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HOUSE OF REPRESENTATIVES

LABOR & INDUSTRY COMMITTEE

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HEARING ON
HOUSE BILL 1367 (MILLER)
AND HOUSE BILL 1685 (BEAR)

BEFORE:

HONORABLE RON MILLER, MAJORITY CHAIRMAN
HONORABLE WILLIAM KELLER, MINORITY CHAIRMAN
HONORABLE RYAN AUMENT
HONORABLE JOHN BEAR
HONORABLE STEPHEN BLOOM
HONORABLE SCOTT W. BOYD
HONORABLE SHERYL M. DELOZIER
HONORABLE H. WILLIAM DEWEESE
HONORABLE SETH M. GROVE
HONORABLE WARREN KAMPF
HONORABLE ROB W. KAUFFMAN
HONORABLE FRED KELLER
HONORABLE KEVIN MURPHY
HONORABLE SCOTT PERRY

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SAFETY & LABOR-MANAGEMENT RELATIONS

PENNSYLVANIA DEPARTMENT OF LABOR & INDUSTRY

CHAIRMAN MILLER: Okay folks. We're getting ready to get started here and I apologize for the delay. I also apologize for the close quarters. There are a couple of chairs here, we expect about five more committee people so if you want to grab three or four of these chairs, pull them around to the side and have a seat. You know, we're not going to stand on any major protocol that way. With that, I will call this hearing of the House Labor and Industry Committee to order.

We had a hearing before on repealing wage issues; today we are looking at House Bills 1367 and 1685. 1367 proposes to amend the Prevailing Wage Act, to require the use of occupational wage data to determine prevailing wage rates on a county-by-county basis. House Bill 1685, Representative Bear's bill, proposes to amend the Prevailing Wage Act to require the use of the Federal occupational classifications to determine the scope of craft, classification of workmen. With that said, Representative Bear and I have both chosen not to do any remarks on the bills; we have a full slate of testimony. I do need to remind everyone that this hearing is being recorded and streamed live and also available for showing on PCN [Pennsylvania Cable Network], just so everyone's aware of that. I would start at my right with Representative Bloom and just ask all the Committee Members to introduce themselves.

REPRESENTATIVE BLOOM: Stephen Bloom, representing the 199th District.

REPRESENTATIVE F. KELLER: Fred Keller, representing [the] 85th District, Union and Snyder Counties.

REPRESENTATIVE AUMENT: Ryan Aument, representing the 41st Legislative District.

REPRESENTATIVE W. KELLER: Bill Keller, Philadelphia County.

CHAIRMAN MILLER: And I'm Ron Miller, Chairman of the Committee.

REPRESENTATIVE BEAR: John Bear, 97th District, part [of] Lancaster County.

REPRESENTATIVE GROVE: Seth Grove, 196th District, parts of York County.

REPRESENTATIVE PERRY: Scott Perry, 92nd District, Northern York and Southern Cumberland.

CHAIRMAN MILLER: And we are scheduled to be joined by other Members. During the course of the hearing, we'll try to introduce them as they come in.

Our first panel – our first testifier is Hank Butler, Executive Director of the Pennsylvania Council of General Contractors.

MR. BUTLER: Thank you, Mr. Chairman and Members of the Pennsylvania House of Representatives Labor and Industry Committee, for the opportunity to speak with you today in support of House Bills 1367 and 1685. The Pennsylvania Council of General Contractors (PennCGC) believes in the principles of fair, efficient, and competitive construction – bidding, awarding, and building. This morning the PennCGC is submitting testimony in support of House Bill 1367 and House Bill 1685. To accurately convey our support for these two bills, I wish to look at each bill separately.

The intent of House Bill 1367 shall enable Pennsylvania's Occupational Wages to set the Prevailing Wage for public construction throughout the Commonwealth. The dictionary defines the term "prevailing" as: dominant; prevailing; common. And yet, in Pennsylvania public works arena, the construction Prevailing Wages are set at the ceiling, the highest level. This ceiling is currently set by the nearest union's negotiated wage, even if there are no union locals in a respective county. It has become commonplace to set the Prevailing Wage at this ceiling and expect all companies to use this wage in their bidding procedures. A ceiling wage is not a prevalent or common wage.

Pennsylvania's Occupational Wages are collected by the Pennsylvania Department of Labor and Industry for all occupations: teachers, truck drivers, physicians, construction workers, et cetera. It is collected in a non-partisan, unbiased manner. The collections truly reflect the mean and median of wages for occupations. These wages are the common prevalent wage for each respective county in Pennsylvania. The Occupational Wages determined by the Department reflect the true intent of this 50-year-old act.

Some supporters of Prevailing Wages advocate using surveys on public and private construction work to determine the Prevailing Wage. In the past, attempts to use this "survey concept" have resulted in privacy issues regarding employees' private information, lawsuits filed by both labor and businesses, misleading data, and consequently, boycotts from contractors.

If the Occupational Wages are used, there's no need for a survey. The Occupational Wages is a survey already being completed so there is no additional cost to the taxpayers. The Department of Labor and Industry already collects the prevalent and common wages for all occupations on a county-by-county basis in a non-partisan, unbiased manner – free from privacy issues, lawsuits, and misleading information. It is time to make the Prevailing Wage in Pennsylvania the true intent of the lawmakers who wrote and passed the bills 50 years ago; a prevalent, common wage for each respective county.

Onto the next bill, House Bill 1685. House Bill 1685 develops a standard set of job responsibilities for public construction enforced consistently throughout the State. Currently, prevailing wage job responsibilities – the work a laborer does versus the work of a carpenter or an electrician – are enforced using regional union trade agreements between the union local, the union contractor, and other union locals in other trades. These agreements are confidential and

available only to contractors who work under a collective bargaining agreement and building trade local unions who negotiate the work rules between each other.

Here is the reality: if you are a contractor who is not signatory to a collective bargaining agreement, you cannot see the work rules. Therefore, if you cannot see the rules, you have to guess. If you guess wrong, you are penalized by Labor and Industry. If you are an employee who chooses not to work for a union, you cannot see these work rules. If you cannot see these work rules, you have to guess. If you guess wrong, you're penalized by Labor and Industry.

Compounding the problem, the Prevailing Wage enforcement officers make their judgments independently. They do not have to consult with each other or match decisions statewide; nor do they have to be consistent. This hinders contractors who wish to work in other areas of the state, because they have to, once again, guess the work rules that are secretive and subjective to interpretation.

In addition, contractors and employees who choose not to be signatory to a collective bargaining agreement are also penalized because of their multi-tasking abilities to work on public work sites. In collective bargaining work, the work rules between the different trades are clearly defined between themselves. The workers only work on these regulated tasks. Without enforceable job responsibilities made public in the beginning of the bidding process, contractors and employees have to guess their trade pay rate for work performed. If they guess wrong as interpreted by the Prevailing Wage investigator, the contractor is penalized. An example for that would be, quite frankly, when an electrician moving wiring to and from a site, is it a laborer's rate or an electrician's rate? If a roofer moves roof shingles from a pile to the top of a roof, what do they pay? Do they pay the laborer's rate or roofer's rate? They have to guess.

House Bill 1685 will create a standard set of job responsibilities for public work consistent throughout the State; that all contractors and employees know the rules and regulations. Plus, the Prevailing Wage enforcement officers can enforce the Prevailing Wage consistently.

For years, we've heard accusations of companies evading Prevailing Wage to win work. Previous administrations have collected millions of dollars in penalties to create the impression of tough enforcement. This is neither an appropriate use of oversight, nor a constructive use of public or private resources. There are also statements that the Prevailing Wage job requirements are on the Labor and Industry website. This website has vague information, varies from county to county, and is not used by the Prevailing Wage enforcement officers. House Bill 1685 will create reliable standards for bidding, working, consistent in the enforcement of Labor and Industry.

House Bills 1367 and 1685 will restore the true purpose of Pennsylvania's Prevailing Wage Act. All contractors will work under the same rules and regulations. There will be a fair and even playing field in public construction. Every contractor will know their responsibilities, be paid accordingly, and have the confidence that their good faith decisions will not be capriciously overturned.

I once again thank the Committee for the opportunity to present my testimony before you today.

CHAIRMAN MILLER: Thank you for your testimony. Do I have questions? Chairman Keller?

REPRESENTATIVE W. KELLER: Thank you Mr. Chairman. Mr. Butler, thank you. Can you tell me what kind of work and wages are included in the surveys for the Occupational Wage data?

MR. BUTLER: The Prevailing – well, I have some – Prevailing wage data consists of everything from physicians to teachers. When it comes to construction, each occupation is there. You have brick masons, carpenters, cement masons, construction laborers, heavy equipment operations, so on and so forth, for their respective trades.

REPRESENTATIVE W. KELLER: Do the OES (Occupational Employment Statistics) surveys include residential work and maintenance activities on projects?

MR. BUTLER: At this time no, but -

REPRESENTATIVE W. KELLER: They do not?

MR. BUTLER: Right now, they just have it as the construction wages. But again, why can't they? Why can't we have commercial carpenters? Why can't they have commercial electricians? It can be done.

REPRESENTATIVE W. KELLER: Does the wage data have the cost of benefits in it?

MR. BUTLER: At this point it does not. But again, the cost of benefits, well that's a whole other issue if you wanted to be quite frank. Each company, especially those who are not regulated by a fringe dollar amount –

REPRESENTATIVE W. KELLER: Well, it's not a whole other issue.

MR. BUTLER: Well, actually –

REPRESENTATIVE W. KELLER: What you're saying is today Prevailing Wage is the maximum rate. What you're trying to do, because it's my understanding that there's a lot of data

in there that's not included in Prevailing Wage today. Projects that are not included in Prevailing Wage.

MR. BUTLER: Answer me this, though. What companies, what companies outside the building trades has the dollar set for the fringe rate? It's usually a percentage of ---.

REPRESENTATIVE W. KELLER: Listen, you're saying this is too expensive and this is our Groundhog Day – we did this once before.

MR. BUTLER: We did.

REPRESENTATIVE W. KELLER: You're saying that it's detrimental and we're going to have testimony that's not detrimental even for non-union shops they're saying this is beneficial. I believe what you're trying to do is, your argument is that we're using the maximum; and my argument is, the things you're going to include are not included in Prevailing Wage today and that's going to make it the minimum.

MR. BUTLER: Well yes and no. First of all –

REPRESENTATIVE W. KELLER: Oh yes.

MR. BUTLER: The fringe package – for example, I'm not asking it to be the low. I'm asking it to be the common, standard Prevailing Wage.

REPRESENTATIVE W. KELLER: You're trying to put, you're trying to use data for projects that are not included in Prevailing Wage today.

MR. BUTLER: They are included. How are they not? It's all ---.

REPRESENTATIVE W. KELLER: Because you're doing residential and maintenance work which isn't included in Prevailing Wage today, which will – you don't use it for Prevailing Wage but you're trying to use it in the data to bring down the rates of Prevailing Wages when it's not even included.

MR. BUTLER: I'm saying we should use the Occupational Wages. Now if you want to make it just for commercial construction, fine; that's easy enough to do. --- you put down commercial construction.

REPRESENTATIVE W. KELLER: Look at that, we're making progress already.

MR. BUTLER: I've always had luck with you. I know, it's a great relationship!

REPRESENTATIVE W. KELLER: Yeah, let's do it on everything.

REPRESENTATIVE W. KELLER: Thank you Mr. Butler.

CHAIRMAN MILLER: Representative Bear.

REPRESENTATIVE BEAR: Thank you, Mr. Chairman. Just a clarification of that point; I think in the bill under -- your bill, Mr. Chairman -- on page 2, between lines 3 and 5, they're two different issues. The occupational rate is one thing for the collective bargaining, but the collective bargaining is still going to be used for fringe benefit. I think that's pretty clear in the bill here. So, just to make that clarification.

MR. BUTLER: Representative, if I may, the fringe benefit, it's kind of an archaic system. Today's society with cafeteria benefit plans, companies are offering everything from education to incentives to car, trucks for cement workers, to buying their tools for themselves. There really is no way to have a fringe dollar amount that's not consistent to the industry. Technically, 80 percent of construction industry is open shop or --- trade or union; they never had a fringe package. They never had a dollar amount that they use. It's here's your health care plan, here's your 401k or pension plan, here's your vacation and sick time. The whole fringe thing is an archaic concept.

REPRESENTATIVE BEAR: I understand that. I just wanted to point out in the actual text of the bill, for the Minority Chairman, I thought it was pretty clearly written in Chairman Miller's bill. That's all.

MR. BUTLER: The discussion about fringe is kind of a – usually it's the percentage of the Prevailing Wage but it shouldn't even be there to begin with.

REPRESENTATIVE BEAR: May I continue? I have a question. So, thank you for testifying. I wanted to ask, going back to 1685, can you just kind of give a real life example of what current practice means to the average contractor, your clients, in terms of how they go about figuring out what definitions or classifications to use and then what the penalties might be if they were game to be breaking them?

MR. BUTLER: I can give you a great example. There was a college in which a roofer – I was actually involved in this situation – where a roofer built a roof at a college. The Prevailing Wage enforcement officers said that from the first construction pile, the roofer paid a laborer's rate from the roofing pile to the roof; at that point, as a roofer to have installed the roof, the roofing tiles. The Prevailing Wage --- was over, the Prevailing Wage investigator said, "No, no, no; from the bottom of the house or building to the top is a roofer's rate, not [a] laborer's rate and if you don't change it, you're debarred and here's your penalty of \$30,000." The roofer had no idea; he didn't know. He had just thought moving the materials was the laborer's rate. Had he known in advance, "Here's what you're going to pay in the pre-bid," there would never even have been any problem, penalty, or even a meeting. Then came the threatening of debarment which the guy couldn't handle because debarment would have meant he's out of business. But again, he just didn't know the rules.

REPRESENTATIVE BEAR: How long is debarment?

MR. BUTLER: Three years. [You] can't work in public work for three years. Plus your name's on it and plus I look at is a felony charge for employment. Any time you even bid on a private job, had you been debarred in the past 5 years? Check yes or no. It truly is a death sentence for construction.

REPRESENTATIVE BEAR: Thank you. Thank you Mr. Chairman.

CHAIRMAN MILLER: Other questions? Seeing none; thank you.

REPRESENTATIVE W. KELLER: We're doing very well Mr. Chairman. We're ten minutes ahead. Don't know if this will last but -

CHAIRMAN MILLER: Our next panel consists of Frank Sirianni, President of the Pennsylvania Building and Construction Trades Council and Abe Amorós, PA Legislative Director, Laborers' International Union. Welcome gentlemen. Good morning.

MR. SIRIANNI: Good morning. Thank you Mr. Chairman Miller, Chairman Keller, Members of the Committee; thank you for allowing us to be here today to give some comments on Prevailing Wage again on House Bill 1367 and 1685. First of all, I'd like to – I have written testimony that I'm going to submit to you later but I'd just like to make comments now, in an effort to speed things up. First of all, I'm looking at the agenda of people that are testifying here and I realize that anyone has a right to come in and testify if they come in but everyone's representing themselves as the voice of the construction industry. Now, our organization is the voice of the construction industry so everything I say is what counts. We actually have -

CHAIRMAN MILLER: A little levity is good, thanks Frank.

MR. SIRIANNI: Well, it's better than last time. So, I just thought I'd get that out of the way. We have 114 local unions and 16 regional councils. Through that we represent 106,000

taxpayers. We're not going to call them construction workers anymore; we're going to call them taxpayers because that's what this is about. It's about taxpayers. It's about saving money and creating jobs, correct? I mean that's what we're all here for; that's what we're looking at. We're not here just to look to cut wages, right? Right. But this bill will cut wages, in some fashion, but we'll set that aside.

