A Web of Confusion and Disparity for Contractors

This 4,000-square-foot storage building at West Bend Municipal Airport is at the center of a prevailing wage dispute between Ford Construction Co. of Waukesha and the State of Wisconsin.
Bob Ford, the longtime owner of a Waukesha construction company, says it was a simple building: a big metal storage place for snow plows at the West Bend Municipal Airport. The 4,000-square-foot structure was straightforward in design and construction.

Figuring out how much the state and federal governments eventually would require him to pay his employees under prevailing wage laws, filling out necessary paperwork and trying to collect money he’s still owed has been immensely more complicated.

Two years ago, Ford won the $419,000 contract with the state to build the storage building. It has been finished for a year – though Ford says he is still waiting for $29,000 from the state, which won’t make its final payment until the case is resolved. Ford’s predicament is the result of a web of appeals (both state and federal) and confusion over what workers on the job should have been paid under Wisconsin’s prevailing wage law.

It was a small job – never more than four guys working on it at one time, says Ford, who has owned Ford Construction Co. for 20 years and has worked in construction since he got out of college. “I’m a project-oriented person,” Ford says of his love of construction. “I like a start and a finish. And I also like that we’re solving problems all day long. We have to come up with creative solutions all the time.”

He’s still working on a solution for this one.

“I’ve got hundreds of hours in this – hours that I can’t be bidding work and getting business,” says Ford, who hired an attorney to handle appeals on the federal and state levels. Currently, he has taken it to the state Department of Administration.

Some suggest changing or eliminating the wage-calculating system, enacted in Wisconsin in 1931. It was designed to ensure that contractors from distant areas of the state with lower-wage workers could not outbid local contractors with higher-paid workers on public projects.

Through the Department of Workforce Development, Wisconsin’s prevailing wage law sets the minimum hourly pay for 200 occupations – carpenters, electricians, ironworkers and more – on most publicly funded projects.

Study reveals flaws in Wisconsin’s law

The nonpartisan Wisconsin Taxpayers Alliance studied the law recently at the request of Associated Builders and Contractors of Wisconsin. The Taxpayers Alliance set out not to evaluate the law’s strengths and weaknesses but to examine the method of calculating wages.

It found two major flaws. First, only about 10% of state wage surveys are filled out correctly and returned – heavily weighted toward unions. About 25% of the construction industry is unionized, the Taxpayers Alliance reports, but 87% of the hours reported are under union contracts. “This tends to raise prevailing wage rates above market values,” the group reports.

The other major flaw that inflates wage rates: Unlike other states that conduct such wage surveys, Wisconsin’s wage-calculating system can be a nightmare for construction companies

By Jan Uebelherr

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The Taxpayers Alliance says. “This unique method results in prevailing wages that can be 20% to 40% above the rate that results from a true average from all respondents.”

The study found that the way wages were calculated meant wide fluctuations from year to year, unskilled workers being paid more than skilled workers and more “costly” wages in low-wage, low-income counties.

As an example of pay disparities between skilled and unskilled workers, the Taxpayers Alliance noted last year, the prevailing wage and benefit package for an electrician in Lafayette County was $21 an hour but was $37.97 – 80% higher – for a general laborer.

The survey itself is so detailed and time-consuming, Ford says, that few non-union contractors participate. “It’s so much work to participate in the survey for a non-union contractor,” says Ford. “Details on every project for the last year …”

And it costs the taxpayer. The Taxpayers Alliance figures state and local governments could save between $199.7 million and $299.5 million on such projects if real market values were used rather than the current system.

**Contractors frustrated by system**

What the Taxpayers Alliance found confirmed the frustrations of Ford and other contractors who take on public projects and the prevailing wage rates that go with them. They find a web of administration at every step, hourly pay rates that can change mid-project and rates that just don’t make sense.

That’s sure what Ford found. After winning the West Bend contract, Ford consulted the bidding document for wage rates. Such documents can have up to five pay rates for workers, though they typically contain three – local, state and federal – for various workers, he says. The contractor looks at the rates for a given type of worker and must pay the highest rate.

“How much are we going to pay the carpenter? Find the highest rate and pay that,” says Ford.

For the West Bend building, he looked at the occupations listed in the document and figured “metal building erectors” most closely matched the type of work being done: assembly work of the structure. The prevailing wage rate was $23.30 an hour.

