

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

635th FPRAC

DOUGLAS FEHRER, Chairman, Presiding

Thursday, September 17, 2020

Virtual Meeting by Teleconference
Office of Personnel Management
Washington, D.C. 20415**ATTENDANCE:****Members/Alternates:**Management Members:Mark Allen, OPM
Christopher Lynch, DoD
Gary Buck, Army
Kendra Atiz, Navy
Alethea Smalls, VALabor Members:Dale Troll, MTD
Jacqueline Simon, AFGE
Richard Loeb, AFGE
Lee Blackmon, NAGE
Travis Kielty, ACT**Staff Specialists and Visitors:**Brenda Roberts, Designated Federal Officer, OPM
Jeanne Jacobson, OPM
Madeline Gonzalez, OPM
Michael Cogar, OPM
Karl Fendt, DoD
Gary Kistner, DoD
Erica Abiera, DoD
Ve-Nu K (Kieu) Nguyen, DoD
Jerry Dollente, DoD
Mandy Laughlin, Army
Kimberly Eidson, Air Force
Keyonna Butler, VA
Greg Hall, DOI**Recording Secretaries:**Mike Eicher, OPM
Ana Paunoiu, OPM

[Transcript prepared from digital audio produced by FPRAC.]

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P R O C E E D I N G

CHAIRMAN FEHRER: It is 10 o'clock. So let's go ahead and begin. This is Doug Fehrer, Chairman of FPRAC. I'm going to call this meeting to order and do a roll call.

Let me begin with our Management members. Mark Allen?

MR. ALLEN: Mark Allen for OPM is on the phone.

CHAIRMAN FEHRER: Chris Lynch with DoD?

MR. LYNCH: Here.

CHAIRMAN FEHRER: Kendra Atiz from Navy?

MS. ATIZ: I'm here.

CHAIRMAN FEHRER: Gary Buck with Army?

MR. BUCK: I'm here, sir.

CHAIRMAN FEHRER: And then Alethea Smalls from VA?

MS. SMALLS: Here.

CHAIRMAN FEHRER: Thank you. From MTD, Dale Troll?

MR. TROLL: Yes, sir.

CHAIRMAN FEHRER: AFGE, Jacque Simon?

MS. SIMON: I'm here.

CHAIRMAN FEHRER: Also from AFGE, Richard?

MR. LOEB: I'm here. Thank you.

CHAIRMAN FEHRER: From NAGE, Lee Blackmon?

MS. BLACKMON: Good morning, everyone.

CHAIRMAN FEHRER: And then from ACT, Travis?

MR. KIELTY: I'm here. Good morning.

CHAIRMAN FEHRER: Very good. And then over on the staff and visitors side, with Management, Brenda Roberts, Designated Federal Officer?

MS. ROBERTS: I'm here.

CHAIRMAN FEHRER: Jeanne Jacobson?

MS. JACOBSON: Yes, I'm here. Good morning.

CHAIRMAN FEHRER: Good morning. Michael Cogar?

MR. COGAR: I'm here.

CHAIRMAN FEHRER: Okay. And then Madeline from OPM?

MS. GONZALEZ: Yes, I'm here. Good morning.

CHAIRMAN FEHRER: Ana?

MS. PAUNOIU: Good morning. I'm here.

CHAIRMAN FEHRER: Okay. And then Mike?

MR. EICHER: I'm here.

CHAIRMAN FEHRER: With DoD, Karl Fendt?

MR. FENDT: Yes. Present.

CHAIRMAN FEHRER: Gary Kistner?

MR. KISTNER: Here.

CHAIRMAN FEHRER: Is it Kieu Nugyen?

MS. NGUYEN: Good morning, I'm here.

CHAIRMAN FEHRER: And then Erica Abiera?

MS. ABIERA: I'm here.

CHAIRMAN FEHRER: Very good. And Jerry Dollente?

[No audible response.]

CHAIRMAN FEHRER: Is Jerry with us?

[No audible response.]

CHAIRMAN FEHRER: It seems Jerry is not on the line.

