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## HEARING

BEFORE THE

## COMMITTEE ON HUMAN RESOURCES

## UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

XAVIER VELA, OF THE DISTRICT OF COLUMBIA, TO BE  
ADMINISTRATOR OF THE WAGE AND HOUR DIVISION,  
DEPARTMENT OF LABOR

JUNE 24, 1977

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## NOMINATION

FRIDAY, JUNE 24, 1977

U.S. SENATE,  
COMMITTEE ON HUMAN RESOURCES,  
Washington, D.C.

The committee met, pursuant to notice, at 10:30 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman), presiding.

Present: Senators Williams, Kennedy, Randolph, Schweiker, and Javits.

Staff present: Don Zimmerman, minority counsel.

The CHAIRMAN. We will come to order.

At this time we will hear testimony concerning the nomination of Xavier Vela, of the District of Columbia, to be Administrator of the Wage and Hour Division, Department of Labor.

Good afternoon, Mr. Vela.

### STATEMENT OF XAVIER VELA, OF THE DISTRICT OF COLUMBIA, NOMINEE TO BE ADMINISTRATOR OF THE WAGE AND HOUR DI- VISION, DEPARTMENT OF LABOR

Mr. VELA. Good afternoon, Senator.

The CHAIRMAN. Mr. Vela, you have been nominated to be Administrator of the Wage and Hour Division of the Department of Labor, a very important position, indeed.

We are pleased to have you here and an opportunity to get your observations on this division, this operation, some of your ideas of where you think problems have developed and what you think we might do about them.

I have read your biography, and maybe I had an incomplete statement of your activities.

Quite frankly, as I recall reading it earlier this morning, I do not know where you are presently employed.

Mr. VELA. I am a consultant with the Employment Standards Administration, Department of Labor.

The CHAIRMAN. A consultant?

Mr. VELA. Yes, since, I believe, April of this year.

The CHAIRMAN. And what was your position prior?

Mr. VELA. Immediately prior to that, I was the Housing Adviser for the National Council of La Raza. It is one of the national Hispanic organizations. I was adviser to them on their housing program.

Prior to that, I worked with the Labor Council for Latin American Advancement working with AFL-CIO and UAW unions throughout the country on voter registration and voter participation programs.

The CHAIRMAN. Maybe I do not have your full biography.

Is that all in there?

Mr. VELA. I think so.

[The biography of Mr. Vela follows.]

#### BIOGRAPHICAL SKETCH OF XAVIER M. VELA

Mr. Vela was born on October 23, 1937 in Albuquerque, New Mexico, and studied at the University of New Mexico before going on to the Occidental College in Los Angeles, California. He completed his formal education at the University of California at Berkeley where he received a B.A. in philosophy and M.A. in international relations.

Mr. Vela began his trade union career with the Retail Clerks International Association in San Jose, California, in 1963 and later served with their international program out of Lima, Peru. In 1964 he joined the American Institute for Free Labor Development, supervising trade union leadership training, cooperative and housing programs throughout Central and South America, and later became the director of the Institute's program in Brasil.

Vela joined the federal government in 1968 as head of Special Projects for Volunteers in Service to America (VISTA) and, in 1969, went to the Agency for International Development where he later became chief of its housing programs for Latin America and the Caribbean.

During his federal service, Mr. Vela served as president of the American Federation of Government Employees local unions both at the Office of Economic Opportunity and at the Agency for International Development.

In 1975 Mr. Vela obtained a teaching credential from the University of Maryland and taught elementary school in Montgomery County, Maryland.

He is a founder and former trustee of the Charles Thomas Legal Defense Fund which successfully sued the Department of State to obtain due process in employee-management relations for the members of American Foreign Service.

Mr. Vela is married and lives with his wife, Pilar Saavedra-Vela, in Washington, D.C.

On May 23, 1977, President Carter nominated Mr. Vela to be Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor.

The CHAIRMAN. Now, could you go back over your activity with the AFL-CIO again?

This biographical sketch gives me no picture of what you have been doing. It is always very helpful to know.

Mr. VELA. I will be happy to.

After graduating from the University of California at Berkeley, I went to work with the retail clerks. I had been a member of the—

The CHAIRMAN. Berkeley graduation. I think that is in here. That was 1963?

Mr. VELA. That was 1963, sir.

Immediately thereafter, I went to work for the clerks in San Jose. I had been a member of the local in Oakland.

The CHAIRMAN. That is San Jose, Calif.

Mr. VELA. That is right.

