



## Unwelcome visitor

Ten-year-old Melody Atwell takes a look at a tree that crashed through the roof at 4126 McGee St. during the storm Tuesday night. Melody and her

father, Don Related sto.

## A land grab or not?

### Overland Park plan stirs discussion

By Cathy Karlin

staff writer

**F**or Mary Morrissey it boils down to a basic question:

"Don't people have the right to live out of Overland Park?"

The answer for Mrs. Morrissey was no—not if she was to continue living on her 4½ acres south of 143rd Street and west of U.S. 69.

Her property was part of seven acres that Overland Park annexed in 1971. They were a small fraction of the roughly 30 square miles the city has annexed since 1960, the year Overland Park was incorporated.

"Let's not kid anyone," the 69-year-old widow said. "Overland Park has been the number one greedy city in land-grabbing."

The city is trying to grow even farther south. The Johnson County Commission will decide Thursday

whether Overland Park can take in 7.8 square miles and about 1,000 residents of Oxford Township—including the communities of Stanley and Morse—on its southern border. The move has been greeted by complaints from some landowners there, who perceive a threat to their rural way of life.

But cities must progress, city officials say, and annexation allows growth in a more controlled, "cohesive" fashion. Development of the rural area is inevitable, but under their guidance it will be done well, they say.

"Long-range planning is our flagship for annexation," City Manager Don Pipes said. "Annexation is a means of avoiding problems that sometimes develop in other urban areas."

See Annexation, pg. 8A, col. 1

## Secret becom

Knight-Ridder Newspape

**B**elvedere, C Edwards we confessed th thing "almost as stead of giving abs police.

The single moth Ms. Edwards, 38, William Rankin, re church, on a Sunda that she had embez women's guild of St Church in Belvedere

"I confessed and process of making

"And it was fully m

The 43-year-old tented to her confe church members. H ere police, and on Edwards was arres sentenced to seven County Jail, to start Now she is suing



...son sparked a political...  
 ...commission mem...  
 ...verland Park Mayor...  
 ...who accused the...  
 ...wanting to suppress his...  
 ...because it would threaten...  
 ...of county government...  
 ...Herman F. Higgins...  
 ...reaching Mr. Rainey's...  
 ...most astinine childish...  
 ...made by a chief execu...  
 ...Park...  
 ...action, the city continued

...city leaders voted to...  
 ...verland Park's size by...  
 ...square miles, stretching...  
 ...3rd Street...  
 ...g, who has advised area...  
 ...Overland Park, for 30...  
 ...d that addition as the

...ake a city, you have to...  
 ...than 40-acre tracts," he...  
 ...ll cohesion can be devel...  
 ...has an overall character...  
 ...get with teeny annexa-

...ent...  
 ...ark's most recent claim of...  
 ...in Oxford Township has...  
 ...d protest from residents...  
 ...f legal action against the...  
 ...county approve the city's

...County Commission's con...  
 ...cursday will be whether...  
 ...would provide adequate...  
 ...e area and whether the...  
 ...ould harm the land or...  
 ...d...  
 ...s say Overland Park's...  
 ...ion attempt was prompted...  
 ...proposal before the Kan...  
 ...e, if approved, would limit

...nsion...  
 ...al—passed by the House...  
 ...the Senate—would give...  
 ...chance to vote on annexa...  
 ...s. A special legislative...  
 ...reviewing the proposal and...  
 ...tion laws...  
 ...ger Pipes said current sti...  
 ...erally allow for the annex-

...and lady...  
 ...s highest court upheld all of...  
 ...ns...  
 ...has a long felony record...  
 ...ed to the Missouri State...  
 ...in 1965 for rape and armed...  
 ...was paroled in 1978, but...  
 ...d to prison three years later...  
 ...violation...  
 ...aroled again in March 1983...  
 ...dition he avoid drugs, alco...  
 ...arms. However, on Nov. 19...  
 ...ar he shot and killed his...  
 ...Geneva Roling of Jefferson...  
 ...d his wife to drive him to a...  
 ...dnapped four women at gun...  
 ...held them hostage for several...  
 ...mobile home near Brazito...

...d one of the women to inject...  
 ...painkilling drugs, and he...  
 ...ttacked the women before...  
 ...drowsy enough for authorities...  
 ...and capture him...  
 ...rial, Nave's wife testified he...  
 ...too drunk to realize what he

...begins term as group's chairman...  
 ...ianship is always a fragile...  
 ...Mr. Alexander, a Republic...  
 ...ded as he assumed the chair...  
 ...from Democrat John Carlin of...  
 ...mid Democratic demands for...  
 ...y over a GOP fund-raising...  
 ...Alexander said he would "find out...  
 ...felt so strongly about some-

...captured three months after escape...  
 ...fingerprints...  
 ...A police secretary in Greens...  
 ...burg said Welch was captured...  
 ...after officers responded to...  
 ...reports of a car blocking an

...tion for whose sake by...  
 ...adding a tract of not more than 20 acres...  
 ...would make a city's boundary line...  
 ...straight or harmonious, or with...  
 ...approval of the County Commis...  
 ...city's petition for annexation...  
 ...To some rural landowners the policy...  
 ...of stretching the city limits to include...  
 ...farm fields and pasture land doesn't...  
 ...make sense...  
 ..."These cities expand before they're...  
 ...ready to expand," said Ernest Mein, 70...  
 ...who unsuccessfully protested the annex...  
 ...ation of his 80-acre pasture in 1965. "We...  
 ...sat there for years before they finally...  
 ...got a sewer in. They just completed it...  
 ...last year."

...Mrs. Morrissey said her annual prop...  
 ...erty taxes have increased since 1967...  
 ...from \$1.46 to more than \$5.00...  
 ...The latest proposal would raise the...  
 ...total property taxes of the Oxford Tow...  
 ...nship residents affected by about 6 per...  
 ...cent, officials say...  
 ...Mr. Keilenberg said that while he...  
 ...empathized with landowners' frustra...  
 ...tions, annexing land seemingly desti...  
 ...ned for development prevents more pro...  
 ...blems than it creates...  
 ..."It needs to be undertaken when the...  
 ...fewest people are disrupted," he said...  
 ..."It would be fairly foolish to wait until...  
 ...everything is all built up and then come...  
 ...in nailing people for code violations."

