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29 CFR Ch. V (7-1-11 Edition)

If the prehearing statement is in conformity with the above requirements, the person shall have the right to participate as a party. In accordance with section 6(c) of the Administrative Procedure Act, the industry committee shall, after considering the advice of committee counsel, issue subpoenas, authorized by section 9 of the Fair Labor Standards Act of 1938, to parties who make a request therefor accompanied by a clear showing of general relevance and reasonable scope of the evidence sought.

(c) Prehearing statements of parties shall be made available for examination at the offices where they are filed. Each person who files a prehearing statement should, if requested, make himself or herself available for conference with the committee staff to make any needed clarification of his or her prehearing statement, and arrange details of presenting his or her testimony or case.

(d) In exceptional circumstances a person who has not filed the prehearing statement required by this section and who does not appear on a witness list filed by a party may nevertheless be permitted, in the discretion of the committee, to offer testimony.

[25 FR 14024, Dec. 31, 1960, as amended at 55 FR 53298, Dec. 28, 1990]

§511.9 Requirements for quorum and decisions.

Two-thirds of the members of an industry committee shall constitute a quorum. Approval by a majority of all of the members of an industry committee or subcommittee shall be required for its report. Except as otherwise provided in this part, the chairperson of the industry committee or subcommittee may make other decisions for the committee or subcommittee, but each such decision shall be subject to approval of a majority of the members present if any member objects.

[55 FR 53298, Dec. 28, 1990]

§511.10 Subjects and issues.

(a) The declared policy of the Act with respect to industries or enterprises in American Samoa engaged in commerce or in the production of goods

for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the object of the minimum wage rate that would apply in each such industry under paragraph (1) of section 6(a) but for section 6(a)(3) of the Act. Each industry committee shall recommend to the Administrator the highest minimum wage rates for the industry that it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of American Samoa; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a)(1), that would be applicable but for section 6(a)(3), unless there is evidence in the record that establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.

(b) Whenever the industry committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry than may be determined for other employees in the industry, the industry committee shall recommend such reasonable classifications within the industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate (not in excess of that prescribed in paragraph (1) of section 6(a) of the Act) that can be determined for it under the principles set out in this section that will not substantially curtail employment in such classification and will not give a competitive advantage to any group in that industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within an industry, in making such classifications, and in determining the minimum wage rate for each classification, the committee shall consider, among other relevant factors, the following:

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(1) Competitive conditions as affected by transportation, living and production costs;

(2) The wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) The wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

[55 FR 53298, Dec. 28, 1990]

§ 511.11 Pertinent data.

Among the types of data which may be considered pertinent to the subjects and issues delineated in § 511.10, are those revealing:

(a) Employment and labor conditions and trends in American Samoa, and on the mainland, particularly since the promulgation of the presently applicable wage order, including such items as present and past employment, present wage rates and fringe benefits, changes in average hourly earnings or wage structure, provisions of collective bargaining agreements, hours of work, labor turnover, absenteeism, productivity, learning periods, rejection rates, and similar factors;

(b) Market conditions and trends in American Samoa, and on the mainland, including changes in the volume and value of production, market outlets, price changes, style factors, consumer demand, competitive relationships, tariff rates, and similar marketing factors;

(c) Comparative production costs in American Samoa, on the mainland, and in foreign countries, together with the factors responsible for differences;

(d) Financial conditions and trends since promulgation of the present wage order as reflected in profit and loss statements and balance sheets; and

(e) Data bearing on proper definitions of classifications within an industry.

[55 FR 12120, Mar. 30, 1990]

§ 511.12 Committee and subcommittee meetings.

(a) The full committee, or a quorum thereof, will convene at the time and place appointed for an initial pre-hearing meeting as provided in the

Secretary's order initiating the proceedings (note § 511.2). The full committee acting through a quorum will decide at that meeting whether it will preside at the reception at the hearing or will authorize a subcommittee to preside. Any resolution authorizing a subcommittee to hold the hearing shall provide a period of 30 days after:

(1) The subcommittee has filed its recommended report and

(2) A transcript of the subcommittee hearing is made available to the parties, for the parties to file exceptions to the recommended report, and the committee shall meet promptly thereafter on call of its chairperson or the Administrator to consider exceptions and prepare its final report.

(b) A committee may adjourn its meeting or hearing, or both, from time to time, and meet again, at hearing or otherwise, pursuant to the terms of adjournment, or on call of its chairperson or the Administrator.

[55 FR 53299, Dec. 28, 1990]

§ 511.13 Evidence.

In accordance with the notice of hearing, the committee and any authorized subcommittee will take official notice of the facts stated in the economic report to the extent they are not refuted by evidence received at the hearing. Other pertinent evidence available to the Department of Labor may be presented at the hearing. The committee itself may call witnesses not otherwise scheduled to testify. Oral or documentary evidence may be received, but the committee shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every interested person who has met the requirements for participation as a party shall have the right to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses called by others as may be required for a full and true disclosure of the facts. Testimony on behalf of an employer or group of employers as to inability to pay the minimum wage rate specified in paragraph (1) of section 6(a) of the Act, or as to inability to adjust to a higher minimum wage rate than prescribed by any applicable wage order of the Secretary, shall be