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Testimony before the House Committee on Labor & Industry

I appreciate the opportunity to appear before you regarding what has been labeled the Open Workforce Initiative legislation.

Throughout my career, I have had the privilege of representing a unique group of individuals. So unique in fact that they have consistently been recognized by all branches of government as being so unique and different from other classes of employees that legislation and court decisions, of necessity, treated them differently. Sometimes different treatment created different burdens and responsibilities which I would like to address with you now.

The classes of employees that I have been proud to spend my entire career representing are those persons who have spent their careers on the frontlines protecting the citizens of this Commonwealth from the criminal element. I am speaking of course of the Pennsylvania State Troopers and Pennsylvania State Corrections Officers.

As I stated earlier, the incredible responsibility placed upon the shoulders of these individuals has been rewarded by legislation and court decisions affecting the families and recognizing that pensions and other emoluments must be different based upon the nature of their professions.

In addition to the benefits conferred upon them, there are also concomitant burdens placed upon them as well.

The traditional "tools" granted to unions have not been granted to these individuals. The right to strike, foremost among them, is specifically prohibited to these individuals. In its place, interest arbitration has been substituted.

Interest arbitration is not a gift for a select few employees. Instead, it is a devise borne of necessity to ensure the uninterrupted delivery of the most vital and critical of public services --- those which represent the core functions of government --- police and fire services, those who are essential to the functioning of the courts, and those who maintain vigil over the incarcerated.

In 1995, our Supreme Court traced the lineage of interest arbitration based units in the public sector:

> By the late 1960s, the failure of labor relations law to protect the rights of public employees had led to illegal strikes and a general breakdown in communication between public employers and their employees; the system was in clear need of revision.
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> In the late 1960s and early 1970s, the legislature enacted sweeping reforms of public labor relations law. The law relating to police and fire personnel, whose services are so vital to an ordered society, was addressed first. Act 111 was created to strike a more perfect balance between the need of the Commonwealth to insure public safety and the rights of the worker. To protect the need of the Commonwealth, police and fire personnel were still denied the right to strike. The rights of the worker were to be safeguarded through collective bargaining rights and arbitration provisions. The interests of labor and management, as well as those of the general public, were to be safeguarded....and decrease the chance that the workforce would be destabilized...a state harmful to all parties.

The system that the General Assembly devised to protect the interest of critical employees, their public employers, and most of all the citizens who rely upon the essential services they provide served as a mixed blessing upon these employees. Such workers were deprived of the most powerful bargaining tool in existence – the right to strike – which other public employees retained. In exchange, these employees were

provided with the substitute right to have their employment disputes resolved through interest arbitration. However, with this substitution came a heavy responsibility – the duty of fair representation toward all members of the bargaining unit imposed by the concept of exclusivity embodied by the law.

Public sector labor representatives do not get to pick and choose who they represent when securing a collective bargaining agreement. That decision is made for them by the law. While these entities have flexibility in dealing with the complaints of employees on individual matters, the law dictates that all must be treated equally when the contract that applies equally to all is achieved.

When these concepts are applied to interest arbitration units, the burden imposed are exponentially increased because ultimately, if agreement is not reached with the employer, the representative is compelled to proceed to interest arbitration. It is a process far removed from traditional strike-unit labor relations. As an adjudicative proceeding, interest arbitration is not an inexpensive process for a bargaining representative. It involves the compensation of arbitrators and the engagement of professionals from multiple disciplines in order for the process to adequately represent all members – costs which must be incurred to benefit all. Yet under the law as it exists today, employees retain their right to choose – the right to choose to be represented or not, the right to choose to join a union or not. The only choice that they are denied is that to freeload, to avoid paying their fair share, when it comes to securing the contract under which they themselves benefit.

The initiatives before the Committee today do not appreciate this reality. Instead, with respect to the central function of securing a collective bargaining agreement, these

measures would still encumber the bargaining representative with the substantial costs necessary to fulfill their legal obligation while in turn absolving employees who reap the financial benefits of these efforts from contribution toward those efforts in the name of "choice". In reality it is the "choice" to take a free ride on the shoulders of other employees.

While the proposed legislation before you purports to excuse collective bargaining representatives from the representation of unit members who chose not to financially contribute in individual grievance matters, none relieves the representatives from the duty of fair representation in the collective bargaining process toward achieving a collective bargaining agreement under which such members would benefit. This is where the true costs are to be found.

Many of you sitting on this committee and those who introduced this legislation have also been involved with the introduction of House Bill 1418, which recognizes the concepts which I have outlined for you today regarding the uniqueness of that class of individuals tasked with protecting the citizens of this Commonwealth, by exempting them from the same prohibitions contained in House Bill 50.

It is strongly urged that recognition should be contained in this other legislation as well to continue the long course of recognition, respect and responsibility earned by those individuals who spend their careers risking their lives to protect all of us.

I have consistently been impressed with this body's resistance and opposition to the concept of "unfunded mandates" from the federal government. What is striking is that which has been so often complained by this body is so firmly embodied in the proposals before you. In essence, the proposals, taken together, place a legal duty upon

collective bargaining representatives to expend funds to benefit unit members who of their own volition may excuse themselves from any financial responsibility associated with those benefits. In that sense, the financial benefit of a collective bargaining agreement, achieved and paid for by others, inures to the benefit of those who choose the "free ride". It is, the very definition of an unfunded government mandate, no different than requiring individuals to carry health insurance so that those who do not will share in the benefit equally.

There is a reason that the equitable distribution of the costs of securing a collective bargaining agreement has historically been referred to as "fair share". This moniker is in recognition that those who benefit from an endeavor be held to the same responsibility for paying for it in proportion to the benefit achieved. It is no different a concept than that embodied in House Bill 1 of 2011, enacted this year and also bearing the title of "Fair Share", whereby no one is to bear more than that to which they are personally responsible.

In an interest based bargaining unit, all enjoy the benefit of the contract which is achieved by the representative. None should be able to enjoy such benefits at the expense of others as such does not achieve an "open workforce", but rather an unfunded mandate to the responsible and a free entitlement to the selfish.

Thank you for the opportunity to address the Committee. I would be happy to respond to any inquires that members may have of me.