Now, today I have with me a lot of people from different areas all over the State; people that represent those taxpayers, okay. Now, we look at the first testifier. He represents eleven companies. Those companies don't represent the taxpayers that work for them. If they did, they'd have to fill out LM forms and they would be unions or some kind of association where they'd have to give reports and do certain things but they still, just like the chambers say, we represent 50,000 people or 100,000 people and we can go right through the list here. We're going to go to the State Association of Boroughs. They don't represent all the people in the boroughs; they represent the people that are, you know, managing the boroughs. They want to make their lives easier because they don't want to fill out forms, they don't want to keep track of jobs; you've already passed bills in the House here that eliminated them having to solicit bids for projects up to \$25,000 of taxpayers' money. You passed those bills, twenty-something of them. Now how does that help a taxpayer not to know where their money's going? The Prevailing Wage Act also helps taxpayers know where their money's going. Because every contractor that works on a Prevailing Wage job has to fill out a form for each worker and what they were paid, if their benefits were paid, whether they're a citizen, and all the things that we want to know about people that are working on our public projects. So, it's very important that the Prevailing Wage Act stays in place because you're dealing with public funds and believe it or not, when you get money from the taxpayers and you put it out in public funds, there should be some

responsibilities to it. That's the truth and I don't think anybody in any party, from A to Z could disagree with that. And if you do, I'm willing to talk about that as [Representative] Scott Boyd knows I'm always willing to talk about anything – we discussed that last time too. But let's get back to the fact here: this average wage process is not accurate. First of all, the rates are two years old; they include everybody from a pick-up truck who pays workers' comp or unemployment comp, who has never done a job the size of this Capitol, or a municipal building or a township building; but they're all weighted in there, okay? That'd be like me saying, "Legislators should only get the average wage for the United States!" Which is \$39,000, but I'm not going to say that because I like all of the legislators and I agree that you guys do a hard, hard job and deserve every penny you get because I'm telling you what, you're in the firing line all the time; you have people when you go home, you're working everywhere you go. You go to a supermarket, you know what, someone comes up to you and says, "Hey, I got a problem with this," or "How come you're doing that?" You're always on call. Same as we are; same as a business agent for a union. I can't go anywhere that there's not someone asking me a question about what I do. Legislators have a tough job and I'm okay with what you guys make, okay. But I don't think we should cut construction workers pay and that's what this bill is about. It's about cutting wages; finding a way to cut wages. And this bill, in no way, will save one taxpayer dollar because no one reduces the price of construction unless, unless there's a scarcity of work, which there is right now, and an abundance of unemployment, which there is right now. If you looked at the budget office, they got 28 percent more for each dollar for their projects from the Federal Stimulus money because of high unemployment and lack of jobs. When there's a glut of jobs and there's a lot of employment, you pay more. Right now you're getting a discount and while you're getting that discount you want to cut wages. I don't get it; that doesn't make sense. That doesn't

put any money back into the economy; that doesn't help anyone. And not only that, but people that work on those jobs are taxpayers. They're getting their own money back. You got to think about that, too. So, you're saying, "Hey, you know, we want to help the taxpayer, but by the way we want to cut your pay." I don't get it; it doesn't make sense. It doesn't make sense in any real world.

So, I'm going to give you my testimony; oh, there's another organization here that my good friends from the Associated Builders and Contractors, the ABC, they have I think it's 1,500 members? But they're not all contractors and they don't represent any of their employees. Maybe a couple of the guys, you know, have talked to their employees and started a grass roots effort and some of their employees say, "Yeah, we're with you boss but give me my paycheck, will you?" But anyhow, they'll agree with them and I don't see anything wrong with that but they're not representing them here; they're representing the businesses and that's fine. Businesses need represented too. Like I said, we have 3,000 businesses here. This fallacy from the Chamber of saving 30 percent on a project is just ridiculous. If you reduce labor by half, you're not going to save 30 percent on a project. You'd have to eliminate it; the entire project only has 30 percent – actually it's only 22.7 percent labor on a project. So, you would have to have people come to work for free and by the way they would have to pay a little bit to go to work too, to save 30 percent on a project. Now, we've already discussed all of that; we had the school boards in here testifying that and they couldn't even do the math. I don't see anybody saying, "Hey, let's cut school superintendents' salaries." No, just the workers that build them. Oh yeah, Scott [Boyd] does. Scott, be careful here. But I mean, you know, think about this: you want money in the economy; you don't want to be taking it out of it.

Well anyhow, we have a guy here that was suspending for Prevailing Wage testifying. Debarred. Eighteen months. Worth & Company. Debarred. They're coming in and they're going to testify. Leer is in the process of a debarment hearing and they're testifying. What are we doing here? We're trying to accommodate people to violate a law by changing a law to accommodate them? These people that are taking money, they're bidding; they're bidding for the jobs, they're writing down on paper what they're going to charge you, and then they're not paying that. Then they're falsifying documents and sending them in. I believe that's mail fraud. I'm not saying these two contractors in particular; I'm saying just people that violate the law. Well, then they're violating so many, so many things. Why aren't we saying, "They should go to jail. If they're convicted they should go to jail." No, no, no, just don't do it. You make a mistake, pay it back. Pay it back, that'll be alright just don't do it again, alright? Well, you know, alright. Alright, we'll negotiate what you got to pay back. But you know what you gave us a bid document and every one of those damn rights were posted on that bid document of what you're supposed to pay and if you're a roofing company, you got roofers. If they mark down that the guy was a laborer and they keep track of it, that's all he pays is labor. It's no magical mystery tour. You keep track of what the guy does and you document it and that's all you got to pay the guy. And you know what? People are saying, "Oh there's too much paperwork, too much documentation," you're damn right, there should be if they're taking government money. There should be some documentation [of] what the hell they did with it. So, I don't know. I give up.

CHAIRMAN MILLER: Mr. Amorós?

MR. AMORÓS: Mr. Chairman, I did submit written testimony to the Committee and I hope that every Member has a copy of it. There seems to be a question on its availability at this moment but I just want you to know that I did submit the testimony in writing.

Good morning Mr. Chairman, Mr. Chairman Miller, Chairman Keller and thank you for allowing the Pennsylvania Laborers to present testimony on House Bills 1367 and 1685. Both of these bills seek to fundamentally change the Prevailing Wage Act and the way workers are paid in Pennsylvania. My name is Abe Amorós and I am the Pennsylvania Legislative Director for the Laborers' International Union of North America. We have more than 30,000 members throughout the Commonwealth, many of whom are present today and I thank them for being here.

Prevailing Wage laws in Pennsylvania have been successful thus far and benefit workers, their families, and the communities in which they live. Good-paying and family-sustaining wages stimulate the economy and allow workers to spend more in their local communities and allow municipalities to function through the use of sales taxes, property taxes, and other revenue-generating methods.

The bills before this committee do absolutely nothing to help working people in Pennsylvania. It makes Pennsylvanians wonder if such legislation is based upon proven, sound, and logical business practices or an ideology that is hostile toward labor unions. With the national unemployment figure at 9.1 percent and Pennsylvania's at 7.4 percent, changing the Prevailing Wage does absolutely nothing but suppress wages for working men and women in Pennsylvania.

House Bill 1367, which would allow the Secretary of Labor and Industry to set rates per county, would fundamentally undermine local economies. Now why would Members of this Committee be interested in suppressing wages that make their communities stronger and provide more in the way of tax dollars for greater programs and services?

A study in Wisconsin proved that losses to communities from wage cuts far outweighed any cost savings. The annual cost of repealing a law in Wisconsin was \$123 million in lost income with a net tax revenue loss of \$6.8 million. In Missouri, a similar study showed a loss of between \$318 million and \$384 million.

Stable wage rates promote growth and sound economies. Cutting them creates havoc for workers, their communities, and the states they live in. Everyone is harmed when wages are suppressed.

It is patently unfair to take from the bottom to enrich the top. That's exactly what House Bill 1367 does. It doesn't address workers' rights, it doesn't address fairness, and it certainly doesn't address the need to focus on greater job creation, which is what this Committee should be focused on instead of suppressing the wages of working people.

Attacking workers' wages and trimming their paychecks should be the absolute last thing that this Committee should be focusing on to get our economy working again. Clearly, those wages are recycled in their respective communities and benefit more than those who earn those paychecks. Laborers pay taxes: we make car payments, we make mortgage payments, and keep our hard-earned dollars flowing in our respective communities.

We ask that you create jobs, create opportunities, and focus on what is important to the people of Pennsylvania. Now the Laborers' Union provides a trained workforce that has a proven track record on safety, getting the job done on time and under budget.

According to the analysis by the Construction Labor Research Council, the cost to build a mile of highway in high-wage states – which averaged \$17.65 per hour – compared with low wage rates – roughly \$9.76 an hour – on average saved taxpayers \$123,057 per mile due to higher productivity.

The Laborers' Union seeks to cooperate with business and provide an excellent work force. As evidence, let me share with you that in Western and Northeastern Pennsylvania, laborers are laying pipeline in the Marcellus Shale. This gas extraction industry will continue to provide job opportunities for our Pennsylvanians for generations to come and the laborers are at the forefront. We successfully work with contractors and businesses to create more job opportunities and are beginning to see real progress in the way of family-sustaining jobs with livable wages and decent health care.

In reference to House Bill 1685, this bill does nothing but weaken the existing Prevailing Wage law as handbook classifications are few and more general. Labor jurisdiction issues aren't recognized and the law is watered down. It would be another blow to workers and their wages.

In the case of the laborers, the bill doesn't take into account rigorous training and experience. The bill does not differentiate between a skilled laborer from a common laborer, [as] already defined by the Pennsylvania Department of Labor and Industry. Instead, the bill generalizes work done by laborers and trivializes their work. A blaster and a concrete saw operator each have a specific set of skills that took a significant amount of safety training, apprenticeship hours, and experience. They should be compensated fairly according to their craft. We ask for fair wages for an honest day's work.

So where is the proof that watering down Prevailing Wage hurts real people? Just ask the workers of Kansas. According to a study prepared for the Kansas Senate, once Prevailing Wage was repealed, wages dropped by 11 percent, training programs declined 38 percent, jobsite injuries rose by 19 percent, and employer contributions to pensions fell 17 percent. This is no way to treat workers anywhere.

We cannot continue along this downward spiral or, as many would say, a race to the bottom. Members of the State Legislature should be more concerned with creating jobs and allowing current laws that support workers to remain in place rather than creating barriers for them which ultimately hurt their families.

In Pennsylvania, workers in the construction industry are facing unemployment rates upwards of 30 percent. They look to the State Legislature and their elected officials for relief in terms of job creation policies rather than implementing laws that only hurt them in the long run.

We are opposed to these bills as they do nothing but hurt workers by taking from the bottom and putting more money in the pockets of contractors.

We hope that you will set aside political ideology and an anti-worker sentiment in favor of those hard-working Pennsylvanians who are the backbone of our State's economy. Let's work together to support laws and policies that only strengthen a law that has a proven track record of providing good-paying and family-sustaining for generations of Americans. Thank you Mr. Chairman.

CHAIRMAN MILLER: Thank you. Thank you both for your testimony. Before we go to questions, I would recognize that we've been joined by Representatives Delozier, Boyd, Kampf, and Kauffman.

I guess I will start off by just noting that between the Representatives that are sitting here, we represent over three quarters of a million people and by extension, all the people in the Commonwealth of Pennsylvania, and I think every one of us totally agreed with you that one of our prime things is to protect the taxpayers of Pennsylvania and make sure they're getting good value for the money they spend. So, I don't think there's any disagreement, Mr. Sirianni, on that

at all. We may differ a little bit on what we believe the good value is and how we arrive at that but I think our intent is the same.

Towards that end, I guess, what drives a lot of this discussion is the fact that if the Prevailing Wage – we had this discussion – if the Prevailing Wage, the way it now is, is a true Prevailing Wage. We can pave x-number miles of highway or if another Prevailing Wage index is the true Prevailing Wage, and it's less by 10 percent, 5 percent, 20 percent, it tends to reason that the taxpayers will gain by paving more highways and rebuilding more inferior bridges in this Commonwealth. So, I think it's a very valuable discussion for us to have because this truly is about the taxpayers of Pennsylvania. The intent is not to hurt any workers but to truly reflect what the Prevailing Wage in this Commonwealth is, and what the job classifications should be. It's quite disturbing to me when I hear that different areas of the state had different classifications and it's the way it's done in this area of the state compared to this area; it takes me back to the days when, you know, horse and buggies, and it took a long time to get somewhere so it made sense, maybe, for this area to be sort of remote and have its own. But the standardization certainly of job classifications would seem to make sense.

My input where I believe we're headed with this, there's two bills that have been put out there, there are stakes in the ground, certainly there's going to discussion and modifications to them but again, the intent is the best value for the taxpayers of Pennsylvania, especially in a time when the private sector unions are seeing jobs shipped to other areas of the United States and the world, we have to make sure that we're being very fair to those taxpayers that don't benefit from a Prevailing Wage. So, that's, you know, we're not totally in disagreement here; we just have different perspective of the way we're coming at it, gentlemen.

MR. SIRIANNI: I appreciate that. We were always under the impression that the construction industry was the only place that we weren't going to have our jobs outsourced. You know, because you talk about all the outsourcing and all the things that have happened in manufacturing and all that, well unfortunately it's happened to us too. It's happened in ways where grant money has gone to projects and out-of-state contractors come in and do those projects, which we understand, fair-trade; but when that happens our tax dollars go to that state and our taxpayers don't get to work on them because they bring their own people in. They bring undocumented workers and all those things so our jobs have been outsourced too. Believe me, the industry cannot afford to have that kind of problem. Not in Pennsylvania. I think that everyone in this room agrees that we want Pennsylvania working on State-funded tax dollar projects. Prevailing Wage provides that.

Earlier there was some comment about, you know, the rates on adjoining counties. You know, Forest County is a forest. That's why they call it Forest County, so there's not a lot of stuff going on there. In the law it says that they may use a contiguous county and they're using the county next to that which isn't a Philadelphia or Pittsburgh rate. So, all the rhetoric you hear about these rates being inflated and we're paying Philadelphia rates and Pittsburgh rates in Lancaster County, well that's just not true. It's whatever was negotiated in the open market between a union and a company. They can't negotiate more than that marketable bear in that county because these contractors that are working with us work on private projects too; they're paying the same rate on private – that's the market rate. Believe me, there's been talk and talk and talk about the rates. Anyone can submit rates. We talked about that last time. Any contractor that's in many of these associations can submit their rates to the Department of Labor and they can challenge the rates. If they don't think it's the right rate, they can challenge them. There

hasn't been a challenge ever since I can remember. Never. You know, as far as the enforcement this goes back to [19]91. There was millions of dollars in enforcement in [19]91, [19]92, all the way up to [19]96, [19]97. These weren't all, you know, Administrations that were all the same; they were different parties. There's always been enforcement on this law. The problem is there's no real penalties other than you get debarred, or maybe a temporary debarment. Or you open another company under another name and they bid it. This smoke and mirrors is being portrayed that, you know, it's the death sentence. That's not the death sentence. They just open another company under another name or they have their sister or wife open a company and they just do the work under their name. It's happened. It's happened regularly. Some people never pay their appropriate wages and are permanently debarred. Those people have had their names turned over to the Attorney General's Office to go after them. They've never gone after anyone. These people are stealing tax payer dollars and misrepresenting how they're taking them and what they're doing with them. There's where you save money. Get people to bid the projects so you get the people you're paying for on the jobs.

CHAIRMAN MILLER: Recognize that Representative DeWeese has joined us and turn to Representative, Chairman Keller.

REPRESENTATIVE W. KELLER: Thank you Mr. Chairman. Mr. Sirianni, you know I will agree that the Prevailing Wage is the Prevailing Wage in that area and I don't know if you can get an average for State-wide because there's going to be winners and losers so to do it in sections seems to make the most common sense; the Prevailing Wage in that area. There's been a lot of talk and I mean anecdotes and examples about electricians and you know the electricians are very important to the people of South Philadelphia, so let's use an electrician example. The OES survey data for electricians; if we used that, would the point I'm trying to make, if we used

that data, that would include people who do single-family residence, right, which has nothing to do with public projects which include, you know, ten-story buildings or larger projects.

MR. SIRIANNI: It would include people that don't have licenses.

REPRESENTATIVE W. KELLER: So, the point I'm trying to make, if we go and use this OES, isn't, you know, they're complaining that we're using the negotiated labor contracts to set the Prevailing Wage, but if we go through the OES we're going the other way; we're using minimum – we're using data that will never be including in a public project so it's skewed just by the nature of using the electricians rates for residential, single-family homes. Then you have to come in to a public project where you have to do ten stories or more on electricians. Your feelings on that issue?

MR. SIRIANNI: First of all, that average wage doesn't include people that are capable of doing high-voltage, which the underground would be. Now, there may be a few of them in there that, you know, that are listed in there but you know, you could have the average going back to people, like I said, that are just doing basic wiring that would have no technical skills. So, now you're going to weigh a guy who's got a building that needs the qualifications of someone who has like five or six years of training in an apprenticeship program or the equivalent of on-the-job training and you're going to compare him to a person that maybe wired a garage at someone's house. I don't think you want that in your public buildings and your schools. What you pay for is what you get. You don't know what's behind that wall when they're done. I mean, you don't know who wired this wall, you don't know what's behind there. You don't know if whether they used it up-to-code or not. You have to rely on that skilled craftsmen and the company that's willing to pay the company to do that work. I mean, if you lower wages, you're going to have less training. You're going to have an immature, less educated, less experienced

workforce. You're going to have higher injury rates. You're going to have lower wages, well okay, that hurts the economy. You're going to have lower health care contributions and pensions. You're going to have more undocumented workers. If you do that just in that one craft with electricians, I mean, you're going to have a real spiral downward in the quality of construction from the level we have on State projects now. Any contractor, if they're paying a decent wage, is going to send their best person. This forces contractors, whether they're union or not, to send their best people to the project. You don't want them sending their cheapest guy.

REPRESENTATIVE W. KELLER: Well, the point I'm trying to make is, if you use the OES survey, you're going to put data in there that has nothing to do with public projects.

MR. SIRIANNI: Right.

