

1 PENNSYLVANIA HOUSE OF REPRESENTATIVES  
2 LABOR AND INDUSTRY COMMITTEE  
3 PUBLIC HEARING  
4 HOUSE BILL 1271  
5 August 17, 2011  
6 1:00 p.m.  
7 Room 205 Ryan Office Building  
8 Harrisburg, PA 17124  
9 \* \* \* \*  
10 MAJORITY CHAIRMAN RON MILLER  
11 MINORITY CHAIRMAN WILLIAM KELLER  
12 REPRESENTATIVE RYAN P. AUMENT  
13 REPRESENTATIVE STEPHEN BLOOM  
14 REPRESENTATIVE SCOTT W. BOYD  
15 REPRESENTATIVE SHERYL M. DELOZIER  
16 REPRESENTATIVE MARK M. GILLEN  
17 REPRESENTATIVE SETH M. GROVE  
18 REPRESENTATIVE WARREN KAMPF  
19 REPRESENTATIVE FRED KELLER  
20 REPRESENTATIVE THOMAS P. MURT  
21 REPRESENTATIVE SCOTT PERRY  
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23  
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25

1 Also Appearing:

2 REPRESENTATIVE BRENDON BOYLE

3 REPRESENTATIVE JOHN T. GALLOWAY

4 REPRESENTATIVE MARC J. GERGELY

5 REPRESENTATIVE PATRICK J. HARKINS

6 REPRESENTATIVE KEVIN MURPHY

7

8 WITNESSES

9

10 Frank Sirianni

11 Abe Amoros

12 Hank Butler

13 Jim Kunz

14 Ed Troxell

15 Kris Long

16 Elam Herr

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1           CHAIRMAN MILLER: Okay. We'll call this hearing of  
2 the Labor and Industry Committee on House Bill 1271 to order.

3           Good morning, everyone. I need to inform everyone,  
4 just for the information of those in attendance this meeting is  
5 being -- or hearing is being videotaped by the broadcasting  
6 office. The lights are on of the House Bipartisan Management  
7 Committee. The video is also being made available to the news  
8 media and for streaming on House websites.

9           Today's hearing is on House Bill 1271 by  
10 Representative Marsico. Unfortunately, he could not join us  
11 this morning. So, we're going to go right to the testimony,  
12 and we'll call up our first panel, unless, Mr. Chairman, you  
13 have remarks.

14           CHAIRMAN KELLER: Mr. Chairman, we didn't have a  
15 chance to do it yesterday because it ran a little long, but I'd  
16 just like to make a comment. I think this Committee and even  
17 the labor and business community are very lucky that you are in  
18 this chair. I think you handled it professionally. It was a  
19 tough issue. It was a long hearing, and I think you did a very  
20 professional job.

21           CHAIRMAN MILLER: I appreciate that. We can always  
22 strive to do a little better, and we'll see if we can stay on  
23 time today.

24           Before I ask you gentlemen to testify, why don't I  
25 start with Representative Bloom and let the members come around

1 and introduce themselves.

2           REPRESENTATIVE BLOOM: Stephen Bloom, 199th District  
3 from Cumberland County.

4           REPRESENTATIVE AUMENT: Ryan Aument, 41st  
5 Legislative District from Lancaster County.

6           REPRESENTATIVE KELLER: Fred Keller, 85th District  
7 Union and Snyder Counties.

8           REPRESENTATIVE BOYLE: Brendan Boyle, 170th  
9 District, Philadelphia and Montgomery Counties.

10          REPRESENTATIVE BOYD: Scott Boyd, 43rd District for  
11 Lancaster County.

12          CHAIRMAN KELLER: Bill Keller, Philadelphia County.

13          CHAIRMAN MILLER: Ron Miller, York County.

14          REPRESENTATIVE HARKINS: Pat Harkins, 1st District  
15 up in Erie.

16          REPRESENTATIVE MURT: Tom Murt, 152nd District,  
17 Philadelphia and Montgomery County.

18          REPRESENTATIVE KAMPF: Warren Kampf, 157th District.  
19 Chester and Montgomery Counties.

20          MR. GROVE: Life is about timing. Seth Grove, York  
21 County, 196th District.

22          CHAIRMAN MILLER: Good morning. Good morning,  
23 gentlemen. Thank you for appearing before the Committee this  
24 morning. The first panel is the Pennsylvania Building and  
25 Construction Trades Council, Frank Sirianni, President, and Abe

1 Amoros, PA Legislative Director, Laborer's International Union.

2 Gentlemen, you may proceed when you are ready. And thank you.

3 MR. SIRIANNI: Thank you, Mr. Chairman. Thank you  
4 Chairman Keller and members of the Committee for allowing us to  
5 be here today. Are we planning on meeting next week also?

6 CHAIRMAN MILLER: No.

7 MR. SIRIANNI: Okay.

8 CHAIRMAN MILLER: No. You're tired of seeing me,  
9 Mr. Sirianni.

10 MR. SIRIANNI: Well, I enjoy seeing the Committee.  
11 I just wish it was on other terms.

12 CHAIRMAN MILLER: Is that mic on? I'm not hearing  
13 it.

14 MR. SIRIANNI: I'm sorry. I enjoy meeting with the  
15 Committee. I just wish it was on other terms.

16 With me today is our attorney, Irwin Aronson, who  
17 represents the Building Trades Council and Abe Amoros from the  
18 Laborers. I will go through again and let you know that I am  
19 the president of the Pennsylvania State Building Trades  
20 Council. And we represent about 106,000 taxpayers in the State  
21 of Pennsylvania through 100 or so Locals and 16 regional  
22 councils and we represent them through our affiliates.

23 We're here today in opposition of House Bill 1271  
24 for numerous reasons. One, the way the Act is written has been  
25 appropriate and it gives good guidelines and good sense to what

1 is maintenance and what is repair, what is new construction,  
2 the way the law is written now. The prevailing law and the  
3 regulations take care of all of that, there is no need to  
4 change this.

5           It is our belief that you cannot have better quality  
6 work, better services or better construction practices in the  
7 industry by reducing wages of construction workers, and that's  
8 exactly what this Bill would do.

9           This Bill would take many of the things that are  
10 considered prevailing wage now off the table and make them  
11 non-prevailing wage. And in all fairness, I mean, why --  
12 again, I will ask this Committee why you would want to cut  
13 wages of workers in the construction industry, especially in  
14 the things like paving a road. I mean, does anyone remember  
15 how hot it was a few weeks ago? Can you imagine being out on  
16 that hot blacktop being poured out at almost a boiling point,  
17 standing out there and working in that heat? I mean, we have  
18 the luxury of sitting in an air conditioned room when it's  
19 humid. But the workers on the construction project, they don't  
20 have that luxury. They're out there under strenuous  
21 conditions, in the line of fire of traffic, you know, working  
22 on jobs that really, really are very strenuous. I mean -- and  
23 not only that, you know, they go to work every day. They drive  
24 their own vehicles.

25           They go to work, they don't get paid to drive to

1 work. They go there and they get a good wage for working on  
2 those state projects, just like many people do in this room.  
3 They get paid a good wage for working here for the State of  
4 Pennsylvania, and I think that we're really letting these  
5 people down by trying to cut their wages. And that's exactly  
6 what this bill will do, it will cut wages.

7           There's been court cases that have clarified the  
8 definition of maintenance and what is not maintenance and what  
9 is to be considered prevailing wage.

10           You know, the people that want to do this are, you  
11 know, saying that they can get more for their money. Well, you  
12 know, we talked about on prevailing wage building projects that  
13 the actual amount of labor on a building project is about  
14 22.7%. Well, it's even less on a highway project. It's all  
15 mechanized.

16           You know, the money that has come in from the  
17 Federal Government has certainly compensated for any cost  
18 increases in oil and petroleum prices over the past few years  
19 that the boroughs and townships and the state have just been  
20 able to do hundreds and thousands of extra projects because of  
21 the influx of money.

22           And again, when there is a glut of unemployed  
23 people, you have a chance of more people working when that  
24 money comes in. So, I don't know why this Bill is coming up  
25 other than -- at this point, because I think, you know, the

1 discussion should have been prior to the Bill coming out, not  
2 just having a Bill come out because someone wants to have  
3 something done. I think maybe the discussion was done earlier  
4 on, I don't know. We weren't a party to it. I think that  
5 discussions with stakeholders and these issues are probably  
6 more appropriate than having a hearing after the Bill has been  
7 presented.

8           I mean, a lot of times, you know, there are things  
9 that people can look at and try to help in situations, but  
10 knowing that the worker really didn't have a big voice in this  
11 Bill, especially the worker that works on these projects, you  
12 know, the people that are going out there and doing this  
13 performance.

14           One thing that, you know, that the Committee might  
15 look at in cost savings for road construction and milling  
16 projects is the use of the aggregate that's removed from the  
17 roads. The millings are taken off and put back into the mix on  
18 a lot of projects. So, you have this commodity of materials  
19 that the state owns, okay, and the contractor is supposed to  
20 take that off, and they chop that up. And it used to be that  
21 -- the millings used to go to a dump site.

22           Well, now they're put back into the mix. But since  
23 they have been put back into the mix, we haven't seen any cost  
24 reduction of materials. We're just seeing this product that's  
25 being reused with no real cost reduction to the state.



1           So, I think maybe that would be one thing that you  
2 might want to look at as a savings on highway projects and road  
3 and paving projects rather than cutting people's wages, you  
4 know. But I'm not going to go on, you know. I'm just going to  
5 say that we oppose this Bill, and we would hope that you -- the  
6 38 cosponsors on Ron Marsico's Bill -- Representative Marsico's  
7 Bill, I would think that maybe if there was 200 cosponsors on  
8 this Bill that I would think that maybe a representation of  
9 more of the people in the state, which we talked about last  
10 week would have a little more weight in it. But you know, the  
11 co-sponsorship memos go out here and people that are interested  
12 in this seem to sign up or they don't sign up, you know, and I  
13 would think that if this was a really valid issue and discussed  
14 issue that that should be a full page of cosponsors on there,  
15 but I just don't see it.

16           You know, we look at population-wise, and I can only  
17 use where I live in York County, we have the Mount Holly  
18 Springs, there's 1,915 and Dillsburg that's 2800 people and new  
19 Cumberland there's 7,000 people. Carroll Township alone  
20 there's only 2,000 people and to say those people represent the  
21 entire state or the entire will of the state, kind of like  
22 makes me say, hey, you know, who are we representing here?  
23 Just a few people or all of the people, or -- you know, I mean,  
24 that was one of the issues last time. You know, how people are  
25 represented. That -- that became a point, and so, I thought

1 maybe I'll start researching that point and seeing, you know --  
2 if we sent questionnaires out to these people which happens in  
3 my district, and 1,000 people respond out of, you know, 1,000  
4 people respond to a subject, and 800 are for it, and 200 are  
5 against it, that's not a clear definition of that area.  
6 Because like I said, the numbers just don't add up to what the  
7 general population is in that area. And maybe, you know, the  
8 response value there is because people says it's not an issue.  
9 You know?

10           I mean, if you have in York County 434,000 people  
11 and you send out a questionnaire and only 1,000 of them  
12 respond, it's either lack of interest, but it's not the  
13 dominant issue that should be used as a catalyst for creating  
14 legislation, at least in my opinion.

15           I think that's a point of, you know, interest to the  
16 people that work on these jobs more than anyone, right now,  
17 that they don't get their wages cut. So, with that, I'd like  
18 to introduce Abe.

19           MR. AMOROS: Good morning, Chairman Miller, good  
20 morning, Chairman Keller, members of the House Labor and  
21 Industry Committee. It's good to be back testifying once  
22 again.

23           My name is Abe Amoros, and I am the Pennsylvania  
24 Director for the Laborer's International Union North America.  
25 We represent 30,000 members throughout the Commonwealth.

1 I'd like to thank you all for allowing us to testify  
2 on House Bill 1271, which if enacted, this Bill would change  
3 the definition of maintenance under the Prevailing Wage Act and  
4 negatively impact workers' wages, health care benefits and  
5 pensions in Pennsylvania.

6 Now, these are going to be recurring themes from  
7 other testimony that I have offered, but they bear repeating,  
8 because this, as you know, it is a very important Bill. The  
9 purpose of prevailing wages is to protect workers on public  
10 projects by paying them a fair wage based upon experience and  
11 training and by protecting workers. The Prevailing Wage Act  
12 puts skilled craftsmen to work.

13 This not only guarantees that the best possible  
14 workers are performing highly skilled work, but also protects  
15 taxpayers against cost overruns and provides quality  
16 craftsmanship on projects such as highways and bridges that  
17 last longer and are safer for the public.

18 Prevailing wage is currently paid on any  
19 construction work in Pennsylvania whether it's considered  
20 maintenance or construction, and current wage rates guarantee  
21 an honest day's pay for an honest day's work. Even the  
22 Commonwealth Court as recently as last August agreed that  
23 paying prevailing wage on maintenance projects was legally  
24 binding and upheld the decision rendered by the Pennsylvania  
25 Prevailing Wage Appeals Court in a case filed by the Borough of

1 Schuylkill Haven.

2           In 2008 the Pennsylvania Supreme Court upheld a  
3 decision by the Commonwealth Court and the Borough of Youngwood  
4 in the Pennsylvania Prevailing Wage Appeals Board. The Supreme  
5 Court ruled that the maintenance work is defined as a subset of  
6 repair which is a component of public work. Therefore, workers  
7 doing repair work should be paid fair wages under the  
8 Prevailing Wage Act.

9           And why should repair work be treated differently?  
10 Are repairs considered to be less than substantial and deserve  
11 substandard wages? Of course not.

12           Taxpayers, especially on public construction  
13 projects, deserve nothing less than the very best. In the end,  
14 the work that skilled craftsmen perform not only saves  
15 taxpayers money, but also saves lives.

16           What House Bill 1271 attempts to create is another  
17 law that circumvents an existing one, one that works just fine.  
18 It's the law that has been challenged, upheld on several  
19 occasions and remains solidly in place.

20           So, why keep challenging a law that works? It  
21 doesn't make any sense to intentionally suppress wages for  
22 working men and women. You are taking food out of the mouths  
23 of children when you do that. Enough is enough with  
24 anti-prevailing wage sentiments in Pennsylvania.  
25 House Bill 1271 is based neither in fairness nor sound business

1 practices, and is a hostile response to organized labor, along  
2 with working men and women. And sadly, some of today's  
3 business practices have no conscience behind them. Nothing in  
4 this Bill -- nothing -- helps working people.

5           On the contrary, it sends those skilled workers the  
6 message that their work is trivial and that their experience  
7 and countless hours and training have very little value.

8           It is a slap in the face to those who work hard  
9 every day and put in long hours to support their families.  
10 This Bill takes money from people's paychecks and puts it in  
11 the bank accounts of contractors. It isn't fair. It isn't  
12 just, and should be viewed for what it is, an effort to hurt  
13 workers, weaken labor unions and ultimately hurt local  
14 economies that benefit from these good wages and  
15 family-sustaining jobs.

16           What you are doing is you're making communities  
17 poor. If people cannot afford to stay in their home, it means  
18 less property taxes. School Districts cannot function  
19 adequately when fewer property taxes are paid. That puts a  
20 greater burden on them to raise their taxes to make up for what  
21 they lost. It's a vicious cycle that is also terribly  
22 inefficient and near-sighted.

23           In these perilous times with unemployment at 7.6% in  
24 Pennsylvania, we should be working together to support programs  
25 that help our workers, and encourage them to find good jobs.

1 House Bill 1271, undoubtedly, is part of an ongoing effort to  
2 suppress those wages, demoralize workers and put unions out of  
3 business in Pennsylvania, and there is no good that can come  
4 out of that, Mr. Chairman. Thank you.

5           CHAIRMAN MILLER: Thank you, gentlemen, for your  
6 testimony today. I would note before we -- oh. I'm sorry. I  
7 apologize. Sorry.

8           MR. ARONSON: Mr. Chairman, no apology is  
9 necessary. When I have reached the point in my career where I  
10 have so well blended in that no one notices me, I would suspect  
11 that I have been a success finally. For those of you who  
12 thought I was a potted plant, I am Irwin Aronson, I am counsel  
13 to the Pennsylvania State Building and Construction Trades  
14 Council, among others. I also help to represent the Laborer's  
15 International Union of North America, Pennsylvania Eastern  
16 District Council, and a number of other labor organizations,  
17 and contractors, as well, contractors that have the privilege,  
18 not the right, to bid on public work. And they exercise that  
19 privilege by following the rules, the specifications in bid  
20 documents and ultimately following the rules in the contracts  
21 on which they give their signature and solemn promise to abide  
22 by and follow those rules.