...Mr. Pipes said that by annexing the...  
 ...land in its rural state, Overland Park...  
 ...officials can ensure proper planning for...  
 ...streets, school sites and a proper land...  
 ...use mix with sufficient green space in...  
 ...commercial areas...  
 ..."Now we're able to stop strip...  
 ...commercial development like along the...  
 ...old area of Metcalf... from 75th to...  
 ...87th," he said...  
 ...Subsequent annexations will depend...  
 ...on the pace of development, Mr. Pipes...  
 ...said...  
 ..."The goal," he said, "is to continue...  
 ...and make even better the quality of life...  
 ...in the city. Annexation enables the...  
 ...development of better communities result...  
 ...ing in a higher quality of life for every...  
 ...one. There is no other tool as effective as...  
 ...annexation in the preservation and en...  
 ...hancement of a community."

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 ...sented in the majority opinion, in disa...  
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Sgt. Dave Forbes and Detective Steve Smith of the Lenexa Police Department seat one of the illegal aliens apprehended in a raid this morning at a housing complex construction site in Overland Park. (staff photo by Dan Seifert)

## Alien continued from pg. 1A

"Sienta se! Sienta se! Sienta se!" shouted Lenexa Detective Steve Smith as three men who appeared to be in their 20s raced toward the field. "Sit down, sit down, sit down. All you guys get down. Sit on your bottom in the mud."

The officers searched the three men and a fourth, older man who was held near a pile of lumber. After the search they bound the men's wrists with plastic bands.

The police guarded the men and awaited the arrival of immigration agents, who were to determine the nationalities and immigration status. Immigration officials said they expected most of the men to be Hispanics but were looking for illegal aliens from all countries.

Officials from the Johnson County district attorney's office were at the construction site to observe the raid, said Joe Cosgrove, an assistant district attorney.

While some construction workers were being detained, others milled around quietly and others continued working.

Authorities said they would interview everyone at the site because they suspected that some of the illegal aliens would try to get lost in the crowd of legitimate workers.

"When you grab hold of them... they're going to try to con you," Agent Ted Moss of the immigration service told police officers at a pre-raid briefing. "They're going to tell you they're citizens. They're going to tell you they're legal resident aliens. They're going to tell you that you don't have the authority to do that."

Police were to conduct a building-to-building search of the site.

The construction firm contracted to build the Skyler Ridge complex is L.B.I. Construction Inc. of Houston, Texas, agents said.

Police said that in the past the construction firm had claimed that most of the workers at the site were employed by subcontractors.

But when the firm was asked during a previous visit to produce a list of subcontractors, officials said, officers of the firm were uncooperative.

Attorneys for the firm arrived shortly after the raid began. One of the attorneys complained to Overland Park Police Chief Myron Scafe that mud was being tracked into some of the completed apartments being searched.

During the police briefing Sgt. Tim Lynch of the Overland Park Police Department said officials hoped to arrest as many as 40 to 50 illegal immigrants.

"Basically we have information that these people will run once they know we are there," Sgt. Lynch said. "Here are some basics. No shooting. We're not going to shoot anybody. If one or two get through it's not the end of the world. We just don't want 20 or 30 getting by us."

The officers viewed aerial photos of the complex before heading out to the site.

An Overland Park police officer posing as a building inspector had scouted the complex in recent weeks, officials said.

In June three Overland Park police officers and three immigration officers raided the complex but arrested only 10 illegal aliens. Nine were transported to Texas and handed over to Mexican authorities. Of those arrested, eight were Mexican and two were from El Salvador. Police believe that 30 or 40 got away because only six officers were involved in the June raid.

"It's been an area growing quite rapidly down there not only in construction but in illegal aliens," said Capt. Gus Ramirez of the Overland Park police department.

7

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officials blamed the incident on U.S.-supported counterrevolutionaries, known as contras, who are fighting to overthrow the Sandinista government.

The State Department said, "We are investigating but cannot confirm these reports." Contra spokesmen denied any involvement in the incident.

U.S. officials said they were trying to learn whether the group on

State Department spokesman Peter Martinez said in Washington that the U.S. Embassy in Managua was trying to send a "small plane into the area where the group was thought to be. "But as a result of heavy fog, the plane cannot get in," Mr. Martinez said. "Therefore, the embassy has sent three embassy officers by auto to the area. It's a three-hour drive. We expect them

See REBELS, A-14, Col. 1

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KANSAS STATE HISTORICAL SOCIETY

# Aliens arrested in Overland Park sent home Inside

By Marquis Shepherd  
A Member of the Staff

The arrest Wednesday of 52 workers at an Overland Park construction site was described by federal immigration officials as the largest roundup of illegal aliens in Missouri and Kansas in recent years.

"It's been a pretty good day," said Ron Sanders, Kansas City district director of the U.S. Immigration and Naturalization Service.

It was the second sweep at the site in less than two months, and

most of those arrested were on a bus heading home as of Wednesday afternoon, said Sgt. Allen Kunz, of the Overland Park Police Department. The federal government pays for the trip.

The sweep was made by 75 federal agents and officers from the Overland Park, Lenexa and Shawnee police departments and Johnson County sheriff's deputies.

Fifty of the 52 workers asked to be returned to their home countries, Sgt. Kunz said. The other two asked for deportation hearings.

Fifty-one were from Mexico, and one was from El Salvador.

Immigration officials "got a search warrant for the construction site — the Skyler Ridge Apartments — after receiving tips and complaints this summer.

Overland Park residents had complained to city officials about the unsightly conditions of workers living in tents near the job site south of 115th Street and west of Metcalf Avenue, Mr. Sanders said. "People in the area were unhappy

that workers were living like that in their city," he said.

Immigration agents received 20 to 30 complaints from people who were unable to secure jobs at the site and who said that illegal aliens were hired instead.