Is there anyone on the line with Navy?

[No audible response.]

CHAIRMAN FEHRER: And then Army, Mandy Laughlin?

MS. LAUGHLIN: Yes, I'm present.

CHAIRMAN FEHRER: VA, Keyonna Butler?

MS. BUTLER: Here.

CHAIRMAN FEHRER: And Air Force, Kimberly Eidson?

MS. EIDSON: Yes. Here, sir.

CHAIRMAN FEHRER: From DOI, Greg Hall?

MR. HALL: Yes, I'm here. Good morning.

CHAIRMAN FEHRER: Good morning.

Is there anyone else on the line?

[No audible response.]

CHAIRMAN FEHRER: Let's move on. This is the 635th meeting of the Federal Prevaling Rate Advisory Committee, and based on our roll call, we do have a quorum. As always, I want to thank everyone for participating in the meeting today, and again, we are attempting to record this meeting, and the minutes will be provided to all members.

To help with this effort, I just want to remind everyone to please identify yourself prior to speaking. I would also like to ask that any nonmembers curtail your participation to listening-only, and if you have any questions or comments or issues you would like to have

addressed, please put them in writing and submit them to our offices. Any press questions or inquiries, as always, should be addressed through OPM's Office of Communications.

Announcements. Does anyone have any announcements for today?

[No audible response.]

CHAIRMAN FEHRER: Hearing none, we'll just move on to the approval of the minutes of the 634th meeting of the Committee, which was held via teleconference on Thursday, August 20th. OPM received no edits of the transcripts. Are there any final edits today?

[No audible response.]

CHAIRMAN FEHRER: Hearing none, do we have motion to accept the minutes?

MR. ALLEN: I move to accept the minutes.

CHAIRMAN FEHRER: Do we have a second?

MR. BUCK: Second.

CHAIRMAN FEHRER: Because we're doing this by phone, I'll ask if there's any opposition to accepting the minutes.

[No audible response.]

CHAIRMAN FEHRER: And hearing none, let the record show that the minutes of the 634th meeting of the Committee have been approved.

Moving to Old Business, we do continue to carry over items (a), (b), (c), and (d), and now item (e) from past meetings. Very quickly, Jacque, do you have anything new on item (a), the Tobyhanna issues, or item (b), San Joaquin?

MS. SIMON: No, I don't, not at this time. Thanks.

CHAIRMAN FEHRER: On item (c), Lee, do you have anything new on the Salinas-Monterey issue, any update on the presentation?

MS. BLACKMON: We would like to present. However, NAGE has been making an effort to wait until the Committee was able to meet in person or was hoping that we'd be able to conduct the meeting via Zoom. However, it does not look like either is going to be possible. So we will be ready to present at the next meeting.

CHAIRMAN FEHRER: So our meeting in October?

MS. BLACKMON: Yes, sir.

CHAIRMAN FEHRER: Thank you very much.

Let's see. On item (d), the Puerto Rico Wage Area issue, Travis, did you have anything new on this?

MR. KIELTY: No, sir, not at this time.

CHAIRMAN FEHRER: Okay.

MR. KIELTY: Still waiting on some responses from Puerto Rico.

CHAIRMAN FEHRER: Very good. And then finally, on item (e), the proposed CFR changes to revise the Wage Grade survey process, this is a time-sensitive proposal.

And with that, we'll move on into New Business with the revisions we had talked about and discussed at our meeting last month. Item (a) under New Business is the revised amendments to 5 CFR part 532, to include Versions 1 and 2 that you received in the Management handout, 635-MGT-1.

Does everyone have those, I assume? If yes, Mark, can you walk us through these again?

MR. ALLEN: Sure. I think some of our members were not able to attend the last meeting. So I'll just give a brief synopsis of what happened at the last meeting and explain what we're providing in 635-MGT-1.

635-MGT-1 provides two alternative versions to language that was presented at the last meeting for sort of modernizing how wage survey data are collected. The original language is still on the table. I just want to make sure everybody realizes that we have the original language and two versions for the members to consider.