REPRESENTATIVE W. KELLER: And you're going to artificially lower the rate because you're using data that will never come into use when we do public projects and that's the flaw I see in using the OES standard. If you could expand a little bit, because I know ABC [Associated Builders and Contractors, Inc.] will be up here and I'll talk to Mr. Swarney about that. Right now, everybody's complaining that it's the union rate but the unions fill out the forms for Prevailing Wage. When the contractors get up here they'll say they don't want to fill out forms because it's proprietary and they don't want to let their competitors know. Unless I have this backwards, we're setting the rate. It's the Prevailing Wage in that area. So, you already know what you're paying. You already know what you're supposed to be paying. You know what you have to, like you say, fill all the forms out. So, I don't get the problem with, "We don't want to use," you're filling the forms out, "We don't want to use your rate, but we don't want to fill out the forms because we don't want to let people know what we're doing." Are there

examples where, on private projects, that some of the contractors bid Prevailing Wage? Do they use the Prevailing Wage on private projects other than just public projects?

MR. SIRIANNI: Well, if they're a collectively bargained contractor they use those rates on every project; they're obligated by contract. So, if they're in Lancaster County, which a ton of people worked on a convention center that were union and people work on projects down there all the time; they could be public or private. Those projects are bid at that contract rate, that's how it prevails because the most projects of any substantial dollar value is done by that contract rate in that area. That doesn't mean that non-union don't do large projects in those areas; they just don't submit their rates. I don't know too many contractors – and I know a lot of contractors because I worked on a lot of projects – but I haven't had heard from Wohlsen [Construction] coming in, who's the largest contractor in Lancaster, coming in and complaining about Prevailing Wage, you know. But we have had Farfield [The Farfield Company], who's an electrical contractor, come in and they're non-union and say that they agree with Prevailing Wage. I think that has some weight; it's not really a union or non-union issue, it's an industry issue. Believe me, when you have a similar rate for all the workers, you know you're going to get a quality person regardless, but construction companies have to compete based on skill, productivity, and experience. When you have that happening, you're going to get the best for your dollar because they're going to come out and they're going to be the best product, the best materials, [and] the best quality they can give you because they have to be competitive on the other end of it. So I, you know, every contractor that's union does work in every county and they do it at those contract rates. So I hope I answered your question.

REPRESENTATIVE W. KELLER: Yes, thank you Mr. Chairman.

CHAIRMAN MILLER: Representative Bear.

REPRESENTATIVE BEAR: Thank you Mr. Chairman, Mr. Sirianni, and Mr. Amorós; good to see you guys.

MR. SIRIANNI: Good to see you again.

REPRESENTATIVE BEAR: So, I know we talked a little bit about this at the last hearing a few months ago, but just for the audience and also for my clarification, let's just step back for a second and clarify a few questions I have. First, Prevailing Wage – how is that determined?

MR. SIRIANNI: How is it determined? Well, there is a part of the law, which I'm sure you're aware of if you look on the site of L and I [Labor and Industry], it has the regulations and how the rates are determined. It's done through submittal of information collected by the Department of Labor to come up with a Prevailing Rate for that area. So, part of that law says that collective bargaining agreements should be part of that assessment, because back when this law was written and debated, and put into effect by a Republican House and Senate, I believe it was, wasn't it Bill [DeWeese]? You remember. Just kidding. So anyhow; no, no, no 1913 is Separations Act; we're talking about 1961. He was just a young lad then. I mean, Representative; I apologize for saying Bill. What happens then, those rates are determined to be, by the largest percentage of them – over 51 percent, are determined to be the Prevailing Rate. That's why we get into this whole thing, you know when they did a survey back in -

REPRESENTATIVE BEAR: Just to be clear though, I think when we went through this last time, we said it was primarily – it's the collective bargaining rate that determines Prevailing Wage.

MR. SIRIANNI: Only because no one else submits data.

REPRESENTATIVE BEAR: But you would agree that it's the collective bargaining rate that determines Prevailing Wage?

MR. SIRIANNI: I think they prevail in most of the area because they are the dominant wage in the area.

REPRESENTATIVE BEAR: Okay. Who does the collective bargaining?

MR. SIRIANNI: Well ---

REPRESENTATIVE BEAR: It's not a hard question, just be clear.

MR. SIRIANNI: The company.

REPRESENTATIVE BEAR: Okay.

MR. SIRIANNI: The company and a representative from a union.

REPRESENTATIVE BEAR: Right. So, a union determines the collective bargaining?

MR. SIRIANNI: No, the company and the union determine -

REPRESENTATIVE BEAR: Who else goes in the collective bargaining? It's the union workers.

MR. SIRIANNI: I said that.

REPRESENTATIVE BEAR: Okay.

MR. SIRIANNI: Both; it's a joint-labor management.

REPRESENTATIVE BEAR: Alright, so it's a union; collective bargaining, it's a union.

MR. SIRIANNI: They have to create --- You have a company ---

REPRESENTATIVE BEAR: Hold on, hold on, hold on; we'll get there. So, we agree that collective bargaining determines the rate, that the union's the one negotiating that rate; the next question I have for you, because I know you said this earlier on about who you represent

and what the other groups represent. The union construction workers consist of what percentage of the construction workforce in Pennsylvania?

MR. SIRIANNI: Well, according to Labor and Industry statistics, there's 300,000 construction workers in the state of Pennsylvania, okay.

REPRESENTATIVE BEAR: What's the percentage?

MR. SIRIANNI: Well, it would be a third.

REPRESENTATIVE BEAR: So ---

MR. SIRIANNI: Now, let me say something further than that. You're going to hear remarks that 80 percent of the construction workers are non-union but the ABC doesn't represent that 80 percent. They only have 875 or 1,000 contractors, so -

REPRESENTATIVE BEAR: I don't care who -

MR. SIRIANNI: I do.

REPRESENTATIVE BEAR: Well, you do, but I'm asking you what the exact breakdown of the workers -

MR. SIRIANNI: A third.

REPRESENTATIVE BEAR: Okay, and I've heard about 20 percent.

MR. SIRIANNI: That's what I said too, that's what they say. But that's not true.

REPRESENTATIVE BEAR: Okay. So, it's about 20 percent of the workforce - construction workforce - basically determine Prevailing Wage.

MR. SIRIANNI: Not construction workforce. Workforce in general is 20 percent.

REPRESENTATIVE BEAR: Pennsylvania construction workforce, 20 percent that's unionized, the rest, 80 percent is open shop.

MR. SIRIANNI: Right, but don't forget you're including the same thing they're including in these wages which is like the guys that don't do your projects, okay. You're including Joe Bag of Doughnuts with a station wagon who happens to be hanging drywall out of his pick-up truck and that's weighed in there. That guy is not going to come into this Capitol and do the work you see in here.

REPRESENTATIVE BEAR: Okay, so we'll use your figure, let's say it's a third.

MR. SIRIANNI: 33 percent.

REPRESENTATIVE BEAR: Okay. Still a small fraction, right, of the total workers out there, if we use your number?

MR. SIRIANNI: --- small fraction.

REPRESENTATIVE BEAR: Well, but ---

MR. SIRIANNI: --- value, it's a very high -

REPRESENTATIVE BEAR: Hold on, hold on, let me ask another question; I'm just trying to make sure I piece this thing together. So, this collective bargaining determines the wages, the unions negotiate the collective bargaining. The unions represent about 33 percent – using your numbers – of the workforce, right? I guess my problem is I would say a very small number of people are really determining the Prevailing Wage. I'd argue that if you look at construction workers, let's just say it's the occupational using that survey or that data that Chairman Miller wants to do, that's still getting people that probably were doing Prevailing Wage work, so I'd even argue that number is probably skewed a little bit because you're dealing with Prevailing Wage work in that number. That's probably not even the true private wage if you weren't considering that. So, I just want to state that I know you mentioned earlier that you represent a majority of the workers; I would dispute that. I'd say you represent the minority of

the workers and Prevailing Wage is determined by the minority. And, by the way, collective bargaining is not an open process, is it? Can non-union workers see the collective bargaining agreement if they're not a part of it?

MR. SIRIANNI: Sure.

REPRESENTATIVE BEAR: So, they're privy to seeing the actual collective bargaining agreement.

MR. SIRIANNI: Absolutely. Absolutely.

REPRESENTATIVE BEAR: I know a lot of people dispute that fact.

MR. SIRIANNI: Who?

REPRESENTATIVE BEAR: We'll hear from them later.

MR. SIRIANNI: ABC already has all of our contracts. Most of them are on the websites.

REPRESENTATIVE BEAR: Well my point – and here's the point I'm making – I think everyone that you've talked about – you used some harsh words: stealing, smoke and mirrors ---

MR. SIRIANNI: Yeah, it's true.

REPRESENTATIVE BEAR: I'd say that the reverse is true. That there's been a lot of smoke and mirrors in current practices; that there should be a standard practice, a standard definition across the State. There should be transparency and it should be all inclusive. That's not just 33 percent determining the wages of what this work will be, what it would charge for an hourly rate. So, I mean, I dispute a lot of facts you threw out there; I don't think they're accurate. And if you really want to do this right by taxpayers, I mean these are harsh words, you're saying fleecing of or you're going after us that we're trying to cut wages; that's not true. We're just trying to get the fair wage and I'm tired of fleecing the taxpayers of Pennsylvania. That's what we're doing. Prevailing Wage has not had one thing change since 1961. I asked you at the last

hearing, I asked a few others, do you think anything should be changed and I got shrugs. How could that be?

MR. SIRIANNI: I think it should be changed.

REPRESENTATIVE BEAR: Okay, well I'm glad to hear that.

MR. SIRIANNI: I think there should be penalties and jail-time -

REPRESENTATIVE BEAR: Then we can work together and get some of these things done.

MR. SIRIANNI: - penalty and jail-time for violators.

REPRESENTATIVE BEAR: Well, how is putting a company – a question, you said there's not enough harsh penalties – putting someone – debarring them for three years, how is that not the death sentence?

MR. SIRIANNI: Well, you know, debarring somebody for three years, like I said, they could open another company under another name which many of them have. Or they bid in the private sector too and they – you know, I don't know of any companies, I'm sure maybe they can give you a couple names of them that went out of business because they got debarred, you know, but most of them come back and are bidding in three years.

REPRESENTATIVE BEAR: Three years is a long time --- does mostly large construction.

MR. SIRIANNI: What do you think they should use? You think they should just let them keep the money?

REPRESENTATIVE BEAR: Well my point is, I don't have any problem with hard penalties.

MR. SIRIANNI: Right.

REPRESENTATIVE BEAR: But, then there needs to be a very transparent standard across the state that there is no ambiguity in, that, you know, is very clear. I'd argue right now it's not. That's why I introduced the bill I introduced; I don't know how anyone could argue having a standard definition that's transparent and open to everyone to see is not a good thing. We're always talking about transparency in government; we're talking about all the time, that's not just going on now. You have ---. Going back to another comment about L and I, if you look at the cases that have been prosecuted, it's clear patterns -- it's certain time periods that you have a lot of investigation being done. I would argue if you have a clear standard across the board here that you wouldn't see this; it would be, and if someone has an open shop and breaks it then they need the book thrown at them. But I'm just a little dismayed at some of the rhetoric I'm hearing over here.

MR. SIRIANNI: It's not rhetoric.

REPRESENTATIVE BEAR: Well I -

MR. SIRIANNI: Listen, I only tell the truth because then I don't have to remember what I said, okay? If I lie, I got to remember the whole thing and that doesn't work for me. Because I don't have that good of a memory, but I will tell you this: if a company violates a law, you're right and I will work with you on working on penalties to put these people in jail. You know what? They deserve to be in jail because let me tell you something: you're trying to change a law and make something legal that was illegal, okay, by changing the job descriptions. They're all posted on the website for L and I, you could pick any ---

REPRESENTATIVE BEAR: No, that's not true. That's just not true.

MR. SIRIANNI: I looked at them this morning.

REPRESENTATIVE BEAR: Well hey, I accept that you're willing to work with and I hope you and Mr. Amorós will work with me and get this standard across the state, because there shouldn't be any question – there should be a standard.

MR. SIRIANNI: --- work on the other part, the penalties and the jail time for people that violate the law.

REPRESENTATIVE BEAR: That's what my penalties too. Sure.

MR. SIRIANNI: Okay.

REPRESENTATIVE BEAR: But, first you need to have a very clear process, a clear standard –

MR. SIRIANNI: There is a clear process ---

REPRESENTATIVE BEAR: That's not open to subject – Oh, come on, it's very subjective in how it's enforced and the opinions with this. What's breaking the rule, what's not; I mean, come on. But anyway, last question is about going back to ---

MR. SIRIANNI: Because I tell you what ---

REPRESENTATIVE BEAR: I'm asking --- I'm sorry, one last, one last question for you if I could. So, dealing with Prevailing Wage, I want to ask you: if you're bidding a private job, not a public job, is your rate different than what it would be for a public job?

MR. SIRIANNI: No. Not that I know of. I mean, I don't know any unions that do that.

REPRESENTATIVE BEAR: I just want to clear, and well I've taken a lot --- question for Mr. Amorós but I -

CHAIRMAN MILLER: I appreciate that, I gave you a little lead-way because one of the bills is your bill.

MR. SIRIANNI: --- any contracts with any unions though. I do not collectively bargain with any of the companies, okay. But I want to make one more statement, okay? You say it's the union rate, it's the collective bargaining agreement rate, which the company also negotiated, okay? It might be multiple companies -

REPRESENTATIVE BEAR: Semantics.

MR. SIRIANNI: - in that area.

REPRESENTATIVE BEAR: Come on ---, it's union.

MR. SIRIANNI: No, well you're making semantics on the other end.

REPRESENTATIVE BEAR: It's union.

CHAIRMAN MILLER: Representative Bear. For the other Members, I gave Representative Bear a fair amount of lead way there because of the fact that one of the bills is his. So, gentlemen I appreciate the dialogue of quick follow-up from Representative [Bill] Keller and then I have two other Members asking to be recognized.

REPRESENTATIVE W. KELLER: Thank you, Mr. Chairman. Representative Bear, of course, I disagree. This is my understanding, and someone should tell me if I had this wrong, alright? The Prevailing Wage is set by the Department of Labor and Industry. The Department of Labor and Industry asks people to fill out forms to set their wages in specific areas, right? You can't say that the unions are negotiating the Prevailing Wage. The unions are filling out a form, letting the Department of Labor and Industry know what they charge in that particular area. The Department takes that information and says, "This is the Prevailing Wage." The Department sets the Prevailing Wage, and if other contractors would like to fill out the form and get engaged in that process, they are more than welcome to. But, we have a problem that they will not fill out the forms and then you can't say because, because Labor, who have to fill out the forms, right,

set the Prevailing Wage. They are just doing what they are told to do by the Department: to fill out the forms. They fill out the forms; if no one else fills out the forms, the transparency is, that's the Prevailing Wage. That's the people [who] filled out the forms, that's the people who answered the questions from the Department of Labor and Industry, and that's the Prevailing Wage. Unless I have this wrong, somebody ought to set me straight right now.

MR. SIRIANNI: I'd like to go back to one thing, if I may. Everyone up there gets Prevailing Wage, okay? Everyone at that panel gets the Prevailing Wage for legislators. Should you have the Lancaster Prevailing Wage, rather than the Philadelphia Prevailing Wage?

CHAIRMAN MILLER: That's been suggested.

MR. SIRIANNI: But the average wage of Lancaster. You can include all the Amish in that, too. That's not funny. Why would you laugh about the Amish?

CHAIRMAN MILLER: Alright, point made. Representative Perry.

REPRESENTATIVE PERRY: Thanks, Mr. Chairman.

MR. SIRIANNI: Oh, hi.

REPRESENTATIVE PERRY: One of my bosses is here, Mr. Sirianni. Good to see you.

MR. SIRIANNI: Good to see you too.

REPRESENTATIVE PERRY: Mr. Amorós as well. I thought we'd try to start on the right foot since you are one of my bosses here with some of the things we agree on.

MR. SIRIANNI: Constituents.

REPRESENTATIVE PERRY: And as a constituent, you're my boss. I'm working for you. So, undocumented workers. You know you and I are on the same page there and we don't, personally, I don't want to do anything to support them taking away our jobs, or really being

here taking away any of our benefits or taxpayer money; and accountability for the taxpayers money – it's critically important to me. So, we agree on that, absolutely.

MR. SIRIANNI: Absolutely.

REPRESENTATIVE PERRY: We absolutely agree on that. Some things we don't necessarily agree on; I don't think that this body creates jobs nor should it. And the ones that it does create are very efficient for society. I think we should create the environment for jobs, or help to create it; and Frank, you didn't say that, but that's my opinion. Let me ask you this; how does an inspector that's checking on Prevailing Wage requirements and compliance, how does he determine whether the contractor is compliant? What standard does he use to say, "Well the contract, the contract," – I'll give you an example, if you want to use electrical. Hauling the stuff, hauling the wire in, hauling conduit; how much of that is deemed to be labor and how much of that is deemed to be electrical and how does that, how does that guy, that enforcement compliance guy, how does he determine that?

MR. SIRIANNI: There's a standard of common usage and job descriptions as been used by the Department of Labor for forever.