In addition, a plainclothes Overland Park police officer had accompanied city zoning officials on daily inspections of the construction site, a 35-unit complex, Sgt. Kunz said. The officer, who speaks Spanish, said. See ILLEGAL, A-20, Col. 1

"Any word on the baseball strike?" the caller asked.

"A tentative agreement has been reached," he was told.

"Yeah?" the caller said. "Who won?"

America's sports fans are conditioned for simplistic results in baseball: wins and losses.

On the surface, it appears that the owners came out winners, getting the players to make some concessions on traditional rights they had held in the two major areas of disagreement: salary arbitration and the amount of the national television revenues that will be contributed to the players' pension plan.

last winter and he on for the last baseball's third forced the canceled scheduled games, ball had reached in negotiations.

The "Curtis Le back to the Stone See BASEBA

## Department

- A.M. ....
- Ann Landers .....
- Business .....
- Classified .....
- Comics .....
- Deaths .....
- Editorials .....
- Metropolitan .....
- Movies .....
- Puzzles .....
- Sports .....
- TV .....

Attachment #8  
House Labor & Industry  
March 25, 1987

# Strike ends after two days; baseball season

Continued from Page A-1

were... roughly a compromise between the two sides."

Other points in the agreement include:

- The owners will contribute an average of \$32.6 million annually to the players' pension fund, an increase from the current \$15.5 million but far below the \$60 million the players had first sought.

- The League Championship Series will become a best-of-seven series this season instead of a best-of-five series.

- The minimum major-league salary will be raised to \$60,000 a year, an increase of \$20,000, with cost-of-living increases that will be part of the five-year agreement.

- The November re-entry draft was abolished, meaning that free agents can bargain with any teams they wish.

- Compensation for free agents will no longer include professional players. Instead, two amateur draft picks will be awarded for free-agent players who are ranked statistically in the top third according to their positions; one pick for players ranked in the middle third; and none for those in the bottom third.

- There will be some sort of up-

## Getting back into the swing

- Kansas City hopes to end Detroit's 12-game winning streak at Royals Stadium in tonight's double-header, and the Tigers' top-heavy travel schedule the past two days hasn't helped them get ready. Page D-1.

- The quick strike settlement was just what the players, owners and fans needed. The morning line. Page D-1.

- Today's revised schedule of games is on Page D-2.

front funding to ensure no future problems in meeting deferred contract obligations to players.

The agreement was announced about 10:15 p.m. Central time, more than five hours after a news conference was called by the commissioner's office.

"We had the shortest strike and the longest press conference," Commissioner Peter Ueberroth said.

"I want you to know very clearly I had no role, that this was done by these two people, Donald Fehr and Lee MacPhail, and they brought baseball back to the field."

Earlier Wednesday, Ueberroth entered negotiations at MacPhail's apartment on New York's East Side. Fehr said the essence of an agreement had been reached before Ueberroth had arrived.

Ueberroth, whose earlier propos-

als were refused by the two sides, had been instrumental in getting the parties to talk Tuesday, the players' strike day. When asked about Ueberroth's role in the negotiations, Baltimore Orioles owner Edward Bennett Williams, a member of the executive committee of the PRC, turned to Shakespeare's "Macbeth" and remembered one of the victims of Lady Macbeth.

"His presence," Williams said, "hung over the negotiations like the ghost of Banquo."

Also hovering above these talks was the financial plight of the owners, a bottom line the owners always wrote in red ink despite varying degrees of losses. When the players came off their \$60 million demand for annual pension benefits to a figure of about \$40 million for six years, they suggested the resulting \$120 million be given to

the weaker clubs. Although no such specific revenue sharing was agreed upon, there was movement — for the first time — in that direction.

"We have been advised by the clubs," Fehr said, "that they are contemplating some sort of revenue sharing. To what extent, we're not sure."

Throughout the bargaining, which began last November, the owners had said they were trying to get to a break-even position by 1988.

MacPhail said although this agreement wouldn't reach that goal, "It's a start. We're pleased with it, and we'll go from here."

The two-day strike caused the postponement of 25 games Tuesday and Wednesday. MacPhail said that although the players will be docked their pay for those two games, "We are trying to make up all these games. If the games are played, the players will be paid for that day."

If the games are made up as part of a double-header, MacPhail said the players will be paid for half a day. He said the players will receive full pay if they are played on a date that previously had been open.

Besides putting an end to the strike that had called off 25 games,

the agreement that baseball problems will have a future.

"If some of Fehr said, 'this part of a crisis comes out of have been a'

Addressing peaceful... said, "I realize this might be a different direction. In his 1985 plan, staff complained."

## Fire ca...

A fire caused early Wednesday and caused 9301 Noland

A Lenexa... during a storm, said the blizzard was not noticed in about three reported about

The residents of the official...

## Illegal aliens headed home after Overland Park raid

Continued from Page A-1

ish, overheard conversations among the workers.

Officials Wednesday evening were trying to sort out who actually worked for what company. Mr. Sanders said that as many as 29 subcontractors were involved in the project, headed by L.B.I. Construction Co., of Houston. The president of the company was to be in Overland Park on Wednesday, according to the Houston office, but he could not be reached for comment.

Mr. Sanders said Kansas law prohibited a company from knowingly employing illegal aliens. Sgt. Kunz said information on the case would be forwarded to the Johnson County district attorney. No charges have been filed.

In June, 10 illegal aliens were arrested at the construction site and sent back to Mexico and El Salvador. No charges were filed in those arrests.

Mr. Sanders said those arrested Wednesday reported earning wages of \$2 to \$12.50 an hour. He said he

thought the workers were hired in Texas and moved to the Kansas City area.

"This is the largest (roundup) since I've been here," said Mr. Sanders, who for 2 1/2 years has headed the immigration office responsible for Kansas and Missouri. "The purpose behind this is to free up jobs for the people in Kansas City area who are on the unemployment rolls and entitled to the jobs."

In June, as soon as officers appeared, workers dropped their tools and bolted. Because of the June experience, extra manpower was called in Wednesday, and a helicopter helped coordinate the raid. The site was surrounded, and officers prevented most of the workers from fleeing.

