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PREVAILING WAGES FOR PUBLIC EMPLOYEES

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I. INTRODUCTION

There are approximately ten million public employees in the United States. The annual rate of income for these public employees is substantially below that income received by private sector employees. This low income rate has caused the labor movement in the public sector to develop quite rapidly. The genuine need to improve the wages of public employees has caused the public employer to reconsider the unilateral method of determining wages on an ad hoc basis, and has brought about several new ways in which a fairer wage for public employees might be reached.

Among the most prominent forms of raising wages is the method of collective bargaining. Since a natural part of this method is the strike its usefulness is limited. Collective bargaining also involves a party far down the echelon of command attempting to reach agreements on wages which, in the final analysis, must come by legislative enactment or popular approval. This is a severe limitation. This does not mean that collective bargaining is worthless as a means of uplifting the wages of a public employee, it means merely that it is clumsy.

Recognizing that the use of collective bargaining alone to determine wages suffers from these disabilities, it is not surprising that another method has been adopted to supplement or supplant collective bargaining, such as a prevailing wage concept. This article will consider the validity, usefulness, and practical effect of the prevailing wage concept as a method of accomplishing its desired goal, and will determine whether the prevailing wage concept might well be the necessary corrective to end the unrest presently prevalent in public employees' labor relations.

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5 E.g., government employees engaged in one hundred and forty-two stoppages in
II. Validity, Usefulness, and Practical Effect

Use of the prevailing wage concept has apparently withstood the test of numerous constitutional challenges. For example, it has been held to be neither an unlawful delegation of legislative power nor an unlawful delegation of discretion. The debt incurred by the government when allowing public employees to be paid in accord with private sector employees' wages has been held not to be an unlawful government debt and can be collected like any other debt owed by the government. Finally, it has been held that it is not against public policy to pay the prevailing wage to public employees. Accordingly it would seem that the prevailing wage concept is a valid method of determining wages.

There are approximately seven hundred thousand federal employees whose rate of hourly pay is set by a wage board or similar administrative pay system in the executive branch of government. These are employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations. This also applies to the officers and crews of vessels.

These wage board employees have their wages set in accordance with the prevailing rate being paid employees in the private sector of employment doing the same or similar jobs in the area involved. After the wage is set, it is effective within nineteen to forty days from the time it is established.

In addition to wage board employees, there are another one million seven hundred thousand employees in the federal government who are paid the prevailing rate. This does not include those who were involved in a public employee strike in 1966, which was three times the number that occurred in 1965. The number of employees involved totaled one hundred and five thousand employees, and resulted in four hundred and fifty-five thousand man-days of idleness, Bur. of Lab. Statistics, Public Employee Strike Report, B.N.A., 206 Govt. Empl. Rels. Rep. B-7 (Aug. 8, 1967).

employed by the Tennessee Valley Authority, the Panama Canal, the Virgin Island, the Atomic Energy Commission, the Alaska Railroad, and a few others.\textsuperscript{16}

The main advantage of the prevailing wage concept is that it is a recognition that the statutory pay systems have failed to meet the needs of today's federal service. Without an accepted standard for federal employees' salaries and a procedure for review and adjustment which goes beyond rigid statutory rules of pay administration, the system is deprived of the adaptability so essential in times of fast changing conditions. By paying the prevailing rate the public salary system will be able to control payroll expenditures with equity to both the employee and the taxpayer.

To pay the prevailing rate has the additional salutary effect of supporting recruitment and retention of the high quality personnel required to carry out government programs. There seems to be no question that those employees who have had their wages set in accordance with the prevailing rate have received larger increases in wages than other public employees.\textsuperscript{16} These higher wages allow the government to compete more effectively with the private sector of employment for those employees who are most qualified.

Another advantage of this system is that governmental services improve. With an adequate wage for public employees, qualified men of higher competency are called to serve. Efficiency in government services improves and less time is needed to do a particular job. This excess time can be used to expand government services. In a highly technical age when it is difficult to succeed without specialized knowledge, the government must be very particular about drawing into their ranks those specialists necessary to keep things progressing on an even keel. To pay low wages ultimately is detrimental to good government.