REPRESENTATIVE PERRY: Can you describe the standard of common usage?

MR. SIRIANNI: Each individual one, or?

REPRESENTATIVE PERRY: Pick one, just pick any one.

MR. SIRIANNI: What it will do is, you have a description of what the process of that job entails, okay? They're all posted on the website for L and I, so when someone bids a job they have the opportunity to look at that website and determine if they're going to have fifteen laborers, ten electricians, four truck-drivers – what those rates would be and put that into their bid package when they apply. Then they can pay those rates.

REPRESENTATIVE PERRY: And that's fair.

MR. SIRIANNI: They could keep track of that.

REPRESENTATIVE PERRY: So under those circumstances –

MR. SIRIANNI: --- forms they turn in.

REPRESENTATIVE PERRY: I understand, and we want that. Like you said, we want accountability; we want to know where our money's sent. So under those circumstances, contractor hires a laborer; laborer, even though may be qualified as that same electrician or a plumber, never does electricity or plumbing. Only does labor and electrician never does labor. Is that how –?

MR. SIRIANNI: That's how they're paid. They can do the other job providing it's documented and they're paid that. So, when they do their wage reports, Joe Smith better have worked as those jobs at that time. Now, here's where people are getting in trouble.

REPRESENTATIVE PERRY: So, how does the inspector determine, because here's the crux of the argument and I know you know where I'm headed with this, okay?

MR. SIRIANNI: Okay.

REPRESENTATIVE PERRY: These contractors that are allegedly criminals and listen, some of them probably are, okay? Some of them probably ---

MR. SIRIANNI: It's not the cleanest industry in the world.

REPRESENTATIVE PERRY: Okay, but how do they determine how much, when to pay that guy because it doesn't clearly delineate in the standards when he's doing this, it's labor and when he's doing that, it's electricity. It's electricians' work, or it's plumbers' rate – it doesn't clearly delineate that and it's up to the inspector that's enforcing to determine and they don't have any requirement for consistency, they don't talk with one another, so every

contractor, it's a different set of rules for every single person that's out there working. Different set of rules. Right?

MR. SIRIANNI: No.

REPRESENTATIVE PERRY: Tell me how it is then.

MR. SIRIANNI: Okay.

REPRESENTATIVE PERRY: Because listen, we want fairness –

MR. SIRIANNI: --- timecards.

REPRESENTATIVE PERRY: - for workers and for businesses and for taxpayers.

MR. SIRIANNI: Hold on, hold on.

REPRESENTATIVE PERRY: That's what we're looking for.

MR. SIRIANNI: I'm going to answer you.

REPRESENTATIVE PERRY: Sorry.

MR. SIRIANNI: It's alright. I'm glad to see you have as much passion in this as I do.

REPRESENTATIVE PERRY: I'm working for you. Anyhow, so I apologize, that wasn't funny. They fill out time cards; they have foremen on the jobs. Ninety-nine percent of the complaints are by the worker. They turn their company in. They're saying, "Look, I'm doing electrical work and they're paying me for doing something else."

REPRESENTATIVE PERRY: So, the worker determines what he's doing?

MR. SIRIANNI: No, when these workers file the complaint.

REPRESENTATIVE PERRY: But what incentive – of course --- to file a complaint, wouldn't you rather make twice the rate of a laborer as an electrician? What incentive don't you have to make that complaint?

MR. SIRIANNI: Well, you know there's been hearings on that and we've had people come in that were laborers and were electricians and the work was defined in hearings and in court proceedings. So, those definitions have not only been defined on the website as what the work characteristics are, but they've also been defined by case law. So, I mean, there's a lot of material out there. Now, the small contractor might not be aware of that you know, but there were seminars put out by the Department of Labor where they went to every group, every trade association, everybody they could get a hold of to give them clear insight and tell them that they were available to work with any contractor to clarify any definitions that may be misunderstood or if there was a problem with it. They do that every Administration. They did it under the Ridge Administration; they did it under the Rendell Administration. People travelled around from L and I, they had meetings with the stakeholders. There's going to be meetings with the stakeholders, there was supposed to be one today over at L and I on issues that we're talking about. So, you know, the people do make mistakes. That's why you get an unintentional violation. If it's an unintentional violation they come in, they look at your books, they talk to the person who files the complaint, they look at it and they say, "Well, you know what, this guy is right. You didn't pay the right rate on this particular job. The foreman had you doing this." The foreman comes in, they investigate it, that's why there's investigators. You know, you don't just make an accusation and then boom you're in jail or even debarred. It's a long, involved process.

REPRESENTATIVE PERRY: The Chairman has asked me to wrap it up and I got a whole host of questions as you might imagine but let me just say this because one of my other bosses is a company that you mentioned and I'm not going to remention it, but I got to tell you I take particular exception to the accusation that they're criminals and –

MR. SIRIANNI: I didn't say they were criminals.

REPRESENTATIVE PERRY: You did. You said they were criminals and they should be thrown in jail.

MR. SIRIANNI: And I said not the companies that are testifying here today, and you can check the transcript, I said not including the companies here.

REPRESENTATIVE PERRY: Let's be clear here.

MR. SIRIANNI: The companies that violate –

REPRESENTATIVE PERRY: If we want to have jail, if we want to have jail, let's talk about it for violators, but also the people –

REPRESENTATIVE DeWEESE: I'd rather not talk about it.

REPRESENTATIVE PERRY: For the people that make the claims erroneously, and I appreciate your comments there, Representative DeWeese, for the people that make the claims erroneously and for the prosecutors and the persecutors, that persecute and prosecute erroneously, and then the company is found, after years of litigation and hundreds of thousands of dollars, to not have committed any fraud, let those other people be fined and subject to jail sentences just the same and then we'll be on the same page. Thank you Mr. Chairman.

CHAIRMAN MILLER: Okay, thank you. Representative Bloom.

REPRESENTATIVE BLOOM: Thank you Mr. Chairman. Thank you gentlemen for being here. A question for Mr. Amorós: I'm listening to your testimony, I'm trying to understand it and I've got to admit I'm a little puzzled. Is your premise, your basic argument that by keeping construction wages artificially high, that we can create more jobs and reduce unemployment?

MR. AMORÓS: I don't recall saying the word "artificial." I disagree with your premise Representative, simply because the Prevailing Wage is the Prevailing Wage as assessed by the Secretary of Labor and Industry through the use of surveys. We are encouraging businesses to

use those surveys as well, and contractors, to submit that information so then there is absolutely no question that these are not artificially high numbers. I don't recall using the word "artificial" in my testimony. I'm certain that it is not in there and I just wish to make it clear that if you eliminate Prevailing Wage, if you amend it in a way that is harmful, it is going to lead towards fewer jobs, fewer high-quality jobs, and the quality of the projects will not be as high as the taxpayers deserved. I believe that that in and of itself is the crux of my testimony that if we hurt the Prevailing Wage in Pennsylvania, it's going to lead toward the depression of wages and health care benefits and pension plans. That's certainly not the direction that we wish to be going in to, particularly given the set of circumstances that have taken place in our nation in the last two weeks.

REPRESENTATIVE BLOOM: Thank you. You didn't use the term "artificially high," that's my term, I'm sorry if I implied that you had said that. But you were, you are here advocating for high wages for the folks you represent and you were talking about the high unemployment rates within the construction industry.

MR. AMORÓS: Right.

REPRESENTATIVE BLOOM: It appeared to me that you were making the connection that by maintaining those high wages, you would actually be able to increase the number of jobs and reduce the unemployment rate within the construction industry.

MR. AMORÓS: No sir. I don't believe that that is what I implied at all. I believe in the Prevailing Wage.

REPRESENTATIVE BLOOM: You agree that high wages do not increase the rate of employment.

MR. AMORÓS: I believe that the Prevailing Wage is working in Pennsylvania. That's what I believe.

REPRESENTATIVE BLOOM: Thank you.

MR. AMORÓS: And if you were to amend the Prevailing Wage it would hurt the local economies as well as the state economies.

REPRESENTATIVE BLOOM: Thank you. Thank you Mr. Chairman.

CHAIRMAN MILLER: Thank you. Last person is Representative Boyd, and I would remind all the Members we've officially slipped behind schedule here so keep it concise if you can.

REPRESENTATIVE BOYD: I'll be the shortest; I can guarantee you that Mr. Chairman. Mr. Sirianni, I have one simple question for you: the constituents that I represent on a regular basis complain to me about Prevailing Wage; whether it's my school directors, whether it's people who are complaining about property taxes and they point to Prevailing Wage on school projects; I live in a growing district that has had a large number of building projects. I've been in the Legislature eight years, please tell me what changes you can support to Prevailing Wage so I can communicate with my constituents that we have at least made some incremental advances. To date, we've opposed raising the threshold, we've opposed the Occupational Wage, we've opposed going to local option; these are all amendments that have been run or bills that have been run that I have been at hearings for the last eight years that you've testified against. So, tell me what you are willing to do to communicate to the constituents that I represent that the unions are not just against everything but they would support this change to Prevailing Wage.

MR. SIRIANNI: Well, I think that the most important change would be to make sure the taxpayer gets what he pays for – that he or she pays for. I think that we all are going to find

common ground on that. And to clean up the industry so the violators of this law don't end up on another Prevailing Wage project. How we get to determining the violators, I think that everyone could come up with a solution to that; I don't think that's that complicated. Also, I believe that, you know, we could agree on one thing: if you work an hour as a legislator, you get paid as an hour – for an hourly rate as a legislator? Okay, so which hour would you want to be paid less working as a legislator? Because you're saying projects from a certain value shouldn't be Prevailing Wage. So you're saying an hour's work isn't worth an hour's pay?

REPRESENTATIVE BOYD: Unfortunately I don't –

MR. SIRIANNI: If you raise the threshold –

REPRESENTATIVE BOYD: I don't know that I got an answer and by the way, if I work seventy hours, then I get paid less for each one of those hours than if I work forty hours that week.

MR. SIRIANNI: That's correct.

REPRESENTATIVE BOYD: So, maybe we would make Prevailing Wage a flat rate per job as opposed to an hourly rate on the project. Maybe that might be an interesting analysis, somewhat like the automobile industry does that pays flat rate and if you get that job done in 15 minutes as opposed to 30 minutes, you've ended up making a little extra money, but I can guarantee that most mechanics that are on flat rate don't like it. So, for the record, for the record, I'm looking for someone in this universe that's here to sit down and say, "I'm willing to give you a \$250,000 threshold; I'm willing to give you local option." Some changes to this law that will have a positive effect and then the second point I just wanted to make is I appreciated your testimony about the guys that are getting paid Prevailing Wage are taxpayers and it's tough on the economy. One of the things you have to realize is that those guys that are getting paid

Prevailing Wage are getting paid a wage that's established by a quasi-government entity. I'll grant you who can weigh in and define what those numbers are, but it's a quasi-government entity that's setting wages. They're friends and neighbors that are looking, living next door, have been cut ten-fifteen percent, they've seen their 401k's go in the crapper and so what ends up happening is that there's a tax shift. The people who are getting paid less continue to pay the same or marginally higher taxes and the people who are getting paid the government-defined rate, yes they continue to pay taxes but they haven't taken the cuts that the average private sector person has taken. And so, what has ended up happening is, there's getting to be this chasm in our society, right? All you got to do is look at Wisconsin and I'm here to say we should try and come together and build a bridge and stop digging this chasm wider and the testimony that I've heard so far in this hearing has served nothing but to drive that wedge wider. I would suggest that we start talking about what we can do; if you don't like these bills then you offer the bill, aside from just throwing – you know, I'm for throwing people in jail that violate the rules, but I want to ask you what rules are you willing to have change so that our taxpayers, our local property taxpayers, feel like they aren't getting hosed on public projects. That's it, don't necessarily need any additional comment, I'm asking for your help in the future.

CHAIRMAN MILLER: I do have one last follow-up, Chairman Keller.

REPRESENTATIVE W. KELLER: Thank you Mr. Chairman. Representative Boyd knows we're reasonable people, we can sit down and work things out; we have in the past. I believe there is a chasm being created. A chasm between the rich, the super rich, and now the middle class; that you just keep pulling wealth out of the middle class and giving it to the super rich. I believe there is – I'll propose, if the prime sponsors of the bills will allow, I'll propose an amendment right now that I believe would make a change – and a big change. In order to be able

to bid on a public project, you must have had filled out the Prevailing Wage form for the Department of Labor and Industry. I propose that right now to put that in. That'll change it immediately. If the people complaining that only the unions fill them out and that private contractors don't want to fill them out, hiding behind that it's proprietary or whatever they want to hide behind – then if you don't fill out the form, you're not eligible to bid on a public project unless you've filled out the Prevailing Wage forms. I think that'll make a big difference immediately. Mr. Chairman if you're – I'll get that amendment drafted.

CHAIRMAN MILLER: It will add to our interesting conversations to come.

REPRESENTATIVE W. KELLER: Thank you very much.

CHAIRMAN MILLER: Thank you gentlemen.

MR. SIRIANNI: Thank you Mr. Chairman, Mr. Keller. Thank you guys.

CHAIRMAN MILLER: As I've mentioned we are officially behind schedule now.

Unfortunately the representative from the PA State Association of Boroughs cannot be with us for personal reasons, but he did submit – and all the Members have and everybody else should have – a spreadsheet that they put together that shows a comparison of, by county, of Prevailing Wage, Prevailing Wage fringes, the total Prevailing Wage amount as compared to the Occupational Wage and Occupational estimated fringes, and what would be the total Occupational Wage amount. So this spreadsheet is, I believe, out on the table but all the Members do have it and I would just suggest you take a look at that when you get a chance. It is broken down by county and will become part of the record for today. So, the next panel that we have is the PA Mechanical Contractors Association; John Wanner, President, Wanner Associates and Robert O'Brien, former Deputy Secretary of the Department of Labor and Industry.

Gentlemen.

MR. WANNER: Good morning. I'd like to thank Chairman Miller, Chairman Keller, and all the Members of the Committee for giving us the opportunity to testify today. I'm appearing today on behalf of a number of my clients, Mechanical Contractors Association, the Plumbing Contractors, UAC Local 690, Constructors Association of Western PA, the Mechanical Trades District Council of Delaware Valley, and the National Electrical Contractors Association, Pennsylvania, New Jersey, Delaware Chapter. I think I omitted the Sheet Metal and Air Conditioning Contractors Association.

You may recall that I testified in the spring at that Prevailing Wage hearing where I appeared with a group of both union and non-union contractors in support of the overall Prevailing Wage and the macro issues. I was informed when we were invited to testify today that the Committee wanted to get into some of the technical aspects of how the wages are determined, how the classifications are determined, and it's very fortuitous, timing-wise, that the gentleman to my left, Robert O'Brien just recently left the Department of Labor and Industry where he held positions where he had direct oversight and responsibility for the administration of the Prevailing Wage Act. So, I asked him if he would appear with me today to present testimony and be available to answer your questions on some of the operational aspects of Prevailing Wage work. So, without further ado, I will give you Robert O'Brien.

MR. O'BRIEN: Thank you John. Good morning Chairman Miller, Chairman Keller, and Members of the House Labor Committee. I'm honored today to be in a unique position of addressing you on behalf of over 16,000 Pennsylvania construction workers and hundreds of Pennsylvania contractors. These Pennsylvania contractors consistently pay their employees family-sustaining wages, family-supporting benefits, and finance the training of highly-skilled, highly-qualified journeypersons and apprentices in Pennsylvania's construction industry.

For the past approximately eight-and-a-half years, I served at the Department of Labor and Industry as Bureau Director of the Bureau of Labor Law Compliance. I was responsible for the day-to-day application of Pennsylvania Prevailing Wage Act. As Deputy Secretary, and then later Executive Deputy Secretary, I was responsible for the oversight of the administration of the Pennsylvania Prevailing Wage Act. The intent of the Pennsylvania Prevailing Wage Act, as it's been since its adoption by the General Assembly in 1961, is to ensure that taxpayers get value for their public construction tax dollars, protect Pennsylvania contractors from unfair competition, and ensure that locally-established wages, benefits, and conditions were maintained. Taking together these statutory goals are aimed at creating and maintaining a level playing field for contractors to bid on Pennsylvania's taxpayer funded public works projects.

Pennsylvania's Prevailing Wage Act and regulations are often discussed, many times misrepresented, frequently misunderstood, and baselessly maligned but the fact is when this law is fairly, reasonably and consistently enforced, it serves Pennsylvania's taxpayers, contractors, public bodies, and construction workers with distinction.

The first issue I would like to discuss is the subject matter of House Bill 1367 requiring the application of the so-called "average rate wage" in determining Pennsylvania's Prevailing Wage rate for every skilled trade and craft classification performing work on no federal taxpayer financed public construction projects. The "average wage" in construction classifications, as presently computed by the Pennsylvania Department of Labor and Industry's Center for Workforce Information and Analysis, creates wage rates for work in Pennsylvania that is based upon data that is both under and over inclusive and is simply unusable and unrepresentative of the reality of our construction industry as it operates in Pennsylvania. Using these wages as the Prevailing Wages is not a "fix-all" as some maybe suggest it is.