"I seriously doubt that we got them all," Sgt. Kunz said. "As many as 20 didn't even show up for work because of the rain" Tuesday night.

One worker, while fleeing, stepped on a nail and injured his foot. He was treated at a hospital.

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 Ritchie Paving, Inc. v. Kansas Dept. of Transportation
 

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No. 54,163

RITCHIE PAVING, INC., DIVISION OF RITCHIE CORPORATION, INC., a Kansas corporation; and UTILITY CONTRACTORS, INC., a Kansas corporation, *Appellants*, v. KANSAS DEPARTMENT OF TRANSPORTATION, *Appellee*.

(654 P.2d 440)

SYLLABUS BY THE COURT

1. LABOR—*Wages—Computation of “Current Rate of Per Diem Wages.”* In computing the “current rate of per diem wages” for the purposes of K.S.A. 44-201, only those workers employed to do similar tasks on similar classifications of projects should be taken into account. Only if no classification of projects, and therefore no differential wage rates exist, should consideration be given to all the workers in the locality doing similar tasks, regardless of the setting in which they work.
2. SAME—*Wages—Davis-Bacon Wage Scales Included in State Funded Highway Construction.* The inclusion in state funded highway construction specifications of Davis-Bacon wage scales developed on project-based analysis is not in violation of the “current rate of per diem wage” requirement of K.S.A. 44-201.
3. SAME—*Wages—Public Projects—Statutory Minimum Wage.* K.S.A. 44-201 sets a floor below which wages paid by contractors on public projects may not fall. When an additional minimum wage requirement is specified by the contracting entity the result is a double floor below which wages may not fall.
4. SAME—*Wages—Public Projects—Purpose of Statutory Minimum Wage.* K.S.A. 44-201 was enacted not for the benefit of contractors but to protect employees by fixing a floor under wages on public projects. It is an expression of public policy that payment of low wages shall not give a contractor an advantage in bidding or securing a public contract.
5. CONTRACTS—*Public Works Projects—Terms—Statutory Law and Public Policy Must Be Followed.* Public bodies having authority to enter into contracts for public works or improvements have the authority to fix the terms of those contracts so long as the terms do not contravene statutory law or public policy.
6. LABOR—*Wages—Adoption of Davis-Bacon Wage Scale by State Agency—Not Delegation of Authority to Federal Department.* The adoption by the Kansas Department of Transportation of the Davis-Bacon wage scale was not a delegation of authority to the Secretary of Labor.

Appeal from Shawnee district court; ADRIAN J. ALLEN, judge. Opinion filed December 3, 1982. Affirmed.

*William G. Haynes*, of Eidson, Lewis, Porter & Haynes, of Topeka, argued the cause, and *Anne L. Baker*, of the same firm, was with him on the briefs for appellants.

*Dan Watkins*, chief counsel for the department of transportation, argued the cause, and *Kris P. Thompson*, staff attorney for the department of transportation, was with him on the briefs for appellee.

Attachment #9  
 House Labor and Industry  
 March 25, 1987

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Ritchie Paving, Inc. v. Kansas Dept. of Transportation

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The opinion of the court was delivered by

McFARLAND, J.: This is a declaratory judgment-injunction action originally brought by five construction firms claiming the defendant Kansas Department of Transportation violated K.S.A. 44-201 by specifying, on wholly state-funded highway projects, payment of federal Davis-Bacon prevailing wage rates [40 U.S.C. § 276a(a) and (b) (1976)]. Plaintiffs Ritchie Paving, Inc., and Utility Contractors, Inc. appeal from the trial court's adverse decision.

Defendant Kansas Department of Transportation (hereinafter referred to as KDOT) gave appropriate notice of its intention to let bids on some 32 highway projects located in various parts of the state. The bid letting was set for December 17, 1981. The bid specifications for each project: (1) required the payment of the applicable Davis-Bacon minimum wage rates; and (2) compliance with K.S.A. 44-201.

Plaintiffs contend that some Davis-Bacon wage scales set certain wage rates lower than the "current rate of per diem wages" mandated by K.S.A. 44-201 and, accordingly, KDOT's inclusion of same in the specifications is unlawful.

Before proceeding to the discussion herein the following should be noted. R. D. Andersen Construction Co., Inc., has been a party to four comparatively recent Kansas appellate court cases involving construction and interpretation of K.S.A. 44-201. Multiple references to these cases are necessary to the determination of the issues herein. To avoid confusion arising from the similarity of case names, the four cases are listed and will be henceforth referred to as *Andersen I*, *II*, *III* or *IV*, as follows:

- Andersen I*: *Andersen Constr. Co. v. Weltmer*, 223 Kan. 808, 557 P.2d 1197 (1978), full opinion, 224 Kan. 191, 577 P.2d 1197 (1978).
- Andersen II*: *Andersen Construction Co. v. City of Topeka*, 228 Kan. 73, 612 P.2d 595 (1980).
- Andersen III*: *R. D. Andersen Constr. Co. v. Kansas Dept. of Human Resources*, 7 Kan. App. 2d 453, 643 P.2d 1142 (1982), *rev. denied* 231 Kan. 801 (1982).
- Andersen IV*: *Baker v. R. D. Andersen Constr. Co.*, 7 Kan. App. 2d 568, 644 P.2d 1354 (1982), *rev. denied* 231 Kan. 799 (1982).

In *Andersen II* this court summarized the Davis-Bacon Act as follows:

"The Davis-Bacon Act, ch. 411, §§ 1-7, 46 Stat. 1494 (1931), as amended (codified at 40 U.S.C. § 276a to 276a-7 [1976]), requires the Secretary of Labor to determine the minimum wages to be paid laborers and mechanics employed by contractors on federal or federally funded construction projects. Under the published regulations, 29 C.F.R. § 1.1 *et seq.* (1979), the Secretary compiles wage rate information, determines the prevailing wage scales, and publishes them periodically in the Federal Register. 'Wages,' 'scale of wages,' 'wage rates,' 'minimum wages,' and 'prevailing wages' are required by 40 U.S.C. § 276a to include not only the basic hourly rate of pay but also fringe benefits.