III. Problems Encountered

It appears that one significant problem has arisen in the implementation of the prevailing wage concept—obtaining the most accurate information in determining the prevailing wage. Agencies in the same locality make surveys of different universes, and derive widely varying findings of the average wage rate for an identical job. Differences in survey coverage occur with respect to geographic coverage, occupations surveyed, and sample establishments, the most

\textsuperscript{16} S. REP. No. 592, 90th Cong., 1st Sess. at 2 (1967).
\textsuperscript{16} Hearings, supra note 10, at 85.
prominent differences occurring in industrial coverage.\textsuperscript{17} In a heavily industrialized area, it is not feasible to collect data from all pertinent establishments and there is consequent need for the use of sampling methods. This need is present because the wage board surveys do not employ standard sampling techniques. As a result, the survey estimates of average rates paid in the area bear an indeterminate relationship to the average rate actually paid.\textsuperscript{18}

An additional difficulty is that there appears to be little distinction recognized by wage setting agencies between statistical editing and the elimination of data for pay fixing reasons. There is no wage survey report. The wage fixing officials work on the survey data in its raw state, using the established schedule returned by data collectors, and perform both statistical and pay-policy editing. The only data available to others are the summaries which are made after both kinds of editing are completed. Because of this, there is little pressure on

\textsuperscript{17} Id. at 161. \\
\textsuperscript{18} Id. at 162. Geographically, wage board employees are found in over four hundred distinct areas for which rates are separately established. Some have only a few employees, but two hundred areas have been defined as having a large number of workers. The concentration of such employees varies greatly by area. For example, there are approximately thirty-nine thousand in the San Francisco Bay Area, fifteen hundred and ninety-one in Hastings, Nebraska, and five hundred and twenty-two in Presque Isle, Maine. Organizationally, there are fifty-two separate departments or independent agencies. Eleven of these agencies accounted for ninety-eight percent of the total of employees. The next thirteen agencies with a total of only thirteen thousand, two hundred and thirty-nine wage board employees had a little under two percent of them. The remaining twenty-eight agencies had a total of only six hundred and ninety-nine wage board employees, less than one tenth of one percent. The Army, Navy and Air Force had over eighty-four percent of all wage board employees. Occupationally, in Army installations alone, there are forty-six different job families, such as, woodworking, which is divided into a number of subdivisions, for example, carpentry. The variety of job families found in the Army includes metal processing, electronics, equipment installations and maintenance, railroad operation, ammunition and explosives and rubber working. Industrially, there are production and repair workers in shops manufacturing or overhauling ships, air craft, ordinance, etc. There are building maintenance workers engaged in the upkeep of federal buildings scattered throughout the country. There are laundry and food service workers in military, veterans' and Indian hospitals. Labor mechanics, such as experimental machinists and glass blowers, are included. Many operate and maintain trucks, construction equipment, vessels and railroads. Others are in warehousing operations and printing plants. Milligan, \textit{The Federal Wage Board Program}, 19\textsuperscript{th} PUB. PERSONNEL REV. (1958), 20\textsuperscript{th} PUB. PERSONNEL REV. 38 (1959). From the above, it is clear that when a wage survey is taken in a locality by one agency, the difficulty in finding an exactly similar job is apparent, and the fact that surveys are made up of random samples, so one agency may survey a high payer and another agency a low payer, might make a wage difference in each agency.
wage board staff to make the distinction and to defend the excesses resulting from their judgment.\textsuperscript{19}

IV. \textbf{Recommendations}

Because of the problems with setting the prevailing rate, there is an obvious need for interagency equity. For example, it is necessary that all agencies in a locality use a common wage survey with common coverage and common data collection and editing practices. To achieve that objective, it is necessary that decisions be made in the area within which federal establishments will use the resultant wage schedule, and on the extent of the survey and practices. These decisions should be modified and areas and survey coverage should be redefined as required by the spread of urbanization with the new combination of once disparate communities and by the creation of new federal establishments and the abandonment of old ones. Appropriate coordinating action could achieve the desired result as could a central agent with authority to define and apply survey policy. Survey policies for a local system may need to be very generalized, leaving considerable flexibility for adjustment of survey coverage to the different industrial compositions of localities and to other local variations.\textsuperscript{20}

It has been recommended that the wage survey cover all private enterprises, industries, and sizes of establishments which employ sufficient proportions of employees in the skilled and unskilled occupations surveyed to influence survey estimates, except those industries in which employment and working conditions are significantly different from governmental conditions and in which these differences have a significant effect on the wage rates paid. It has also been recommended that geographic coverage of surveys coincide, when possible, with a recognized economic community such as a standard metropolitan statistical area, or a labor market area, or with a political unit, such as a county, or with a combination of such communities or units. Whenever feasible, it has been recommended that the Bureau of Labor Statistics act as the survey agent. Finally, it has been recommended that formal reports of survey findings be made available to the public and to governmental employees as well as to federal wage officials.\textsuperscript{21}

Remedial legislation has been introduced in the United States

\textsuperscript{19} \textit{Id.} at 164.