This so-called “average wage” includes wages from maintenance activities, residential work, work on mobile homes, and offsite fabrication. It also incorporates the wages of helpers, learners, registered and unregistered apprentices, unskilled, untrained workers who during the course of a single day could be assigned tasks typically performed by a trained laborer, carpenter, electrician, plumber, pipe fitter, heavy equipment operator, painter, glazer, welder, roofer, paper hanger, dry wall finisher, floor layer, and who knows what else. One great significance in that analysis is the fact that there is no fixed methodology for making those “average wage” calculations, for determining precisely what information is being included in and excluded from the calculation or any legally predictable, consistently required basis for its final calculations. They are, in one word, arbitrary and therefore unreliable as a measure of determining the Prevailing Wage and benefit rates in any particular Pennsylvania community for any trade or craft of construction worker.

Some of the additional specific methodology flaws in the present formulations of the Department of Labor and Industry’s so-called construction “average wage” include:

The wage data used in these calculations is typically stale and not currently reflective of the presently paid wages and benefits. It should not be relied upon and utilized because it is as much as four years old.

Another glaring flaw is that only a limited number of employers participate in this survey each year. It limits the respondents to 8,000 Pennsylvania companies. By participating in this survey, these specific contractors are precluded again from participating for up to the next four years, regardless of any such participant’s market share, the relative size of the jobs undertaken, the number of employees, or the distribution of work among various trades and crafts. And, non-

Pennsylvania contractors are completely prohibited from reporting regardless of how many workers they employ on Pennsylvania construction activities.

Another further example of the fundamental unworkability of this suggested approach is that a reporting contractor may have a hundred employees: 25 may have worked in Dauphin County in the past year, 25 may have worked in Chester County in the past year, 25 may have worked in Bucks County in the past year, and the last 25 employees in Philadelphia County for the last year. But if the business is located in Lancaster County, all 100 employees' wages would be applied to the computation of the "average wage" in Lancaster County where not so much as one hour of work was actually performed.

Another issue is the failure to include any information from the calculation of employee benefits – a basic element of Prevailing Wage rate determination under the Prevailing Wage Act.

Finally, I am compelled to point out that this particular Pennsylvania Department of Labor and Industry data is so unreliable that the U.S. Department of Labor refuses to use its results in the computation or calculation of the Federal Davis-Bacon Prevailing Wage rates.

Pennsylvania's current system of relying substantially upon collectively bargained agreements, subject of course to the Act's plainly articulated administrative challenge, to determine the locally Prevailing Wage rate in Pennsylvania's communities has worked consistently well over the years in assuring the multiple intentions of the Act that I have previously discussed. Remember, the Prevailing Wage rate determined for any trade or craft is not some artificial number set by some government employee who knows nothing about the construction industry. The Prevailing Wage rates currently applied in Pennsylvania are most frequently based upon negotiated agreements between businesses, employers, and contractor associations and union representatives selected by their members who, working together, seek to

assure, through among other things, realistic wage and benefit rates that are reflective of the actual local market conditions, a continuous flow of jobs and work in the affected communities in which they actually operate. These are not fantasy rates or hypothetical aspirations – they are actual rates currently paid and verified by the way of mutually agreed upon enforcement mechanisms embodied and articulated in those same collective bargaining agreements.

Unlike all possible alternatives and certainly unlike the proposed artificial and unreliable “average wage,” these are not inflated or non-existing rates as some would have you believe but are instead actually what the private sector is already paying in each of our Pennsylvania communities for a highly-skilled, well-trained, and productive worker.

To demonstrate this point, there have been very few challenges or grievances to any Pennsylvania Prevailing Wage determination for any project, in any county for any trade or craft published by the Department of Labor and Industry for a building project, a highway project, or a heavy and highway project in the last eight-and-a-half years.

And I want to point out as well that not one single contractor, union or non-union, nor one single contractor association, union or non-union, has provided the Department of Labor and Industry, Bureau of Labor Law Compliance, with any wage information or wage data in the past eight-and-a-half years that even suggests that the Prevailing Wage rates determined by the Secretary on behalf of the Department were improper or inaccurate rates for any trade or craft in any county in Pennsylvania. While we should always seek to assure that our procedures are reflective of the market place, I respectfully submit that the Act as presently applied and administered in this regard has consistently given us exactly that result.

Next, I would like to discuss House Bill 1685. This bill would compel reliance upon the Federal Occupational Outlook Handbook for craft and classification of construction workers on

Pennsylvania taxpayer financed construction projects. By its own description, on its own website, “The Occupational Outlook Handbook” is a recognized source of career information designed to provide valuable assistance to individuals making decisions and choices about their future work lives. It’s for people looking for broad and general information on jobs. It was not designed to be used to determine classifications on a jobsite. And it is precisely based upon this plainly articulated and very narrow focused purpose that the U.S. Department of Labor refuses to utilize this source as any aspect of the basis for Federal Prevailing Wage classification determinations.

The Occupational Outlook Handbook does not utilize any local data but, instead, takes a broad national approach. If the Occupational Outlook Handbook were to be used, it would cause confusion among the Pennsylvania contractor community because Pennsylvania’s Department of Labor and Industry would still be required to determine wages, classifications, and crafts on a purely local level in the county where the work is to be performed. The Occupational Outlook Handbook does not take into account the differences among cities, non-urban areas, and various localities and it completely ignores established local and regional custom and usage in the construction industry.

Moreover, the Occupational Outlook Handbook relies on information from types of projects not covered by the Pennsylvania Prevailing Wage Act such as single family housing projects, projects under the threshold of \$25,000, industrial work, and offsite fabrication.

The Occupational Outlook Handbook does not account for the fact that workers are trained for the work they perform, and that the Pennsylvania Department of Labor and Industry uses the Commonwealth’s approved and accepted Apprentices Standards to help determine local custom and usage for each trade and craft in each Pennsylvania county.

I understand the Labor Committee is looking for ways to improve the Prevailing Wage Act and I think that's commendable. I have two proposals: if the Act were to be amended, it should be modified to ensure that fines and penalties may be assessed with respect to every contractor who intentionally or unintentionally violates Pennsylvania's Prevailing Wage Act. Such fines and penalties should be returned to a designated fund at the Department of Labor and Industry to ensure improved and consistent enforcement as well as ongoing guidance to both public bodies and contractors bidding on Pennsylvania public works.

Another proposal I have is: the current and very limited Maintenance Exception should be eliminated. Our Pennsylvania courts have spoken with clarity on this topic. By requiring uniform and consistent Prevailing Wage applicability, confusion, and potential inconsistent applications would be eliminated, compliance with recent Pennsylvania court rulings would be simplified, and our administrative framework would mirror the Federal Davis-Bacon Act and the vast majority of states that have their own individual Prevailing Wage laws.

In conclusion, the Pennsylvania Prevailing Wage Act in its present form has served Pennsylvania's taxpayers, contractors, and construction workers well. It has the flexibility to assure consistent, predictable applications and realistic establishments of rates and occupational duties and content. I hope you will agree with me that Pennsylvania's employers are entitled to a level playing field when bidding on taxpayer financed projects and that Pennsylvania's construction workers deserve family-sustaining wages and family-supporting benefits when they work on taxpayer-funded projects.

That dual goal based approach is not only consistent with the law and good public policy; it's the right thing to do for our businesses, our citizens, our communities, and our taxpayers.

I'd be happy to answer any questions that you have at this time.

CHAIRMAN MILLER: Thank you for your testimony. If I might begin with a question, it's obvious, Mr. O'Brien, from your testimony that the Occupational Wage Data, you believe is very flawed.

MR. O'BRIEN: That's correct sir.

CHAIRMAN MILLER: Do we use that for anything in Pennsylvania now?

MR. O'BRIEN: To my knowledge, it is not used for any construction wage rates; it's not used to establish the Prevailing Wage. It's not only not used to establish the Prevailing Wage in Pennsylvania, the Federal government also refuses to use that wage information for their Davis-Bacon projects.

CHAIRMAN MILLER: With that being said, as Executive Deputy Secretary, did you propose to get rid of even collecting this data? Of what value, why do we collect it then?

MR. O'BRIEN: That's a very good question, why do we?

CHAIRMAN MILLER: But you were Executive Deputy Secretary. Why did we perpetuate collecting data that's of no value?

MR. O'BRIEN: My understanding is there's a user agreement between the Department and the Federal government that requires the Department to collect that data.

CHAIRMAN MILLER: Okay, we'll take a look at that. I have no further questions. Others? Representative Keller?

REPRESENTATIVE W. KELLER: Thank you Mr. Chairman, thank you Mr. O'Brien, Mr. Wanner. Mr. O'Brien, during your tenure over at the Department, do you have any idea the total number of Prevailing Wage complaints that were filed while you were there?

MR. O'BRIEN: They averaged between 500 and 600 a year, maybe sometimes a little bit less, sometimes more. But the average, you could probably say 550, 575 a year.

REPRESENTATIVE W. KELLER: During that time, during your time, how many contractors were disbarred for the complaints?

MR. O'BRIEN: I think that number was 86 in the eight years of the Rendell Administration.

REPRESENTATIVE W. KELLER: There seems to be a lot of confusion about the Prevailing Wage and the jurisdictional issues. Can you just give us a slight overview of how that is determined and why there is so much problem? I mean, if you have to fill out all the forms before the job starts, you going to say you're going to use x-number of craftsmen for this many hours on this particular site. We hear that the contractors, that confuses them and that's why, all of a sudden, there's complaints against them because it's very confusing. Could you run by that?

MR. O'BRIEN: I believe you're talking about custom and usage. I don't feel that there's any big mystery here, I don't feel that there's a lot of confusion. I think that if we just look at this from a common sense approach, and I will describe it for you. Custom and usage is not hard to understand. First of all, the majority of contractors – the vast majority of contractors – in the Prevailing Wage market have apprenticeship and training programs that have been proved by the Pennsylvania Apprenticeship and Training Council. In their standards, it lists what an electrician, what a plumber, what a steam fitter, what an insulator, what a carpenter, what an iron worker does. It also lists in these approved standards what a laborer does. So there is a basis for the custom and usage. Also, you need to look at this realistically because, let's face it, you brought up an electrician. If you're an electrical contractor and you're putting in an electrical system, you're hiring electricians to do that – you're not hiring laborers, you're hiring electricians. If you're putting in a new plumbing system, you're hiring plumbers. If you're putting in [an] HVAC system, you're hiring sheet metal workers, you're hiring steam fitters; I don't believe

there's any confusion at all about that. The vast majority of contractors get it, they understand it, and it's not a problem.

REPRESENTATIVE W. KELLER: But we've heard testimony in the past, we've heard it today, and I'm sure we're going to hear it within the next couple of testifiers that that is the number one problem with the Prevailing Wage system; that no one has any idea of how if somebody carries roofing material up, they're paying roofers – these are the things we hear constantly over and over and over again.

MR. O'BRIEN: Let me say this to you, okay? The vast majority of the feedback that I heard in eight-and-a-half years was positive about the Department's enforcement of the Prevailing Wage Act. The few complaints that we heard were from the lawbreakers or the folks who represented the folks that were in violation of the Act. And, for over the last forty years, Commonwealth court has upheld and affirmed custom and uses dating back to 1970 and right up to two recent cases, R L Insulation and Allied Mechanical. Here again, Commonwealth affirmed how I use custom and usage, how the Department uses custom and usage, and found no problems with it.

REPRESENTATIVE W. KELLER: During your tenure, did you make sure that every contractor who was bidding on public works projects got a packet to fill out the Prevailing Wage form?

MR. O'BRIEN: The Department does and would accept data from any contractor, interested party, union contractor association. The only information that the Department of Labor and Industry in the last eight-and-a-half years is --- this collective bargain agreements submitted by unions and their contractors association. Let me be clear about this, I was only Bureau Director for 2, maybe 3, weeks and Hank Butler, the then-lobbyist for the ABC came to see me

to introduce himself. During a conversation in front of me, and the Harrisburg Supervisor, ---, and administrative officer at the Bureau of Labor Law Compliance --- stated that the ABC would not participate in any surveys and they would not submit any data to the Department because they didn't want their contractors – some of their contractors didn't want people to know what they were paying. To this day, when I left in July, we had not received any data from them.

REPRESENTATIVE W. KELLER: Doesn't that – I mean, you've heard questions today about, you know, it's just a union rate, it's the highest rate – would you, well I shouldn't ask you this – we have to, to get the true Prevailing Wage, we're going to have to get the people who are not participating and are complaining the most, to submit data to the Department of Labor and Industry.

MR. O'BRIEN: That's correct.

REPRESENTATIVE W. KELLER: Alright. And to get, until they do that, the only data you have is the data submitted and that's – that will be the Prevailing Wage. So they're trying to have it the both ways. They don't want to submit the data but yet they want to complain about what the Department determines is the Prevailing Wage.

MR. O'BRIEN: I agree with you.

REPRESENTATIVE W. KELLER: Alright, well I'm sure we'll ask the ABC that when they get there. Thank you very much.

CHAIRMAN MILLER: Representative Bear.

REPRESENTATIVE BEAR: Thank you Mr. Chairman. Thank you Mr. O'Brien for testifying. Just for my clarification, before we get into some of the questions – I have a lot about my classification bill – last time I saw you, you were in your official capacity. Are you testifying today as a private citizen?

MR. O'BRIEN: That is correct.

REPRESENTATIVE BEAR: Alright and since you left the Department, is there anyone you're working for now and if so, whom?

MR. WANNER: My clients are paying him for his time to prepare and deliver the testimony.

REPRESENTATIVE BEAR: So, he's working for Wanner & Associates?

MR. WANNER: He's not an employee; it's a one-time project.

REPRESENTATIVE BEAR: Okay. Prior, when in your last position, who appointed you to your last position?

MR. O'BRIEN: Secretary Schmerin; Secretary of Labor and Industry Steve Schmerin.

REPRESENTATIVE BEAR: Okay, and what Governor?

MR. O'BRIEN: Governor Rendell.

REPRESENTATIVE BEAR: Okay, thank you. So, following up to what I just heard about surveys, in your prior position, I think it says in regulations that the Deputy Secretary will be proactive in trying to collect those surveys. So I want to ask you, first question, what did you do to be proactive?

MR. O'BRIEN: We met with, and continued – the Department continues it – ongoing process of meeting with contractors, contractors associations, unions, ABC, various groups, independent groups, to explain Pennsylvania Prevailing Wage Act to them; to explain how it would be enforced and to explain custom and usage, and various other things.

REPRESENTATIVE BEAR: So, over the last eight years if I would go to some of the open shops, or any of the contractors, and said were you active and actively trying to get these surveys filled out they would tell me yes?

MR. O'BRIEN: I don't know what they would tell you. I'm telling you what we did. We would, the Department of Labor and Industry, would have examined any data that had been submitted. No data was submitted.

REPRESENTATIVE BEAR: That brings me to the next question on that point: are these surveys confidential or are they public?

MR. O'BRIEN: The wage data that is submitted to the Department becomes public because when it's used, it's put up on our website and it's used for the wage rates and the benefit rates in that county for that particular craft.

REPRESENTATIVE BEAR: Okay, if you're not getting surveys back from the open shops, then you are getting surveys from whom then? Surveys or what do you get?

MR. O'BRIEN: Surveys is not the proper term. It's wage data –

REPRESENTATIVE BEAR: Wage data.

MR. O'BRIEN: - that is submitted to the Department. There has not been a survey at the Department since, I believe, 1996 under the Ridge Administration and it was thrown out by Commonwealth court and Supreme Court because it was too restrictive.

REPRESENTATIVE BEAR: So, you get your wage data then from what, collective bargaining agreements?

MR. O'BRIEN: Yes, our wage data from contractors associations and unions that submit it and any other group – they could submit the wage data, the Department would have looked at it, examined it, and if it prevailed, use it.

REPRESENTATIVE BEAR: And that's all public information too?

MR. O'BRIEN: It's all public information. I believe it's all subject to Right-To-Know.

REPRESENTATIVE BEAR: Alright, thank you. Now moving on to my bill, 1685, you were mentioning earlier that you have some concern over using the Federal Labor and Industry handbook, the Occupational Handbook, and you made a statement where you said, “Well, you know, classifications or definitions of these jobs can be very different from region to region to state to state,” and I guess I’m just asking how is that so? I mean, is not an electrician an electrician whether you’re in Pennsylvania or Idaho or - ?

MR. O’BRIEN: There were some locally established custom and usage in different counties in Pennsylvania that I believe has served Pennsylvania well if, if you had one broad approach, let’s say that if there was already a local custom and usage for a particular craft, say in Jacobus, Pennsylvania, you would be saddling Jacobus with a Philadelphia and/or Pittsburgh broad stroke instead of allowing the local custom and usage prevail in that community.

REPRESENTATIVE BEAR: So, you’re saying that it varies that much; what an electrician does in Philadelphia might be different from an electrician in Lancaster, it might be different from an electrician in Erie?