The two versions we put together are based on what was discussed at the last meeting of the Committee. The Chairman suggested at the last meeting—and Management members agree—that it may be a good idea to modify the language that we originally presented in 633-MGT-2. Personally, I think that Version 1 in 635-MGT-1, the new document here, is the only one that's really viable as an alternative. The difference between the two versions is that the second version is more restrictive, and it says that the data can be collected only in emergency situations. The problem I see with including the word "emergency" there is we may unnecessarily tie the hands of the Local Wage Survey Committee members when the objective here is really to place the decision-making authority in the hands of the Labor and Management members on the Local Wage Survey Committee.

Personally, I would prefer that we go with Version 1, as I think it's a pretty strong compromise version to the original version Management members proposed. I will note that the same process has actually been used for decades for Wage Change surveys, not necessarily saying here that any local Wage Survey Committee even needs to use this alternative data collection methodology by using electronic means or collecting data by phone. Once OPM would go through the regulatory process, the language will be out there in the regulation as an option for data collectors to use. The real objective here is to help people in each wage area to be able to maximize their collection of accurate wage data and to better reflect what's going on in their local labor market.

As I mentioned earlier, Version 1 appears to me to be a pretty strong compromise from the original Management proposal, and OPM staff would like to get regulations put into a public comment as soon as possible to try and help out with the local data collection efforts.

I think that's all I had to say on that. Mr. Chairman, I recommend opening it up for discussion now if anybody else has any other opposing views or supporting views.

MS. SIMON: I don't know how to say this in a diplomatic way, but I kind of feel as though as staff, that was a very opinionated view rather than a compassionate presentation of two alternatives.

I think Version 2 is the better version. I think it takes into account our concern about whether or not in-person surveys would ever be collected again, given that you're requiring unanimity, and so I think that the break on having either electronic surveys, all electronic surveys becoming either the default or the only kind of survey that's done is the qualifier that it would occur only in emergency situations, such as a pandemic or war or some such thing.

And I'm really uncomfortable, actually, Mark, with how, the way you just made that presentation and asserted your personal opinion so strongly. I think that Version 2 reflects the conversation we had at the last meeting. It takes into account both sort of operational concerns that Management expressed and the concerns that we expressed about what we believed to be the superiority of in-person data collection.

So I would propose that we adopt the second version. Thanks.

MR. ALLEN: I would say we're all on the Committee to express opinions about what we think is best for the Federal Wage System and the data collection process. So that's what I'm doing today.

I think, Jacque, you may have things a little backwards. Under these changes that

we're recommending, the default position is always going to be to do in-person data collection for full-scale wage surveys. All we're really doing here in Version 1 is saying as an alternative, if a Local Wage Survey Committee agrees unanimously under whatever conditions they believe is appropriate, that they can collect data from the private establishments, based on what they think is going to get the best amount of data for the local wage survey.

MS. SIMON: Well, I read it, Mark, and I'm pretty sure I understood it, and I expressed my view that I prefer the second version because it specifies very explicitly that it's to be used in the context of emergencies only.

CHAIRMAN FEHRER: Does anyone else have any thoughts or comments, discussion?

MR. LYNCH: DoD is concerned about the segment of the Federal Wage System population that's currently receiving the minimum increase allowed versus the prevailing rate as stipulated under the law, and the Department recognizes the culprit as the current pandemic and strives to resolve the issue this year as soon as possible.

DoD as the lead agency is confident in its ability to collect prevailing rate data under the alternative. Alternative means as stated in the options presented here today will ensure, as always, Labor participation at every step of the data collection and pay-setting process.

Now, having said that, I think we'd prefer Alternative 1 because it does provide both Labor and Management—the ability to provide an opinion on how the data collection will occur, and it does require unanimity on how the data will be collected. That's my opinion. Thank you.

MS. SIMON: Excuse me. Are you saying that you think that either version accommodates the need that DoD has? One might—

MR. LYNCH: At this moment to get the data collected, we need to move forward to get the data collected in some way, shape, or form. However, in the long term, the best way forward would be Option 1.