\textsuperscript{20} \textit{Id.} at 165.

\textsuperscript{21} \textit{Id.} at 174.
Senate which will go far toward implementing the above recommendations and solving many of the problems plaguing the implementation of the prevailing wage concept. Senate Bill 2303 establishes a new standard for setting the wages of wage board employees. The bill is broken down into three principal parts. In the first, a federal wage board committee made up of the Secretaries of Defense, and Labor, the Administrators of Veteran's Affairs and General Services, a labor organizations representative and the Chairman of the Civil Service Commission is established. Their function is to prescribe rules and regulations for the administration of the wage board system designed to create equal pay for equal work for wage board employees who are employed in the same wage area, and to accomplish the recruitment and retention of qualified employees at rates of pay and working conditions comparable to private enterprise in the wage area. This committee has the duty to establish wage areas for the setting of prevailing rates. In establishing such areas, the committee must consider the nature and similarity of the population, employment, manpower, and industry.

The second principal part of the bill establishes an area wage board composed of a chief official of each agency having a significant number of wage board employees located within such area. The board shall also have a labor organization representative as a member. This board has the duty, with the technical aid of an agency within the area designated by the committee, to plan and conduct a wage survey, and issue wage schedules based on such rates for all federal employees covered by this bill within the area. Additionally the board has the duty, whenever an area wage board determines that in private enterprise there is an insufficient number or kind of comparable positions or activities to determine prevailing rates for a federal position, to notify the committee, which will determine the prevailing rate for these employees in accordance with the prevailing rates paid in another wage area which has a sufficient number of comparable employees.

positions or activities and which is determined by the committee to be most similar in the nature of its population, employment, man- 
power, and industry to the wage area for which rates are being determined. The third, and last, principal part of the bill creates a federal wage board council. This council is composed of a civil service commissioner, three labor organization representatives, and three members from the general public. This body observes the committee and, based on the committee's action, makes reports and recommendations to them. At this writing, this bill has been approved by the Senate and is being considered by the House Post Office and Civil Service Committee.

Of the few subsidiary problems noted previously that arise under the implementation of the prevailing wage concept, this bill corrects the situation where many different agencies, having their own boards, arrive at different prevailing rates for the same positions. Under the bill there is centralization, so this does not occur. In addition, since under this bill, the Council and the Board check on the committee when it sets the prevailing wage, and for additional reasons mentioned above, the committee cannot edit, and eliminate a comparable prevailing wage. Numerous other problems are also dealt with by this bill regarding the wage boards. If the foregoing recommendations are followed, and Senate Bill 2303 becomes law, the prevailing wage concept might well become the necessary corrective to end the unrest presently prevalent in public employees' labor relations.

V. THE GOAL: A MODERATE LIVING STANDARD

The function fulfilled by the prevailing rate concept is putting those employees who enjoy its use on the same level, financially, as similar employees in the private sector. This is a significant improvement for these employees. However, there is a higher standard that as yet has not been reached. That standard is the amount of money necessary to support a city worker's family budget for a moderate living standard. This moderate living standard has moved far ahead of the actual wages paid employees. For example, grade seven wage

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23 Id.
24 Id.
25 U.S. BUREAU OF LABOR STATISTICS, DEPT. OF LABOR, BULL. NO. 1570-1, CITY WORKER'S FAMILY BUDGET FOR A MODERATE LIVING STANDARD (Autumn 1966); Hearings supra, note 10 at 84.
board employees in 1967 made less than fifty-nine hundred dollars per year.\(^{27}\) This is well over three thousand dollars a year less than the amount of money necessary to support a city worker's family budget for a moderate living standard.\(^{28}\)

This disparity between the amount paid to wage board employees and the amount necessary for moderate standard of living is caused by an increase in the total cost of a moderate standard of living.\(^{29}\) Our consumption standards have risen, food standards have been upgraded, the cost of housing has risen, automobile ownership has increased, better health care is now available, and more clothing is being purchased.\(^{30}\)

When real income rises, and certain aspects of living, once considered attainable only by a few, come within the reach of the multitude, they are accepted as part of the American way of life. In a dynamic society the relative position of a moderate living standard on a scale of all living standards may remain fixed, but the description of what makes up that standard will be constantly changing.\(^{31}\) As the prevailing rate concept presently exists, it has yet to meet the final goal of any pay system, which is the payment of a wage which will make it possible for the public employee to maintain a moderate living standard.