MR. O’BRIEN: It may not vary that much but it gives the opportunity for local custom and usage to be used instead of just a broad overview.

REPRESENTATIVE BEAR: Alright, so if you’re against using a Federal standard, what do you think about having a Statewide standard then, defined by Pennsylvania?

MR. O’BRIEN: I think the current custom and usage has worked well in the construction industry. And, here again, okay, very, very, very few complaints; possibly none in the last eight-and-a-half years – probably a few. Again, the only complaints I received about custom and usage were from people who had violated the law or representatives of the folks that had violated the law. Let’s face it, when these people try to hide behind custom and usage, they attempt to get an

unfair bidding advantage against all the other contractors in Pennsylvania that abide by the law and play by the rules.

REPRESENTATIVE BEAR: Alright, the question I have on that then is, is there a place on, in anywhere, that this is written down with L and I, Pennsylvania Labor and Industry?

MR. O'BRIEN: Well on the Department of Labor and Industry's website it has briefly job descriptions; all you need to do is contact the Bureau of Labor Law Compliance, any of their five field offices, to get the determination. If you don't like that determination, you can then call the Department – the Department of Labor and Industry – Office of General Counsel will be happy to send you a legal determination that that individual could challenge.

REPRESENTATIVE BEAR: You're saying it is written down with the L and I?

MR. O'BRIEN: It's on the website.

REPRESENTATIVE BEAR: It is? I mean, I look at the website; the only thing I see is rates. I see nothing with definition or classification. I mean, if anyone has an iPad I'd like to have a look.

MR. O'BRIEN: You need to click on definitions because you'll see, just for instance, operating engineers. There's a page and a half of definitions.

REPRESENTATIVE BEAR: That's news to me.

MR. O'BRIEN: I'd be happy to walk you through the website.

REPRESENTATIVE BEAR: My question ---

MR. O'BRIEN: And I'd be happy to walk you through the website, I'd be happy to do it.

REPRESENTATIVE BEAR: Last question, so you – just to make sure I understand your position – so you see no merit in having a uniform classification across Pennsylvania that's

transparent, that's on your website that I could click like that; you don't see a merit in that? It has to be custom and usage by region because it varies so much?

MR. O'BRIEN: I believe custom and usage has worked well in Pennsylvania. It has been supported by the last forty years by Commonwealth court, the way it's been applied, and I think it's served Pennsylvania's contractors, the construction industry, public bodies, and construction workers well.

REPRESENTATIVE BEAR: Thank you for your testimony. I disagree, I think having a standard – I don't see electrician from one region to another really varies that much – and to say it does, I think adds to ambiguity, but thank you.

MR. O'BRIEN: You're welcome, sir.

CHAIRMAN MILLER: Representative Keller, Fred Keller.

REPRESENTATIVE F. KELLER: Good morning and thank you for your testimony. I have a couple questions and it deals with some of the violations that were talked about. If I'm an electrical contractor and I have fifteen employees, ten electricians and five laborers, and the job requires some conduit to be installed so wires can be run through it. Who can do the work on that conduit?

MR. O'BRIEN: Well, fifteen of those employees could do that work. But when those laborers are installing conduit and pulling the wires, they have to be paid as an electrician.

REPRESENTATIVE F. KELLER: So nothing is sacrificed on quality when they do that?

MR. O'BRIEN: It's possibly, and I would agree with you that it could be a quality issue very much so but the letter of the law says workers have to be paid for the work they perform.

And if those folks, those laborers are doing that work, they have to be paid as an electrician. The quality issue does not get involved with Pennsylvania's Prevailing Wage Act.

REPRESENTATIVE F. KELLER: So, on one day, the laborers can strictly be doing laborer work, on the next day for five hours they do labor work and for the other three hours be doing, nailing conduit, and I would have to keep track of how many hours I did each thing so I could hand that in and make sure that I was abiding by the law.

MR. O'BRIEN: You would have to fill that out correctly on your certified payrolls; that's right.

REPRESENTATIVE F. KELLER: So, the person performing that work would have to spend time filling out what he was doing, rather than performing work.

MR. O'BRIEN: With the computer programs they have today, filling out certified payrolls takes a matter of a few minutes a week.

REPRESENTATIVE F. KELLER: But on a job site; I'm on a job site and all the materials are here. I've unloaded them all from the truck and the electricians are going and if I don't get that conduit installed, they're going to have to wait. I don't have anything to unload, so now I got to install the conduit, okay? Or I just stand around and wait and the electricians come down and do it where if I could just jump in and do that, they could keep working. My point is, my point is, I would have to keep track that for this two hours, I was working on the conduit.

MR. O'BRIEN: That is correct; you would have to pay yourself the wages and benefits of an electrician.

REPRESENTATIVE F. KELLER: And how do I keep track of that on the job site so that at the end of the day I remembered how much time I did doing each thing?

MR. O'BRIEN: Well, the vast majority of projects in Pennsylvania, you have to turn in – every contractor must turn in a manpower report to the general contractor every day. So you're listing how many folks you have working on there anyway. In every project I've ever been on in my twenty-eight-and-a-half years in the construction industry, they've turned in time cards. I would hope that your time cards would accurately reflect the work that you were doing.

REPRESENTATIVE F. KELLER: So, in other words, I carry a time card with me the entire day and when I'm done unloading the truck I write down I'm done unloading the truck and started hanging conduit.

MR. O'BRIEN: You could do it that way or you could fill out the time card at the end of the day or fill out the time card that night on your own personal time.

REPRESENTATIVE F. KELLER: See, I guess I just look at things a little differently. I look at getting the job done; and there were some things brought up earlier, that's why I get into that. You know, I don't know that it's always necessarily an issue of quality as far as it is of just making sure that we're paying the rate that has been defined, whether the person is qualified or not. I mean, I come from an area where if you're on a farm and something needs done, you do it; you know, you don't worry about who's getting paid what; you're getting paid your daily wage. But I'll get off, I just wanted to understand what could happen because if an inspector comes out and sees that happening and looks at that and something isn't right, they could be in violation.

MR. O'BRIEN: The inspector would come out to discuss it, interview the workers, talk to you about it, review the certified payrolls; here again, if it's just an unintentional accounting error, they would just have you settle up. In the eight-and-a-half years, we found over 2,000 contractors in violation. Only, I think, 86 or 88 of those contractors were debarred. 92, 94 percent of all the cases were settled unintentionally.

REPRESENTATIVE F. KELLER: Okay, just a couple other questions I have. The Prevailing Wage also includes a fringe benefit rate?

MR. O'BRIEN: That's correct.

REPRESENTATIVE F. KELLER: What can that fringe benefit rate be used for?

MR. O'BRIEN: Health care, pension, 401k, a variety of other things, vacation time, sick time; many other things.

REPRESENTATIVE F. KELLER: Training?

MR. O'BRIEN: Pardon me?

REPRESENTATIVE F. KELLER: Training?

MR. O'BRIEN: Absolutely. Many other things. The Department has been very, very flexible in my eight-and-a-half years to work with contractors so that fringe benefit could be included.

REPRESENTATIVE F. KELLER: So, I could use that, if I were an employee, I could get trained with that, with that money, or part of that?

MR. O'BRIEN: That's correct.

REPRESENTATIVE F. KELLER: And I could choose where I want to have the training done?

MR. O'BRIEN: If it was agreeable with your contractor, I believe that's correct.

REPRESENTATIVE F. KELLER: Any approved training facility could do that? Training, whether it's a technical institute or a college, or – I know we toured, as the Committee, we toured a place in Lancaster; we were down one chairman – Lebanon.

CHAIRMAN MILLER: Lebanon.

REPRESENTATIVE F. KELLER: Yeah, we toured a facility that does training so we could choose any one of those?

MR. O'BRIEN: I also toured that training facility and it's one of the best in the Commonwealth. In Pennsylvania, one thing we have to remember, we have some of the best apprenticeship and training programs, not only in the country but in the world.

REPRESENTATIVE F. KELLER: Okay. I just wanted to make sure I understood what all happened with those training facilities. But my employer would have to agree to let me go to whatever approved training facility?

MR. O'BRIEN: And if those training facilities were involved with a, whether it be with the ABC or a joint-apprenticeship and training thing through the Building Trades, that contractor would have to be a member for you to attend that training facility.

REPRESENTATIVE F. KELLER: So if I'm not a member of one of the organizations, my employees can't go there for training?

MR. O'BRIEN: If you're a contractor, that's correct; unless you work out a user agreement with that facility.

REPRESENTATIVE F. KELLER: Okay. Thank you.

CHAIRMAN MILLER: Representative Kampf.

REPRESENTATIVE KAMPF: Mr. O'Brien, I guess I know the answer to this, but since you were at L and I for eight years, you can hopefully shed some light on this: does L and I set and enforce the wage rates for any other private contractor doing business with the government, other than in the construction field?

MR. O'BRIEN: No sir.

REPRESENTATIVE KAMPF: Okay, thank you.

CHAIRMAN MILLER: Representative Perry.

REPRESENTATIVE PERRY: Thank you Mr. Chairman and thank you gentlemen for your time this morning. My question is probably mostly directed to Mr. O'Brien. Mr. O'Brien, of the 500 plus or minus complaints, investigation, and enforcement actions, can you give me a percentage of how many of those were taken out against merit shops as opposed to organized shops?

MR. O'BRIEN: The majority of those complaints that were received were against open shop contractors and here's the reason why –

REPRESENTATIVE PERRY: Can you describe "majority" first? What's "majority?" 51 percent? 99 percent?

MR. O'BRIEN: It's hard to put a hand on it; I would say at least two-thirds. ---

REPRESENTATIVE PERRY: At least 66 percent?

MR. O'BRIEN: Yes.

REPRESENTATIVE PERRY: Okay.

MR. O'BRIEN: The Department doesn't look at things as union or non-union. A complaint comes in, we receive it, and the Department investigates it. But let me explain something to you: the reason that you get more complaints against open shop contractors than you do against union contractor is when a union worker is on a job and he's got a problem, or he feels he's being underpaid, he can go to a shop steward, he can go to his business agent, he can go to the president of the union, he can stand up at a union meeting and complain. When an open shop worker has a complaint, he's got one place to come: Bureau of Labor Law Compliance, Department of Labor and Industry, to file his claim.

REPRESENTATIVE PERRY: Okay. I mean, if that's your answer, that's fine. Can you explain to me your role on the Apprenticeship Council? Or with the Apprenticeship Council?

MR. O'BRIEN: In my eight-an-a-half years, I was what is called an ex-officio member; I had no standing vote. I attended most, if not all, of the apprenticeship and training councils, representing three different secretaries.

REPRESENTATIVE PERRY: Okay then; I appreciate that. I'm wondering if you can explain to me, and the rest of the folks here, why there are different standards for different training organizations that have all been approved. These are training organizations or programs that have been approved by the council, but let's say for instance that one organization that has an approved training program will require so many journeymen per apprentices; and another organization that has exactly the same approval from the Apprenticeship Council for their training will require a different number. Why is that?

MR. O'BRIEN: The ratios have been set by the standards that were presented to the council and approved by the council. The majority of those standards are ten, fifteen, twenty years old. There are some trade additions that have been approved. The council has been very reluctant; the ratios in Pennsylvania are usually four-to-one or five-to-one.

REPRESENTATIVE PERRY: Four-to-one to five-to-one for?

MR. O'BRIEN: Four journey people to one apprentice.

UNKNOWN: The collective bargaining agreement specifies otherwise.

REPRESENTATIVE PERRY: I was going to say, but how does a collective bargaining agreement – if this is about safety and making sure that the, that the novice so to speak or the trainee is being properly supervised, how does a collective bargaining agreement differ from the training? The training's the training.

MR. O'BRIEN: I couldn't agree with you more. The council does not, nor does the Bureau of Labor Law Compliance, does not use those collective bargaining agreements to determine ratios. Those ratios are determined by the approved standards that the council approved. So, even if somebody has, say a two-to-one in their collective bargaining agreement, but if their approved standards are four-to-one on Pennsylvania Prevailing Wage projects, it has to be a four-to-one standard, sir.

REPRESENTATIVE PERRY: And how come most of the organized labor shops are one-to-one?

MR. O'BRIEN: Not on a Prevailing Wage project they're not. I'm sorry I don't know of any one-to-one ratio that's been approved by the Pennsylvania Apprenticeship and Training Council.

REPRESENTATIVE PERRY: You don't know of any?

MR. O'BRIEN: I don't know of any and I challenge you to show me one.

REPRESENTATIVE PERRY: Okay, that's fair. Can you provide any proof regarding independent organizations or contractors that have sent in their wage rate information that their information is being used in determining the Prevailing Wage rate and do you use U.S. DOL [Department of Labor] information regarding the average of journeymen, apprentice wage rates?

MR. O'BRIEN: To answer your first question, any wage data that was submitted to the Department would have been reviewed.

REPRESENTATIVE PERRY: Would have been reviewed.

MR. O'BRIEN: Would have been reviewed.

REPRESENTATIVE PERRY: But how does, because you claim that – or the Department and some folks here claim that – open shop companies, agencies, whatever,

enterprises, don't submit any data. And, of course, these folks tell us they do submit data. How can they have any level of confidence that their data is being considered when determining Prevailing Wage rates if you're telling them it's not being submitted and they're submitting it?

MR. O'BRIEN: Let me assure you Representative Perry, the data was never submitted.

REPRESENTATIVE PERRY: And, if I can prove that it was, then what?

MR. O'BRIEN: Then the Department would have to examine it and review it. But I guarantee you, it didn't happen.

REPRESENTATIVE PERRY: You can guarantee it personally.

MR. O'BRIEN: Yes sir. In my eight-and-a-half years, no data was submitted involving wage rates from ---

REPRESENTATIVE PERRY: Do you provide transmittal notices or anything when data is submitted to, let's say, the Brotherhood of Electrical Workers, Local so-and-so submits that data; do they get any -- like a receipt that they submitted it?

MR. O'BRIEN: No, they do not.

REPRESENTATIVE PERRY: So, how could you prove, how could anybody prove, that any submitted? How do we know what numbers you're using? Really?

MR. O'BRIEN: The numbers that are being used is the data and the information that is being sent to the Department for the Secretary to make a determination.

REPRESENTATIVE PERRY: I understand what you're saying; I'm asking how do you prove it?

UNKNOWN: What's the documentation?

REPRESENTATIVE PERRY: Is there any documentation at all? How do we know? I mean, we're counting on your good word -- I appreciate it -- but how do we know?

MR. O'BRIEN: The documentation is when the website is updated with the new wages, wage rates and fringe benefits.

REPRESENTATIVE PERRY: So, there is no proof. There is no proof is the point. And that's concerning, I think, to anybody.

MR. O'BRIEN: And let me also say this to you: there's been no complaints that wage data was submitted to the Department that wasn't used.

REPRESENTATIVE PERRY: Sir, I got to tell you this: I've been to the Apprenticeship Council meetings and if the rest of the Department runs like they do, it's a travesty and I would suggest that we televise them; it's a kangaroo court and it's hokey, and it's rigged, and that's my perception and perception is reality. I think we ought to televise it so the working public can see that.

MR. O'BRIEN: Well the reality is that the folks on the Pennsylvania Apprenticeship and Training Council are good people who –

REPRESENTATIVE PERRY: I didn't say they weren't.

MR. O'BRIEN: - who care about apprenticeship and training in Pennsylvania. And when I was there, they cared about apprentices, they cared about good programs in Pennsylvania, and they did an excellent job.

CHAIRMAN MILLER: I think –

REPRESENTATIVE PERRY: Final question, Mr. Chairman.

CHAIRMAN MILLER: I think I allowed this to go a little bit further than I should have.

REPRESENTATIVE PERRY: One final question?

CHAIRMAN MILLER: Because it's really not Prevailing Wage, but it may have to do a little bit with job classification, so I let that slide. Last question.

REPRESENTATIVE PERRY: Regarding fines and penalties: if you're going to fine and penalize the alleged or convicted violators, the company so-to-speak; if that's going to be the case, would you agree to having the same or a similar set of fines and penalties for those folks that erroneously falsify documents or claim or turn in a company that is determined not to have violated the law? Would it be fair to turn about fair play?

MR. O'BRIEN: Listen, I'd be happy to sit down and that's something to look at and work out as this process moves forward.

REPRESENTATIVE PERRY: Thank you Mr. Chairman.

CHAIRMAN MILLER: Representative Boyd.

REPRESENTATIVE BOYD: Thank you Mr. Chairman. I have one final question but listening to Representative [Fred] Keller's line of questioning, I'll have some follow-ups to that. So, a worker on a job site is responsible in essence to classify himself. That's basically what you said at that three hours that he makes a change, he's got to put that on his time card.

MR. O'BRIEN: Typically either the worker fills out his timecard or the supervisor on, whether it be that floor or that project, fills out the time card.

REPRESENTATIVE BOYD: Okay. What happens if he makes a mistake? What happens if just – it's a hot day, it's 102 degrees and he's just like "I don't give a rip," and he fills it out incorrectly.