23           And I think, members of the Committee, that's an  
24 important point that needs to be made, at least in my mind,  
25 because there seems to be some confusion that contractors

1 somehow or another have an unfettered, almost unalienable right  
2 to bid on public works projects. That's just not true. They  
3 are invited to bid, all are invited to bid. Those bids are  
4 solicited pursuant to a series of specifications. Those  
5 specifications may say how many toilets are going to be on a  
6 floor. They may say what roofing material is going to be used  
7 on the roof. They may say what kind of paving material or what  
8 quality of concrete or other materials are to be used.

9           And they also say what wages and conditions are to  
10 be applicable to the workers who work on those projects. And  
11 indeed, the Pennsylvania Supreme Court, as I have come to learn  
12 over the last 39 years of my representing working men and women  
13 in this state and contractors that employ them, has indicated  
14 with absolute and crystal clarity that the Pennsylvania  
15 Prevailing Wage Act is one of a number of remedial statutes  
16 adopted by this General Assembly with a purpose. And the  
17 purpose is to protect and assure that taxpayers' funds will not  
18 be used to drive down wages, to drive down working conditions  
19 in our communities in Pennsylvania.

20           To instead, assure that taxpayer funds are used for  
21 the purpose of protecting and maintaining our existing market  
22 based standards that are established not by unions, but by the  
23 marketplace. And that gets me to another fundamental misnomer,  
24 in my judgment, of there being such a thing as a union wage.

25           I can suggest to you Committee members and Chairmen

1 that after 39 years of earning my income this line of work, I  
2 have never once run into, found, been involved with, or  
3 negotiated a union wage. They're the product of the  
4 marketplace, the product of what employers are willing to pay  
5 skilled trained people to do their jobs. Nothing more, nothing  
6 less.

7           In common vernacular, we may find ourselves  
8 referring to that as the union wage, but I suggest to you with  
9 all sincerity and all respect that there is no such thing as a  
10 union wage. There is a market wage.

11           I also want to delve into some specifics on House  
12 Bill 1271. As a casual reader of the reportage from the  
13 Pennsylvania Supreme Court and the Commonwealth Court, and the  
14 Prevailing Wage Appeals Board I would note one of the threads  
15 that binds those multiple levels of that litigation together is  
16 the fact that my name on the reports of all of those cases as  
17 an advocate for amicus curiae litigants.

18           That case, four square, reiterated by our Supreme  
19 Court and by our Commonwealth Court and by our Prevailing Wage  
20 Appeals Board, the administrative body charged with the  
21 administration application of this law, the remedial nature of  
22 the Prevailing Wage Act and reiterated, of course, as well, the  
23 rules of statutory construction established by this General  
24 Assembly that require with respect to the interpretation and  
25 application of remedial statutes that they be construed



1 liberally to effectuate their intended purpose. And therefore,  
2 any exceptions are to be narrowly focused, narrowly construed  
3 so as to insure that the intended purpose of the statute is not  
4 swallowed.

5           House Bill 1271, with all due respect in its effort  
6 to statutorily have this General Assembly adopt a law that cuts  
7 wages is an effort to create an exception to the prevailing  
8 wage statute that swallows the rule and that is just  
9 fundamentally inappropriate in my humble judgment for this  
10 Legislature to do at any time, but particularly at a time when  
11 we are in such economic peril.

12           I would suggest to you that cutting wages of a  
13 targeted group of working men and women in this state is  
14 nothing more than a targeted tax increase by another name.  
15 When we cut people's wages, they have less disposable income,  
16 they have less capacity to spend money. And unlike corporate  
17 big-wigs, working people tend to spend their income, and they  
18 tend to spend that income on consumer activities, on public  
19 utilities, on rents and mortgages and on things that stimulate  
20 our economy, not drag it down. And when we statutorily cut  
21 their wages, we create a problem that I just cannot reconcile.

22           I also want to point out one other item, and then  
23 I'm going to be quiet and stand down and hopefully get an  
24 opportunity to competently address some of your questions. The  
25 Pennsylvania Prevailing Wage Act, like so many of our remedial

1 statutes, is an organic law. It has served us well for 50  
2 years and it serves us because of the flexibility inherent in  
3 the law.

4           That flexibility allows, for example, the small,  
5 narrow exception for maintenance which is really an exception  
6 to the rule that repair work generally is covered by the Act,  
7 when not maintenance, to be flexibly interpreted to recognize  
8 technological advances, technological changes as they develop  
9 over time. What is proposed in 1271 is to fix a definition for  
10 all time, and in so doing, announce to the citizens of the  
11 Commonwealth of Pennsylvania, to all public bodies who are  
12 bidders, who are soliciting bids and to all bidders, that  
13 regardless of what technology teaches us, regardless of what  
14 technology makes available to us, maintenance and the  
15 maintenance exception may well swallow the rule, is fixed.  
16 It's static. It cannot be changed without another Act of the  
17 General Assembly.

18           In so doing, I suggest again with all due respect  
19 and reverence for this body, because I have much time and a  
20 great deal of reverence for this body, it is both overinclusive  
21 and that it's an exception that swallows the rule and it is  
22 under-inclusive because it fixes in a static fashion and  
23 eliminates the organic nature of the statute.

24           With that, I'm going to stand down for the moment  
25 and we will all attempt to address your questions and inquiries

1 and thank you for your indulgence.

2           CHAIRMAN MILLER: Thank you to all three gentlemen  
3 for your testimony.

4           MR. ARONSON: Two gentlemen and a lawyer. Yes.

5           CHAIRMAN MILLER: I will note that since we did --  
6 went through introductions at the start, we have been joined by  
7 Representatives Perry, Gillen, Gergely, Murphy and Delozier.

8           I do have just maybe one or two observations, and  
9 then I will go to Chairman Keller. I would just note that I  
10 have seldom in my time in the House been to a Committee hearing  
11 that has not been on a Bill that's already been introduced,  
12 unless it was a policy committee where you're exploring policy  
13 issue type things. But almost every committee hearing I have  
14 ever been to has been on a Bill once it's been introduced.

15           The only other thing I would note is your analogy  
16 about the number of cosponsors and possibly having 200. Two  
17 years ago we passed a budget that had one cosponsor. So, maybe  
18 we could repeal that one because I didn't like that budget at  
19 all. But anyway, that's just my observation. Representative,  
20 Chairman Keller.

21           CHAIRMAN KELLER: Thank you, Mr. Chairman. Thank  
22 you everyone for their testimony.

23           We have been here all summer on prevailing wage.  
24 Like I said, it's like Groundhog Day. But I think this one has  
25 a little different twist. We're here usually talking about the

1 wages, and my constant comment is, we're after the prevailing  
2 wage in the specific area, and if the -- everyone would submit  
3 their wages, then we would get the true prevailing wage of the  
4 area, and we should not have any problem. And you can't -- but  
5 we constantly have to go marching in here and say it's an  
6 unfair wage but they won't send their data in to the Department  
7 of Labor. So, that's the overall theme of this summer.

8           But I think this one is a little different. I mean,  
9 this one has been all the way through the court system to the  
10 Supreme Court, and ruled that this is the prevailing wage job.  
11 And now we're coming back for a different bite. We need a  
12 separate bite of the apple. It's not about that, it's about  
13 now changing a law that has been through the court system.

14           I was just wonder, Mr. Aronson, if you could, in the  
15 Cliff Notes version just give us an overall view of the -- this  
16 case that went all the way to the Supreme Court, and now we're  
17 back trying to change that

18           MR. ARONSON: Thank you, Chairman Keller. I'll try  
19 to be brief, but you know, I get paid by the word.

20           CHAIRMAN KELLER: We're not paying you by the word.

21           MR. ARONSON: Youngwood Borough, which is a small  
22 community in Westmoreland County determined to repave five,  
23 maybe seven streets. And in the repaving do some new piping  
24 work and things of that nature, and some curbing, as Mr.  
25 Sirianni reminds me.

1           The Township unilaterally decided to not follow the  
2 Pennsylvania Prevailing Wage Act initial requirement of any  
3 public body in the state when doing this kind of work, and that  
4 is they determined to not even ask the Pennsylvania Department  
5 of Labor and Industry for a predetermination of prevailing  
6 wages and benefits for the workers that would work on that  
7 particular project.

8           They did the work. Unfortunately, because they  
9 never made the statutorily required request, even though the  
10 people who were in charge had raised their right hand to the  
11 appropriate time and had taken an oath of office to among other  
12 things uphold the laws of this Commonwealth. Labor and  
13 Industry was not aware of the project's undertaking until it  
14 was completed. After it was completed, Labor and Industry  
15 learned of it, sent some inquiries, got some answers back about  
16 what the nature of the work was, and then rendered an  
17 after-the-fact determination that this was not maintenance, but  
18 repair work covered by the Prevailing Wage Act. And  
19 appropriately advised the community that the contractors were  
20 liable for paying prevailing wages on this job to the workers  
21 on that job.

22           Youngwood Borough appealed that decision. It  
23 ultimately went to the Prevailing Wage Appeals Board in the  
24 nature of a grievance under the Prevailing Wage Act. The  
25 grievance was denied. It was appealed to the Commonwealth

1 Court. The grievance was denied by upholding the decision of  
2 the Prevailing Wage Appeals Board. Ultimately, it was appealed  
3 to the Pennsylvania Supreme Court on a writ of allocatur that  
4 exercised its discretion to hearing the case. And in hearing  
5 the case it determined that the Commonwealth Court and the  
6 Pennsylvania Prevailing Wage Appeals Board got it right. This  
7 was indeed maintenance -- repair work, not maintenance work and  
8 not subject to the very narrow maintenance exclusion.

9 I personally was involved in the case on behalf of  
10 certain clients who entered the case as friends of the court as  
11 amicus curiae and I submitted briefs on behalf of those clients  
12 and did indeed participate in oral argument as well. That's  
13 the thumbnail background sketch.

14 In another era, at another time, there would have  
15 been certainly an argument that the Borough of Youngwood acting  
16 in its capacity as a public body to not merely ignore, but  
17 intentionally flout the laws of the Commonwealth of  
18 Pennsylvania had violated the civil rights of some folks. But  
19 it didn't get to that point and it was a simple prevailing wage  
20 case and it was litigated appropriately. And ultimately the  
21 people who work on that job were paid the correct wages as  
22 contemplated by this General Assembly.

23 CHAIRMAN KELLER: And from your testimony, not being  
24 a lawyer, thank God, it seems to me that even if we -- if this  
25 Bill passed and became law, that would generate more lawsuits?

1           MR. ARONSON: Oh, I think is beyond per-adventure  
2 that it would generate more lawsuits. I would suspect that  
3 people surrounding me in this room would encourage me in my  
4 capacity as their counsel to analyze this amendment and explore  
5 it for its direct contravention to the remedial purpose of the  
6 Pennsylvania Prevailing Wage statute and those lawsuits would  
7 be certainly costly to my clients. But candidly would be very  
8 costly to the taxpayers and citizens of the communities that  
9 are subject to it.

10           And again, we are a nation and a state of laws.  
11 Youngwood Borough and the reason this case is so enshrined now  
12 in legislative proposal broke the law, knowingly broke the law,  
13 and didn't just break it, but evaded the law by refusing to  
14 seek that which the law requires of it in terms of a  
15 predetermination. And in so doing it attempted to hide behind  
16 the notion that it couldn't be called to task because there was  
17 no record of the wages that it failed to ask for.

18           CHAIRMAN KELLER: Your learned opinion, because of  
19 this case law that is already in, that it would probably come  
20 out with the same result?

21           MR. ARONSON: Representative Keller, as I believe  
22 you're aware, about a decade ago some nice folks thought I  
23 ought to be a member of the Commonwealth Court. Fortunately,  
24 the voters in this Commonwealth thought otherwise. I really  
25 wouldn't arrogate to myself the capacity of knowing what the

1 judiciary will do on any case. I think that at a minimum, this  
2 legislation is a bare-knuckled attempt to statutorily reverse a  
3 Pennsylvania Supreme Court decision, and at a lesser level. It  
4 is clearly an attempt to cut people's wages. And at any level,  
5 it is going to be subject to litigation, the outcome of which,  
6 at best, is subject to question.

7           CHAIRMAN KELLER: And just to have more  
8 understanding of this, can you explain the MOU that Youngwood  
9 relied on in making this rash judgment?

10           MR. ARONSON: Well, there was, going back to the --  
11 actually to the end of the Ridge and Schweiker administration,  
12 a so-called MOU, Memo of Understanding, between the Department  
13 of Labor and Industry and PennDOT in which those two entities,  
14 under cover of darkness, quite frankly, without sunshine,  
15 without an open meeting, without circulation of documents --

16           MR. SIRIANNI: Created a new law.

17           MR. ARONSON: As Mr. Sirianni says, created a new  
18 law among themselves which said that basically, several of the  
19 provisions that are now embodied as amendments in House Bill  
20 1271, would be their gentlemen's agreement with respect to road  
21 milling, in particular.

22           The memorandum of understanding apparently was  
23 suggested after the fact to have been relied upon by Youngwood  
24 Borough; however, the only copy of the document that was  
25 produced in court on which they reputedly relied was not even



1 signed, it was not documented in any agency. But more  
2 significantly, it was an agreement among two other governmental  
3 bodies to exclude workers, contractors, this General Assembly  
4 and a host of others all of whom were contemplated by the Act,  
5 the prevailing wage to be stakeholders. The Supreme Court as  
6 did the Commonwealth Court and as did the Prevailing Wage Act  
7 Appeals Board handled that rather swiftly and rather deftly by  
8 saying that MOU, that memorandum of understanding was not a  
9 memorandum, it was not an understanding and it had excluded  
10 particularly entities like contractors, responsible  
11 contractors, and the representatives of the trades and affected  
12 workers from the capacity to participate in a law in which they  
13 are named as interested parties. So, that -- that was  
14 dispatched with, if you will, Representative Keller.

15           CHAIRMAN KELLER: Thank you. It's very helpful  
16 understanding the history of this. Thank you, Mr. Chairman.

17           MR. ARONSON: Thank you. I'm blessed to know that  
18 you're not a lawyer, because I would be in trouble trying to  
19 get business myself.

20           CHAIRMAN MILLER: Thank you. Representative Scott  
21 Perry.

22           REPRESENTATIVE PERRY: Thanks, Mr. Chairman. Good  
23 morning, gentlemen.

24           MR. ARONSON: Good morning. We have seen a lot of  
25 each other, some of us lately here.

1           REPRESENTATIVE PERRY: For Mr. Aronson, obviously,  
2 you have a particular view of the history of this thing and I  
3 want to ask some questions, too, so we're trying to gain some  
4 facts here and some perspective. Prevailing wage has been in  
5 force since 1961. And up until the point of this memorandum of  
6 understanding, what was the general practice?

7           MR. ARONSON: General practice was consistent with  
8 what the Pennsylvania Supreme Court said in the Youngwood  
9 Borough case, that maintenance is a narrow exception, and  
10 things like road milling were to have been covered by the  
11 Prevailing Wage Act as repairs, not part of the exception for  
12 maintenance.

13           REPRESENTATIVE PERRY: So, I'm going to ask some  
14 other testifiers later on just to make sure we gain full  
15 perspective, they're going to have essentially the same answer  
16 -- since 1961, this type of activity would have been determined  
17 to be repair, and thus, subject to prevailing wage  
18 requirements?

19           MR. ARONSON: Well, let me answer this another way:  
20 That was consistently, with the exception of a very narrow  
21 period in which this MOU was under the radar, and being  
22 applied, to be the way the law was applied.

23           I cannot sit before this Committee today at the ripe  
24 old age of 59 and tell you that every community that was  
25 responsible for the application of this law did the right

1 thing. And I cannot tell you, beyond per-adventure that the  
2 Department of Labor and Industry always and consistently was  
3 aware of situations in which public bodies potentially violated  
4 the intent as well as the word of the law.

5           I can tell you with absolute certainty, that from  
6 1961 through the present, this is how the law was to be  
7 interpreted and to be applied, and there really can be no  
8 argument about that. So anybody that suggests otherwise is  
9 suggesting that someone in an official capacity was engaged in  
10 either avoiding or evading the statute.

11           REPRESENTATIVE PERRY: And I understand what you are  
12 saying. I guess what I'm trying to figure out if it was common  
13 practice since 1961, to do it one way and the MOU as of  
14 4/29/05, codified that as a methodology for Labor and Industry,  
15 with the Department to promulgate the regulation to determine  
16 what, by definition, is maintenance and what is repair. And  
17 that was general practice up to that point.

18           MR. ARONSON: Well, I guess my answer would be, not  
19 having been involved in every meeting and every room at every  
20 bid specification for every community over a 40-odd-year  
21 period.

22           REPRESENTATIVE PERRY: Sure.

23           MR. ARONSON: If it indeed was the consistent,  
24 common, generally accepted practice of public bodies to do it  
25 in the fashion that the MOU purports to articulate, when it was

1 present, then there would not have been any need for an MOU.