It is therefore suggested that in addition to paying the prevailing wage, and the adoption of those procedures that will make it possible for an accurate prevailing wage to be paid, a thorough consideration be given to the actual amount of money needed by a public employee in order to maintain a moderate living standard. It is not at all difficult to determine in a wage area that the amount paid out for food, housing, transportation, clothing and personal care, medical care, gifts and contributions, personal life insurance, occupational expenses, social security and disability payments and personal taxes by an individual is a certain number of dollars.\(^{32}\) If the money is available or easily acquired, the payment should be equivalent to the prevailing wage, with financial realities as a principal determinate.

Geographic location will, of course, have a bearing on the setting of this standard. For example, an industrial state with a high

\(^{27}\) *Hearings on S. 2303, supra* note 10.

\(^{28}\) Id. at 11.

\(^{29}\) Id. at 26.

\(^{30}\) Id. at 26-30.

\(^{31}\) Id. at 8.

\(^{32}\) Id. at 14.
gross state product will be able to afford the expense of paying its public employees a wage which will support a moderate standard of living, while a state with a very low gross state product will not be able to afford such a luxury. The present proposal in Senate Bill 2303 would create wage boards to determine the prevailing rate for all agencies of government in a given area. It would seem that their jurisdiction and administrative expertise in this matter would make possible, in addition to the prevailing rate, the determination of the amount needed in that area to maintain a moderate living standard which would be in accord with the area's actual ability to pay. The implementation of the moderate standard of living criterion would not be easily achieved as noted before.

VI. THE WISCONSIN EXPERIENCE

In the state of Wisconsin, there is no statutory requirement that a prevailing wage be paid to public employees. Such is not the rule as established by court decision either. As a matter of practice, however, such a mechanism has been adopted by factfinders who have the statutorily imposed duty to attempt to resolve disputes that arise during collective bargaining between public employee labor organizations and public employers.

A significant number of cases heard by factfinders in Wisconsin involved a dispute about the size of a general increase for public employees. Because there is not a single accepted wage standard, and because of the high proportion of cases of this nature, an analysis of them has been made. Of the four criterion traditionally mentioned in wage increase disputes—wage comparison, productivity, ability to pay, and cost of living—the first has been relied on most by the factfinders and the parties. Cost of living has been mentioned frequently by managements and unions, but rarely cited by factfinders as a basis for their decision. Even though the national attention has been focused upon productivity and the wage-price guideposts, the analysis found that they were seldom mentioned as the basis for the award. Over the period which this analysis covers, only one case gave them primary consideration in the reasons for its decision. Ability to pay, which would seem to be the heart of any settlement in the public sector, was relied on in several cases.

35 Id. at 15-17.
As a result of the numerous decisions handed down by the factfinders in Wisconsin on the setting of public employee wages, the following factors are looked to when a factfinder fulfills his statutory duty:

1. The absolute amount of increase granted to employees doing the same work in a neighboring municipality.
2. The absolute amount of increase granted to employees doing similar work in private industry in the same community.
3. The present wage compared with average wages (existing wages, rather than wage increases) paid to workers of comparable experience doing comparable work in other cities.
4. The increase requested as opposed to that given to other employees of the same unit of government who are not in the collective bargaining unit.
5. The existing wage as against that paid for similar work in the same geographic area by different units of government (city, county, state and federal).
6. Present take-home pay contrasted with former take-home pay when working longer hours.\(^\text{36}\)

Less reliance by the factfinder in fulfilling his duty was placed on the following factors:

1. Social usefulness (of deputy sheriffs), when compared with other workers (teachers), receiving higher wages.
2. "Without creating morale problems, the county cannot offer to a boy just out of high school a wage in excess of that offered a teacher who is a college graduate."
3. The similarity of the wage increase granted to the amount, "to which free collective bargaining would have carried the parties absent the interference of a third party."
4. Whether the wage increase requested would put the workers, "in an unrealistically high income category as compared to other townspeople."
5. Whether, "relationships which had existed in prior years," will be disturbed if no wage increase is given.\(^\text{37}\)

A summary of factors used in determining what a comparable wage will be includes the comparison of existing wage levels, raises, traditional relationships, median and average between various kinds of public and private employees in like and different labor markets doing the same or different types of work.