The CHAIRMAN. We have to keep that straight because you also spent some time in San Jose—

Mr. VELA. That is right.

After working there, I was assigned by the retail clerks to their international program out of Lima, Peru. I worked there for almost 2 years and then came back here, and worked with the American Institute for Free Labor Development, which is an AFL-CIO sponsored nonprofit agency that works with the Agency for International Development, working with trade unions overseas and leadership training, collective bargaining, housing projects, credit unions, literacy programs—any union-sponsored projects overseas that are Latin American. And I served with them in Brazil for a couple of years.

The CHAIRMAN. This was funded by the parent, the AFL-CIO?

Mr. VELA. Only a small extent. It is primarily funded by Uncle Sam through the State Department Agency for International Development, and that is a program that was instituted in the early 1960's under the Kennedy administration.

The CHAIRMAN. How about the retail clerks program?

Mr. VELA. The retail clerks program was a private program. It was part of the so-called International Trade Secretariat that the retail clerks belonged to, along with other white collar unions throughout the world. The headquarters of that Secretariat is, I believe, in Geneva, and has been around for some 65 or 68 years.

After returning from Brazil, I went to work directly for the Agency for International Development, our foreign aid program with the so-called housing guarantee program, which guaranteed private U.S. mortgage investments overseas in moderate- to low-income housing, working mostly with housing agencies of governments in Central and South America.

The CHAIRMAN. Who was the guarantor?

Mr. VELA. Uncle Sam.

The CHAIRMAN. Of housing in other countries?

Mr. VELA. Of the mortgage money, right. It was basically an FHA.

The CHAIRMAN. When was that?

Mr. VELA. This was between 1968 and 1972—I am sorry—1974.

The CHAIRMAN. That was during a period when we had a housing moratorium in this country?

Mr. VELA. That is right.

The CHAIRMAN. How could it happen that we were supporting housing abroad and absolutely stopping new construction of housing here?

Mr. VELA. Well, as you know, there was a general shortage of housing finance. I think there was a major debate over the countercyclical policy that should be undertaken by the Federal Home Loan Bank and others.

But since our program took up such a small proportion of the available housing finance, the administration decided that it would not be worth it.

It was one of the few foreign aid programs that paid for itself. That is, private mortgage money was lent, a fee was paid for the U.S. Government guarantee, and that fee more than offset the cost of the administration.

Because it was such a small program and because it represented self-sufficient foreign aid, it was continued during that era.

The CHAIRMAN. What was the experience of that housing, successful?

Mr. VELA. It is successful so far. I think a very small portion of the contingent liability has ever had to be honored by Uncle Sam, and it is still going on, not only Latin America, but worldwide.

The CHAIRMAN. And this was your activity in Lima?

Mr. VELA. No. This was my activity when I came back to the United States and worked for the foreign aid program. This was approximately between—I have not looked at my biographic data recently, but I believe I went there in late 1969 and stayed there until 1974-75.

The CHAIRMAN. It just seems to be an entirely different discipline than you have been in.

Mr. VELA. Well, if that confuses you, in the middle of all this, I took a couple of years off and taught third and fourth grade in Montgomery County.

The CHAIRMAN. What gives you the background to hold the position of wage and hour administrator?

Mr. VELA. First of all, I am a product of the labor movement. My uncle, who raised me in New Mexico, was an organizer of several building trades. He was an official of the State AFL in those days. And I grew up with very intimate knowledge of the labor movement. And I have been either a staff member or an official of the labor union for almost my entire professional life.

Second, I have had some experience in Government, and have an idea of how it works.

And, third, I believe very strongly in the idea of labor standards, that labor standards are an essential part of the 20th century landscape; that unless they are reasonable and unless they are enforced vigorously, unless there is imaginative, thoughtful, farsighted planning of how they change to meet the demands of the time, then they become meaningless. If they become meaningless, then everything to which the working man and woman in this country ascribes can be undermined.

I suppose my commitment is an historical and philosophical one.

The CHAIRMAN. Are you familiar enough with this office that you are going to know what authority you have and how you can use it when one of the departments of Government seeks to contract work out?

The contracting agency, say Defense, say the Army, has some rebuilding to do at a base and they have estimated the job to be \$5 million. The bids come in about \$5 million, except one that comes in for about \$3.5 million the Army accepts the \$5 million bid.

What authority do you have in this office to look into that and what authority do you have to blow the whistle on the Army if they do that?

Mr. VELA. My short answer is no authority.