2 It would have been consistent.

3           REPRESENTATIVE PERRY: Okay. And you might be right  
4 about that, and that's what I'm trying to gain here. How many  
5 -- do you have any idea -- because if this was going on since  
6 1961 to '05 without an MOU, but -- and flying in the face of  
7 the intent of the law, wouldn't there have been numerous  
8 lawsuits in that regard? And if there were, how many? Do you  
9 have any idea how many there were?

10           MR. ARONSON: I cannot tell you how many entities in  
11 this Commonwealth broke this or any other law with any  
12 certainty, or why they haven't been caught. I mean there are a  
13 number of people that are driving as we sit here today above 65  
14 miles an hour on any number of roadways who are not being  
15 caught by the State Police or the local police. I just don't  
16 know. I can tell you that the fact is that the law is clear.  
17 It has been interpreted not only in the Youngwood case, but in  
18 Culture Roofing, in A.J. Scalise and any number of other  
19 cases, many of which are cases which I have been involved with,  
20 many of which date back to my childhood long before I was given  
21 this full-throated voice.

22           REPRESENTATIVE PERRY: Sure.

23           MR. ARONSON: And the fact of the matter is, the law  
24 is the law. I am absolutely confident that if somebody wants  
25 to change the law, the way to do that is not through a private

1 memorandum of understanding.

2 REPRESENTATIVE PERRY: I would concur.

3 MR. ARONSON: And I would be reasonably confident  
4 that there would be no need for any memorialization, if you  
5 will, of an understanding of how we're going to interpret the  
6 law unless that was because we were changing the  
7 interpretation.

8 REPRESENTATIVE PERRY: Sure. But there is an  
9 ambiguity, which maybe the MOU was trying to address, albeit  
10 incorrectly. Because this is the body that creates the law,  
11 but that would indicate that this is the correct forum to  
12 discuss this and to determine whether we are at where we want  
13 to be or should be, or should have been.

14 MR. ARONSON: Actually, through the prescience of  
15 this General Assembly, we have the Statutory Construction Act  
16 and the Statutory Construction Act teaches us exactly how to  
17 interpret ambiguities in the law. And indeed, the Pennsylvania  
18 Supreme Court, following the lead in this instance of the  
19 Pennsylvania Commonwealth Court, applied the Statutory  
20 Construction Act, to result, found there was indeed no  
21 ambiguity and applied the Statutory Construction Act to give  
22 the words in the statute their plain meaning as was required by  
23 this General Assembly in adopting the Statutory Construction  
24 Act.

25 REPRESENTATIVE PERRY: Okay. You're an attorney.

1 I'm not. I'll take your word for that.

2 MR. ARONSON: I have no special market corner on  
3 this. As a lawyer, I get to look at the Statutory Construction  
4 Act, but it is you gentlemen, ladies, and your colleagues in  
5 the past who have adopted it.

6 REPRESENTATIVE PERRY: Let me ask Mr. Amoros this.  
7 In your testimony it says, that highways and bridges that last  
8 longer and are safer to the public. Is there any information  
9 to indicate that post the MOU versus previous the MOU that  
10 anything has changed regarding safety and quality regarding  
11 road repair, road maintenance that would let us believe that  
12 something changed to make it worse since then?

13 MR. AMOROS: No, Representative. I don't have any  
14 empirical data that supports that. My point was basically that  
15 when you have the best paid workers working on public projects,  
16 you're basically guaranteeing the life of those bridges, the  
17 life of those highways to be a lot longer and a lot better.

18 When you have someone that makes \$20 an hour,  
19 clearly, done it because of their experience or level of  
20 training, I'd rather put my trust in an individual that has  
21 that sufficient training and that sufficient experience rather  
22 than somebody who is making \$7 an hour, who doesn't have that  
23 capacity.

24 I think that that's the point I was trying to make.  
25 But in reference to the MOU, no, sir, I have no empirical data.

1           REPRESENTATIVE PERRY: And just as another point of  
2 clarification, so I understand, it seems like in some of the  
3 testimony here there's an assumption that the union  
4 contractors, if this would happen, would not be able to compete  
5 or would not get the jobs. Is there something we're missing  
6 here? Understanding that currently union contractors are  
7 competitive. Is there something that's going to change, that's  
8 going to make them uncompetitive in that regard?

9           MR. SIRIANNI: I think that you will hear testimony  
10 later. Our contractors, our signatory contractors, and their  
11 success rate in bidding in different areas. I believe Mr.  
12 Kunz will be talking about that.

13           REPRESENTATIVE PERRY: So, it will lend itself to  
14 that point.

15           MR. SIRIANNI: I think so.

16           REPRESENTATIVE PERRY: Okay. Thank you. Thank you,  
17 Mr. Chairman.

18           CHAIRMAN MILLER: I believe this is the last  
19 question from Representative Fred Keller.

20           REPRESENTATIVE KELLER: Good morning, gentlemen.  
21 Thank you for your testimony. I do have a few questions. It's  
22 been made reference to quality of work. In fact, Mr. Amoros,  
23 you just mentioned that a higher paid worker will give you  
24 better quality work. Is that because we're paying him more, or  
25 is that because he's sufficiently trained?

1           MR. AMOROS: It's actually both. I believe that a  
2 sound business practice would merit that an individual that is  
3 making a higher wage has sufficiently earned that through  
4 experience, through training, much like white collar jobs. You  
5 move up in the ranks based upon your experience, based upon  
6 your training. And I would rather have someone who has the  
7 years, the mileage, the training, the experience, and the  
8 safety precautions to work on my highways and bridges rather  
9 than someone who is not experienced, someone who is making a  
10 lesser wage, because the contractor wishes to pay him or her a  
11 lesser wage because they don't have those capabilities.

12           I recall a comment being made at one of the previous  
13 hearings that, where someone was actually complaining that  
14 they're sending their best workers out to sites, and what is  
15 wrong with that? We need to send our best workers out there,  
16 particularly on public projects. We have a problem in  
17 Pennsylvania. There are over 5,000 structurally deficient  
18 bridges. I believe the number is 5,025. We have 10,000 miles  
19 of road that need attention. We need to put the very best  
20 workers out on those jobs that make sure that the public's  
21 interest is protected and that the taxpayers get the best bang  
22 for their buck.

23           REPRESENTATIVE KELLER: So the best worker is always  
24 the one that's paid more money?

25           MR. AMOROS: In our experience in construction, the



1 best worker, the most experienced worker, the most highly  
2 trained skilled craftsmen are the ones on the jobs.

3           REPRESENTATIVE KELLER: Another question I have, how  
4 do you validate on a prevailing wage contract that the people  
5 are qualified? In other words, how is that contract audited  
6 when there's a complaint for prevailing wage?

7           MR. SIRIANNI: Well, we know that our workers are  
8 qualified because they're trained, they're tested, and they're  
9 drug tested, too. We know that we have drug-free, skilled  
10 people that have gone through apprenticeship programs,  
11 graduates of apprenticeship programs. They have journeyman and  
12 journeywoman upgrading programs.

13           We don't send people that we advertise in the phone  
14 -- in the newspaper for, which I see on some projects when crew  
15 size is depleted when there's a lot of employment, or some  
16 companies will just advertise in the paper for workers. Now,  
17 they may get a good worker. They may get a guy who has never  
18 been -- or a girl that's never been in construction before.  
19 Our labor pool is static. We know who they are. We evaluate.

20           REPRESENTATIVE KELLER: So does the private -- so do  
21 the other contractors know their employee, too.

22           MR. SIRIANNI: I don't know what they do.

23           REPRESENTATIVE KELLER: Oh. But you can't say that  
24 they don't.

25           MR. SIRIANNI: I can say that they might not.

1           REPRESENTATIVE KELLER: And you may not, too.

2           MR. SIRIANNI: No, we do.

3           REPRESENTATIVE KELLER: Well, but I guess the  
4 question I want to ask, to insure quality, okay, the prevailing  
5 wage, when it's audit and there's a complaint against it, it's  
6 generally a complaint -- is it generally a complaint that  
7 somebody wasn't paid the proper wage?

8           MR. SIRIANNI: I don't have any record of that. I  
9 think in the last hearing there was some comments on an average  
10 of 500 complaints a year from my recollection of the testimony  
11 from the past Executive Director of Labor Law Compliance, and  
12 he had testified, I don't know if -- 500 a year, complaints?

13           REPRESENTATIVE KELLER: So are contracts audited to  
14 make sure that the person that's performing that work is  
15 actually getting paid the wage or actually got the training?

16           MR. ARONSON: To some degree in both instances  
17 there's an obligation in the statute and in the regulatory  
18 framework on public bodies to collect weekly payroll  
19 certifications from the contractors doing the work on  
20 prevailing wage jobs. Those payroll certifications require the  
21 payment of wages that are determined to be the prevailing  
22 minimum wages, at least those wages, for every worker on the  
23 job.

24           Journeypersons are designated to get one rate for  
25 his or her craft, and indentured apprentices get a sub-set of

1 that rate, and they are, of course, trainees in training on the  
2 job pursuant to a regulatory framework that is in place.

3           So, the obligation on the part of -- with respect to  
4 this kind of auditing is applied to and imposed upon as a  
5 matter of law. The public body that is supposed to be  
6 collecting weekly wage certifications from every contractor  
7 regarding every employee on every job.

8           REPRESENTATIVE KELLER: Okay. I guess I just --  
9 there's been a lot of testimony to the quality of work done  
10 because it's done by a prevailing wage bidding, it's better  
11 than work that would not be done by prevailing wage bidding and  
12 we talked a week ago, and Robert O'Brien was testifying and we  
13 were talking about an electrician. And we said, hey, you know,  
14 the laborer can help do some electrician's duties, but he  
15 doesn't necessarily have to be qualified. He just needs to get  
16 paid that wage. That was last week's testimony.

17           We're talking about time slips and a lot of other  
18 things. So, my question is how is a job audited to ensure that  
19 quality, or is it just audited to make sure that somebody  
20 working on that job is getting paid the wage?

21           MR. SIRIANNI: I guess you could look at the  
22 standards for an apprenticeship program, which I believe the  
23 non-union -- a lot of non-union apprenticeship programs are out  
24 there, and they have standards to qualify to become a  
25 journeyperson. And if they're going to pay someone as a

1 journeyperson, I would guess they would monitor --

2 REPRESENTATIVE KELLER: Would you guess they would,  
3 but it wouldn't be certain.

4 MR. SIRIANNI: Right, so therefore --

5 MR. ARONSON: Representative, I would say you  
6 shouldn't have those companies on those projects if you're not  
7 getting what you're paying for.

8 CHAIRMAN MILLER: And I'm going to ask you to wrap  
9 up this questioning.

10 REPRESENTATIVE KELLER: Okay.

11 CHAIRMAN MILLER: So we can move on to the next  
12 panel.

13 REPRESENTATIVE KELLER: I guess I just want to try  
14 to get through to some facts rather than a bunch of emotion  
15 that's in the testimony taking food from families and other  
16 things. Just let me say, I mean, we're saying that all of the  
17 businesses that went to bid non-prevailing wage are  
18 unscrupulous people, and they don't do things above-board,  
19 meanwhile --

20 MR. SIRIANNI: You said that, I didn't say that.

21 REPRESENTATIVE KELLER: No, but that's what's being  
22 implied.

23 MR. SIRIANNI: No, it's not. No it's not. We're  
24 talking about a Bill here -- and I resent the fact that you're  
25 going to sit there and say things like that that we're not

1 telling the truth? What makes you think you're telling the  
2 truth? We have no criteria that you're telling the truth in  
3 anything that you do.

4 REPRESENTATIVE KELLER: I'm strictly off --

5 MR. SIRIANNI: I have a problem with what you're  
6 telling me.

7 REPRESENTATIVE KELLER: Excuse me. Excuse me. Can  
8 I just --

9 CHAIRMAN MILLER: Enough. This is over. This is  
10 not a debate. This line of questioning is over for now. We  
11 can carry on later and have some more afterwards, but it's not  
12 what we need to do.

13 REPRESENTATIVE KELLER: Thank you.

14 MR. SIRIANNI: Thank you.

15 CHAIRMAN MILLER: Gentlemen, I thank you for your  
16 testimony. Mr. Aronson, you gave Representative Keller and  
17 myself another point of agreement, 59 is not a ripe old age.

18 MR. SIRIANNI: Thank you, Chairman and Members of  
19 the Committee. We do appreciate your indulgence.

20 CHAIRMAN MILLER: The next testifier is Hank Butler,  
21 Pennsylvania Director of Pennsylvania Council of General  
22 Contractors.

23 MR. BUTLER: I'm sure I'm not going to be as  
24 lively, so I do apologize in advance for that.

25 CHAIRMAN MILLER: Pull the mic a little closer, if

1 you would, Hank.

2 MR. BUTLER: Is that better? Is that better?

3 CHAIRMAN MILLER: Better.

4 MR. BUTLER: Thank you for allowing me to testify,  
5 and I hope after this you enjoy your summer.

6 Thank you, Mr. Chairman, Members of the House of  
7 Representatives Labor and Industry Committee for the  
8 opportunity to speak with you today in support of House Bill  
9 1271 introduced by Representative Marsico. The Pennsylvania  
10 Council of General Contractors believes in the principles of  
11 fair, efficient and competitive construction bidding, awarding  
12 and building. Today I'm here on their behalf to testify this  
13 morning and submitting testimony in support of House Bill 1271.  
14 My testimony is short, to the point.

15 For years inserting the State's prevailing wage on  
16 local governments' maintenance work changes from administration  
17 to administration. The inserting of this mandated wage has  
18 always been political and not what is best for Pennsylvania.  
19 So, I would like to remove the politics of this issue and talk  
20 about the basics.

21 Number one, there are currently very limited  
22 resources to improve our infrastructure. Let the market decide  
23 the price for road maintenance and not set an arbitrary fee,  
24 price. Local governments are under constituent mandate to  
25 improve as many roads as possible. The Commonwealth should

1 work in partnership with local governments to reduce the  
2 bureaucracy and mandated wages to help improve our roads.

3           In the spring of 2004 there was an attempt to  
4 mandate the prevailing wage of road maintenance through an  
5 executive order. Only after only a few days of announcing this  
6 order, the local governments in the western portion of the  
7 state pronounced their outrage towards the governor. The  
8 difference from the original bids without prevailing wage to  
9 the increased cost of the road maintenance with prevailing wage  
10 was a loss of miles and miles of needed work in each respective  
11 municipality and township.

12           The executive order was rescinded and instead the  
13 mandate was quietly implemented at a later date without public  
14 order. Finally, without a consistent set of work  
15 responsibilities to local governments to know the payment of  
16 the workers, i.e.: What work is paid at a laborer's rate and  
17 what is an operating engineer's rate, the local governments are  
18 opening themselves to additional government scrutiny through  
19 the arbitrary enforcement of the prevailing wage officers.

20           We have all heard comments that prevailing wage  
21 assures safe, quality work. Yet during the bouncing of  
22 prevailing wage in and out of road maintenance work, there has  
23 been no correlation between the safety or the quality of the  
24 work. It is time to stop making road maintenance work a  
25 political issue and help the local governments optimize their

1 limited resources for their road improvements.

2           If we as Pennsylvanians expect our local communities  
3 to have a strong infrastructure and safe roads, we need to help  
4 our local leaders obtain this objective and not hinder their  
5 efforts with additional bureaucracy, mandated wages above the  
6 local market, and arbitrary prevailing wage enforcement.

7           House Bill 1271 will help to accomplish this need.  
8 I wish to once again thank the Committee for the opportunity to  
9 present my testimony before you today. Thank you.

10           CHAIRMAN MILLER: Thank you. The first person for  
11 questions, Chairman Keller.

12           CHAIRMAN KELLER: Thank you, Mr. Chairman. Quickly,  
13 Mr. Butler, we just spent a half hour about the history of the  
14 prevailing wage on this particular subject. Just I didn't hear  
15 any reference to the court case in your testimony. You are  
16 well aware.

17           MR. BUTLER: I was, and actually as I developed it,  
18 I thought about this. But in reality isn't legislation -- this  
19 is a confusing issue that had to go to the courts for  
20 clarification. In essence this is what this legislation is all  
21 about, to help identify and clarify what is right now a murky  
22 interpretation.

23           CHAIRMAN KELLER: Well, I don't think the Supreme  
24 Court said that it's murky, but in your opinion it's murky.

25           MR. BUTLER: But the argument is there, so let's



1 have clarification.

2           CHAIRMAN KELLER: The court did clarify. But we'll  
3 have our debate also. Thank you, Mr. Chairman.

4           CHAIRMAN MILLER: Representative Perry.

5           REPRESENTATIVE PERRY: Thanks Mr. Chairman, and  
6 thank you, Mr. Butler, for coming in today. In your testimony,  
7 you state that the maintenance work conducted by local  
8 governments where the state's prevailing wage is required  
9 changed from administration to administration and you probably  
10 heard my last question for Mr. Aronson, looking for our view of  
11 the history. I think Mr. Aronson essentially testified that it  
12 was very clear since 1961 what the intent was, and that he  
13 didn't know who may have violated the law with regard to that  
14 intent since 1961. But the general practice is that all of  
15 this work would be considered prevailing wage work. What is  
16 your understanding?