On other prevailing wage projects, a meeting is usually held with the government handling the project before work begins to go through wages. That didn’t happen with the West Bend project, Ford says.

The trouble began when Ford began filing weekly pay reports with the state, as required for projects like this one overseen by the Wisconsin Department of Transportation. He notes that on such projects, he essentially runs two sets of payroll: his own and the one required by the state.

**Another big headache**

The state told him he was using the wrong occupation. He should be paying ironworkers rates. That would be $54.21 an hour. Ford couldn’t understand it. There was no welding involved on this very simple building. “Everything was precut and ready to erect,” he says.

Since the wage rate he was being asked to pay was a federal rate, he had to appeal at the federal level. So he did. He was supposed to get an answer in 30 days, but
that turned into 90 days.

Work continued on the simple snow plow building. Ford kept paying his workers the $23.30 rate.

The federal government came back with a reduction of $3 an hour from the $54.21. Ford asked how the feds arrived at that but says he couldn’t get a response. He appealed again, and they came back with an hourly wage of $45.45. He asked again what that was based upon but got no answer.

“We think they picked the lowest skilled trade laborer … looks like ceramic tile installer rate,” says Ford, though he’s not entirely sure.

He’s now appealing the case to the state Department of Administration. A state DOT public affairs spokeswoman declined to comment on the matter since it is still an open case.

**Some contractors simply walk away**

Even given his experience with the West Bend building, Ford isn’t ready to walk away from such projects — he notes that he’s had good experiences working with local governments managing the projects — but some construction companies do.

Stan Johnson, president of A.C.E. Building Service in Manitowoc, has had enough. He doesn’t bid on such jobs anymore.

Johnson compares the prevailing wage to Garrison Keillor’s Lake Wobegon, “where no one’s below average.” While it may be a charming idea, it’s not reality. “They don’t represent the wages that we normally see in my world. My wages are very competitive … it’s the benefit rates (under prevailing wage) that are ridiculous. It really is just insane,” he says.

For example, he pays an experienced carpenter nearly $30 an hour. That includes $5 for benefits. Under the prevailing wage system, he has to add another $15 an hour for benefits.

“Our benefits max out at $5 an hour,” he says of his non-prevailing wage workers. “We’ve got a decent health insurance, a 401(k) plan. It’s not like we’re a cheap employer, because we’re not. We’ve been around 50 years. People want to come and work here.”

Johnson also didn’t like what it did to his workplace. It created tension among workers. Generally, 90% of his workers were on non-prevailing wage jobs. The other 10% would get an extra $10 to $12 an hour on a prevailing wage job. “How do you decide who goes where? That sets up internal strife that I prefer to avoid,” Johnson says.

And there’s extra bookkeeping. If a worker spends half a day on a prevailing wage job and the other half on another job, it means more records. “I’ve got to have multiple wage rates in my system,” Johnson says. “It’s just a bunch of busy work.”

In the end, the loser in the deal is the taxpayer. “As a taxpayer, I’m concerned … this extra money is for what? And it’s not representative of what the majority of the state makes. That means that state institutions are paying a lot more and getting a lot less for their construction dollar.”

**Repeal or change the law**

Johnson would like to see Wisconsin join other states that have abandoned such systems, but he doesn’t see a political climate that would allow it. “It’s a tough one politically to sell,” Johnson says. Abolishing it means “somebody’s going to get paid less.”

At the least, Johnson would like to see the calculation method changed. “There’s got to be a better way to get a true average,” says Johnson, who notes that he doesn’t fill out the survey. “It takes a few hours to do it. Plus it’s open records. Anybody can get at it,” he says. As a business, “you don’t want all your information out there. So why would I do that?”

He’d like to see the threshold raised from $234,000 to $1 million for public projects that must use prevailing wage. In the world of public works, $234,000 is a small project. That way, small projects wouldn’t have to deal with all the headaches that he sees with prevailing wage.

For his part, Ford isn’t opposed to the notion of a prevailing wage. “We have to pay decent wages,” he says. “Do we have to pay as much as a union?”

He adds, “Something needs to be done. Either fix it, or repeal it.” He favors repealing it. “Because I’m afraid of what they’ll do if they try to fix it.”

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