My long answer is that I think that what you are implying is that the enforcement of the Davis-Bacon Act is long overdue for review. It seems to me that unless there can be some kind of uniform enforcement—unless there can be some uniform enforcement of prevailing wage legislation, not only Davis-Bacon but service contracts as well—then it becomes a farce to be undermined on the very basis of it, namely that wages should not be a competitive factor in bidding for service and goods that Uncle Sam uses.

I feel that our mechanism for determining wages can be improved and is being improved. I do not feel that the authority, the enforcement, is consistent enough by any means.

The CHAIRMAN. What is the machinery of enforcement when it appears that wages have been a factor in competition of the low bid?

Who does what to correct that situation?

Mr. VELA. I am not as familiar with the details as I am sure I will be in a few months.

But, as I understand it, the Department of Labor has the authority to enforce those wages, those standards, once the determination has been made that, No. 1, the contract falls under the Davis-Bacon Act and, No. 2, there has been a wage and determination for that project or for that geographic area.

In practice, as I understand it, the agencies themselves are responsible for enforcing those standards, and if they do not, it is an unhappy history.

The CHAIRMAN. If they do not, then what do we have to do? OK. I will be right back. You can think about that.

[Short recess.]

The CHAIRMAN. I stopped you in the middle of a sentence to go vote.

If you want to pick up there, go to it.

Mr. VELA. Senator, I think what we were talking about is authority that the Secretary of Labor has to order a Government agency to stop payment to a contractor that is not honoring the prevailing wage rate. I think that is obviously critical.

But I think what preoccupies me at the moment is the——

The CHAIRMAN. That would be just one method of reaching this violator.

Would there not be other kinds?

Mr. VELA. Of course, there could be departments down the line, and I do not mean to——

The CHAIRMAN. Is there any way to get a court order to make them pay under the law the prevailing wage?

Mr. VELA. I do not know. I am familiar with the procedures and I am familiar with the Department of Labor to stop payment——

The CHAIRMAN. Have you been over there at all?

Mr. VELA. I have been over there. I have been concentrating on the preparation of some intensive directive enforcement, both in this area and legislation.

Most of my time has been taken up with designing a program to direct enforcement of Davis-Bacon service contracts in the field before the end of this fiscal year. So I have not gotten into the details of litigation and that side of it to any great extent.

The CHAIRMAN. If you are working on enforcement of Davis-Bacon, maybe you are getting at it in a way that will protect us from some of the potential violations and abuses.

What are your different approaches in directing enforcement?

Mr. VELA. The approach that we have been concentrating on in the short run is using more of our own resources to target investigations toward potential violators. That is in the last quarter of this fiscal year, we have asked all of our regions to assign an average of four people for 3 months.

In other words, one man shall be devoted exclusively to this in each of these 10 regions, concentrating on those contracts over \$3 million which are about half done. So there is a history there, and within four or five of the agencies that we feel might not be enforcing the standards as well as we would like.

The CHAIRMAN. Is that classified, those agencies that you feel are not fully observing the standards under Davis-Bacon?

Mr. VELA. That information is not classified as far as I know.

The examples that I know of that come to mind are the Department of Defense and ACW.

I think there is also possibility of simply indicating what agencies have been most vigorous in our enforcement and what agencies have been lackadaisical. What preoccupies me at the moment is whether or not more of that enforcement should be carried out directly by the Secretary of Labor.

Perhaps that is one of the major problems that we face.

The CHAIRMAN. I set up a hypothetical. I did not spell out all of the elements of the hypothesis.

But where a contracting part of the Government is putting something out for bid, I imagine they have a procedure to make the ball park estimate of what the bid should be. And if it comes in way below their estimate, I would think that that is a warning of something.

Mr. VELA. Indeed.

The CHAIRMAN. Now, I wonder if your Division has or if it has not—whether it might properly have a guideline to contracting agencies of our Government, that this is a caveat and that it should be looked at, and maybe your Division could be available for consultation.

Does that make any sense?

Mr. VELA. I do not know. I think it makes sense, but right now that is a layman's view.

I think another flag we have to focus in on is how many of these agencies are abusing the so-called 10-day rule.

The CHAIRMAN. What is the 10-day rule?

Mr. VELA. The 10-day rule, as I understand it, says that an agency must notify a contractor 10 days before the prospective contract, 10 days before, what the prevailing wages are for that project. And many of the agencies simply say that they do not have that much time available and, therefore, are ignoring it.