17           MR. BUTLER: My understand, and I have -- though  
18 I'm not young, I have not been involved in that -- the  
19 generations of it. But what we saw was in previous  
20 administrations prevailing wage was enforced. Other  
21 administrations it was not enforced for maintenance work. And  
22 what happened four years after Rendell took office, it was  
23 enforced, and the lawsuit came about.

24           So, it was bouncing around back and forth. So, in  
25 reality, though the courts have made a decision, I think this

1 -- I'm happy to see the legislation needs to flush it out of  
2 what it really is.

3           REPRESENTATIVE PERRY: So, can you with any  
4 certainty determine -- is there any information that we can get  
5 that shows us that a certain administration or between certain  
6 dates municipalities didn't pay -- didn't have to pay the  
7 prevailing wage, some kind of understanding between labor and  
8 city and the Department or the Administration, versus other  
9 administrations where they did it. How do we know which ones  
10 did and which ones didn't and which years it occurred, what  
11 years it didn't?

12           MR. BUTLER: I don't have that.

13           REPRESENTATIVE PERRY: I'm trying to determine,  
14 quite honestly, if there was any common practice in any period  
15 of time where boroughs and municipalities thought that, with  
16 some justification, that it was okay to pay the way they were  
17 paying. And I'm having a hard time trying determining that,  
18 quite honestly.

19           MR. BUTLER: You know, I cannot give you the data  
20 except from my members can say if they did or didn't going  
21 back.

22           REPRESENTATIVE PERRY: Is that data that you could  
23 get?

24           MR. BUTLER: I could ask.

25           REPRESENTATIVE PERRY: I mean, you're making the

1 charge that it did change from administration to  
2 administration, so that's why I'm asking you.

3 MR. BUTLER: I will say during the Ridge/Schweiker,  
4 it was not. Prevailing wage was not on road maintenance, road  
5 resurfacing.

6 REPRESENTATIVE PERRY: And how about prior to that?

7 MR. BUTLER: I think-- again, I'm not sure.

8 REPRESENTATIVE PERRY: And prior to that. Is this  
9 something that flip-flopped every eight years, every four  
10 years?

11 MR. BUTLER: What I saw, what I observed, was that  
12 during the Casey administration it was enforced. In the  
13 Ridge-Schweiker it was not, and then during Rendell, it was  
14 enforced which prompted the lawsuit which ultimately had the  
15 decision it has. And now here we are with the legislation.  
16 So, I mean, I think that's a good homework assignment for the  
17 municipalities to find -- not that I'm putting them on the  
18 stand right now, but to have them find out for you.

19 REPRESENTATIVE PERRY: But you don't have the  
20 information --

21 MR. BUTLER: No.

22 REPRESENTATIVE PERRY: -- and you don't think you  
23 can get it.

24 MR. BUTLER: I mean, I could ask.

25 REPRESENTATIVE PERRY: If you can get it, I'd love

1 to see through the Chairman, I'd like to view that if that's  
2 something that's available.

3 MR. BUTLER: I can try and see what I can find.

4 REPRESENTATIVE PERRY: Okay. Thank you.

5 CHAIRMAN MILLER: Representative Gergely.

6 REPRESENTATIVE GERGELY: Thank you, Mr. Butler.

7 Nice to see you, Hank. A quick question. As Chairman Keller  
8 had indicated, I think the definition has been decided by the  
9 Supreme Court, and I think this is a revisit of what that  
10 change might be, which is what we do in this legislature. And  
11 we're going to hear some testimony from the boroughs and the  
12 councilman from Youngwood to that extent.

13 Let me go another line of questioning that I think  
14 would be interesting to both parties. When you do -- Attorney  
15 Aronson indicated that there are possibly even weekly payroll  
16 audits on prevailing wage is set into the project, correct.

17 MR. BUTLER: Yes.

18 REPRESENTATIVE GERGELY: You would agree with that.

19 MR. BUTLER: Certified payroll is submitted.

20 REPRESENTATIVE GERGELY: Certified payroll. So we  
21 know who the employees are.

22 MR. BUTLER: Yes.

23 REPRESENTATIVE GERGELY: Okay. When we don't have  
24 that and the boroughs do the work or the townships do the work  
25 on their own, does anybody certify those payrolls.

1           MR. BUTLER: That would be up to the municipality.  
2 But without prevailing wage you also have something which is a  
3 -- well, you have to be bonded. You have to be a quality  
4 contractor. You have to pay, quite frankly, sustainable wages  
5 and information based on I'm sure that's an auditing practice  
6 that they can do with each -- with the contractors they hire  
7 outside the bureaucracy of the state. They can easily get that  
8 information.

9           REPRESENTATIVE GERGELY: Okay. That being said,  
10 does the possibility exist, and I'm sure it does, and I'm sure  
11 we can hear complaints about it, that illegal immigrants or  
12 seasonal workers are taking Pennsylvania jobs doing this work  
13 when you don't have prevailing rate in place for these jobs?

14           MR. BUTLER: To answer your question -- I'll answer  
15 the question for you. I have done employee relations, I have  
16 developed orientation programs for thousands of employees prior  
17 to doing this. I have an MBA, I'm a Professor of management at  
18 York College. In my time, I mandated -- every employer is  
19 mandated under the I-9 form to submit evidence of citizenship  
20 whether driver's license, Social Security number, passport,  
21 what have you.

22           Also, when you do public work, you have to get a  
23 criminal background check. What would prevailing wage or even  
24 in some cases -- I forget the question about project  
25 requirements that everyone else is not doing? What mechanism

1 is there? What paperwork is there that would mandate them  
2 above and beyond what they currently do? I don't know. That's  
3 why I kind have been wrestling with this issue of the  
4 immigration issue.

5           Because quite frankly, after the I-9 form and after  
6 the criminal background checks, what other mechanism can you do  
7 to reinforce or prove that they are citizens.

8           REPRESENTATIVE GERGELY: So in a sense Youngwood  
9 Borough required criminal background checks so they can pass  
10 the Counciling Act. And they required the criminal background  
11 checks or the ability to see that for the contractors that did  
12 that work.

13           MR. BUTLER: Most governments. Do I know that  
14 Youngwood did it themselves? I don't know. I do know that  
15 most government work, regardless, if you work around children  
16 or what you have, you have to get a criminal background check.

17           REPRESENTATIVE GERGELY: But you said most, so that  
18 left --

19           MR. BUTLER: When I worked for the County of York,  
20 we had people who were not even near -- who were in separate  
21 agencies and no involvement around kids, but everyone had a  
22 criminal background check.

23           REPRESENTATIVE GERGELY: I agree. But the  
24 possibility exists, do you agree or disagree?

25           MR. BUTLER: Of fraud? Of course, it can exist. Do

1 I think that's rampant? No, not at all.

2 REPRESENTATIVE GERGELY: But when we talk about or  
3 we have testimony that says -- we have been criticized about  
4 saying -- you're taking food out of the mouths of children when  
5 you do that, if you have illegal immigrants working on these  
6 jobs -- and maybe even the prime contractor, this may be subbed  
7 out to a sub, the subs could bring in illegal immigrants. It's  
8 not impossible to happen?

9 MR. BUTLER: Once again, that's --

10 REPRESENTATIVE GERGELY: It is a very -- this is the  
11 kind of issue in construction where it does happen.

12 MR. BUTLER: I'd like -- I'd like to see a better  
13 mechanism to do this. But again, with what we do, with what  
14 every other company does through the I-9 forms and even some  
15 criminal background checks, I'd like to see what else there is  
16 for proof.

17 REPRESENTATIVE GERGELY: Let me ask you this, let's  
18 be frank. The prevailing rate implementation gives us another  
19 layer of protection from that happening, do you agree or  
20 disagree?

21 MR. BUTLER: I disagree because you still have the  
22 criminal background check. I do disagree with that.

23 REPRESENTATIVE GERGELY: So the auditing of the  
24 payrolls doesn't protect from having illegals on these jobs.

25 MR. BUTLER: I don't think the mechanism of

1 prevailing wage is a good mechanism to guarantee this. I think  
2 the INS form, the ICE forms, obviously, the I-9 forms, I think  
3 criminal background checks, I think there's other mechanisms  
4 that are in place.

5           Let's be honest, are we going to enforce it the  
6 fourth time or fifth time? Let's talk, you know, let's talk  
7 about the E-verify. I have heard of cases where people give  
8 false Social Security numbers in Texas, get E-verify acceptance  
9 and then some guy in Chicago is getting hit with a W-2 form for  
10 work he never did. It's -- how do you run around this circle  
11 to try to handle it? I just don't see prevailing wage as a  
12 mechanism to reinforce a fourth time or third time.

13           REPRESENTATIVE GERGELY: Well, if it takes six or  
14 seven, I'm for it because I want Pennsylvania residents first  
15 and foremost to have the jobs. I'd prefer not to have a  
16 contractor rolling out of Maryland or Ohio or West Virginia  
17 doing my work in Pennsylvania which occurs also. But if it  
18 takes that much, and we don't have an E-verify and prevailing  
19 rate does give us another layer of guarantee, I think we should  
20 all be comfortable with that because we're protecting --

21           CHAIRMAN MILLER: Representative, I think we have  
22 addressed this about six different directions. Is there  
23 another question?

24           REPRESENTATIVE GERGELY: No, that was it. Thank  
25 you.



1           CHAIRMAN MILLER: Thank you. Representative Boyle.

2           REPRESENTATIVE BOYLE: Thank you. I'm over here,  
3 Hank. Marc Gergely's broad shoulders are blocking me, but --

4           REPRESENTATIVE BOYLE: I just had a quick question,  
5 because I, and thank you for your testimony, and especially  
6 brief testimony. And I appreciate that both contractors and  
7 construction workers have something in common right now, and  
8 that is that both are suffering and wish there were more  
9 projects to bid for contractors and more work for construction  
10 workers. So, I appreciate and can understand that contractors  
11 are looking to reduce their costs.

12           I just want to throw out there and I would be  
13 interested in your opinion on this, that understanding, you  
14 know, your view and your organization's view on prevailing  
15 wage, be that as it may, though, would you agree that besides  
16 protecting workers that there is one positive benefit to  
17 prevailing wage for the contractors in that it does offer  
18 protection for the more established, legitimate contractors  
19 from being undercut by the fly-by-night guys?

20           MR. BUTLER: To answer your question -- I looked  
21 over at Representative [Inaudible] conversations, and I love to  
22 look at his reaction. To give you some brief, because some of  
23 you were not here -- my organization is recently formed. There  
24 are contractors, group of small general contractors, large  
25 general contractors, some of them have union shops. Others are

1 signatory to union, steelworker's unions. We're not  
2 anti-union.

3           Prevailing wage, it is what it is. It's not going  
4 to go anywhere. We're not going to repeal prevailing wage.  
5 I'm not saying -- you can try, but I just don't -- personally,  
6 me looking at the chess board, I don't see it happening. What  
7 we believe is it should be done in a fair and objective process  
8 where contractors should know the rules before they work, are  
9 enforced by those rules, and it's a level playing field.

10           As for the wages, we'd like to find an actual, true,  
11 average common wage. I'm not saying that in some cases if you  
12 look at the occupational wages, which is what we pushed for  
13 before, some wages were higher than prevailing wage. Others it  
14 was lower. It's the true -- to answer your question, yes, to  
15 answer your question, I don't like fly-by-nights coming in. Or  
16 I call them trunk-slamers. I don't like them coming in. I  
17 don't like them coming in from South Carolina and taking jobs.  
18 Absolutely not.

19           But if it should be done, it should be done in a way  
20 that everyone, regardless of your choice of labor affiliation,  
21 and I'm definitely not anti-union at all, it should be an open  
22 and fair process and objective and that's it. So, to answer  
23 your question, yes, it can prevent the fly-by-flights from  
24 coming in from outside.

25           REPRESENTATIVE BOYLE: Okay. All right. Well,

1 thank you. Thank you, Mr. Chairman.

2 CHAIRMAN MILLER: Thank you. Seeing no further  
3 questions, thank you for your testimony.

4 The next person, Jim Kunz, Business Manager,  
5 International Union of Operating Engineers Local 66. Welcome,  
6 Jim, and you may proceed when you are ready.

7 MR. KUNZ: Good morning. Thank you, Mr. Chairman.  
8 Chairman Miller, Chairman Keller, and members of the House  
9 Labor and Industry Committee. My name is James C. Kunz, Jr.,  
10 and I am the Business Manager of the International Union of  
11 Operating Engineers Local 66 representing approximately 7,000  
12 men and women in 33 western counties of Pennsylvania who work  
13 in the construction, pipeline, utility and the heavy equipment  
14 service industries here in Pennsylvania.

15 These men and women are tax-paying, voting  
16 Pennsylvania residents who work hard every day constructing  
17 this state's infrastructure and other economic development  
18 projects. They are an integral part of Pennsylvania's economic  
19 engine. I am here today to speak in opposition to House Bill  
20 1271, and other attempts to eliminate or dilute Pennsylvania's  
21 Prevailing Wage Act.

22 It appears that the intent of House Bill 1271 is to  
23 dilute the state's prevailing wage law by reversing the  
24 Pennsylvania Supreme Court's 2008 Youngwood Borough decision.  
25 This legislation would redefine the meaning of maintenance work

1 by including the details of an expanded version of the PennDOT  
2 Department of Labor and Industry Memorandum of Understanding  
3 used by Youngwood Borough in their defense to the Act, and I  
4 refer to this as an expanded version because the original  
5 unsigned version that may date back to the 1970s did not refer  
6 to the milling of roadways.

7           Attempts to consider milling as maintenance in order  
8 to avoid the payment of prevailing wages started in the last  
9 eight years under the Rendell administration. Now, we could  
10 probably spend all day arguing over the definition of  
11 maintenance, demolition and construction. But clearly, tearing  
12 a road down by milling it, and then rebuilding it by paving it  
13 is not maintenance.

14           Comparing the process to scraping loose paint off of  
15 a wall before it is repainted is more than a stretch. This is  
16 more like the demolishing all of the building we are now in,  
17 except for the foundation and then rebuilding it just like it  
18 is. I don't think any of Pennsylvania taxpayers would call  
19 that maintenance work.

20           But let's get to the heart of the issue, which is an  
21 attempt to reduce the wages and benefits of many hard-working  
22 Pennsylvanians both union and non-union, because many public  
23 bodies are facing budget concerns.

24           There has been a lot of public testimony over the  
25 last six months on both sides of the prevailing wage issue.

1 Those who support eliminating or amending the Act have claimed  
2 that the wages are inflated and are based on a minority of  
3 workers in the industry. They also claim that these wages  
4 increase the cost of the project to the taxpayer, negatively  
5 impact the economic health of Pennsylvania, and many public  
6 bodies need these cuts in order to balance their budgets. Now,  
7 let's take a look at each of these claims.

8           First, prevailing wages are not union inflated  
9 wages. They are simply the prevailing wage paid in a county  
10 for a particular type of work as determined by the Pennsylvania  
11 Department of Labor and Industry. They are not the lowest wage  
12 or the highest wage. They are the prevailing wage.

13           As House Bill 1271 deals with road milling, paving  
14 and other road infrastructure construction, it would be the  
15 state heavy and highway rates. These are the prevailing rates  
16 paid in that specific sector which primarily include road and  
17 bridge construction, street milling and paving, sewer and water  
18 line work, tunnels, railroad construction, locks and dams, and  
19 mid to large size earth and rock excavation. It does not  
20 include home remodeling, home building, commercial building  
21 construction, power plant construction, manufacturing  
22 construction, school buildings, hospitals, sewage disposal  
23 plants, water treatment plants, et cetera.

24           In fact, it is the inclusion of residential  
25 construction such as home building and remodelling, driveway

1 paving and small commercial construction that allows groups  
2 like the ABC to claim that 70% of the construction industry  
3 does not belong to a collective bargaining unit or union. Most  
4 of the contractors in these sectors do not bid on public sector  
5 work.

6           In the 33 counties of Pennsylvania in which I  
7 represent operating engineers, 75 to 80% of all of the bridge  
8 work is done union, as is 65% of public sector paving work.  
9 73% of all PennDOT work in 2010 in the 33 counties was done by  
10 a union contractor, and overall, 60 to 69% of public sector  
11 heavy highway construction was performed by union. Therefore,  
12 it makes sense that the union wage was the prevailing wage,  
13 because it was paid on more jobs than any other wage.