MR. O'BRIEN: My experience is if the Department sees that that was just an honest mistake by a worker, they close the case and they move on.

REPRESENTATIVE BOYD: So, let's play that out. Let's talk about how that though would happen because ultimately he's going to recognize it when he gets his paycheck and he complains to his boss that, "Hey wait a second on that job that we were doing over at the school, that week I put in nine hours as an electrician instead of as a laborer and it's not in my paycheck." And the boss says, "Hey, here's your time cards that you filled out; you're basically out of luck. Sorry." Is that a scenario that's possible? Is that like one of the complaints that comes in from a laborer?

MR. O'BRIEN: It's possible and in that case, we would look at it; talk to the employee, talk to some of the other workers, see if there was a pattern where that was happening a lot or whether that was just an isolated incident.

REPRESENTATIVE BOYD: Okay and then one other question on that: how does an employer appropriate benefits differently? I mean, I'm an employer, I've had employees, I've provided benefit package, okay, so different grades of – you're saying that there's a different benefit package for a journeyman electrician as opposed to an apprentice electrician? Frankly if I tried to do that in my business, I might go to jail for having different benefit structures for different levels of employees.

MR. O'BRIEN: The benefit structure amongst apprentices and journey people – and journeypersons – are very, very close. The difference is if it's an open shop contractor, his benefit package may be less so he can choose to make that up in a variety of ways. He can pay the remainder of that money as a cash portion or he could put additional money into the workers' 401k for instance.

REPRESENTATIVE BOYD: Okay, so please indulge the question. Would you at least admit that that is some additional paperwork for the owner of the company?

MR. O'BRIEN: Maybe, a very small, minute.

REPRESENTATIVE BOYD: Have you ever done payroll? Have you ever done any of that?

MR. O'BRIEN: I've never done payroll, no.

REPRESENTATIVE BOYD: So, you realize payroll taxes are appropriated on wages. So you have to make certain calculations there. There's a difference. There is absolutely additional costs in paperwork.

MR. O'BRIEN: Well, you know what, here again if you want to bid a Prevailing Wage job, I guess that's the cost of doing business.

REPRESENTATIVE BOYD: Okay, thank you. It's the cost of doing what business if you want to do a Prevailing Wage job. Last question --- actually I'm just speaking to Mr. O'Brien. Last question: you said in your testimony a couple times you've never had any complaints about this system and this process. I invite you to come to my town hall meetings where my constituents complain regularly about their property taxes and a contributing factor to their property taxes is Prevailing Wage that is paid on particularly school projects, but Prevailing Wage paid on municipal projects as well. So, I ask you the same question that I asked Mr. Sirianni: this discussion, this argument is not between the Legislature and the unions; this discussion is between the taxpayers who are paying local taxes and the people who are making Prevailing Wage. My question is, is that, or my statement is that there is this divide and it grows. What suggestions do you have to amend the Prevailing Wage Act, aside from increasing the penalties, the two things that you put in that will actually lower the tax burden on the taxpayer?

MR. O'BRIEN: Let me say this to you: I believe the Prevailing Wage Act does lower the tax burden on all taxpayers in Pennsylvania. It ensures that you pay the going rate for the best trained, most qualified, most productive worker that gets that job done right the first time to help eliminate cost overruns and things of that nature. That's what I would tell your taxpayers.

REPRESENTATIVE BOYD: Have you ever served on a school board?

MR. O'BRIEN: No, I have not.

REPRESENTATIVE BOYD: So, you've never really dealt with that issue on a school board level. Every one of my school board members, I represent four different school districts; potential a fifth, a small precinct of five, nine members each, 36 to 45 people, who all have told me it increases their costs. You're telling me they're wrong.

MR. O'BRIEN: And I also believe that Prevailing Wage ensures that local workers and local contractors get that work. Any reducing of the Prevailing Wage opens Pennsylvania contractors up, and your school districts, to out-of-state contractors, out-of-state workers, the explosion of independent contractors and undocumented workers. Prevailing Wage helps to prevent that.

REPRESENTATIVE BOYD: Again I would suggest to you that – I'm one of the people on this panel that's looking for some solutions today; not one person has given me a solution that's an alternative to either – well, Representative Keller – William Keller and I, Chairman Keller and I will talk about his suggestion; but other than that from the people who have testified, nobody has been willing to talk about threshold, nobody has been willing to talk about local option, nobody has been willing to talk about any of the other potential proposals. The index of Prevailing Wage hasn't gone up in, what since [19]61; so a project now that should, what, can we at least exempt \$250,000 projects?

MR. O'BRIEN: I'm not prepared to talk about the threshold today; I'm prepared to talk about the two bills that I'm testifying about.

CHAIRMAN MILLER: Okay, thank you. One last person. Representative DeWeese.

REPRESENTATIVE DeWEESE: Thank you, Mr. Chairman. [I'd] just like the record to reflect a disparity between my own point of view and the point of view of my honorable colleague from the center of the state. I represent eight school districts, seventy-two school board members, and zero of those people have come to me gnashing their teeth and full of lamentations about the Prevailing Wage. I have to speculate that they're solid middle class perspectives are undergirded by a feeling that more productivity, more training, and more middle class wages are created in those rugged hills of Greene and Fayette and Washington and I just think it's necessary for the record to reflect a different point of view that I project than the one of my honorable colleague. Thank you Mr. Chairman.

CHAIRMAN MILLER: I appreciate that Representative DeWeese. It might have to do with the fact that the in the center of the state we're building new schools every other year, but that's part of it. Yes?

MR. WANNER: Just one comment and I think a number of the Members of the Committee have gotten into the issue of different rates being paid to the same individual. I mean, my experience with the contractors, both open shop and union, is that an electrician, he works eight hours, he gets paid eight hours at an electrician's rate. If he's a laborer it's eight hours at the laborer's rate. I think some of the consternation comes about it when we've seen contractors trying to gain a bidding advantage by saying, "Well, one of those hours the electrician was just carrying his tools back and forth and therefore he should only be paid a laborer's rate." Every job I've ever had, if I got paid an hourly rate, I got paid the same rate for the same day. I think the

issue isn't laborers doing electrical work; it's contractors wanting to pay workers a different rate when they're working on the same job, the same day.

CHAIRMAN MILLER: Thank you. Thank you gentlemen for your testimony. We're down to our last panel and it's obvious I need to work on my time management a little bit better. I would note that we've been joined by Representative Murphy. Our last panel is the Association of Builders and Contractors, Steven Swarney, Director of Government Affairs; Tom Zipfel, General Counsel, Worth & Company; Stephen Leer, Leer Electric; and Tim Woolford, Woolford Law. Please. Okay, they pulled some from up front too. I will tell you that I don't want to cut you gentlemen short at all but I did read through some of this testimony last evening and some of it is quite lengthy so if you can modify some of it I would appreciate it. But when you're ready, I don't know who's going to kick off first. Steve? Okay. Turn that mike around.

MR. SWARNEY: This is electricians' work, right? Right, levity?

CHAIRMAN MILLER: Levity's good.

UNKNOWN: Maybe it says so on the website. We'll check it out.

MR. SWARNEY: Good morning Chairman Miller, Chairman Keller, and the rest of the Committee. My comments are very brief and they're actually aimed at the other association that was not here. The Boroughs Association, Ron Grutza was to be here; he did a lot of work on that statistical package and he did not write testimony to back all that up but he wanted to, to let everyone know that he will submit written testimony. He did a lot of work on that so I ask you to consider that and wait for Ron's work on that. He had a little family emergency. So, with that I'll turn it over to Jack Zimmer.

CHAIRMAN MILLER: Okay, thank you. We will; we'll take a look at the testimony when he gets it to us and certainly look at the spreadsheet.

MR. ZIMMER: Thank you Mr. Chairman. On our panel today is Tom Zipfel, General Counsel for Worth & Company; Steve Leer, Leer Electric; Tim Woolford, Woolford Law; and myself. Tom Zipfel will lead us off.

MR. ZIPFEL: Good morning and thank you for giving me the opportunity to speak with you today. I have some prepared notes that I've already submitted to the Committee and I agree with Representative Miller, the Committee can read them at their leisure.

I'd like to address just some of the issues from kind of a 5,000 foot level what's included in the testimony that I've given and then also respond to some of the things that you've heard today. But I want to start off by saying, look I represent Worth & Company; we're probably one of the most well-known companies when it comes to Prevailing Wage Act and that's probably why you have a very large group today. What I don't want my testimony, in particular, to devolve into the dispute that I think the Department of Labor and Industry has fallen into for decades and possibly this Committee has fallen into for decades which is to have that union/non-union battle. There are a number of issues that come to light; there are a number of issues that can be addressed, like Representative Boyd I'm prepared to tell you a couple of things, improvements that can be made to the Prevailing Wage Act that are not union and non-union. Sure, there are different philosophies here but I think the common ground can be found and that's the intent of my representation here of Worth & Company. It's not to discuss our prior litigation; I wasn't here for it. But, Mr. Sirianni, who I have a tremendous amount of respect for and I know he does for me as well, I think probably wishes he had not specifically mentioned Worth & Company in the manner in which he had and I say that with you know deep respect for him and we actually spoke outside; but that's not what I ask this Committee to do. I ask this

Committee to look forward. I ask you to take a look at the Prevailing Wage Act and see how it can be improved for employers and employees and find that common ground.

The first bill, or the bill that I'm here to discuss specifically is, I believe; it's 1685. What it talks about is adopting the Federal handbook for occupational definitions into the Prevailing Wage Act. Okay, so let me tell you just one small snippet of the Worth case with L and I: we had twenty-two days of trial; my recollection is that we had twenty-two days of trial. We started at eight in the morning and we went until six o'clock at night. It was, by far, one of the longest trials of my career and hopefully it will be longest. We spent at least seventeen parts of seventeen days talking about how to define what a laborer does. Now I'm sure you're sitting there saying it's impossible. How could anybody, even lawyers, come off with ways to discuss what a laborer can do for seventeen days? We found it; not because we tried to, it's because there was no guideline whatsoever. The example that I use, for example the five-county area – you know Bucks, Montgomery, Delaware, Philadelphia; that area, Chester County – the definition of what a laborer is is two words long: it's common laborer. That's it. Now, I recognize that there are a lot of smart people who work in this industry and have some understanding of what a common laborer can do, but not everyone agrees, even Labor and Industry representatives. As good as an effort as I will talk about, as I will give to them today about their honest effort to try and interpret the law and I disagreed with them many, many times; in their best effort, you can put two or three different representatives up board – up on a panel – and they will give you different definitions. Some of these definitions might seem trivial to you; how is a hole drilled? Well, I have to tell you, even though that might not seem very important to the panel, there are hundreds and thousands of hours a year dedicated to drilling, core drilling holes for example, on public projects. The example I'll give to you about confusion is, if you drill a hole that is the same size,

same depth, through the same material and you run your pipe through it, for example, you must be paid – now this is not written down, this is just what we’ve received anecdotally through twenty-two days of trial and just being in the industry – I’ve practiced for thirteen years before becoming General Counsel of Worth & Company with a heavy interest in labor and employment law – this same exact hole, depth, width, and everything else, you run pipe through it and you must, by the definition or interpretation of some of the L and I representatives, be paid as a plumber. However if you run electrical conduit through there, it’s now called a multipurpose hole and you could be considered a laborer. Now, there’s a lot of confusion there and just to point out, one is, it’s silly in my opinion. The second reason is, why is a person qualified to drill a hole and be considered a journeyman or a mechanic, depending on what terminology you use – they’re the same thing, they’re qualified to be paid as a plumber when just their material goes through but the minute you put more than their material, it’s now a laborers’ position. Look, I’m not trying to demean a laborer by any stretch; in my opinion they are so critical to projects – projects would never be completed. But, why is it that differentiation is created? It’s because of jurisdictional disputes that exist across the State. That’s it. There’s no other reason. That’s not a good thing or a bad thing; it’s the practical reality of how things exist in the construction industry.

If, however, we try and create some guidelines, at least some parameters that explain what a laborer can do, and I use the five-county area as the best example, you’re going to increase the efficiency of companies to do the work and, I believe given my sixteen, seventeen years of practice, you’re actually going to improve the wages and benefits of employees. The reason I say that – there’s probably a bunch of people in the room right now saying, “How’s that possible?” – it’s very simple: some companies will take that individual and they will pay him or

her as a laborer, no matter what they do whether it's a common hole, a multipurpose hole, or a single purpose hole. If you create a definition that explains to people how it's supposed to be done, they will – that same individual – could very easily be paid as a mechanic or a journeyman because then they would rightfully be entitled to it under the definitions. Right now there's a gap, there's a void and the Committee has an opportunity, with your leadership and common sense, to fill that gap and void and to fix it. That will absolutely, in my opinion, assist in creating upward wages for certain employees; there's no doubt about it.

For our employers, it will also be beneficial because there's a number of things: one is efficiency – they understand how to pay people and how to do it; and second is they will not walk around the State, the Commonwealth of Pennsylvania, in fear of the Department of Labor and Industry. Well, I'm not here to testify about the information that's provided – the surveys that are submitted; I'll tell you that one of the reasons I know, from clients, that they don't submit the surveys is because they're scared. Because nobody – they have either had a bad experience with the Department of Labor and Industry, I don't care what Administration, I don't care how far you go back if it's Democratic or Republican; it doesn't matter – nobody wants to provide that information to the Department of Labor and Industry because of their experience or someone else's. That is critically important. That's the brunt and the primary basis of my testimony. I'll allow the written testimony to speak for itself but a couple other quick points: Representative Boyd, you've asked for people to help you fix the Prevailing Wage Act. From a practitioners' standpoint, a lawyer who has represented people in this area – Pennsylvania, New Jersey, Delaware – for years, I'll tell you how to fix the Prevailing Wage Act. Some of them are a little bit more technical in nature and there's primarily four.

First is definitions, which I just talked about. Right, the handbook. That, by the way, is a good start. Right now, Mr. O'Brien would agree with me on this, Labor and Industry already uses the Outlook Handbook as a guideline of what a laborer can do; but adopting it into the Prevailing Wage Act would raise it. It would raise it up and would recognize it even further as a true guideline that would be followed. But in my opinion that's not enough. You would need a statewide classification for all different crafts. So, the bill that's in front of us is a good start is what I'm trying to say. Second is, practitioners' point here, there's not statute of limitations when it comes to the Pennsylvania Prevailing Wage Act. I think it's insulting to employees that they actually have a six-month statute of limitation that they must bring a claim to the Pennsylvania Department of Labor and Industry within six months. However, the Pennsylvania Department of Labor and Industry can go back as far back as it wants. In other words, you can be an attorney sitting in a trial for twenty-two days in 2008 arguing about who did what for seventeen days back in 1999. That is, in my opinion, a travesty. Not just from a practitioner's standpoint but as a government, we should be more efficient than that. Not to say that people should get away with bad things but how do you defend a case? How do you even put on a case if you're representing an employee? If you can go back ten years, twenty years and there's no limitation whatsoever.

Third is the department penalty. We've heard about it before as the death penalty. I would submit to you that it is a death penalty. If a company has done something wrong inadvertently but it is determined by humans, by individuals, that they say, "Well I think this company did this intentionally, I think that they classified this individual as a laborer but they should have been paid as a mechanic," they instantly are subject to a debarment action. Now, I would love to be able to say with the good graces of every representative over at Labor and Industry, they know the right thing to do but wisdom is not prevalent throughout government or

throughout society. That's why we have guidelines. So, what do you do? You create a sliding scale. I've been preaching this for years. A sliding scale is to be based on size of company, it could be based on size of amount owed, it could be based on a number of different factors. I don't have a succinct answer for you right now, Representative Boyd, but those are the things that, in my opinion, to improve the Prevailing Wage Act, that's what the Committee should be discussing.

Then last is again a practitioner's standpoint, there's, when you're putting on a case, there's no discovery and I know discovery is a term that says, "Oh well that's just going to just belabor lawsuits and it's going to go on, drag on for years and years," but there are so many Pennsylvania agencies that have discovery. I used to work for the Pennsylvania Human Relations Commission; there's discovery when you have a case there. It's limited but it makes sense. Now, your company's up for debarment but there's no discovery, which means you don't really know, other than a witness list, you don't know what's going to be presented, you don't know how it's going to be presented, you have no understanding of how to defend this company.

I guess there's one last point that I should make and that is from a practical standpoint. And then I hope I didn't take too long but that is this: when it comes to understanding what classifications, how to classify an employee; your best bet as a company or as a representative of a company, is to have a contact: a friend, a colleague, someone who you can contact over at Labor and Industry who can quickly respond to you if you send them an email. I preach this everywhere. You send someone an email, someone who is a representative who then can give you an answer back that says, "You should classify in this area under this rate of pay in this geographic location; this is how you should classify that person." There are only about five or ten people who do this in the State because I'm one of them and that's what we do – we contact

other lawyers in the Department of Labor and Industry and say, “In the best interest of my client, I would like to know in this county, he or she is doing this work, what’s the classification, what’s the rate of pay?” I will get a response. But alternative to that, if you’re not a practicing lawyer who knows someone who can help you, you are stuck sending a letter, making a phone call and waiting – not because necessarily they’re slow but because they’re dealing with millions of people and potentially thousands of questions a day – you’re not going to get an answer back as to how to properly classify an employee until it’s too late. Because the rules are you have to properly classify them and pay them within seven days. I think it’s unrealistic to think that you can just write a letter and quickly get a response from L and I that gives you the proper – I call it the golden ticket – that you can say, “See, I was told that this person should be classified in a particular manner,” and then rely on it within seven days or frankly it’s not going to happen. It’s not efficient for the State to do it and it’s not efficient for employers at all.