"Davis-Bacon wages must be paid by all contractors on state and local construction projects when any federal financial assistance is utilized. 42 U.S.C. § 6708." 228 Kan. at 76.

For purposes of the Davis-Bacon Act wage scales, Kansas is divided into five wage areas. Multiple prevailing wage scales are developed by the United States Secretary of Labor for each area based on the type of construction project involved. The wage scale adopted in each instance by KDOT is the highway construction classification. Certain categories of highway workers therein have a lower wage rate than their counterparts in other classifications. Illustrative of this is the "carpenter" category. In Wage Area No. 2 (Sedgwick County), a carpenter on a highway project has a minimum wage of \$5.83 per hour (46 Fed. Reg. 21,566 [1981]) while a carpenter on a high-rise construction project had a minimum wage of \$11.45 per hour (46 Fed. Reg. 34,971 [1981]). These wage scales were stipulated in the case herein.

The key factor for purposes of this issue is that the wage rates under Davis-Bacon are the result of project-based analysis. The basis therefore is 40 U.S.C. § 276a(a), which provides in relevant part:

"[S]hall be based upon the *wages* that will be *determined* by the Secretary of Labor to be *prevailing* for the corresponding *classes of laborers* and mechanics *employed on projects of a character similar to the contract work* in the city, town, village, or other civil subdivision of the State, in which the work is to be performed . . . ."

We turn now to the Kansas statute in controversy. K.S.A. 44-201 provides:

"44-201. Eight-hour day; exceptions; payment of current rate of per diem wages where work performed. *The current rate of per diem wages for the intents and purposes of this act shall be the rate of wage paid in the locality as hereinafter refined to the greater number of workmen, laborers or mechanics in the same trade,*

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*occupation or work of a similar nature.* In the event that it be determined that there is not a greater number in the same trade, occupation or on similar work paid at the same rate, then the average rate paid to such laborers, workmen or mechanics in the same trade, occupation, or work shall be the current rate. The 'locality' for the purpose of this act shall be the county wherein the physical work is being performed: *Provided*, That where cities of the first or second class are located in said counties, each such city shall be considered a locality.

"Eight hours shall constitute a day's work for all laborers or other persons employed by or on behalf of the state of Kansas or any municipality of said state, except in cases of extraordinary emergency which may arise, in time of war, or in cases where it may be necessary to work more than eight hours per calendar day for the protection of property or human life. Laborers or other persons so employed, working to exceed eight hours per calendar day, shall be paid on the basis of eight hours constituting a day's work. Not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers or other persons so employed.

"And laborers and other persons employed by contractors or subcontractors in the execution of any contract or contracts with the state of Kansas or any municipality thereof shall be deemed to be employed by or on behalf of the state or such municipality so far as the hours of work and compensation herein provided are concerned.

"That the contracts hereafter made by or on behalf of the state of Kansas or by or on behalf of any county, city, township or other municipality of said state with any corporation, person or persons which may involve the employment of laborers, workmen or mechanics, shall contain a stipulation that no laborer, workman or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight (8) hours in any one calendar day except in cases of extraordinary emergency (as defined in this act); such contract shall contain a provision that each laborer, workman or mechanic employed by such contractor, subcontractor or other person about or upon such public work shall be paid the wages herein provided: *Provided further*, That the provisions of this act in regard to hours worked per calendar day shall not apply to the construction, reconstruction, maintenance, or the production of local materials for: Highways, roads, streets, and also the structures and drainage in connection therewith; sewer systems; waterworks systems; dams and levees; canals; drainage ditches; airport grading, drainage, surfacing, seeding, and planting." (Emphasis supplied.)

Under K.S.A. 44-201 the "current rate of per diem wages" is the "rate of wage paid in the locality" to workmen in the same trade or work of a similar nature.

Plaintiffs argue that K.S.A. 44-201 does not permit project-based classification of workers. Put more simply, the contention is that a carpenter is a carpenter whether working on a highway, a high-rise office building, or a chicken coop. Therefore plaintiffs argue wages of all carpenters in the locality should be considered

in establishing the current rate of per diem wage referred to in K.S.A. 44-201. Davis-Bacon wage scales are project-based and authorize, in a particular area as shown in the earlier illustration, payment to a highway project carpenter of approximately one-half the minimum wage authorized for a high-rise building project carpenter. Plaintiffs argue the Davis-Bacon variation in wages for similar jobs among the various classifications in a given area is a patent violation of K.S.A. 44-201. We do not agree.

The issue of whether K.S.A. 44-201 itself requires a project-based analysis was before the Court of Appeals in *Andersen IV*. After reviewing prior case law construing K.S.A. 44-201, the court therein concluded:

“Workers, although in the same generic class of employment, are not necessarily always in the ‘same trade, occupation or work of a similar nature,’ to use the statutory language. Persons employed to do similar tasks may nevertheless not be in the ‘same trade, occupation or work of a similar nature,’ owing to the fact that such workers perform these similar tasks in substantially different work environments. The ‘eight-hour law’ should be construed in light of these statements.

“We hold that in computing the ‘current rate of per diem wages’ for the purposes of 44-201, only those workers employed to do similar tasks on similar classifications of projects should be taken into account. Only if no classification of projects, and therefore no differential wage rates exist, should consideration be given to all the workers in the locality doing similar tasks, regardless of the project setting they work in.

“ . . . A project-based analysis would also lessen the burden on a plaintiff who sues a contractor under 44-201, for his proof could be limited to similar projects, and would not have to involve all workers doing similar tasks in any setting. Further, a project-based construction would indirectly serve the ‘eight-hour’ mandate of 44-201 in addition to directly affecting the ‘minimum wage’ provisions. These two arms of the statute are like two sides of the same coin; if a worker is not paid an adequate wage for his eight-hour day of work on a public construction project, it is highly likely that economic pressures may force him to work at some other employment in addition thereto, thus obviating one purpose of 44-201, that being to prevent overworking of public employees.” 7 Kan. App. 2d at 575-76.