14           Second, many claim that prevailing wages increase  
15 the cost of a project by up to 30%. In fact, last week, the  
16 Associated Builders and Contractors in a hearing in this  
17 Committee used the flawed analysis of union wages and fringe  
18 benefits to suggest that prevailing wages cost 40% more.

19           Again, looking at the heavy highway industry that  
20 House Bill 1271 deals with, most work is seasonal. Most heavy  
21 highway construction workers are laid off from November through  
22 March or April. You don't pave when there's snow on the  
23 ground. And that's union and non-union alike.

24           The first six months of this year were very wet, and  
25 much of this work did not start until late May. Most of my

1 members who worked in the heavy highway industry make about \$40  
2 to \$45,000 a year, with an additional \$16,000 in fringe  
3 benefits for a total of \$56 to \$61,000 a year total package.  
4 And that is in a good year, far from the \$100,000 per year the  
5 ABC suggested last week.

6           Using the Youngwood Borough decision, the estimated  
7 project cost was \$183,209. Now, in the decision in the Supreme  
8 Court information, the Borough claimed that the decision cost  
9 them an additional \$15,000; therefore, the added cost was 8%,  
10 not 40%. But even this is suspect as it was after the fact.  
11 We have no idea what the contractor's profit margin was or how  
12 he or she would have bid it if he was told to pay the  
13 prevailing wage.

14           As you have heard over the last several months,  
15 there are a number of studies that have shown that the  
16 elimination of prevailing wages result in lost productivity and  
17 lost training dollars, which have a negative impact on the cost  
18 of present and future projects. In addition, studies have  
19 shown that workers' access to health insurance dropped by 79%  
20 when prevailing wages are eliminated, and injury rates rise by  
21 as much as 14%.

22           These costs would be shifted to Pennsylvania  
23 taxpayers.

24           Third, prevailing wages do not have a negative  
25 economic impact on Pennsylvania. In fact, the opposite is

1 true. The good wages and benefits required under the Act allow  
2 Pennsylvania workers, both union and non-union, to give back to  
3 the state and their communities through increased spending,  
4 taxes, and community involvement. These workers pay taxes, buy  
5 houses and cars, make other major purchases and spend their  
6 disposable income in their communities.

7           They are not compelled to find a second job, nor are  
8 both parents forced to work to make ends meet instead of one of  
9 them being at home with the kids.

10           A 2006 study showed that the elimination of  
11 prevailing wages in Minnesota would definitely cut income and  
12 sales tax to the state. Prevailing wages are also the easiest  
13 way to guarantee that these state funded construction projects  
14 employ Pennsylvania taxpayers. There is no incentive for a  
15 contractor to use transient or illegal workers to perform this  
16 work when he or she has to pay the prevailing wage.

17           Finally, many local municipalities are supporting  
18 House Bill 1271 because they believe it will have a significant  
19 impact on their budgets. You know what? They may be right.  
20 The lost wages and revenues to local businesses and the  
21 municipalities will definitely result in a reduction in income  
22 to both the municipality and the state.

23           In his testimony to this Committee on March 22,  
24 2011, Mr. Elam Herr -- if I didn't get that right, I apologize  
25 to him -- the Executive Director of the State Association of



1 Township Supervisors testified that in order to maintain their  
2 roads, many townships have returned to microsurfacing and tar  
3 and chipping as well as working with other municipalities  
4 sharing a paver and road crews to perform true maintenance on  
5 their roads and bridges. I commend this effort and believe it  
6 is a better solution than the reduction of a working man or  
7 woman's standard of living.

8           In the 2008 Youngwood Borough decision, the  
9 Pennsylvania Supreme Court in a unanimous decision noted that  
10 the Pennsylvania Prevailing Wage Act's focus is placed squarely  
11 on protecting workers on public works projects from receiving  
12 substandard wages and should not punish workers. We believe  
13 that this should continue to be the Act's focus.

14           Local 66 is willing to work with this Legislature to  
15 identify a responsible course of action to address our  
16 transportation funding needs. We believe that House Bill 1271  
17 is not the answer and that it will negatively affect the  
18 standard of living of all Pennsylvanians working in the heavy  
19 highway sector, whether organized or unorganized.

20           Thank you very much.

21           CHAIRMAN MILLER: Thank you for your testimony.  
22 Chairman Keller.

23           CHAIRMAN KELLER: Thank you, Mr. Chairman. Thank  
24 you, Mr. Kunz. You made reference in your testimony about  
25 training. Could you -- I know part of your area is right in

1 the heart of the Marcellus shale.

2 MR. KUNZ: Right.

3 CHAIRMAN KELLER: Could you give me a brief  
4 description of how that training has helped your union as far  
5 as it comes to the work in --

6 MR. KUNZ: First to start. Our training is a  
7 four-year program. It's much like going to college. You have  
8 to have a minimum of 4,000 hours of actual on-the-job  
9 experience plus about another 1800 hours in classroom and  
10 on-site training under the direct supervision of an instructor.  
11 I think that that has resulted in extremely qualified operating  
12 engineers coming out of our local union.

13 We are a very successful in the Marcellus shale  
14 fields now. Over the last couple of years that has grown  
15 exponentially and, in fact, we are doing a majority of a lot of  
16 the work. Pipeline, compressor stations and now well site  
17 construction and the roads into the well sites.

18 The reason we were able to get our contractors --  
19 our contractors were able to get a lot of this, and actually  
20 most of that site construction now is very simple. If you are  
21 a drilling company, you have the drill over here, you're  
22 finishing up. Now, you have a drill, a large expense, a crew,  
23 a lot of guys. You need to be able to move that drill to your  
24 next site, and you have to do it on a specific date.

25 So, when the industry first came to Pennsylvania,

1 they were strictly looking at what you would call low-dollar.  
2 That's strictly all they looked for and they were getting  
3 contractors that were paying substandard wages in the  
4 construction industry to do their site development and their  
5 road development into the sites. What was happening was that  
6 say you needed to have a site done in eight weeks. Well, those  
7 particular contractors, by and large, were taking 12 to 14, 16  
8 weeks to get the job done. So that that drilling company's  
9 drill ended up sitting on a well site not being able to be  
10 moved to the next site for three, four, five weeks. That's a  
11 significant loss of income and money to that drilling company.

12           By hiring the union contractors, the contractors we  
13 provide labor to, Trumbull being one of them, Ashuta  
14 Corporation and a number of large ones. They were able to get  
15 those jobs done, usually, if they gave them eight weeks. They  
16 were getting it done in six-and-a-half to seven weeks so that  
17 site was ready for that drilling crew to move that equipment,  
18 and their crews, from site A to site B.

19           So, now we have captured a significant amount of  
20 work, and I think that is due in large part to the skill and  
21 productivity and training that these members have, these men  
22 and women.

23           CHAIRMAN KELLER: Thank you. The Chairman and I are  
24 always looking where we can find some common ground. In your  
25 testimony you mentioned that you agree with Mr. Herr and -- on

1 one specific issue. Could you also expand on that, please.

2 MR. KUNZ: Which one was that again, please?

3 CHAIRMAN KELLER: The chipping and --

4 MR. KUNZ: The chipping. I worked -- I didn't  
5 always wear a tie. I have been an operating engineer for 35  
6 years. I actually worked construction for four years prior to  
7 that, kind of quit college. We won't go into that. But I  
8 spent part of my career in the bridge construction for Logan P.  
9 Dickerson, a number of other companies and then actually the  
10 paving industry for several years working in that. You know,  
11 these are ways to maintain roads. They have been very  
12 effective.

13 I disagree that this is old technology. I know even  
14 into the 90s and early 2000s there were still a lot of  
15 municipalities out there shooting and chipping roads because it  
16 is an inexpensive and quick way to maintain and extend the life  
17 of the road surface. And I think by doing these things, using  
18 old or new technology over, you know, this milling and paving,  
19 which is pretty significant construction, in my opinion, is a  
20 much better road to go down. I think the taxpayers in those  
21 municipalities are going to see better savings that way.

22 CHAIRMAN KELLER: Thank you. I think they are two  
23 good points, especially the one about the training. Training  
24 has actually, always as I could see, made a big difference when  
25 it came to the apprentice programs in the state are probably

1 the tops in the nation.

2           MR. KUNZ: Short of the two -- I like to talk, too  
3 -- but short of the two operating engineers locals in  
4 Pennsylvania apprenticeship programs, really the only other way  
5 that you can get training on heavy equipment are through  
6 schools that you have to pay. Some of them whose programs are  
7 as short as six weeks with about one to two weeks of that in  
8 the field. And after that, six weeks they claim that you are a  
9 qualified journeyman, heavy equipment operator. These  
10 individuals don't even -- don't necessarily have the  
11 prerequisite to even get into our apprenticeship programs after  
12 that six weeks. So --

13           CHAIRMAN KELLER: Thank you. Thank you, Mr.  
14 Chairman.

15           CHAIRMAN MILLER: I would just note that if you are  
16 making inroads with my constituents when you supported  
17 chipping, you probably lost every one of them -- chip some of  
18 your roads in Philadelphia, Representative Keller.

19           CHAIRMAN KELLER: We're looking for common ground  
20 here, Mr. Chairman. We're looking for agreement.

21           CHAIRMAN MILLER: That's one of the major complaints  
22 that I get in my office, one of the top ones, is don't chip  
23 anything ever again because they hate it, but -- Representative  
24 Perry.

25           REPRESENTATIVE PERRY: Thanks, Mr. Chairman, and

1 thanks, Mr. Kunz. Let's start out with just some clarification  
2 on my position because I don't necessarily want to be spoken on  
3 my behalf for. When you say, let's get to the heart of the  
4 issue, this is an attempt to reduce the wages and benefits of  
5 many hard-working Pennsylvanians, I don't see it distinctly as  
6 that.

7           While I agree that might be the effect in some cases  
8 for me personally, that's not my interest. My interest is to  
9 make sure that all Pennsylvania taxpayers, hard-working or  
10 otherwise get the best bang for their buck.

11           Also, regarding what the prevailing wage is, in  
12 testimony last week, I could not get any proof that non-agency  
13 shop contractors' wages were being considered. Now, they may  
14 be. They may be in the prevailing wage. Or they may not be.  
15 My point is that there was no proof provided and no proof can  
16 be provided, so I think that statement is somewhat specious.

17           Let me ask you this, if I'm sanding the floor in my,  
18 let's say that I have a hardwood floor and it gets scratched up  
19 because I have dogs and kids or whatever, and I'm sanding it  
20 and then I'm going to refinish it, so to speak. Is that  
21 maintenance or is that construction?

22           MR. KUNZ: I believe it depends upon how you are  
23 sanding. If you want to get down and sand it by hand you can't  
24 do a lot of damage, maybe that's maintenance. But I think that  
25 if you're using a belt sander --

1           REPRESENTATIVE PERRY: So, as soon as I use a  
2 machine, it's construction?

3           MR. KUNZ: Well, no. I would suggest that you hire  
4 someone that's qualified. I wouldn't do that, and I'm fairly  
5 handy. I would suggest that you hire somebody that's  
6 qualified.

7           REPRESENTATIVE PERRY: I'm not asking who we hire.  
8 I'm just saying if I sand it, is that maintenance or  
9 construction. Am I building something or am I fixing  
10 something?

11          MR. KUNZ: See, you're not -- all you're doing is  
12 taking the finish off the top. You're not going down into the  
13 wood. In effect, when you are milling a road, you are actually  
14 taking a lot of the structure down just like this building. So  
15 --

16          REPRESENTATIVE PERRY: Listen, I --

17          MR. KUNZ: You could argue that's construction.

18          REPRESENTATIVE PERRY: I get that you understand  
19 where I'm going and that's exactly where I'm going. If you buy  
20 a hardwood floor, they tell you how many sandings you will get  
21 because you are going into the wood and I would submit to you,  
22 sir, because I have some knowledge of this, too, when you are  
23 milling the road, you are doing essentially the same thing.  
24 Maybe when we talk about the depth. If you are milling six  
25 inches of road into the base, then you're talking construction.

1 But if you're talking an inch off the top and you've got four  
2 inches of base and then two inches of top, to me, that  
3 objectively could be considered maintenance. I just want to  
4 make that clarification.

5 MR. KUNZ: I would respectfully disagree with that.

6 REPRESENTATIVE PERRY: And that's fine.

7 MR. KUNZ: And you can -- continue to do that.

8 REPRESENTATIVE PERRY: And that's fine. Now,  
9 regarding your testimony that says that therefore, it makes  
10 sense that the union wage was the prevailing wage, it was paid  
11 on more jobs than any other wage, so based on that testimony,  
12 it's your understanding that it's 50%, plus one.

13 MR. KUNZ: It is the prevailing wage, which means  
14 that the wage that's most commonly paid. I can show you  
15 instances where there are union and non-union contractors in  
16 the industry that are paid higher than what you can -- higher  
17 than the state's prevailing wage. That did not also become the  
18 wage. It is the prevailing wage or that wage most commonly  
19 paid, so --

20 REPRESENTATIVE PERRY: It's not an average of the  
21 wages paid?

22 MR. KUNZ: It's not an average.

23 REPRESENTATIVE PERRY: And it's not intended to be.

24 MR. KUNZ: It's not intended to be.

25 REPRESENTATIVE PERRY: In your opinion. Okay. It's



1 just the one paid most often?

2 MR. KUNZ: Correct.

3 REPRESENTATIVE PERRY: Just out of curiosity, you're  
4 a pretty handy guy, I'm sure, just based on what you have told  
5 me about your background. When you get some work done at your  
6 home that you don't do yourself, and I imagine you do a good  
7 bit yourself, but if you had to get somebody to come in, do you  
8 know of any home remodelers and folks that would do home  
9 maintenance that pay or bid prevailing wage?

10 MR. KUNZ: Actually, I don't go to home remodelers,  
11 I usually hire someone that works for a union contractor and  
12 pay the prevailing rate.

13 REPRESENTATIVE PERRY: Prevailing rate. You do pay  
14 the prevailing rate?

15 MR. KUNZ: On my house, yes. Just because I  
16 believe it's the appropriate thing to do, and if you would like  
17 to check, you are more than welcome.

18 REPRESENTATIVE PERRY: I'll take your word for it.  
19 Thank you, sir.

20 CHAIRMAN MILLER: Representative Kampf.

21 REPRESENTATIVE KAMPF: Thank you, Mr. Chairman. Just  
22 a couple of quick questions because I'm not sure all of the  
23 terms that you were talking about are familiar to me. With  
24 tarring and chipping, that is maintenance work, is that right?

25 MR. KUNZ: That has always been considered to be

1 maintenance work, correct.

2 REPRESENTATIVE KAMPF: So your members generally  
3 don't work on those jobs?

4 MR. KUNZ: No, that's incorrect. My members do.  
5 Yes.

6 REPRESENTATIVE KAMPF: And are they paid. They're  
7 not paid the prevailing wage because prevailing wage isn't  
8 implicated there.

9 MR. KUNZ: They are paid the prevailing wage on  
10 that work.

11 REPRESENTATIVE KAMPF: Oh.

12 MR. KUNZ: Because that happens to be the wage that  
13 they have negotiated in that particular case. I can show you a  
14 study here that has indicated that there is no empirical  
15 evidence that shows that union or non-union contractors are  
16 either more or less successful in the bidding of actual  
17 prevailing wage work. This is not a union/non-union issue.  
18 This is about a particular wage being paid for a particular  
19 type work in a particular area.

20 REPRESENTATIVE KAMPF: Just so I understand what I  
21 think you said, for tarring and chipping, which is not -- which  
22 is maintenance work, so it would not implicate the prevailing  
23 wage law, your members are still paid the prevailing wage  
24 because they have negotiated that with the government entities?

25 MR. KUNZ: No. They have negotiated with their

1 employer.

2 REPRESENTATIVE KAMPF: With the employer, right.

3 MR. KUNZ: Right.

4 REPRESENTATIVE KAMPF: And so that employer goes to  
5 the government entity, the township or whatever and says this  
6 is the, this is the bid price, accept it or not.

7 MR. KUNZ: Correct. They bid just like everybody  
8 else.

9 REPRESENTATIVE KAMPF: All right. And -- other than  
10 tarring and chipping, are there other types of typical  
11 maintenance work so where prevailing wage is not implicated,  
12 that your members will work on for government entities of any  
13 kind, townships, schools -- I mean, we have talked about  
14 tarring and chipping, but I'm not familiar with all of the  
15 different maintenance work that your members might work on.

16 MR. KUNZ: I'm not quite sure.

17 REPRESENTATIVE KAMPF: Well, for example, I mean, is  
18 there maintenance work in government buildings that typically  
19 operating engineers will go to and do that is not subjected to  
20 the prevailing wage law? That's what I'm driving at.