What that means then is that a lot of the contracts either do not have the current prevailing wages, or are using prevailing wages from a prior determination.

So I am sure there are things that we should do to make it harder for an agency, a Federal agency, to ignore the provisions of this act. Again I come back to my point, Senator, that I believe that the heart of the problem is that we share a responsibility and that—I am quoting now from something that has been said by Assistant Secretary Elisburg—the partnership is not equal nor is it functioning well.

The CHAIRMAN. The partnership is not what?

Mr. VELA. The partnership for enforcing Davis-Bacon with the other contracting agencies, the Labor Department and those other Federal agencies is not equal nor is it functioning well.

I believe that that is one of the major areas that we should focus on.

The CHAIRMAN. Obviously, the objective is to have it function well. Is it an equal partnership?

Mr. VELA. I do not think so.

The CHAIRMAN. Or should it be or can it be?

Mr. VELA. If history is the guide, Senator, it cannot be. That is if the other agencies have found it possible to ignore the provision of this legislation, provision of the service contract. We do have sole responsibility there. But if, in Davis-Bacon, the agencies have found

it possible to give less than vigorous enforcement, to put it euphemistically, to this act, then I think we have to say that the partnership is not functioning well.

The CHAIRMAN. That is true of the Service Contract Act as well as the Davis-Bacon?

Mr. VELA. Yes, for different reasons.

I have had the opportunity to spend nearly a week with the compliance officer, making rounds with him all the way up to the service station on the one hand, data processing on the other, and one of the examples—

The CHAIRMAN. Where were you visiting service stations?

Mr. VELA. Well, we were doing everything that a compliance officer does. I wanted to know exactly how—

The CHAIRMAN. Minimum wage?

Mr. VELA. This was the minimum wage on the one hand and the other was the service contract complaint.

One of the examples that we ran across, and I am told that it is quite widespread, is contract for services to a Government agency which did not have attached to it the wage determination so that we could hardly prosecute that private firm for not observing the prevailing wage if that agency had not—did not include the determination in its contract, in what agency was what.

I believe in this case it was the Federal Energy Administration. And I am told that some of the newer agencies may be just a matter of growing pains. I am also told that it was some other agencies just indifference.

So I guess, to repeat my answer, I think that agencies may take the same attitude toward this as they take toward the Davis-Bacon but for different reasons. Obviously the mechanics involved are different.

The CHAIRMAN. Well, you have been specific about problem areas, and these are areas where I have been less specific in my information. But I have noted those conclusions.

You had one that I did not know, that the agencies were getting the foundation information. It has come from the Labor Department to them.

When they put out the bids, they have to attach the prevailing wage?

Mr. VELA. They have. They just do not pass it on to the respective—

The CHAIRMAN. I thought I heard you say on the energy side they do not have it.

Mr. VELA. I did not mean to say that.

What I understand is that in most cases they do indeed have them or they are under an obligation to release it. Once we send it, that is the form that indicates for service contracts what the prevailing wages should be. Then it is their obligation to include that as part of the bid documents. That is how the system breaks down.

The CHAIRMAN. Are you getting ready to bring in the white collars as well as the blue collar workers?

Mr. VELA. In service contracts?

The CHAIRMAN. Yes.

Mr. VELA. We are studying it now. I think there are a lot of examples where it is clear that professionals do not have a projection that they should have.

I do not think the Department of Labor has made the decision on that as yet, but they certainly are giving it careful and sympathetic study.

The CHAIRMAN. You mean whether to support the law that would include the professionals?

Mr. VELA. Yes, sir.

The CHAIRMAN. Which is going to come first, their position on that or their position definitively on the minimum wage?

Mr. VELA. Senator—

The CHAIRMAN. It is the biggest broadest smile.

Mr. VELA. I do not think I am able to answer this, Senator, especially before lunch.

The CHAIRMAN. Very good.

You know, in a way, I do not envy you going into this position.

You have got a lot of work ahead of you to make that law real, all of these laws real. Not one of them has been working right.

We have had eight years of erosion. You are going to be right in the middle of rebuilding it. That is the way it looks to me.

Do you have any attitude of what you are going into in terms of the erosion, as I call it?

Mr. VELA. I do. But I also am optimistic because I have seen, in the last couple of months, some steps taken in that direction.