MS. SIMON: Well, I hear you saying that you prefer Option 1, but do you believe that Option 2 gets you to where you need to be?

MR. LYNCH: It could, but it's not the best option.

MR. ALLEN: I can amplify on that a little bit.

I think it would always be the case if we go with Version 1, a Labor member on a Local Wage Survey Committee could say that they only want to collect data if there's an emergency in existence in a local wage area.

One of the problems I see with using the word "emergency" in there is that I don't think anybody would be able to say what an emergency situation is, and I think after the fact, somebody could question the collection of data from a company if it was done through alternative means about whether or not there was actually an emergency in effect that the Local Wage Survey Committee agreed unanimously.

So one thing I would not want to see is that data that are already legitimately collected under an alternative means that everybody agreed to, then be subject later on to dispute because it would tie up the local wage survey results, meaning that DoD would not be able to issue a schedule in a timely way.

I think the Federal Wage System operates best when the data are being collected locally using the best means that are currently available. I think we do need to recognize that times have changed and that there are alternative methods for collecting data. OPM is not planning on prescribing in every situation that data needs to be collected through alternative

means. OPM would basically just say that we're giving people an alternative, but the gold standard is always going to be collecting data in person for a full-scale wage survey.

MS. SIMON: Mark, I think that your Version 2 could be edited a little bit, and it could say, for example, under circumstances within a State or a locality when an emergency, a public emergency has been declared or some such language like that, so that you could have a little more clarity on what's meant by emergency.

Richard, what would the language be?

MR. LOEB: Hi. We have referred in other documents—and this exists throughout a bunch of OPM documents—to the declaration of an emergency usually by some individual—right now, the current emergency was declared by the Secretary of HHS.

MS. SIMON: Yeah. But there are State emergencies. Since we're doing this on a location-by-location—

MR. LOEB: Right. But it would be by competent—you know, a competent authority in the State, locality, et cetera—

MS. SIMON: Right, right.

MR. LOEB: —authorized to declare such emergencies.

MS. SIMON: Perfect. Beautiful.

MR. LOEB: That could even include someone like the health commissioner of a particular State or municipality, assuming they are authorized to declare such things.

MS. SIMON: Right. I think that would improve Version 2 and provide clarity.

MR. ALLEN: I understand where you're coming from on that, but I do think it would be too restrictive. What we're trying to do on the Management's side here is give options to a Local Wage Survey Committee that may be in a situation that is not a public health

emergency. A public health emergency is not the only form of emergency. There could be the case where a compensation manager is just not available in person on-site at a company because they may be teleworking and there may just be a better idea to deal with the compensation manager through either videoconference or some other electronic means like that rather than requiring the joint Labor-Management teams go to do personal visits at every private sector establishment.

I think if we try to put that language in there, it would be too restrictive on what we're trying to get at.

I think that's about all I have to say on that.

MS. SIMON: Mark, we just heard from DoD's representative who said the language, even the language unimproved without elaboration on what we mean by emergency, would allow DoD then to collect the data it would need.

So I don't know. You're digging your heels in on Version 1 for whatever reason, but Version 2, if it were slightly edited to define what is meant by emergency, you know—because emergency and inconvenience are not the same thing. And it doesn't have to be a public health emergency. It could be a weather emergency. It could be a national security emergency. There are all kinds of emergencies. God knows, 2020 has taught us that.

But as Richard suggested, an emergency declaration by a responsible government official or a source, whatever, does the trick.

MR. ALLEN: Would the other Management members like to speak to this?

MR. BUCK: I'm partial to Option 1, myself.

MS. ATIZ: In reviewing the two versions, the Department of Navy supports Version 1. I think it's the clearest. It gives the most flexibility for now and for the future, keeping

in mind that the Management and Labor members still have to agree, and it can be very conditional based. And I think the definition of an emergency makes it lose its context and convolutes it. Thank you.