21 MR. KUNZ: In building construction which is not  
22 what we're talking about here today, this is strictly heavy  
23 construction covered under 1271, so I'm not sure what --

24 REPRESENTATIVE KAMPF: Well, how about on roads.

25 How about on roads.

1           MR. KUNZ:    Get back to buildings.  We typically do  
2 not work inside of buildings.  You don't have heavy equipment  
3 inside a building.

4           REPRESENTATIVE KAMPF:  How about on roads.  Is there  
5 maintenance work on roads other than tarring and chipping that  
6 your members work on?

7           MR. KUNZ:    There is even patching and repairing.  
8 There are some municipalities that subcontract out small patch  
9 and repairs on their roads and in that case, it may go to a  
10 contractor that employees my members.

11          REPRESENTATIVE KAMPF:  And the same would hold true,  
12 that's not subject to prevailing wage but your members are paid  
13 the prevailing wage because they have negotiated that with  
14 their employers?

15          MR. KUNZ:    They have negotiated a rate with the  
16 employer, correct.

17          REPRESENTATIVE KAMPF:  Thank you.

18          CHAIRMAN MILLER:  Representative Boyd.

19          REPRESENTATIVE BOYD:  Actually, Representative Kampf  
20 asked my one question about chipping.  I have actually seen  
21 where people do strictly milling.  They'll just mill a surface,  
22 particularly in an intersection --

23          MR. KUNZ:    Correct.

24          REPRESENTATIVE BOYD:  And they won't go back then  
25 with a top coat.  Is milling, just milling, does that trigger

1 prevailing wage?

2 MR. KUNZ: Yes, it does. It's demolition work.

3 REPRESENTATIVE BOYD: Okay. So, and that's a part  
4 of that, of the court decision?

5 MR. KUNZ: Actually, I --

6 REPRESENTATIVE BOYD: That demolition work is in  
7 fact -- trigger -- is in fact repair. So, my understanding of  
8 the court case is, the court delineated between maintenance and  
9 repair. Maintenance is a very narrowly defined part of the  
10 prevailing wage law. Repair is broader.

11 MR. KUNZ: Correct.

12 REPRESENTATIVE BOYD: And in such, repair triggers  
13 prevailing wage, but maintenance does not, is that correct?

14 MR. KUNZ: Actually, milling, I think they might  
15 have referred to the milling as demolition, not even repair.

16 REPRESENTATIVE BOYD: Okay. So, demolition then --

17 MR. KUNZ: It was the demolition of the road,  
18 correct?

19 REPRESENTATIVE BOYD: Just one other --

20 MR. KUNZ: And I'm not Irwin, so --

21 REPRESENTATIVE BOYD: He's very interested behind  
22 you, by the way. He stepped right up. They warned him about  
23 me is what they did. That's what they did. This is one thing  
24 just for fun in reference, I -- just would suggest that when we  
25 talk about prevailing wage, I believe some of the other

1   testifiers said that prevailing wage, they wanted the absolute  
2   best possible wage for their guys when they're working on  
3   public works projects.  So, I suggest that it's probably close  
4   to the highest wage.  Your testimony seems to say it's the  
5   average wage.

6                   MR. KUNZ:  I can tell you in my particular industry,  
7   and I referred to Marcellus shale and in the pipeline industry  
8   which we are again doing the, contractors that employ my  
9   members are doing the Yeoman's part of the work in western and  
10  even central -- western/central Pennsylvania, the wages and the  
11  benefits are significantly higher for that type of work than  
12  they are, than the state prevailing wage.  Given that industry.  
13  And that's union and non-union employees alike.  So --

14                   REPRESENTATIVE BOYD:  Good for Western Pennsylvania,  
15  we're happy for them.

16                   MR. KUNZ:  So am I.

17                   REPRESENTATIVE BOYD:  Thanks.

18                   CHAIRMAN MILLER:  Thank you for your testimony  
19  today.

20                   MR. KUNZ:  Thank you.

21                   CHAIRMAN MILLER:  We have one final remaining, as  
22  soon as I find my agenda.  I'll steal Chairman Keller's agenda.  
23  Local government organizations.  We have Ed Troxell, Director  
24  of Government Affairs, PA State Association of Boroughs, Kris  
25  Long, Councilman, Borough of Youngwood, member, PA State

1 Association of Boroughs and Elam Herr, Director of Government  
2 Affairs, PA State Association of Township Supervisors.

3           Okay. And I would also note that the County  
4 Commissioner's Association has submitted written testimony that  
5 you should have. Gentlemen, when you're ready. You may  
6 proceed.

7           MR. TROXELL: Okay. We are all here. I guess we're  
8 -- okay. Good morning, Chairman Miller and Chairman Keller,  
9 Members of the Committee, thank you for this opportunity to  
10 present to you today a little something different on House Bill  
11 1271.

12           My name is Ed Troxell, I'm the Borough Association  
13 Director of Government Affairs.

14           I just want to briefly share with you a little bit  
15 about our association's position on the Bill. For years now,  
16 we have been trying to get this Bill, something like it, a  
17 narrow definition of maintenance, run through the legislature  
18 for a while now. This is very promising for to us see, and  
19 we're very happy that we're here talking about it today.

20           One of the things I want to do is really introduce  
21 Kris Long who is from Youngwood Borough. We have heard a lot  
22 of hearsay today. We have heard that this -- we'll take this  
23 and that and then everything. Why don't we listen to the  
24 source. Why don't we listen to Youngwood who depended on the  
25 Pub 9 which acted as an MOU for them.

1           And I also have with us today, too, in the audience,  
2 Bill Genard who is the Council Vice President of Youngwood  
3 Borough as well as the solicitor, and co-counsel who argued the  
4 Youngwood case, Gerald Yanity. He is here as well. So,  
5 they're more than willing to help share a little bit of input  
6 should the Committee desire that, without much ado.

7           We want to let you know the Boroughs support 1271.  
8 We support Youngwood's plight and I give you Kris Long.

9           MR. LONG: Thank you, Mr. Troxell. Chairman Keller,  
10 Chairman Miller, and all members of the Committee. Thank you  
11 for allowing me come visit with you today.

12           My name is Kris Long. I am a Councilman from the  
13 Borough of Youngwood, Pennsylvania and on behalf of our  
14 borough, I am pleased to testify before this Committee today  
15 concerning the Prevailing Wage Act and House Bill 1271, and how  
16 it applies to the matter of the Borough of Youngwood versus the  
17 Prevailing Wage Appeals Board.

18           I chair the Budget and Finance Committee for the  
19 borough. And with me today as Mr. Troxell had mentioned is our  
20 Council Vice President, Mr. William Genard and our solicitor,  
21 Mr. Gerald Yanity. And he, as Mr. Troxell said, was the  
22 co-counsel arguing the case before the Pennsylvania Supreme  
23 Court.

24           Before I begin, I'd like to give a brief  
25 introduction of my town of Youngwood, Pennsylvania. It's a



1 borough. It's situated within Westmoreland County, which is  
2 five miles -- Youngwood is five miles south of the county seat  
3 of Greensburg. And it borders New Stanton Borough which is at,  
4 as you may know, Exit 75 of the Pennsylvania turnpike.

5           The population of Youngwood is approximately 3300  
6 and the borough operates within a yearly budget of  
7 approximately \$700,000. This borough also plans a biannual  
8 street project that normally is within the \$150 to \$175,000  
9 range.

10           The event that's in question that has brought us  
11 here today as it relates to the House Bill 1271 is the  
12 Youngwood 2005 Street Resurfacing Project. And before I  
13 explain the details of this project and its aftermath, I want  
14 to offer the definitions of two words that I researched in the  
15 Webster Collegiate Dictionary while preparing this.

16           The first is "construct," which is to make or form  
17 new. And the second is the word "maintain," which is to keep  
18 in an existing state of repair, or to preserve from failure or  
19 decline. And then to further define the word "repair" in the  
20 maintain definition, repair is to restore by replacing parts to  
21 make a sound or healthy state, or to renew.

22           The Youngwood 2005 Street Resurfacing Project which  
23 I will further call as "the project" was contracted to include  
24 the resurfacing of five streets, the surface treatment of two  
25 streets, minor drainage work on one street and the patching of

1 one street, and other incidental work.

2           The project did include the milling of asphalt,  
3 which did not constrict or make impassable the streets in  
4 question. The streets were usable between the phases of  
5 milling and paving, which is common during resurfacing projects  
6 in Pennsylvania.

7           Again, the purpose of this project was to maintain  
8 the existing facilities and to preserve them from further  
9 failure or decline.

10           The project did not include any work that caused a  
11 change or increase in the size or the type of the existing  
12 facilities. No part of the project had specifications to  
13 construct or to form or make new.

14           As with other projects of the same scope prior to  
15 2005, this project was budgeted and advertised for bid with  
16 reliance on the Pennsylvania Department of Transportation's  
17 Publication 9 which we have been referring to as the memorandum  
18 of understanding which defined this project as maintenance  
19 work.

20           The Youngwood Borough engineer which is Bove  
21 Engineers relied on this publication from PennDOT as the firm  
22 has done in numerous projects in the past. This project was  
23 awarded for \$183,209 and the work was performed by Pompeii &  
24 Sons of Bentleyville, Washington county. The project, which  
25 again was defined by the Publication 9 was outside the

1 requirements of paying the prevailing wage.

2           Only after the project was completed did Youngwood  
3 receive a notification from the Bureau of Labor Law Compliance  
4 which is the borough stating that the project was defined by  
5 the Bureau as construction work, which then required the  
6 payment of prevailing wages.

7           To fulfill the requirement, the borough was notified  
8 to pay additional money to make up the difference between the  
9 wages bid and the prevailing wage. The funds to pay the  
10 difference were not budgeted, nor were they anticipated as an  
11 expenditure, thus putting additional strain on a balanced and  
12 tight budget.

13           Youngwood challenged the Bureau's determination by  
14 appealing the matter to the Commonwealth Court of Pennsylvania.  
15 Youngwood felt that it had justifiably relied upon the guidance  
16 it received from the state agency of PennDOT in classifying its  
17 projects as a maintenance project. The case then proceeded to  
18 the Pennsylvania Supreme Court which ruled that the process of  
19 milling and repaving, which is the most widely accepted method  
20 of preserving the useful life of a roadway was not maintenance  
21 work, but was rather considered to be the same thing as  
22 building a new road for purposes of the Prevailing Wage Act.

23           The case argued by Youngwood was denied, and as a  
24 result, the borough paid out an unbudgeted difference. And if  
25 I may correct Mr. Kunz's testimony of \$15,000, the amount that

1 was paid was \$23,086.80, and the borough complied in full to  
2 the ruling of the courts concerning the prevailing wage.

3           So, after the payment of the \$23,086.80 to the  
4 Bureau, plus the awarded bid of \$183,209, the project grand  
5 total was \$206,295.80. Because of the ruling of the  
6 Pennsylvania Supreme Court, I am here today on behalf of the  
7 Borough of Youngwood to ask the Legislature for relief for  
8 municipalities such as ours across the Commonwealth.

9           We ask that the Legislators enact into law the  
10 common sense guidelines as set forth by PennDOT's Publication 9  
11 which we had been following for years prior to the Supreme  
12 Court's decision.

13           I would like to stress that Youngwood does not  
14 advocate any repeal of the Prevailing Wage Law, but it does  
15 support common sense changes that will clarify the rules which  
16 municipalities of any size can follow concerning maintenance  
17 and construction when projects are advertised for bid.

18           The clarification of maintenance can be achieved  
19 through House Bill 1271 where the definition will include the  
20 types of activities permissible under PennDOT guidelines, which  
21 Youngwood has relied on and has always been compliant. The  
22 borough supports the payment of prevailing wages for public  
23 projects that are defined as construction. But regarding  
24 maintenance, this clarification is needed for municipalities of  
25 all sizes when projects are bid that will extend the life of

1 existing facilities with work that does not include a change or  
2 increase in the size or the type of the existing facilities.

3           When bidding projects using the clarification of  
4 House Bill 1271 regarding maintenance, municipalities will be  
5 able to provide more service with the taxpayer funding that  
6 will allow the dollars spent to go further toward the  
7 improvement of the existing facilities that the public relies  
8 on.

9           During these uncertain economic times, it is  
10 imperative that all public money be used in the most efficient  
11 manner in order to provide the highest of service and the  
12 greatest amount of return to the citizens of Pennsylvania.  
13 House Bill 1271 will aid in providing this service and return.  
14 The Borough of Youngwood supports House Bill 1271.

15           Again, Mr. Chairman, Mr. Chairman, thank you for  
16 allowing this testimony on this matter. I would be glad to be  
17 able to entertain any questions that I can answer. And if I  
18 may allow the members here, Mr. Yanity and Mr. Genard, to  
19 assist with any concerns. Thank you very much.

20           MR. HERR: Thank you, Mr. Chairman and Chairman  
21 Keller for this opportunity to be here today and comment on  
22 House Bill 1271.

23           First of all, I'd like to say that you have my  
24 testimony, my written testimony. I'm not going to read that.  
25 I'll try to get us a little bit back on schedule. I also would

1 suggest that you refer back to the March 2011 testimony when  
2 you have had time to review it.

3           When you will see that what I will say today -- and  
4 I will take few minutes for some comments -- is to reinforce  
5 what some of the testifiers previous to me have said.

6           I also would like to take the time, Mr. Chairman, to  
7 thank you and your Committee for the number of people who are  
8 still here with me being the clean-up person on the panel.  
9 Usually, it gets very scarce, and I do appreciate all of you  
10 sitting here and going through this.

11           You have heard a lot of interesting comments today,  
12 and you know, some contradict each other. Some are right on  
13 point. What I want to say is -- a couple of -- in my comments  
14 is remember a few things. First of all, we're talking about  
15 bidding and prevailing wage. And if you look at our municipal  
16 codes, what it says is that when we do a project over \$10,000,  
17 we have to go out and bid it. And when we bid a contract, it  
18 says we're supposed to get the lowest responsible bidder. But  
19 with that in mind, realize that when you're doing a project  
20 over \$25,000, it says you've got to get the lowest responsible  
21 bidder, but add prevailing wage to that contract.

22           So, now all of a sudden, you're having the lowest  
23 responsible bidder with additional costs to it.

24           And I'm not here to, as it seems from previous  
25 comments that were made this morning -- I'm not here to bash

1 unions. What I'm here -- and we have been accused of being  
2 here to bash unions, the municipal groups, and we're not.

3           What we're here is -- we want the best work that  
4 meets the standards that are put out there, when the project is  
5 to be done, at a reasonable cost, and a cost that is not  
6 inflated. So, if you -- if you keep that in mind with the few  
7 other comments that I have to add, I think you will understand  
8 where we're coming from.

9           First of all, municipalities are not in the business  
10 to subsidize anyone or anything. You know, we tried to provide  
11 the best services at a reasonable price and basically, if you  
12 look again at our municipal codes at what we're supposed to do,  
13 you also look at the situation with -- in the same as the  
14 Legislature, we don't like to raise taxes, either. But if  
15 costs go up, we have to cover our costs somehow.

16           In a response to a statement about inferior work.  
17 You know, work that is performed for the municipality has to  
18 meet the standards, the requirements, and if it doesn't,  
19 whether it's by a group paying prevailing wage or a group that  
20 isn't paying prevailing wage, we have recourses to go after  
21 that individual or entity if the work is not being done  
22 properly.

23           You know, it was stated that you get better work due  
24 to prevailing wage. If that's the case, then, you know --  
25 they're saying prevailing wage guarantees the work. At least

1 one of the Representatives on the panel will remember a few  
2 years ago when a school district had a project in Lancaster  
3 County done by -- with prevailing wage, done with union labor  
4 -- and again I'm not bashing the union labor for this, but it  
5 was done with prevailing wage. It was found that the school  
6 was built incorrectly and they had to go back for it.

7           So, it isn't the issue that others aren't trained to  
8 do the job right. It's the individuals. It's the company,  
9 whatever you get, that makes a mistake.

10           And there is the cost. In the testimony, I give  
11 examples of municipalities after the Youngwood case where they  
12 were able to compare costs, and showed what the difference was  
13 between what they had bid and what they had to re-bid after the  
14 Supreme Court came down with their decision. Just one example  
15 -- Cranberry Township, Butler County. It's a large township in  
16 Butler County just north of the Allegheny County line.

17           They had bid a project for seven miles of work to be  
18 done within the township and different things. The total cost  
19 was over \$1 million. So, if you put that down, it's  
20 approximately \$142,000 per mile. After they had to rebid it,  
21 the cost came back in at about \$26,000 per mile more.

22           The only difference in the two bids were that  
23 prevailing wage was now being used. In this case, it seems to  
24 be a little higher than what we find is our normal average, but  
25 what it comes down to is the amount of money per mile that they



1 were paying.

2           And just so everyone knows, the same bidder that  
3 received the award before Youngwood got the award after  
4 Youngwood. So, it was the same one. But the end result was  
5 with prevailing wage, they would not have had to pay the  
6 prevailing wage, they could have gotten approximately .2 of a  
7 mile more. Now, again, .2 doesn't sound like much, but you  
8 realize that's over three football fields more of road that  
9 could have been done per mile there.

