

## Wage and Hour Division, Labor

## § 511.13

(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 prehearing 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 supported by tangible objective data filed as part of the prehearing statement under § 511.8. Financial or other

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data shall include data for the most recent year or fraction thereof for which data are available. Financial statements filed in accordance with this provision, except those relating to a period of less than a full fiscal year or a fiscal year ending less than 90 days prior to the filing of the prehearing statement, shall be certified by an independent public accountant or shall be sworn to conform to and be consistent with the corresponding income tax returns covering the same years. Evidence of witnesses not present at the hearing may be submitted only by affidavits received with, or as a part of, a prehearing statement that meets the requirements of §511.8 and satisfactorily explains why each affiant cannot be present. Such affidavits will be received in evidence to the same extent that testimony from affiants would have been admitted had they been present. The committee will give such weight to these statements as it considers appropriate, and the fact that such affiants have not been subject to cross-examination may be considered, along with other relevant facts, in assessing the weight to be given such evidence.

[55 FR 53299, Dec. 28, 1990]

#### §511.14 Procedure for receiving evidence.

(a) All testimony shall be given under oath or affirmation. Any party shall have the right to appear in person, by counsel, or by other specified representative. Misconduct at any hearing shall be grounds for summary exclusion from the hearing. The committee shall limit the testimony of any witness where appropriate to prevent the hearing from becoming unduly prolonged. The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the committee, be ground for striking all testimony given by the witness on related matters.

(b) Unless otherwise directed by the committee, witnesses shall be called in the following order: The committee economist qualified to testify concerning the content and preparation of the economic report, other witnesses called by the Department of Labor, witnesses called by the parties, other

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witnesses. Unless otherwise directed by the committee, all witnesses other than those called by the parties shall be examined in the following order: By committee counsel, by committee economist, by committee members, by the parties or their representatives. Witnesses called by the parties shall be examined first by the party calling them or by the party's specified representative, and then in the order herein indicated for all other witnesses. Redirect examination may be permitted at the discretion of the committee. Rebuttal evidence may be offered in the order and manner in this section provided for other evidence. To the extent not specified in this section, the order for calling and examining witnesses shall be specified by the chairperson of the committee or subcommittee.

[21 FR 7669, Oct. 6, 1956, as amended at 55 FR 53299, Dec. 28, 1990]

#### §511.15 Submittals prior to reports.

As soon as the receipt of evidence is concluded, a committee or subcommittee presiding at a hearing shall receive any proposed findings of fact and recommendations together with the reasons therefor submitted by any party. These submittals shall be oral unless otherwise directed by the committee or subcommittee. If, in the discretion of the committee or subcommittee such proposals should be in writing, it may grant such additional time as it deems essential.

#### §511.16 Reports.

Promptly after receipt of submissions under §511.15, the committee or subcommittee will resolve the issues before it and prepare a report containing its findings of fact and recommendations. The report shall contain the committee's or the subcommittee's findings and conclusions as well as the reasons or basis therefor upon all the material issues of fact, law, or discretion presented on the record. When a committee, acting through a quorum, has presided at the reception of evidence, this report shall be its final report on the matters referred to it. Where, however, a subcommittee has presided at the reception of evidence, this report shall be an initial report, and the committee shall