We conclude the foregoing holding and rationale of the Court of Appeals are sound and should be approved. Inasmuch as K.S.A. 44-201 itself requires project-based analysis in determining the “current rate of per diem wage,” Davis-Bacon can hardly be deemed in violation of the Kansas statute by virtue of employment of the same considerations in determining the prevailing wage rates. There is no claim that a classification for highway construction projects is improper where project-based classifica-



tions are permissible. We further conclude the inclusion of the Davis-Bacon wage scale in the specifications herein is not a violation of the "current rate of per diem wages" requirement of K.S.A. 44-201 on the basis that said scale is project based.

In summary, in determination of the current rate of per diem wages under K.S.A. 44-201, substantially similar projects in the locality are the considerations. In determining highway construction wages the comparison must be to other highway construction projects, not to building or residential construction. Only if there are no substantially similar highway construction projects in the locality may one look to other types of projects.

Plaintiffs' evidence in support of their contention that the Davis-Bacon wage scales herein are unlawful by virtue of being lower than those required by K.S.A. 44-201 was only valid if the Kansas statute did not permit project-based analysis. Plaintiffs argue that the Davis-Bacon division of the state into five wage areas is substantially different from the "locality" requirement of K.S.A. 44-201. However they have failed to establish that such circumstances have, in fact, resulted in inclusion of a wage scale lower than that mandated by the Kansas statute.

Another area of plaintiffs' concern is that the inclusion of both minimum wage provisions in the specifications is confusing to contractors.

In *Andersen II* this court said:

"K.S.A. 44-201 sets a floor below which wages paid by contractors on public projects may not fall." Syl. ¶ 1.

"K.S.A. 44-201 does not prohibit a municipality, if it wishes to do so, from specifying wage rates and scales higher than those required by K.S.A. 44-201, and from including them in the specifications and in the contract." Syl. ¶ 2.

"K.S.A. 44-201 was enacted not for the benefit of contractors but to protect employees by fixing a floor under wages on public projects. It is an expression of public policy that payment of low wages shall not give a contractor an advantage in bidding or securing a public contract." Syl. ¶ 4. 228 Kan. 73.

Inclusion, in essence, of two minimum wage considerations simply sets a double floor below which wages paid by contractors may not fall. The wage paid any particular workman may not be less than the minimum wage required under either Davis-Bacon or K.S.A. 44-201.

It should also be recalled that it is the particular workman who claims violation of K.S.A. 44-201 who may bring an action for

recovery of the underpaid wages. See *Andersen III*, 7 Kan. App. 2d 453.

The next issue is whether KDOT has authority to include a specific minimum wage schedule in its highway construction specifications.

Unlike the federal Davis-Bacon Act which requires a wage rate specification, K.S.A. 44-201 does not. *Andersen I*. However, K.S.A. 44-201 does not prohibit a municipality from electing to have a specific wage rate. *Andersen II*. See also *Andersen IV*, 7 Kan. App. 2d at 574. Public bodies having authority to enter into contracts for public works or improvements have the authority to fix the terms of those contracts so long as the terms do not contravene statutory law or public policy. *Andersen II*, 228 Kan. at 79-80. The Kansas Secretary of Transportation is a public official vested with authority to make contracts (K.S.A. 68-407). Consequently, he may fix the terms of those contracts so long as the terms do not contravene statutory law or public policy. *Andersen II*, 228 Kan. at 80.

The Transportation Secretary may elect, as did the City of Topeka in *Andersen II*, to include specific minimum wage rates. If he does, such specifications must be equal to or be greater than the prevailing wage determinable under K.S.A. 44-201 for substantially similar projects in the locality. *Andersen IV*. Permitting the Secretary to employ Davis-Bacon rates is not only consistent with *Andersen II* but also decisions from other jurisdictions. *E.g., Woodside Village v. Sec. of U.S. Dept. of Labor*, 611 F.2d 312 (9th Cir. 1980).

We conclude that KDOT had authority to include the Davis-Bacon wage scale in the specifications herein.

As their next issue plaintiffs argue KDOT's adoption of the Davis-Bacon wage rates was an invalid delegation of authority to the Department of Labor. This issue is wholly without merit. As noted by the trial judge herein, "[t]he decision to use the Davis-Bacon scale is that of the defendant [KDOT] and not the Department of Labor."

Other issues raised have been considered and found to be without merit.

The judgment is affirmed.

# Kansas Association of Counties

*Serving Kansas Counties*

212 S.W. Seventh Street, Topeka, Kansas 66603

Phone (913) 233-2271

March 24, 1987

To: House Labor and Industry Committee

From: Kansas Association of Counties

*from  
Fred Allen*

Re: Senate Bill 112

The Kansas Association of Counties asks that you give serious consideration to the passage of Senate Bill 112.

Thank you.

Attachment #10  
House Labor and Industry  
March 25, 1987

## KANSAS PREVAILING WAGE PROCEDURE

**SUMMARY:** This manual explains the methodology used in determining wage rates for construction workers in various classifications within the state of Kansas. Each county of the state (105), each 1st class city (24), and those 2nd class cities (9) that do not own or operate a municipal light or water plant will be considered localities where a wage determination will be made. K.S.A. 44-201 et seq. directs contractors by asking them to pay the "current rate of per diem wage" to workers on public construction projects. Public construction projects include those contracted by or on behalf of the state of Kansas, or any county, city, township, or other municipality of said state.

The information provided to the Department is compiled and a determination is made available to all public entities upon request.

### COLLECTION OF DATA:

A list will be made of employers who work and pay employees within the construction business community. All general contractors and subcontractors will be included so long as they 1) pay workers and 2) worked within the time frame being surveyed.

Said list was compiled from the Unemployment Insurance computer ear-file, local phone books, F.W. Dodge Reports, and the various contractor association memberships and labor union signatories. The list will be updated each year. Once the initial list is built, F.W. Dodge reports may be sufficient to keep the list current.