10           Earlier my name was raised from testimony I gave  
11 back in March. And yes, I did make the statement about oil and  
12 chipping. A lot of our municipalities, and especially in rural  
13 Pennsylvania, as you get into suburbia, and more urban, they  
14 try to avoid it as Representative Miller had said because --  
15 although it will prolong the life of a road, residents hate it.  
16 No matter what you do and follow the standards, when you put  
17 oil and chips down, for some reason, those chips end up on your  
18 car.

19           So, it's a problem. But we are seeing it. It will  
20 prolong the life of a road, of a blacktop road. That's what  
21 we're talking about, a blacktop road. It doesn't cure all of  
22 the ills, and what happens is sooner rather than later, you  
23 will end up having to do a major construction project on that  
24 road and reconstruct the road in its entirety.

25           So, yes, my members are doing things to try to

1 alleviate the cost that has come down based on the Youngwood  
2 case, but it's a temporary patch. It's not a solution.

3           And the other thing to keep in mind with tar and  
4 chips in most cases, that is being done by municipal labor  
5 forces. It's not going out for contract. So we're not hiring  
6 other people to do it.

7           Just two last things I'd like to say is that --  
8 again, and this is a response, and part of the benefit of being  
9 last and in most times as I said before, not too many people  
10 are here to hear it is that you can respond to a couple of  
11 statements. It's not the issue that wages always result in a  
12 better return to the community. From the standpoint is, a lot  
13 of these contractors that come into a municipality are not from  
14 the community. So the wages don't go back to the community.  
15 They may stay in Pennsylvania, that's true.

16           The businesses most likely will still benefit one  
17 way or another, whether prevailing wage is being paid or not,  
18 because they still got to get their supplies. So, what we're  
19 looking at is the ability to provide the services to our  
20 members, or to the residents that our members represent.

21           And the other last statement I have to say is about  
22 training. I commend when the unions say they train their  
23 employees. But there's others out there doing training, too.  
24 You fund training schools in this Commonwealth. They're  
25 training people. The Marcellus employers, the drillers, are

1 working with Lycoming college in providing trained personnel to  
2 help them out. So, training is being done out there. The end  
3 result is, again, municipalities want to get a reasonable  
4 product, a good product, excuse me, at a reasonable cost.

5           Mr. Chairman, that's -- as the other gentlemen here  
6 will attempt to answer any of your questions, and I do  
7 appreciate the time. And again, I do appreciate all of you  
8 sticking around for me as the last testifier.

9           CHAIRMAN MILLER: Thank you all for your testimony.  
10 Is that -- you all concluded. I just wanted to make sure that  
11 you didn't have any follow-up comments.

12           I do have one question for Mr. Long.

13           MR. LONG: Yes, sir.

14           CHAIRMAN MILLER: And I guess maybe it's obvious,  
15 but maybe it's not -- what would have happened if you had known  
16 you had this requirement to bid the prevailing wage when you  
17 bid this amount of money that was increased eventually from  
18 138,000 to 206,000, would you have, within your budget, have  
19 been able to do those projects or would you have had to pull  
20 back? What would you have done at that point? Hindsight, you  
21 got stuck with a bill, you understand.

22           MR. LONG: That's right. Hindsight is 20/20. But  
23 every project that we have bid out since then has been  
24 prevailing wage, and the result of those projects, we have had  
25 to make sure to keep them within our range that we're able to

1 handle within our budget. And also, you know, scale back the  
2 size and the scope of the project because of our amount of --  
3 you know, funds that we allocate towards our biannual street  
4 project, which now we have to make sure to compensate for that  
5 extra prevailing wage and bid it out that way, which means less  
6 work can be performed with monies available.

7           CHAIRMAN MILLER: And I appreciate that. I know my  
8 wife was the Mayor of a -- the borough where we live, and they  
9 tried to stretch every dollar as far as they could. And  
10 certainly, I was aware of these -- this court decision and the  
11 impact on the amount of roads that they could pave at the time,  
12 and the fact that there's been less roads addressed, and to  
13 some extent, less employment because the projects don't get  
14 done. They just get postponed until another year. So --

15           MR. LONG: May I ask your borough, sir.

16           CHAIRMAN MILLER: Jacobus, small southern York  
17 County. Not as big as yours. Representative Boyd.

18           REPRESENTATIVE BOYD: Thank you, Mr. Chairman.

19           So, first of all, with Mr. Long, with your  
20 testimony, we have a project that we absolutely know now that  
21 the -- by going prevailing wage, it increased the cost of the  
22 project 12.6%. And that's empirical, you know, it's not --  
23 it's 40%, it's 50%. We're not throwing numbers around.

24           MR. LONG: These are actual numbers.

25           REPRESENTATIVE BOYD: This was 12.6%.

1 Interestingly, it's -- you're overall budget was \$700,000.

2 Isn't that what you say, annually.

3 MR. LONG: Yes, approximately.

4 REPRESENTATIVE BOYD: So that one project by having  
5 to pay prevailing wage, your annual budget was increased 3.2%.

6 MR. LONG: Again, we do biannual projects.

7 REPRESENTATIVE BOYD: Biannual.

8 MR. LONG: So, we try to --

9 REPRESENTATIVE BOYD: That year it would have been  
10 -- it's just interesting numbers.

11 Elam, I have a question for you. When  
12 municipalities -- when a developer is doing a new development,  
13 and he comes in and has to put in -- he's putting in streets,  
14 curbs, sidewalks, storm water systems, and then it's dedicated  
15 to the township after it's done. Does he have to pay  
16 prevailing wage on those projects?

17 MR. HERR: No.

18 REPRESENTATIVE BOYD: Why?

19 MR. HERR: It's a private contractor. Prevailing  
20 wage only deals with public contractors. When the developer is  
21 doing the roads, he's doing them as a private entity. He hires  
22 the subcontractor, most likely, to do the roads. Once the  
23 roads are built, and they meet specifications of the  
24 municipality and PennDOT regulations, then they can be turned  
25 over to the municipality.

1           REPRESENTATIVE BOYD:  So, there's -- it does raise  
2 an interesting point because ultimately they're public streets?

3           MR. HERR:  Correct.

4           REPRESENTATIVE BOYD:  I think there would probably  
5 be some in the room, my good friend to my right that would say  
6 that probably they should be paying prevailing wage to build  
7 those treats because you want the top quality -- you want the  
8 top quality of work done.  So you certainly would want the  
9 absolute best wages paid for that initial construction.

10           I think I could make the case that it's far more  
11 important to build it right the first time than it is to go  
12 back and resurface it the second time.  Am I wrong in that  
13 assumption?

14           MR. HERR:  When a developer does the roads, they  
15 also have to put up money for security to make sure that that  
16 road --

17           REPRESENTATIVE BOYD:  I --

18           MR. HERR:  -- is done proper so that as you were  
19 saying, being done right the first time.  So, we, as municipal  
20 governments, have the ability to quote, unquote, guarantee that  
21 that road is going to be done.  Because if it isn't, then one  
22 of two things happen; the developer either has to come back,  
23 have it fixed, or we have security to go in and correct the  
24 problem.

25           So --

1 REPRESENTATIVE BOYD: Yes.

2 MR. HERR: The answer that comes back is we want the  
3 best there is.

4 REPRESENTATIVE BOYD: But the irony of it is that  
5 the original manufacturer of that product isn't required -- and  
6 ultimately, it's being dedicated to the township, so it's a  
7 public road.

8 MR. HERR: Correct.

9 REPRESENTATIVE BOYD: Okay. It seems odd that then  
10 any maintenance work or any repair work, not maintenance,  
11 repair work, done to that product in the future will be  
12 required to be paid prevailing wage. It just seems ironic to  
13 me. That's the only point that I was trying to make in that.

14 I'm not advocating for original installation, I  
15 hesitated to go here. I know, you're already drafting the  
16 Bill. I know -- Gergely. And I kind of hesitated to go there.  
17 I just wanted to point out the irony in it.

18 MR. HERR: I think you should have the Chamber of  
19 Business and Industry come in and respond to that question.

20 REPRESENTATIVE BOYD: Well, here's the next question  
21 then. When a developer is doing a major project on a state  
22 road and has to add turn lanes and lights and storm water, is  
23 prevailing wage paid on those additional turn lanes, curbs,  
24 sidewalks, et cetera, et cetera, et cetera?

25 MR. HERR: Is PennDOT doing the work or having a

1 contractor do the work?

2 REPRESENTATIVE BOYD: Now, it will be done by the  
3 developer.

4 MR. HERR: No --

5 REPRESENTATIVE BOYD: The developer is responsible.

6 MR. HERR: If the developer is doing the work, they  
7 will be putting in the turn lanes, not actual work on the road  
8 surface except for tieing it in. But if they're doing the work  
9 on the turn lanes, it does not have to be done with prevailing  
10 wage. If they do any work for PennDOT on the actual roadway,  
11 then most likely it would be prevailing wage.

12 REPRESENTATIVE BOYD: Okay. We have, I mean, a  
13 municipal road --

14 MR. HERR: Well, again, if it's work being done for  
15 the municipality on their road, yes. If it's just putting the  
16 turn lane in and the actual tying in to that road or -- you put  
17 the turn lane against the travel portion, that turn lane, no.

18 REPRESENTATIVE BOYD: So --

19 MR. HERR: It's part of the development.

20 REPRESENTATIVE BOYD: I think I know the answer to  
21 this question, but if you're a municipal -- if you would have  
22 had your own crew do that work, you would have been exempt from  
23 prevailing wage, is that correct?

24 MR. HERR: Correct.

25 REPRESENTATIVE BOYD: Okay.



1           MR. HERR: Excuse me. That's why what we said with  
2 using tar and chip. We're using our own labor forces there  
3 because it's cheaper.

4           REPRESENTATIVE BOYD: By the way, the people who  
5 really hate tar and chip are motorcycle riders.

6           MR. HERR: Yes.

7           REPRESENTATIVE BOYD: They really hate tar and chip.  
8 Okay. I -- I just thought that was sort of some interesting  
9 points. Thank you.

10          CHAIRMAN MILLER: Representative Gergely.

11          REPRESENTATIVE GERGELY: Thank you, Mr. Chairman.  
12 To the councilmen, thank you for testimony today and coming to  
13 Harrisburg.

14          MR. LONG: Thank you.

15          REPRESENTATIVE GERGELY: Just your project costs  
16 didn't stop at the \$206,000 mark. Both you and Mr. Kunz were  
17 wrong. What was the solicitor cost to argue the case all the  
18 way up?

19          MR. LONG: Our solicitor has a fee --

20          REPRESENTATIVE GERGELY: He's -- what did you get  
21 paid? That's a right to know request. How much did you get  
22 paid? (Conversation inaudible )

23          MR. LONG: Is that the testimony?

24          REPRESENTATIVE GERGELY: No. What was the cost,  
25 though?

1 MR. LONG: Our solicitor is under contract, and he  
2 is paid a fee based on the work that he performs. Mr. Yanity.

3 REPRESENTATIVE GERGELY: Mm-hmm.

4 MR. YANITY: That was in 2008. I don't recall the  
5 exact figure. It was far less than the difference between the  
6 prevailing wage payment and the original project cost. I can  
7 assure the Committee of that.

8 REPRESENTATIVE GERGELY: The \$23,000.

9 MR. YANITY: It was far less.

10 REPRESENTATIVE GERGELY: Far less than the \$23,000.  
11 Then you essentially gave them a break, as you are indicating  
12 to me. First of all, we know that. So, he wasn't paid his  
13 prevailing rate --

14 MR. LONG: No.

15 MR. GERGELY: -- to do the job for you.

16 MR. LONG: But granted, there has been, you know,  
17 additional -- this trip today, additional legal work, things  
18 that are -- you know, continuing long after this project has  
19 been finished.

20 REPRESENTATIVE GERGELY: He's not getting paid to be  
21 here today, is he? You haven't decided yet, you have, sir?

22 (Inaudible)

23 REPRESENTATIVE GERGELY: Just checking.

24 CHAIRMAN MILLER: Where are we headed here,

25 Representative?

1           REPRESENTATIVE GERGELY: Mr. Chairman, I wanted to  
2 establish that the costs didn't end. There's a legal issue to  
3 this. We dealt with this yesterday. But my question really --

4           MR. LONG: Yes, sir.

5           REPRESENTATIVE GERGELY: Surrounds all of you. You  
6 have another form of a way to attain product and services and  
7 that's through your Council of Governments.

8           MR. LONG: Yes.

9           REPRESENTATIVE GERGELY: And you do that with many  
10 purchases and many means. Why haven't we visited Councils of  
11 Governments to look at paving and work in that relation? I  
12 don't know if my union members -- friends appreciate me asking  
13 that, but I think it's something that maybe it's the way to do  
14 it, and then the COG representing all of you gets the bids, and  
15 everyone is not as parochial. Their engineer, their attorneys  
16 negotiate with a bigger contractor for a lesser cost and  
17 everybody saves money because not just Youngwood but New  
18 Stanton and everybody in the Westmoreland Council of  
19 Governments gets their paving at a lesser cost because it's a  
20 bigger buy.

21           MR. LONG: That is true and there is a central  
22 Westmoreland Council of Governments that the Borough of  
23 Youngwood has participated with purchases and things of that  
24 like. But most recently, we have been working in conjunction  
25 with our neighboring borough, which does include Hunker and New

1 Stanton to work together to have a larger scope of a street  
2 project in order to look for better costs.

3           You know, having one contractor come in to do the  
4 work in three locations, which, you know, hopefully would, you  
5 know, get more of a project, number one.

6           Number two, you know, have one contractor do the  
7 complete job, which would lower their costs by reducing the  
8 amount of immobilization that they would have to make between  
9 moving from one job to the next since our boroughs are in close  
10 proximity, and also, you know, to allow good cooperation  
11 between our neighboring boroughs, you know, in an effort to be  
12 -- you know, most efficient cost-wise and service-wise for our  
13 residents.

14           REPRESENTATIVE GERGELY: Have you realized savings  
15 from that cooperative agreement?

16           MR. LONG: We are currently, you know, working on  
17 that. We do not have a project together that has been bid out  
18 or realized as of now. But it is something that we are  
19 stressing more, and working more towards.

20           REPRESENTATIVE GERGELY: Let me ask you this way --  
21 in other means, say the salt purchasing program or other work  
22 that you do -- how much do you realize in savings?

23           MR. LONG: It's a substantial amount, especially the  
24 salt, through our COG program in Central Westmoreland COG.

25           REPRESENTATIVE GERGELY: So, interestingly enough,

1 by the testimony of Mr. Herr, I think you said the costs go up  
2 between 7 to 12%. Possibly if we really do serious  
3 consideration of multiple municipal agreements when you  
4 consider paving, the 7% to 12% additional cost reduces  
5 significantly because contractors, especially the bigger ones  
6 are more interested because there's more roadways to pave and  
7 more of a way that they can make their profits from it, yet pay  
8 their workers the right way, and again, protect and make sure  
9 they're Pennsylvania workers.

10           MR. LONG: True. I want to stress again that, you  
11 know, this project that we're talking about, between our three  
12 local boroughs, you know, it's not something that has been put  
13 together by a COG. It's just our own -- our own relationships  
14 between the three of us because we all know each other and work  
15 with each other closely. Whether it's between school or work  
16 or -- you know, social functions that we all know each other to  
17 try to work together to do the best for our citizens.

18           REPRESENTATIVE GERGELY: And I think everyone  
19 appreciates that endeavor. And to the Chairmen, I think when  
20 we visit issues like this, when you look at savings of cost and  
21 we don't have that discussion about how governments -- our  
22 local governments operate, not that I want to force you to do  
23 this, but obviously you have marked savings when Councils of  
24 Governments participate or you do somethings together.  
25 Everybody benefits from those initiatives.

1           MR. HERR: Just two quick responses. One, we did a  
2 survey, I guess it's almost two years ago now, about 68% of our  
3 members have some type of intergovernmental cooperation. And  
4 some of it is what we're discussing today. They either do it  
5 with their own road crews or they go out and hire.

6           The second thing is, just to keep in mind, whether  
7 you're using prevailing wage or not, we cannot limit to  
8 Pennsylvania contractors or employees. The state does have  
9 "buy American" requirements on there, and we at one time, the  
10 State Legislature actually looked at "buy Pennsylvania" and  
11 that was thrown out.

