

Testimony before the Pennsylvania House Judiciary Committee
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Good morning Mr. Chairman and members of the Judiciary Committee. I would like to thank you for the opportunity to present testimony regarding House Bill No. 1972. My name is Diane Dietrich. I am Manager of Human Resources for Keystone Railway Equipment Company, a manufacturing Company based here in the Capital region. I am also here in my role on behalf of the Capital Area Society for Human Resources (CASHRM) as the Legislative Affairs Coordinator to share with you some of the difficulties faced under present laws regarding reference checking.

Briefly, the CASHRM is made up of a diverse group of human resource professionals representing both large employers such as AMP Incorporated, to companies similar in size or smaller than Keystone Railway Equipment Company. In the past few years, the CASHRM has gone from a handful of dedicated human resource professionals interested in a forum to discuss present and future work force needs, to an organization with close to 100 members. The CASHRM has been successful in sponsoring and supporting such activities as a labor and employment law update, to an upcoming project supporting local area students by conducting mock interviews to help these students better prepare for the workplace.

As you may know most human resource professionals handle a broad array of duties including compensation, benefits, training and recruiting. We deal with a variety of issues on a daily basis and often have to find the best balance between employer and employee needs. I have been employed at Keystone Railway Equipment Company as Manager of Human Resources for the past five years and have encountered many

difficulties surrounding the issue of reference checking both here and in my previous tenure as a human resource professional. As a student of labor history, and human resources practitioner for the past ten years, I realize the continued critical role employees play in the success of an organization. My current and past work experience have enabled me to experience first hand the difficulty both employers and prospective employees face dealing with the absence of sound reference checking laws.

Keystone Railway Equipment Company is based in Camp Hill, with approximately 150 employees on site, as well as other manufacturing facilities in Kansas and France. Our work force includes all types of positions, from welders and machine operators, to engineers, accountants and sales professionals. There are numerous examples of corporate downsizing due to increased competition, and Keystone has not been immune to increased competition in our industry. As with other industries, the railroad industry has experienced growing pains in recent years. Today it is not always enough to have the most technologically advanced, quality product, to really serve our customers we must produce the best product at the lowest cost and be able to meet customer needs within 24 hours. We are fortunate to have a strong core work force of hardworking, loyal and bright employees, but we have not been immune to the problems all employers face with our present lack of ability to check or provide references.

To be successful, any organization has to met the needs of the shareholders, community, employees and customers. It takes dedicated, hard working individuals to make the organization successful and if there is one non-contributor in a group of employees, employers will expend a great deal of time, energy and money trying to resolve employee related issues, which could be better spent elsewhere. We invest a great deal of time and money recruiting individuals for our organization because we need a work force with a good work ethic that can respond quickly to the changing needs of our business. The absence of the ability to get accurate and valid information through reference checking only hampers these efforts and actually works to the detriment of both employers and prospective employee. I will briefly detail a few examples from my current and past employment to illustrate my concerns.

In recent years, it is an unfortunate fact that many employers have faced the threat of an employee who physically threatens co-workers, and possibly acts upon those claims. However, as the law currently stands, rather than take a risk that we would potentially be open to a multi-million dollar lawsuit, most employers have made it a policy to allow no references to be stated other than to confirm the position and dates of hire for a former employee. In some instances, employers may even try and provide a neutral reference as part of a discharge settlement, simply to have the employee go away quietly. In my course of employment, I have dealt firsthand with an employee who has had a history of substance abuse, substantial lost time due to absenteeism and tardiness, and threatening of co-workers, including physical assault. We hired this individual based upon information that they had performed the work for several years, and a neutral reference stating they could perform the task required in a satisfactory manner. What the former employer could or would not mention, however, is the fact that this individual only performed the work sixty to seventy-five percent of the time because they were absent so often due to substance abuse and a lack of a good work ethic. In addition, this individual had physically threatened several co-workers in his past employment. We hired the individual based on the information available and the knowledge we had a probationary period in which to evaluate his performance. However, as with many individuals, upon successful completion of a probationary period of sixty days, we embarked on a path where we were dealing with a series of performance issues that utilized substantial resources and affected the morale of the entire work force. Following a history of attempts to work with this individual, and thousands of dollars through counseling, substance abuse rehabilitation, and discipline based upon absenteeism, this individual was terminated because of threats and physical assault against several supervisors and co-workers. In the course of defending the employer against allegations of wrongful discharge, the information was discovered that this same individual had a history of such incidents. In fact, in a review of previous employment we were told off the record, that this individual had displayed the same behavior throughout the course of his previous employment. After almost a year of defending our position, the company was successful in defending the position of discharge for just cause. Clearly, if we had been able to get more information in the initial hiring