CHAIRMAN FEHRER: Are there any other comments or thoughts on this?

[No audible response.]

CHAIRMAN FEHRER: If not, is there a motion for either Version 1 or 2?

MR. ALLEN: On behalf of OPM staff and the Management members, I can make a motion. The motion is to accept as FPRAC's recommendation that Version 1 specified in FPRAC document 635-MGT-1 be adopted.

CHAIRMAN FEHRER: And we would need a second for that.

MS. ATIZ: Navy seconds.

CHAIRMAN FEHRER: With the second, we will take a vote on the motion, and what I'll do is just go through the roster of everyone that's on the phone. We'll record your vote in that way.

So, at this time, let's start with Labor, if we can. Dale?

MR. TROLL: Metal Trades is against the adoption of the first option.

CHAIRMAN FEHRER: I'm sorry. Can you—

MR. TROLL: We are against the first option.

CHAIRMAN FEHRER: Jacque?

MS. SIMON: I vote no.

CHAIRMAN FEHRER: Richard?

MR. LOEB: I vote no.

CHAIRMAN FEHRER: Lee?

MS. BLACKMON: NAGE votes no.

CHAIRMAN FEHRER: Travis?

MR. KIELTY: ACT votes no.

CHAIRMAN FEHRER: Okay. And then on the Management side, Mark Allen?

MR. ALLEN: OPM votes yes.

CHAIRMAN FEHRER: Chris Lynch?

MR. LYNCH: DoD votes yes.

CHAIRMAN FEHRER: Kendra with Navy?

MS. ATIZ: Navy votes yes.

CHAIRMAN FEHRER: Gary, Army?

MR. BUCK: Army votes yes.

CHAIRMAN FEHRER: And then Alethea with VA?

MS. SMALLS: VA votes yes.

CHAIRMAN FEHRER: So we have five members who are voting in support of Version 1 and five members who are voting against Version 1, or not in support of Version 1, which leaves this in my hands as Chairman.

I will vote with Management on this one, and I would like to add a couple comments for the record on this. I do see this as a fallback option, the way it's written. Everyone is in agreement that collecting in person is the best alternative, and I do think Version 1 places the decision in the hands of the local committee and gives flexibility to all unforeseeable events or issues. And I would just point out that Version 1 does require the unanimous consent of the members at the local level in order to use this option, so, again, having the broadest flexibility for anything that could come to pass in the future and requiring unanimous consent, it just seems

Version 1 is the best option moving forward.

So, respectfully, I appreciate everyone's opinions on this, but I do have to side with the Management members this time.

Okay. Moving on. There's no other New Business.

MR. ALLEN: Mr. Chairman, I would like to just try to close the loop on what we're doing with the proposal. The next step would be to present a recommendation to the OPM Director on moving forward with regulations. When we do reach the stage initiating regulations, they would, of course, be open for public comment where any member would be able to provide comments on what they thought about it.

It's going to be a proposed or interim regulation. We don't yet know whether we can do an interim rule, but we're going to try to move this as fast as we can.

CHAIRMAN FEHRER: Mark, thank you very much for that.

I was just going to say, given that we've now been looking at this for a couple months and we've lost a lot of data collection time, please do expedite the proposal moving forward.

Again, moving on through our agenda, our future meeting dates, as you know, for the rest of the year are on your agendas, and they have also been published in the Federal Register. God willing, our next meeting will be held on Thursday, October 15th, at 10 a.m.

I believe this covers all the items on our agenda for today, and on a personal note, I hope, trust, and pray that you and all your families remain well.

With that, is there a motion to adjourn?

MR. BUCK: Motion to adjourn.

CHAIRMAN FEHRER: Do I have a second?

MR. KIELTY: Second.

CHAIRMAN FEHRER: Thank you, and given that we are doing this by phone, is there anyone opposed to adjourning at this time?

[No audible response.]

CHAIRMAN FEHRER: Okay. Hearing none, this meeting is now adjourned.

Please stay well, and as always, thank you and OPM team for their great work.

[End of recorded session.]