12           So, prevailing wage does not guarantee that we'll  
13 get Pennsylvania workers, especially if you are on a border  
14 county. You're going to -- a lot of cases get contractors, and  
15 their employees from out of state. Just something --

16           REPRESENTATIVE GERGELY: Let's just hope they're  
17 from a state, though.

18           MR. HERR: Pardon me?

19           REPRESENTATIVE GERGELY: Let's just hope they're  
20 from a state.

21           MR. HERR: Yes, I would agree with that statement.

22           REPRESENTATIVE GERGELY: Thank you, Mr. Chairman.

23           CHAIRMAN MILLER: Representative Fred Keller.

24           REPRESENTATIVE KELLER: Thank you, gentlemen. I  
25 appreciate your testimony, and I know we're all here to

1 determine how we can best get value for the residents of  
2 Pennsylvania. I just have a couple of questions on road  
3 contracts.

4           On your road contracts, as far as the bid, what kind  
5 of things are included in that when you look at that as far as  
6 price, specs --

7           MR. LONG: Well, Mr. Keller, whenever we put  
8 together a bid specification, our borough engineer, you know,  
9 and our director of our public works goes out, surveys the  
10 town. We have a list of the areas that need the most  
11 attention.

12           REPRESENTATIVE KELLER: I guess I'm looking at  
13 specific -- if I can just sort of -- I want to get to the point  
14 here real quickly. When you look at this and determine  
15 prevailing wage, what things are different included in a  
16 prevailing wage bid versus a non-prevailing wage bid? Is  
17 training mentioned in the bid anywhere?

18           MR. LONG: It's not. You know, at this point, and  
19 since our court case, we have -- we have bid it as prevailing  
20 wage ever since our case from 2008. So, we bid it based on the  
21 need, you know, the areas that we feel that need the most  
22 attention, and with the monies that we have available to do as  
23 much as we can with those monies.

24           REPRESENTATIVE KELLER: Okay. Then just going back  
25 to this determination --

1           MR. LONG: There are no specifications for, you  
2 know, what each worker gets paid, what -- you know, type of  
3 equipment that they use, things like that.

4           REPRESENTATIVE KELLER: Okay. Then on the  
5 prevailing wage --

6           MR. LONG: The training that they have.

7           REPRESENTATIVE KELLER: -- on a prevailing wage job  
8 like in this instance where you said you have to go back and  
9 it's a prevailing wage job now, the only thing you had to go  
10 back and do is pay more wages?

11          MR. LONG: Yes.

12          REPRESENTATIVE KELLER: You didn't have to have it  
13 inspected to quality?

14          MR. LONG: We always do have it inspected to  
15 quality.

16          REPRESENTATIVE KELLER: Post this decision. This  
17 decision didn't change the inspection for quality.

18          MR. LONG: No. We always -- our borough engineer is  
19 always on the job to watch and make sure that the work is done  
20 properly.

21          REPRESENTATIVE KELLER: So basically, all this does  
22 then, here again, is it just addresses the wages that are paid.  
23 It doesn't address that this person has to have X-amount of  
24 days training or hours training, just so long as the whole job  
25 meets the quality it's supposed to meet?



1 MR. LONG: That's correct.

2 REPRESENTATIVE KELLER: Okay, thank you.

3 CHAIRMAN MILLER: Representative Murphy.

4 REPRESENTATIVE MURPHY: Mr. Chairman, thank you.

5 I'm going to do everyone here in the room a huge favor. I'm  
6 going to digest the information we have received here today and  
7 I will put off my questions until another time. Thank you.

8 CHAIRMAN MILLER: Representative Kampf.

9 REPRESENTATIVE KAMPF: Sorry, I can't do the same  
10 thing. I guess I could. But -- Ed and Elam, maybe this is  
11 directed to you. My recollection just in reading the rules and  
12 my experience as a supervisor in Chester County tells me that  
13 if a township, say, hires an HVAC company to come in and, you  
14 know, do some quote, repair work, unquote, on the system. But  
15 if they determine that, say, one of the big chillers or big  
16 piece of the infrastructure for the HVAC system has to be  
17 replaced, that that triggers prevailing wage. Am I right about  
18 that?

19 MR. TROXELL: Normally, any public work,  
20 irregardless of when it hits the \$25,000 range automatically  
21 goes into that column of having to use that wage scale. So,  
22 it's --

23 REPRESENTATIVE KAMPF: Even if the person is just  
24 coming in initially to do repair work, meaning, you know, see  
25 if the system is working. Gosh, it's a little cold in here

1 today -- you know, you have to adjust the controls.

2 MR. TROXELL: Yeah. I mean, once he goes over --  
3 once they hit that threshold, it goes into the wage.

4 REPRESENTATIVE KAMPF: Even if it's not replace --  
5 it's not replacing. It's just maintaining? My interpretation  
6 is if you're maintaining, you know, you're just making sure  
7 it's working right, everything is okay, you don't have to pay  
8 prevailing wage. Elam, do you agree with that?

9 MR. HERR: If I understand what you're saying,  
10 there's two different questions there. One is, for our  
11 maintenance contract to come in and make sure that the system  
12 runs properly to keep the temperatures operating where you want  
13 them. That is a maintenance type of activity.

14 REPRESENTATIVE KAMPF: Right.

15 MR. HERR: But when you end up going to something  
16 major as the unit that you said breaks down, then you get into  
17 this where the -- you're going to have to bid it out most  
18 likely because it's over \$10,000. If it hits the \$25,000 range  
19 in there, then it's going to have to be prevailing wage for  
20 those people to come in, tear it out, the unit, and put in the  
21 new unit.

22 REPRESENTATIVE KAMPF: Right.

23 MR. HERR: So, you do have two different things.  
24 The maintenance contract, which before I left there was  
25 somebody there working on our HVAC in our office. He was there

1 doing some maintenance work.

2 REPRESENTATIVE KAMPF: Have you heard of situations  
3 where the same company literally -- you're paying the guy to do  
4 the maintenance work at one rate, but then all of a sudden,  
5 he's got to actually replace one of the bigger units and then  
6 you got to pay him prevailing wage? Have you heard of that?

7 MR. HERR: If it's over \$10,000 and we have to go  
8 out and bid it, and it's over \$25,000, then yes. You could be  
9 paying two different rates.

10 And actually, in some cases, companies do have a  
11 maintenance contract that you can work on that they pay a  
12 certain amount for, and the construction part of it is at a  
13 different rate.

14 REPRESENTATIVE KAMPF: Okay. Thanks.

15 MR. HERR: You do have that.

16 REPRESENTATIVE KAMPF: All right.

17 CHAIRMAN MILLER: Representative Perry.

18 REPRESENTATIVE PERRY: Thank you again, Mr.

19 Chairman.

20 Elam, I'm going to start with you. Tell me what the  
21 percentage is on that Cranberry job. The increase we have  
22 heard. I agree, we hear anywhere from 5% to 40% and a little  
23 anecdotal information here on your particular borough, sir, on  
24 that one. But just for the record here, do you have a  
25 percentage on that?

1           MR. HERR: The percentage is right around 20% in  
2 that situation in Cranberry Township and that was stated -- we  
3 also talked to the Township and it was reported in the papers  
4 out in Western PA.

5           REPRESENTATIVE PERRY: Okay. So, you get a 12%  
6 increase in your borough cost and Elam, you are citing an  
7 increase, the same contractor, same job, 20%. So, somewhere  
8 between 12 and 20, at least anecdotally for this particular  
9 circumstance is a fair assessment, I think?

10          MR. HERR: Yes, but I just want to put on the  
11 record, in -- overall, we have seen it's approximately about 7%  
12 to 12% overall the contract is going up. The labor cost is  
13 different, and that's usually the higher number.

14          REPRESENTATIVE PERRY: But that was just -- we're  
15 just talking about the labor on these two projects, just labor  
16 alone.

17          MR. HERR: And this year labor cost was 20%.

18          REPRESENTATIVE PERRY: Just labor alone. Labor  
19 alone. Okay. And that's what I'm going to get to. Labor  
20 alone is somewhere between 12% and 20% on these two particular  
21 hard, fast contracts?

22          MR. HERR: All right.

23          REPRESENTATIVE PERRY: I want to go to Kris. I  
24 appreciate you taking the time here. Getting back to my  
25 earlier questions regarding some other testifiers, and if

1 anybody has come with you can also testify to these, you don't  
2 look like a guy that's as old as I am, and I don't know how  
3 long you have served, so I'm looking for some historical  
4 perspective about how this has been done historically in  
5 Pennsylvania since 1961. If it flip-flopped from  
6 administration to administration, why wasn't this -- why hasn't  
7 this been assailed before in the courts? And how do boroughs  
8 know? How do they -- what is your experience? Can you give me  
9 any historically perspective?

10 MR. LONG: Well, again, in 1961, I was minus 10  
11 years old. Okay?

12 UNIDENTIFIED SPEAKER: I hate you.

13 MR. LONG: But other than -- other than this case  
14 that, you know, I'm involved with, you know, with my borough, I  
15 have been a Borough Councilman since 2002. I do not have the  
16 background as to other cases, you know, other ways.

17 REPRESENTATIVE PERRY: Do any of the folks that are  
18 with you have any historical perspective?

19 MR. LONG: I do know that within our own borough  
20 that the procedure that we always followed to bid out our  
21 street projects, you know, again since I have been involved in  
22 2002, has been the same as when it was in 2005. Just here at  
23 2005 is when this happened.

24 REPRESENTATIVE PERRY: So, for those three years it  
25 was all the same and there was no trouble.

1 MR. LONG: That's correct.

2 REPRESENTATIVE PERRY: Nobody was suing you, you  
3 were operating within the confines of the laws and the  
4 regulations?

5 MR. LONG: That's right, which we have always  
6 complied.

7 REPRESENTATIVE PERRY: Some other folks want to  
8 chime in. Yes, sir.

9 MR. HERR: I'm a dinosaur sitting here.

10 REPRESENTATIVE PERRY: You said that, not me.

11 MR. HERR: Yeah, well, since he's been born, I've  
12 almost been here that long. Yeah, I started with the  
13 Association in '76. So, I have 30-some years.

14 The issue of the prevailing wage as it dealt with  
15 maintenance and construction for road projects has flip-flopped  
16 over the years with different administrations. We have gone  
17 back. How does the municipality know about it? PennDOT puts  
18 out a publication worksheet that shows what is and is not  
19 construction and maintenance. I just downloaded this on the  
20 15th of this month.

21 Basically milling with or without thin HMA overlay  
22 where in course construction. A few years back, it was  
23 maintenance. The issue prior to Youngwood at the point of  
24 time, it was looked at as maintenance, it was changed to  
25 construction. Governor Rendell, you know, turned it back. It

1 went on to the courts.

2           So, it has been a roller coaster ride during my  
3 tenure with the association.

4           Thank you. Do you have anything to --

5           CHAIRMAN MILLER: Thank you. Do you have anything  
6 to --

7           REPRESENTATIVE PERRY: Okay. I appreciate that.  
8 Back to Mr. Long here, this \$23,086 additional cost borne out  
9 of the requirement to pay the prevailing wages. Is there any  
10 reason -- how -- because there was other testimony here that it  
11 was \$15,000. Is that public information? Is there any reason  
12 to be confused there? Because we're trying to get to the facts  
13 and the truth here and sometimes we get --

14           MR. LONG: We have -- I had our borough  
15 secretary/treasurer check these figures. And there was a check  
16 written, you know, to the Commonwealth of Pennsylvania, Bureau  
17 of Labor and -- the Bureau, and it was for \$23,086.

18           REPRESENTATIVE PERRY: Is that public information?

19           MR. LONG: Sure it is.

20           REPRESENTATIVE PERRY: Is there any reason in your  
21 mind that you know of that a figure of \$15,000 would be  
22 confused?

23           MR. LONG: I don't know --

24           UNIDENTIFIED SPEAKER: [Inaudible comments]

25           REPRESENTATIVE PERRY: All right. Regarding the

1 publication out -- the publication, the --

2 [Unidentified voice speaking in the back of the room]

3 REPRESENTATIVE PERRY: That's the number the  
4 attorney used in the court case.

5 UNIDENTIFIED SPEAKER: [INAUDIBLE] What Youngwood  
6 paid is not public information. You can't go down there and  
7 say show me all of your --

8 CHAIRMAN MILLER: Okay, but -- and I appreciate the  
9 information, but I'm going to have to have you come take a mic  
10 if we're going to keep this going because it's not being --  
11 it's just not being picked up.

12 UNIDENTIFIED SPEAKER: [INAUDIBLE]

13 CHAIRMAN MILLER: Understood. Understood.

14 REPRESENTATIVE PERRY: Sorry, Mr. Chairman. I want  
15 to talk about this publication where you bid the job based on  
16 what you thought to be the circumstances under which the job  
17 was to be bid. Is that -- do you know if that's available or  
18 at the time was available to all municipalities?

19 MR. LONG: I'm sorry, say that again.

20 REPRESENTATIVE PERRY: The publication that you  
21 used.

22 MR. LONG: Publication 9.

23 REPRESENTATIVE PERRY: Right.

24 MR. LONG: Yes.

25 REPRESENTATIVE PERRY: It was available to all



1 boroughs and authorities and political subdivisions?

2 MR. LONG: As far as I know, across the  
3 Commonwealth. It was available to us.

4 REPRESENTATIVE PERRY: Okay. So, it has been  
5 implied earlier in this room that you folks actively sought to  
6 dissuade and avert the law. I mean is there any -- you're  
7 sitting in these borough council meetings determining how the  
8 project is going to be bid, and what the scope of the work is,  
9 and that type of thing. Was there any discussion at all inside  
10 of closed doors, outside of closed doors of averting the law  
11 for purposes of avoiding prevailing wage and acting out of  
12 accordance with what was given to you by the state agencies?

13 MR. LONG: Not at all, no.

14 UNIDENTIFIED SPEAKER: And to add, Representative,  
15 we're very, very sure to tell --

16 CHAIRMAN MILLER: Please pull the mic closer.

17 UNIDENTIFIED SPEAKER: We're very, very adamant of  
18 using the Pub 9 and making sure that they have the latest  
19 editions of it as well. If there's any changes made to a Pub  
20 9, they go out to all of the recipients of liquid fuels funds.  
21 They go out to all of the recipients with a strike-off letter  
22 saying this will replace your current Pub 9 with the new one.

23 REPRESENTATIVE PERRY: And as you understand it, and  
24 as I understand it, but I want to get your understanding, House  
25 Bill 1271 would clarify exactly using the same language in that

1 publication 9 that was sent out to the boroughs and political  
2 subdivisions regarding maintenance as opposed to construction  
3 and how they were to bid and pay for said work?

4 UNIDENTIFIED SPEAKER: Exactly.

5 REPRESENTATIVE PERRY: So this isn't like --

6 UNIDENTIFIED SPEAKER: It's a very narrowly tailored  
7 bill that goes after a specific issue that we need some clarity  
8 of law on instead of like you are learning from the history of  
9 it is that it's bounced back and forth, back and forth,  
10 depending what administration perspective is taken.

11 What we need to do with something like this, in  
12 these times is to narrow it down, know exactly what is  
13 construction, what exactly is maintenance. And you know what,  
14 I often say, it's almost like a jobs bill. Because then I know  
15 what's going to fall under maintenance, how far my dollars are  
16 going to go and they're the taxpayer dollars and how far they  
17 go.

18 REPRESENTATIVE PERRY: Okay. Thank you. Mr.  
19 Chairman, just a couple of statements. I know you want to wrap  
20 it up. It is clear to me that this has been a thing that we  
21 really can't rely on for consistency as far as our political  
22 subdivisions, our local governments, et cetera. And that is a  
23 reason to address it.

24 For those who have said that the Supreme Court has  
25 already decided and there's no reason to forge on here, I

1 reject that out of hand. There are bills passed and signed  
2 into law changing law every single year in this body, and  
3 that's what we're here to do.

4           The Supreme Court are not the lawmakers. They sit  
5 here in these chambers, and the other thing that I reject is  
6 the supposition that you should use the COG, use whatever that  
7 you should use to make things more efficient, and by virtue of  
8 doing that, we should do nothing else.

9           Let me be clear. On behalf of the taxpayers that I  
10 represent, I expect you to do everything, including using the  
11 Council of Governments to increase efficiency. And if  
12 necessary, shouldn't have to pay prevailing wage if it's  
13 appropriate to save money for the taxpayers. And I reject  
14 those notions out of hand. Thank you, Mr. Chairman.

15           UNIDENTIFIED SPEAKER: The Borough of Youngwood  
16 supports that, too.

17           CHAIRMAN MILLER: I appreciate your testimony today,  
18 gentlemen.

19           Before I totally adjourn this hearing, I would let  
20 the Committee members know, I'm sure you're tired of seeing me  
21 after the past couple of weeks. There will be no more meetings  
22 and hearings in August, but stay tuned. I'll be consulting  
23 with staff and Chairman Keller, and we'll put out a September  
24 schedule as soon as we can. Thank you very much. This hearing  
25 is adjourned.

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MR. LONG: Thank you.

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I hereby certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

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Marjorie Peters, RMR, CRR