process, we would have potentially saved a great deal of time in money in the selection, training and subsequent lost time and legal costs incurred surrounding this one individual. Further, we would have been able to employ another qualified individual who otherwise was denied employment.

Some people may hear this type of example and feel that as an employer we have an obligation to protect the privacy of former employees and give such individuals another opportunity to become a valued member of the work force. However, I am also responsible to the remaining employees in the organization to provide a safe working environment, as well as to other employers in the community. I do not feel we should be forced to protect the rights of individuals who create fear and use force against others over those who simply want to come to work each day in a safe and productive environment to earn a good living for their family. One thing that stands out in my mind when I look back on this incident is the obvious change in the work atmosphere after this employee was terminated. When I commented on the change to several employees, they replied that it was a much better place to work now that they did not have to live in fear of being threatened or physically assaulted and they knew that the company could devote our resources to more productive issues.

I could provide you with other similar examples concerning the "bad" employees, but many of you may question how this legislation will help potential "good" employees. All of us at some point or another will face the prospect of job hunting in their career. I would much prefer to give employers the ability to do a thorough reference check to confirm my work ethic and skills, then to try and provide a letter of reference which may be treated with skepticism. Often times employers will agree to give a vague, neutral letter of reference simply to get an employee to leave quietly, or to settle allegations of wrongful discharge, rather than trying to defend their position through arbitration or the legal process, and they hope that the information does not come back to haunt them. I have also faced such situations, where we have terminated an individual for cause, including absenteeism, inability to perform the job, and threatening of co-workers, but turned around and provided a letter of reference stating simply that an employee worked in a particular position during a certain period. This practice has become the norm in

giving letters of reference so that when an employee who is actually well qualified and is terminated through no fault of their own, a letter of reference is treated almost as a negative by prospective employers because they are trying to find out the "real" reason someone was terminated.

To illustrate, in one of my work experiences we had hired several production employees and another supervisor in an effort to meet anticipated production demands. The individual we hired as supervisor brought to us over fifteen years experience and was a bright, innovative, dedicated employee. He worked with us for close to a year and then, because of a downturn in the market, we were forced to reduce our overhead and his position was eliminated. I provided a letter of reference giving a detailed summary of this individual's work ethic, leadership capabilities and overall performance with our company. He contacted several recruiters and in the course of searching for new employment, I was called and asked by several people whether we could provide a reference. When I referred to the letter I had written I was told that the recruiter had seen the letter but wanted to know the "real" reason we had terminated this individual. One even asked if he was "dead wood" and we had used the downsizing to get rid of him! Although I assured these individuals that the only reason for the reduction was the drastic downturn in business, and tried to assure them that this was a person who could contribute a great deal to any organization, I was left with the distinct impression that the individual would only be successful in getting another employment opportunity through a combination of luck and perseverance.

Employers also may use the term "temporary employment" as a method to really test an employee before hiring them as a regular full time employee, to the detriment of prospective employees. I have unfortunately been frequently involved where a supervisor will have an opening and ask to fill the position, but to do so with a temporary employee so they may have time to evaluate the person, without having to have any real justification to terminate if things do not work out. For example, an individual may work for six or sometimes 8 months, doing all the facets of a job and being treated as any other employee in terms of workload or hours, but without the benefits of a regular full time employee in terms of compensation and health benefits. If we had the ability to do a more thorough

job in the initial hiring stage, and actually get some honest information from previous employers, many of these individuals would be hired up front as a regular full time employee. As the law currently stands, employers have too great an investment in each person recruited to take the risk the individual is not going to work out.

In sum, the passage of HB 1972 would be a win for both employees and employers by allowing information to be provided in good faith regarding the performance of an individual. I urge you to take action in support of this legislation and I again thank you for this opportunity.