As you know, the Employment Standards Administration is headed by someone who has a pretty good idea of what has been happening over the last few years. There have been some concrete steps taken; for example, those I have just given you. And basically I am confident that I have gotten to know more and more of the compliance officers, their supervisors here in Washington in the Wage and Hour Division, who truly want to do a good job. And one of the reasons that they welcome the direction we are giving them is they felt in the last few years they were on a merry-go-round that stopped and changed directions every few turns.

I think we have an obligation to make up our minds about where we are going to chart a course and keep a steady hand.

The CHAIRMAN. How many regions are there?

Mr. VELA. There are 10 regions, approximately 1,200 compliance officers, 500 or 600 people clerical, technical supervision.

The CHAIRMAN. Have you heard any—any complaints of inadequacy of compliance people in the regions?

Mr. VELA. I am sorry, I do not understand that.

The CHAIRMAN. Has it reached you from the regions that they do not have enough people hired to do their job?

Mr. VELA. Oh, indeed. Indeed.

I think what—as you know, what has happened is the number of laws that they have had to enforce over the last few years has grown.

The findings have grown, but the staff has not grown proportionately. And that is, of course, a constant demand and something that I am sure you will be seeing in the next budget request.

But, at the same time, I do not feel that we make it in good faith unless we make some honest effort to improve the rewriting, the training, the support that we give our people.

But I think we are obligated not only to match the job with the resources, we are obligated to give our present staff the training that they require.

The CHAIRMAN. Are you familiar with the region that includes New Jersey?

Mr. VELA. No, I have not had a chance to get out there. I met the regional director.

The CHAIRMAN. How big is that region in terms of States?

Mr. VELA. I know it includes New York, New Jersey, but I am not familiar with the geographic boundaries.

The CHAIRMAN. Do you have any idea how many employees there are in compliance in that region?

Mr. VELA. No, not offhand, sir.

The CHAIRMAN. At any rate, all of those that are in compliance in a region, they have the whole range of all the acts?

Mr. VELA. That is exactly the case.

There are a couple of specialists, less than five, who may concentrate on one or the other thing. But a man or woman who gets in that car and starts to respond to a complaint and goes out and does investigation is obligated to enforce all of the 80 some statutes that are our obligation to enforce.

So, one day, he or she may be looking at a very simple minimum wage violation and the next day a very complex equal pay or age discrimination, and the next day be out on a construction site with possible Davis-Bacon ramifications.

So it is an extremely complex job, and we have been burdening that compliance officer with more staff work. We have been asking more and more of him or her, and I think we have a breaking point unless we give that person more support and two more people onboard.

The CHAIRMAN. I think the age discrimination, at least the responsibility right now, tops at age 65, is that right?

Mr. VELA. That is right.

The CHAIRMAN. That is going to be changed, too, am I right on that?

Mr. VELA. There certainly are proposals to that effect. And again I will give you the same answer, we are studying it, and I believe there will be testimony by Assistant Secretary Elisburg on that, at least on the House side, very soon.

I think we all agree that it is not working as well as it should. Part of it may be enforcement, but part of it may be the law as it presently stands.

The CHAIRMAN. I think that is going to get more complicated before it is simplified, because the direction seems to be, or the movement seems to be toward changing that arbitrary ceiling.

Mr. VELA. Yes, indeed.

I think it may grow more complex to enforce, but it seems to me it is well worth the trouble because obviously the law, as it now is structured and enforced—

The CHAIRMAN. Let me understand you.

You personally feel that the ceiling is wrong?

Mr. VELA. Well, I personally feel that the law, as it is presently written, does not adequately address the problems that we have become aware of with the older worker in recent years.

So I think that—and I am sure that is why the study has been done so carefully—because we need to take a close look at it.

The CHAIRMAN. Have you ever worked in other—in any areas in prior times with Secretary Marshall?

Mr. VELA. No, I have not. I have not had the good fortune. I admire him greatly.

The CHAIRMAN. Have you known him for long?

Mr. VELA. By reputation.

But I have not met him personally—of course, recently.

The CHAIRMAN. I take it the fact that minority counsel is in the audience and not up here, I interpret as acquiescence, is that right, Don?

Mr. ZIMMERMAN. I have to consult with minority members on the committee as to their position.

The CHAIRMAN. All right.

That leads us to the next question.

Mr. ZIMMERMAN. There has been no objection that have been brought to my attention or that to Senator Javits.

The CHAIRMAN. On any of these?

Would you find out?

Mr. VELA. Thank you very much.

The CHAIRMAN. OK. Thank you very much. Nice to meet you and good luck.

[Whereupon, at 1:18 p.m., the committee adjourned, subject to the call of the Chair.]