The original list utilized the Standard Industrial Code (SIC) numbers for identifying employers within the construction industry. These codes classify employers for UI purposes. The SIC numbers are as follows:

### GENERAL BUILDING CONTRACTORS

1521	single-family houses
1522	residential buildings
1531	operative builders
1541	industrial buildings
1542	non-residential buildings

### CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION

1611	highway & street construction
1622	bridge tunnel & elevated highway
1623	water, sewer, pipeline
1629	heavy construction composite

### SPECIAL TRADE CONTRACTORS

1711	plumbing, heating, air conditioning
1721	painting, paperhanging, decorating
1731	electrical work
1741	masonry, stone setting, other stonework
1742	plastering, drywell
1743	terrazo, tile, marble
1751	carpentering
1752	floor laying
1761	roofing & sheet metal

## SPECIAL TRADE CONTRACTORS (cont.)

1771	concrete work
1781	water well drilling
1791	structural steel erection
1793	glass & glazing work
1794	excavating & foundation work
1795	wrecking & demolition work
1796	erection of building equipment
1799	special trade contractors, misc.

All the contractors (general and sub) are contacted by U.S. Mail when a general wage rate survey is begun. The survey will concern itself with each particular locality (county and cities of the 1st and 2nd class). The survey will ask for wage rates paid to particular worker classifications on a specific project during a certain time frame. Each contractor will be asked to fill out a survey form (see attachment I) for each project worked within the designated time frame. The contractor is asked to provide the following:

- 1) the name and location of the project worked
- 2) the name of subcontractors also paying wages on the project
- 3) the type of project (building, residential, highway, heavy, other)
- 4) the beginning and ending date of the project
- 5) the cost of the project and contractor's portion of the cost
- 6) the classification of workers used
- 7) the largest number of workers used in one classification per project and the date employed
- 8) the rate paid to each worker
- 9) the amount of fringe benefits paid, if any

Contractors are asked to fill out a form for each project performed within the time frame of the survey. Contractors are under no mandatory obligation to provide the information. Whatever information is received will be utilized for making a determination.

## ANALYSIS OF DATA

As the information is received, such receipt must be logged acknowledging the contractor and location of project (sheet inside file). Once the contractor's name has been checked in the county of his residence, the wage information sheet will be placed in the county where the work was performed.

The information sheet shall be reviewed in the following manner:

- 1) check date of pay period (#13), making sure it is within the proper time frame of the survey
- 2) check the type of construction project being identified (#5)
- 3) check location of project

If the work being acknowledged is out of date, not of the building or residential construction type, or located outside the state of Kansas, then the information does not apply.

Once the information has been accepted as being pertinent to the survey and this particular locality, it should be given a number between 0001 and 9999. Each project in a county will have a separate identification number. The number is primarily for convenience in logging information into the computer and checking for data entry mistakes.

The type of construction will be signified on the computer by being 1) building, 2) residential, 3) highway, 4) heavy, or 5) other. ( Many forms that have "other" marked may be adjusted to one of the other types by reviewing the description of the project on the second line of the form.)

The worker classifications will be designated by the contractor filling out the form. The number of hours worked is not asked. It is possible for a contractor to acknowledge a number of different worker classifications at the same wage rate when in actuality the same person performed all duties. Our interest is in the rate paid for each classification. It will be assumed that the rates given on all information sheets reflect the rate paid to one worker in one classification. There is no mechanism set up to check the actual number of people used on a project.

The worker classifications used on the first prevailing wage survey are as follows: ( the number on the left signifies the classification identification number used in the computer)

01	Air Conditioning & heating mechanic
02	Asbestos worker
03	Boiler maker
04	Boilermaker's helper
05	Bricklayer-stonemason
06	Bricklayer-stonemason helper
07	Cable splicer
08	Carpenter
09	Carpenter's helper
10	Ceiling installer
11	Cement Mason (Finisher)
12	Drywall Hanger
13	Drywall Finisher (Taper)
14	Electrician
15	Electrician's helper
16	Elevator Mechanic
17	Elevator Mechanic helper
18	Fence Installer
19	Glazier
20	Glazier helper
21	Insulator
22	Iron worker, structural & ornamental
23	Iron worker, reinforcing
24	Laborer, general
25	Laborer, air tool operator
26	Laborer, form setter
27	Laborer, landscape worker
28	Laborer, mason tender
29	Laborer, mortar mixer
30	Laborer, pipelayers
31	Lather
32	Lineman
33	Metal Building Erectors
34	Millwright
35	Overhead Door Installers
36	Painters, brush
37	Painters, structural steel
38	Painters' helpers

39 Paperhangers  
40 Piledriverman  
41 Plasterers  
42 Plumber  
43 Plumber's helper  
44 Power Equipment Operators: crane

45 air compressor  
46 asphalt paver-screed  
47 asphalt laydown  
48 backhoe  
49 blade  
50 bulldozer  
51 cherry picker  
52 distributor  
53 fork lift  
54 front-end loader  
55 hi-loader  
56 loader  
57 mechanic  
58 motor grader  
59 oiler  
60 pump  
61 roller  
62 scraper  
63 tractor  
64 trenching machine  
65 welder

66 Roofer  
67 Roofer's helper  
68 Sheetmetal Worker  
69 Sheet metal worker's helpers  
70 Soft Floor Layers  
71 Sprinkler fitters  
72 Tile setters  
73 Tile setter's helpers  
74 Truck drivers  
75 Groundman  
76 Pipefitter  
77 Floorlayer  
78 Furnace installer  
79 Furnace installer helper  
80 Mud jacker  
81 Operating engineer  
82 Gas fitter  
83 Siding applicator  
84  
85  
86  
87 Painter Foreman  
88 Plumber Foreman  
89 Foofer Foreman  
90 Carpenter Foreman  
91 Plasterer Foreman  
92 Electrician Foreman  
93 Millwright Foreman  
94 Sheet metal Foreman  
95 Pipefitter Foreman

Determinations made for the various localities will be made available to all public entities (state agencies, counties, cities, school boards, municipalities, and special districts) that wish to utilize them. A public entity is under no obligation to use the rates produced by the Department of Human Resources.