Interestingly enough, in seven cases handed down prior to 1965, factfinders recommended a higher wage for public employees than that received by employees in the private sector. It seems obvious that

\(^{36}\text{Id. at 16.}\)

\(^{37}\text{Id.}\)
factors other than the prevailing wage were relied upon in making the determination. Even though this is true in these cases, it appears that the factfinders tend to give the going rate, unless they face compelling circumstances that dictate otherwise. One fact that accounts for the payment of a higher rate to public employees than that received in the private sector is that the public employee may come from a depressed area where wages are rather low and where the increase given in previous years were fewer in number and smaller in amount than the national trend.

Significant difficulties arise when a determination is made, regardless of who is making such a determination. For example, because of a lack of familiarity with the relationship, there is a tendency to rely upon general trends in society, and the standard one brings with him in the case. Because of this, factfinders in some areas are drawn from their own areas because it is thought they would be inclined to grant lower settlements. In addition, since the factfinder's recommendations have not in some cases been accepted, binding arbitration has been suggested. Such arbitration would be legal if an adequate standard were set for the arbitrator. However, without money to pay an arbitrator's award, it might well be limited to this extent. Mediation, which is not binding either, suffers from the same deficiencies as a factfinder's recommendations because it too can be rejected. Politically, such recommendations are met with intransigence when it is necessary to raise taxes to implement them. Providing for a factfinder shifts part of the burden a politician carries in this matter, but it still leaves the final decision in the hands of those who must run for reelection. Some factfinders give weight to this consideration along with other more subtle practical considerations, such as, that factfinding is an extension of the bargaining process granted in return for public employees giving up the right to strike. This factor, of course, is not present in a wage board situation on the federal level of government where collective bargaining is not called for in Executive Order 10988. Another factor is the acceptance of the recommendation. When a factfinder's recommendations are consistently rejected by the parties, then the factfinder is ineffectual. Finally, designing a recommendation so that it establishes grounds

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39 Id. at 671.
40 Stern, supra note 34.
41 § 6 (b) 27 Fed. Reg. 551 (1962).
for further bargaining by the parties cannot be done with any precise accuracy since it is never certain whether money will be available to implement the decision.

Since a factfinder's recommendations are not binding and fact-finding itself is not compulsory, and since collective bargaining is not engaged in at the municipal level in Wisconsin, it can be seen from the above that when determining what a fair rate is for public employees, the factors considered are endless. It is not just a matter of finding what a leading firm is paying in a designated area, and then saying that this rate should be paid. The other considerations and factors mentioned above indicate that every aspect of comparison is part of the factfinder's standard. There seems to be no uniformity in the determination, and no central body to regulate the determinations. Perhaps if the recommendations issued by a factfinder were binding, this general, non-uniform approach would have to be changed because no such plan could be used for long in the disbursement of the taxpayer's money. The public funds would soon be non-existent, and then, whether binding or not, the recommendations would have no effect. It appears then that the true benefit of the Wisconsin experience is in exposing many of the aspects of setting public employees' wages for nearly all levels of public employees who do not have their wages set specifically by statutory provisions. Since the effects of the factfinder's recommendations are not of a binding nature, no judicial challenge has as yet been leveled against its application, but if the California experience is any indication, there would be no question as to its validity if it were made binding.

VII. CONCLUSION

There seems to be no question that public employees do not make a sufficient amount of money to maintain a standard of living comparable to employees in the private sector doing similar jobs. In addition, it is clear that public employees do not make a sufficient amount of money to support a moderate standard of living for themselves. While the prevailing wage concept has not brought the public employees' wages comparable with the optimum amount needed to support a moderate standard of living, it has proven to be a viable concept. Evidence of this is found not only at the federal level but also at the local level of government.

43 A general discussion of factfinding in Wisconsin may be found in, Note, The Strike And Its Alternatives In Public Employment, 1966 Wis. L. Rev. 549.
The principal problem that has arisen is that when implemented by the present wage boards, there is such a decentralization of the wage boards' surveying devices and decision making processes that an accurate prevailing wage will not result from the use of this mechanism. Senate Bill 2303, if enacted, will go far toward remedying this problem. Even with its problems, however, the proven viability of the prevailing wage concept, its usefulness, validity and practical effect would appear to dictate its continued use, even on a broader basis. Competent and efficient government service, although always an ultimate goal, can never become an achievable reality, or as close to a reality as possible, without a change in the present system of setting public employees' wages to a system which insures probable equity as the use of the prevailing wage does or has the potential of doing.