

# BOLI survey will evaluate HVAC testing, balancing work

The Oregon Bureau of Labor and Industries (BOLI) will survey contractors who test, balance and adjust HVAC (heating, ventilation and air conditioning) control systems this spring to determine whether or not they should have their own wage classification under state prevailing wage laws.

Testing and balancing of HVAC controls follows the installation of the HVAC system. Installation is performed by Sheet Metal Workers.

Oregon's prevailing wage law requires employees on state-funded construction projects be paid wage rates comparable to wages paid for similar work in the area where the project is located. Thirty-one states have such laws, and of 16 states that BOLI contacted (including Washington), all recognize testing, balancing

and adjusting (TAB) work as covered under the Sheet Metal classification.

Independent and nonunion TAB contractors in Oregon say that TAB work is an industry unto itself and that it should either be exempt from prevailing wage laws, or at least have its own wage rate classification separate from the Sheet Metal rate.

Portland-based Sheet Metal Workers Local 16 disagrees.

"TAB is a big part of our industry," said Willy Myers, a business agent for Local 16. He said the union's HVAC & Metals Institute offers TAB certification classes to its apprentices and journey-level workers and that all of its signatory HVAC contractors perform TAB work.

The issue over TAB wages surfaced last summer when a nonunion crew working for Beaverton-based

Accurate Balancing Agency Inc. at the Madras State Prison filed a wage claim with BOLI citing prevailing wage law requirements. A BOLI investigator was sent to the worksite in Central Oregon, where he determined that workers should be paid at the prevailing wage rate for Sheet Metal Workers. BOLI said the employees were owed back-wages and penalties totaling nearly \$100,000.

Accurate Balancing Agency Inc. cried "foul," claiming that a BOLI determination in 2003 stated that TAB work was exempt from prevailing wage laws. That, in turn, set off a firestorm among open shop contractors, who threatened to sue the agency. Some of those contractors called state and federal lawmakers to complain.

Labor Commissioner Dan Gardner told the NW Labor Press that wage rates for TAB workers on public-works projects have never been challenged before.

Gardner said work is not subject to prevailing wage laws if, "20 percent or less is physical in nature." He said that when Accurate Balancing sought a wage clarification in 2003, the owner characterized the work as not physical.

"Based on the 2003 characterization of the work provided by Accurate Balancing, our agency provided an appropriate response, (that it was exempt)" Gardner said.

However, when the BOLI investigator was called in, he witnessed work

that was physical in nature more than 20 percent of the time.

Gardner said BOLI can make companies pay up to six years in back wages if workers are improperly classified.

With a complaint on file, Gardner decided to appoint a subcommittee of the Prevailing Wage Rate Advisory Committee to look at the matter. The Advisory Committee is part of BOLI, established in 1995 by the Oregon Legislature to assist the labor commissioner in administering prevailing wage laws. The subcommittee consisted of an equal number of union and open shop HVAC and TAB contractors, union and open shop reps, and industry lobbyists.

Gardner said, the subcommittee agreed to compile a survey of the TAB industry. A new committee is now meeting to craft the details of what

that survey will look like. Gardner doesn't expect the survey to be distributed for at least 90 days.

**NOTE:** The BOLI investigation at Madras prompted Sheet Metal Workers Local 16 to file a similar complaint in Washington State on behalf of employees working for Accurate Balancing Agency Inc. It seems that some of the employees at Madras had also worked on public works projects in Washington for basically the same wages they were getting in Oregon.

An investigation by the Washington Department of Labor and Industries' Employment Standards Section found the company paid workers between \$10 and \$20 an hour for work that was supposed to be paid between \$23.29 and \$36.74 an hour. The company was ordered to pay 11 workers \$34,283 in back wages and benefits.

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## Three Carpenters locals endorse John Kroger for attorney general

Carpenters Union Locals 247 in Portland, 1065 in Salem and Exterior and Interior Specialists Local 2154 (drywall hangers) have endorsed John Kroger for Oregon attorney general in the Democratic primary.

Kroger, a Lewis & Clark Law School professor and a former federal prosecutor is seeking the post being vacated by Democrat Hardy Myers, who is retiring and will not seek a fourth term in office.

"We need an aggressive attorney general that will defend the rights of workers and prosecute those that abuse our laws," said Joe Baron, chairman of the Metrowide Endorsement Committee for the United Brotherhood of Carpenters and Joiners and a member of Carpenters Local 247. "We need someone that will take a proactive and visible role. John Kroger will be that kind of attorney general."

"These endorsements show that people want an attorney general who will fight for every single Oregonian," Kroger said about the endorsements. "Every day in office I'm going to stand up for workers when labor laws are being violated and I'm going to work closely with the business community to build a healthy and sustainable economy."

Kroger also has backing from former Gov. John Kitzhaber, and City Commissioners Erik Sten, Dan Saltzman and Randy Leonard.

His opponent in the Democratic primary is three-term state Rep. Greg Macpherson of Lake Oswego. No Republicans have filed to run for the office.

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