#### COMPUTATION

K.S.A. 44-201 asks that the wage rate paid to workers will be that "rate of wage paid in the locality as hereinafter refined to the greater number of workmen, laborers or mechanics in the same trade, occupation or work of a similar nature". In the event that it be determined that there is not a greater number in the same trade, occupation or on similar work paid at the same rate, then the average rate paid to such laborers, workmen or mechanics in the same trade, occupation, or work shall be the current rate.

The "greater number" is considered over fifty percent (50%) at one wage rate. The wage rate is broken down into hourly rate paid and fringe benefits paid. The greater number will consider each separately.

#### Example:

five(5) carpenters(08) working at \$12.45 per hour with a \$1.25 fringe package; plus  
three(3) carpenters(08) working at \$6.75 per hour with an \$.80 fringe package; plus  
six(6) carpenters(08) working at \$8.25 per hour with no fringe package; plus  
four(4) carpenters(08) working at \$10.50 per hour with no fringe package

Four projects were worked in the locality. Eighteen (18) carpenters were present, in all. No simple majority (10 workers) were paid at the same hourly rate. The total hourly rate paid was \$174.00 (multiplying the number of workers at each rate times the rate paid and adding the totals). The total hourly rate paid divided by the number of workers gives the average rate paid or \$9.67 per hour.

The fringe benefit package may be figured differently. Ten workers received no fringe benefits. Eight workers did receive some fringe payment. Ten workers become the "greater number" receiving their particular rate because it is a simple majority; so no fringe package is to be paid.

The total wage rate to be paid to the carpenters in this example is no less than \$9.67.



96	Laborer Foreman
97	Drywall (Taper) Foreman
98	Floor layer Foreman
99	Ironworker Foreman
00	Cement Finisher Foreman

Worker classifications that do not fit within the above listing will require a telephone call-back situation for clarity. Supervisory classifications, part-time workers, owner/workers, and apprentices are not to be counted in the determinations.

The "current rate per diem wage" will be determined from reviewing the rates paid to all within one worker classification for a locality, the locality being the county where the project was worked and the first or second class city where worked. The definition for first and second class cities would be those cities of 2,000 population or more. First class cities are those of over 25,000 population and those whose population is between 15,000 and 25,000 who have elected to be considered a first class city. Those cities that are of the first class are:

<u>City</u>	<u>County</u>
Atchison	Atchison
Coffeyville	Montgomery
Dodge City	Ford
Emporia	Lyon
Fort Scott	Montgomery
Garden City	Finney
Hutchison	Reno
Junction City	Geary
Kansas City	Wyandotte
Lawrence	Douglas
Leavenworth	Leavenworth
Lenexa	Johnson
Liberal	Seward
Manhattan	Riley
Newton	Harvey
Olathe	Johnson
Overland Park	Johnson
Parsons	Labette
Pittsburg	Crawford
Prairie Village	Johnson
Salina	Saline
Shawnee	Johnson
Topeka	Shawnee
Wichita	Sedgwick

Second class cities may have a population between 2,000 and 25,000. There are 86 cities of the second class. K.S.A. 4 -201 excludes cities of the second or third class owning or operating municipal light and water plants. Those cities of the second class not specifically excluded by the law are:

<u>City</u>	<u>County</u>
Derby	Sedgwick
Fairway	Johnson
Great Bend	Barton
Lansing	Leavenworth
Leawood	Johnson
Merriam	Johnson
Mission	Johnson
Roeland Park	Johnson
Scott City	Scott

## APPEAL PROCEDURE

8-26-85

All wage rate determinations are controlling for each worker classification until a new general determination is made or a specific worker classification wage rate has been contested and modified. That modification will then be controlling until a new general determination is made or a subsequent modification is made by the Secretary.

### PROCEDURE

- I. All appeals must be submitted to the Secretary of the Department of Human Resources in writing and contain the following information:
  - A) The locality (city or county) in which wage rates are questioned.
  - B) The worker classification(s) and wage rate(s) questioned.
  - C) Evidence to show that classifications or wage rates are not indicative of a prevailing rate for a particular locality. Such evidence shall consist of specific rates paid to worker classification(s) on specific projects within the locality questioned.
- II. Upon receipt of a written appeal the Secretary shall either:
  - A) Issue a written denial of the appeal setting forth the reasons for the denial; or
  - B) Order that a modification be made; or
  - C) Order that an administrative hearing be convened to determine whether a modification shall be made.
- III. Types of Appeals
  - A) Single Appeal
    - 1) A contractor, worker representative, or governmental agency may file a written appeal with the Secretary.
    - 2) If the Secretary determines that such appeal is in compliance with Paragraph I of this procedure, the Secretary shall order that a hearing be convened.
    - 3) Notice of the hearing shall be given to all interested parties who have previously informed the Secretary of their desire to be notified of any such hearings and such other interested parties as may be deemed appropriate by the Secretary. Notice of the hearing shall be served in a timely fashion and in such form as deemed to be appropriate by the Secretary.

- 4) The hearing shall be conducted in an expeditious manner by the Secretary or a designee thereof.
- 5) All interested parties shall be given an opportunity to appear at the hearing to present evidence and testimony relative to the wage rate(s) in question.
- 6) The hearing officer shall, as expediently as possible after the close of the hearing, issue a determination of the wage rate(s) appealed.
- 7) Any determination made pursuant to the provisions within the appeal procedure shall be final subject only to a new appeal filed pursuant to the provisions within Paragraph I of this procedure.

B) Joint Party Appeals

- 1) Any appeal filed jointly by contractor(s) and worker representative(s) shall not be subject to the provisions of Paragraph III-A of this procedure.
- 2) Upon receipt of a Joint Party Appeal, the Secretary shall investigate to determine the validity of the allegations contained within the appeal.
- 3) The Secretary's investigation shall be limited to a period of time extending back twelve (12) months from the time the appeal was filed.
- 4) The Secretary may determine to modify wage rate(s) or to order an administrative hearing into the matter.
- 5) The Secretary may order an administrative hearing conducted in accordance with the provisions of Paragraph III-A, if the Secretary feels the circumstances dictate such action.
- 6) Any determination made pursuant to the provisions within the appeal procedure shall be final subject only to a new appeal filed pursuant to the provision within Paragraph I of this procedure.