With that, I just rely on the remainder of my testimony. If you have any questions after everyone else speaks, I’d be happy to answer.

MR. WOOLFORD: Thank you everyone. My name is Tim Woolford; I have a construction-focus law firm based in Lancaster, Pennsylvania. We represent approximately 200 construction companies, many of whom perform, on a regular basis, Prevailing Wage work. I want to start, and I’ll not just read my remarks into the record; I think everyone can read them; they are brief. But, I think the whole discussion needs to start with an understanding that the rate to be paid to the worker is based not on the label given to them – there’s been a lot of talk in here, “Oh this is an electrician, this one’s a pipe fitter,” – the way the Prevailing Wage Act is currently structured and has been structured, the analysis is a worker. Everybody that works on a Prevailing Wage job isn’t an electrician, they’re not a pipe fitter, they’re not a steam fitter,

they're not a roofer, they're not a laborer; they are a workman. In order to determine how to pay the workmen, you must ascertain the task that the workman is performing. Then, according to the task, you decide what craft or classification that work belongs to. The fundamental problem here is that there are no standards or objective guidelines to fill that step. I know the task that he's performing – he's drilling a hole, he's moving equipment from one place to another – whatever it may be, it's not important. The problem is there's nowhere to go presently in order to determine how that work should be classified. It's completely a gray area. Now, Mr. O'Brien says that the L and I website has descriptions of the various classifications. Okay, that's not true. I have the website right here. You have very limited information for exactly two classifications: laborers and equipment operators. No other information concerning any of the other of the other classifications is presented. The information that's there, as my friend Mr. Zipfel said, is extremely limited. The definition of common laborer, you'd think that you'd go there and see a neat little list of tasks; it's not there. You have two words: common laborer for the five county.

Another problem that compounds it is that the limited information that is there with regard to common laborers, I will concede that the twenty-nine county labor notes, which you will find on the L and I website if you are able to navigate through to that point, does indeed have a list of activities or tasks that the common laborer can perform. The problem is that L and I doesn't even feel that it's bound by those tasks that it lists on its own website. I recently took a contractor through twenty-something days of hearings in an alleged violation case as well. The investigators admitted that they don't classify work based upon the standards that appear on their own website. So that compounds the problem.

All that Representative Bear's bill seeks to do is very simple. It's a very simple change that would alleviate 90 percent of the problems. That is, all it does is reference the Federal

standards. You can go to that Occupational Outlook Handbook and you can click on pipe fitter and you can click on roofer or electrician, laborer, and all of the different wage determinations or classifications that we have. You can see a nice description of the work that they perform.

Now Mr. O'Brien says that, in his testimony – I brought it here, he says, "It is a recognized," and I'm talking about the Occupational Outlook Handbook that Representative Bear is attempting to incorporate for purposes of classifying work, he says it is a "recognized source of career information designed to provide valuable assistance to individuals making decisions and choices about their future work lives." Well, I submit that that's pretty important. If the Federal government is asking people who are trying to determine what to do for the rest of their lives, to rely upon the information that's in the Outlook Handbook, but that's not good enough apparently for the Commonwealth of Pennsylvania Department, I say that is unreasonable. Now to Mr. Zipfel's point, I have here on my computer – and I'll be glad to share this with any of the Members of the Committee – an internal document that I received from the Department of Labor and Industry marked confidential but I'll quote from it. We got this in discovery in an inaction, another point Mr. O'Brien says nobody complains; well the reality there's been a number of Federal Civil Rights lawsuits filed against the Department based upon its conduct over the last several years. One of which was resolved and one of which is currently pending. But the question, in L and I's own internal document, is as follows, "How are classifications for work determined?" The answer that appears in L and I's own internal document is that, "The classifications on a public work project are determined by the custom and usage in the building and construction industry." That's that phrase; Mr. O'Brien talked about that. He was the only one that mentioned it here. That's the key: custom and usage. "This is what the Bureau consults local collective bargaining agreements and other resources such as the

United States Department of Labor's Occupational Outlook Handbook and The Dictionary of Occupational Titles." So, Mr. O'Brien says that that system, or that source, is unreliable and shouldn't be used yet L and I's own internal document specifically says that they consult that document for making classification determinations. But here's the problem: when I questioned four or five investigators including the former Bureau Director, Director of Labor Law Compliance ---, at a recent hearing – less than twelve months ago – about, "Did you consult the Occupational Outlook Handbook as indicated here on your own internal document?" The answer I got was, "Well, we used to go by that but we don't anymore." But contractors aren't told that. See, that's the problem is they're left to guess. In construction, the biggest problem in construction – any contractor will tell you, union, non-union, small, large, a guy working out of a station wagon which is one of the images that was presented here – they don't like surprises. They want to know up front what the rules are. It's true of building codes, it's true of OSHA [Occupational Safety and Health Administration] regulations, and it's true of classifications of work. You let the contractor know what the rules are and they will comply with them in all but the most – there will be a few exceptions but they will comply. They can formulate their bids if they know how work is to be classified. They need to know exactly what can be paid at the laborer rate. They need to know exactly what must be paid at the electrician's rate and so forth and so on. The problem here is that that's nowhere to be found.

Now another problem is that the investigators themselves have different inconsistent interpretations of what custom and usage is. So, if you ask Investigator Jones about, "my worker is doing this and how do I classify that work?" Maybe Investigator Jones will say, "When this occurs, roofing." You ask the same question to Investigator Smith and he'll say the same work on the same project in the same locale must be paid at the sheet metal rate. So, you don't even

have consistency between the L and I people themselves that are responsible to enforce this law. Adopting Representative Bear's bill will end all of that because we're not going to go back and forth with Investigator Smith and Investigator Jones and the inconsistencies. We'll simply look to the definitions in the Occupational Outlook Handbook and then everybody knows what the rules are. The next time Mr. Leer here from Leer Electric formulates a bid on a project, he'll have something to rely upon so he'll know how many hours are likely to be properly classified as laborer and how many hours properly classified under other classifications. That way he can give an accurate bid and he's not going to be surprised two years later, like Mr. Zipfel explained, or three years later when some L and I investigator comes and says, "You know what? You paid that guy wrong." Now, how do you defend yourself against that because L and I just says what the rules are and there's no objective, transparent, written guideline that we can point to. Representative Bear's bill is a good bill. L and I already uses, or refers to or should be, the Occupational Outlook Handbook. This will simply codify what apparently has been the practice among some and it will eliminate all of the potential for inconsistency for abuse that has occurred.

One final point: this custom and usage standard that you hear, the Commonwealth court did not give some kind of glowing endorsement of the custom and usage standard. The two cases to which Mr. O'Brien referred, Allied Mechanical and R.L. Insulation, that standard was a collateral part – it was a very minor part, it was dicta in the case, I'll suggest to you. The issue there was that the contractors had used ratios. I'm not going to get into what ratios are, but according to the Commonwealth court that was a clear violation and they didn't need to address the propriety or the constitutionality of the custom and usage standard.

It's a fundamental notion of our system of government and justice that when you make laws, you have to afford people fair notice of what's permitted and what's prohibited. The problem with the current state of the law is [that] contractors don't have that notice. The problem isn't, as one person tried to characterize it, that people don't have any idea how to classify work – that's not an accurate statement. It's these gray areas that are the problem. Representative's bill is going to sure up and eliminate those gray areas. We all know what generally is the sheet metal work, electrical work, but there are gray areas and that's where L and I has been operating. Mr. O'Brien used the term that the law should ensure that there is no arbitrary enforcement. I believe he said it in the context of the other bill that's being considered here today. That's the problem right now. Without an objective standard where people know what's permitted and what's prohibited, it creates potential for abuse of discretion and that's what we've experienced. Thank you.

MR. LEER: Good morning Chairman Miller, Chairman Keller, and the Members of the entire Labor and Industry Committee. My name is Stephen Leer and I am president of Leer Electric. My company is located in Dillsburg, where I founded it in 1973. We are a full service electrical construction company who is well equipped to do small residential projects as well as large commercial and industrial projects. In the past 38 years, we have successfully completed projects of various sizes throughout the Commonwealth of Pennsylvania, as well as several other states. Our projects have been as large as eight million dollars in size. Over the years I have created hundreds of jobs for people here in the Commonwealth.

In the last twenty years a large portion of our business has been public work which has largely been Prevailing Wage work. I'm not here to give you my opinion on the merits of the Prevailing Wage pay; I am here as a business person who regularly employs many people in

public sector Prevailing Wage jobs to ask you to do something constructive about the rules of the Prevailing Wage Act. My views are also expressed here on behalf of the Central Pennsylvania Chapter of the Independent Electrical Contractors, which is a national trade organization of 3,700 merit shop electrical and systems contractors.

The way the Act is written, it is almost impossible to follow the rules and be within the law. There are now two investigators who view the rules the same. In fact, the rules themselves are mysterious because they are not in writing and there is no objective standard. Over the years, I have asked the same questions to different L and I investigators and have gotten different answers almost every time. For example, if I ask one investigator if a laborer can do demolition, he will say yes. If I ask that same question to a different investigator, he will likely say something different such as no or he will try to describe a certain situation where the answer is yes and other situations where the answer is no. Other times they just say, "Follow the custom, usage, and tradition in the industry." Frankly, I think the custom and usage expression is useless. I might say that custom and usage in Dillsburg is totally different than it is in Philadelphia. I have heard different people at L and I express very different understandings on custom and usage. As the owner of a construction company, I just want a clear, objective source of what the rules are telling me exactly how each task that my workers perform on a construction project is to be classified. Right now, I have to guess and when I ask someone from L and I, I cannot rely on their answers because the answers change and they are not written down anywhere.

I've also reviewed the Federal sources that this law would set as a standard and they provide the objective guidance that we contractors seek. The biggest Prevailing Wage issues I face in my electrical construction business is whether an employee is doing electrical trade work or he's doing labor work. If L and I would make it clear which tasks are classified as trade work

and which tasks are labor work, then I and all my competitors would know exactly how to bid a job and how to manage a job and what rates to pay their employees.

As an employer, I do not care what rates you require me to pay for what tasks; I just want you to specify those tasks and rates in writing. If those tasks are in writing, you will save the taxpayers of the Commonwealth thousands, if not millions, of dollars in investigation and enforcement fees.

As a taxpayer, I am getting the best value for my tax dollars if there is a level playing field where all participants know the rules.

As an employer who has dealt with the Prevailing Wage Act and its ambiguous rules for many years, I feel an important step to reforming the Act would be to adopt the proposed amendments.

On behalf of my employees and the Central Pennsylvania Chapter of the Independent Electrical Contractors, I would like to thank the Members of the Committee for their time and hard work on this worthwhile cause.

MR. ZIMMER: Mr. Chairman, Minority Chairman, Members of the Committee, thank you for your time. I'm Jack Zimmer, the president and CEO of the Keystone Chapter of Associated Builders and Contractors. Along with the Central Chapter, we represent about 1,000 contractors and 25,000 employees and with our sister chapters in the Eastern and Western part of the State, it's about 1,700 members and 50,000 employees. I'd like to make some saline points on both pieces of the legislation that are being considered before this Committee today.

First of all, House Bill 1367, the Occupational Wage Bill – the Pennsylvania Prevailing Wage Act, in Section 9.103 states that “The general prevailing minimum wage rates,” minimum wage rates, “including contributions for employees, benefits as determined by the Secretary

which shall be paid to the workmen employed in the performance of that contract.” Section 9.103 goes on to say “The contract shall contain the stipulation that workmen shall be paid at least a general prevailing minimum wage rate and other provisions to assure payment thereof is set forth ---.” Finally, in Section 9.105 it states, “Among other things that the Secretary may ascertain and consider wage rates and employee benefits established by collective bargaining agreements when determining the Prevailing Wage rates.”

Things have changed over the fifty years on those pieces of that guidance. A few weeks ago there was said we had some history behind the Federal Davis-Bacon Law and the subsequent mini Davis-Bacon Act and how that affected state Prevailing Wage laws, but Federal legislation records, very clearly, that at least some of the reasoning behind the Federal Davis-Bacon Law was to protect local workers and local wage scales from being undercut by cheap outside labor from outside the state. Another line of discussion during that last hearing held by this Committee on this subject unveiled a disagreement when in fact the current State Prevailing Wage rate was based upon union collective rates. I think we’ve overcome that and in fact Prevailing Wage rates are set, mainly, by collective bargaining agreements. These agreements account for a bulk of the data used.

At present, clearly over 70 percent of the construction industry does not belong to the collective bargaining ---, therefore it makes no sense that a true Prevailing Wage rate could be established using simply collective bargaining rates. In fact, in many areas collective bargaining rates from an entirely different area are used. These out-of-area rates wind up with higher rates being paid in that particular area.

Now, why’s this important, why does it matter? It matters for two reasons: one, a small group in the construction arena has been able to make themselves artificially competitive. Two,

the taxpayers pay a higher premium for the construction labor for private project owners for the same work. Fortunately there's a simple solution. The state collects data on a county-by-county basis using the occupational wages. That information, by the way I was surprised that Mr. O'Brien didn't know what that information is used for; it's used to help establish workers' comp rates and unemployment rates. That information is collected on a regular basis. I'm going to move away from my testimony a little bit in that he talked several times about how this is flawed information and it's outdated; I pretty much would agree that everything he was saying also prescribes exactly what the Prevailing Wage laws are. They are flawed and they are outdated.

The difference between open shop and union is really simple, and this hearing is part of the problem and why there's so many people passionate about this on the side against reforms; open shop treats every worker fairly based on his ability, on his seniority, on his skill, on his aptitudes, and all other requirements of the job; while unions treat every member equally regardless of individual seniority, skill, aptitudes, and so forth. Trade unions should not be permitted to continue to make blanket statements that are not supportive of these facts. Secondly, another argument used in discussion with this is there is a wide variety of job descriptions far exceeding the simplistic approach. While we agree there could be some validity in this statement, it should be pointed out that the Prevailing Wage Act was meant to set a minimum rate to be paid by the local workers. If a contractor needs to pay a higher wage rate to maintain that individual, that should not be the State law; that should be the option for that individual. Prevailing Wage rate is meant to establish a floor, not a ceiling. For instance, a twenty-year master electrician should make more than a new, first-year journeyman electrician. In the open shop, private sector side, that is the case. On Prevailing Wage, union side, that is not the case.

My third point to address: the erroneous claim that there's no real cost savings or minimal cost savings – the reality is the current Prevailing Wages are higher than occupational rates. If you pay somebody more for the same level of productivity and efficiency, you get the same thing. The fact that they will, on the other side, say higher productivity because I'm earning a Prevailing Wage over a private work is ridiculous.

Combined with these three points, today we have the opportunity to take a political football in the Prevailing Wage and ensure that a fair game is played as you've heard from our testimony already. A bigger question is to ask, and the one I hope that we move into talking about in future hearings, is why are the fringe benefits so high on Prevailing Wage jobs? Assuming that the collective bargaining agreements are used for the base rate and fringe benefits – we got to wonder where all the fringe benefit money is going. The fringe benefit amounts, quite often, turn out to be greater than the base rate. If for sake of an argument, if a good fringe benefit retirement package cost \$10, why do we have fringe benefit package that amount to almost \$30 per hour. We all know how out of touch the fringe benefit packages are in the union sector; we are paying on a union model that funds all plans with just 11 to 1,200 hours of work. That's how we wind up with this inflated scale. Yet we're paying it on a 2,000 hour year. In private industry the average cost of the benefits run between 25 and 50 percent of the hourly wage of an employee. The Prevailing Wage scale runs between 56 and 71 percent. It's typical to see a Prevailing Wage base rate, \$20 to \$25 in a fringe benefit package of \$30 an hour. \$50 per hour, 40 hour weeks, that makes it about \$100,000 a year and the unions say this is the minimum for life-sustaining wages. Because unions fund their blue chip exorbitant fringe benefit packages in just 1,200 hours, the Pennsylvania taxpayers are paying 40% higher premium than they should.

The Prevailing Wage Act is very much here and it's very much alive – that doesn't mean its application needs to remain stagnant. It's been around for 50 years, it adheres to the whims of the unions and it continues to be a broadly and subjectively applied base on the political winds that blow. We are willing to have serious discussions on these issues while the other group resists even to hint about a compromise. I heard Representative Bear, I heard Representative Boyd implore the other side, "Throw us a bone. One thing that we could work on to improve the Prevailing Wage and all's I got was, let's increase the penalties and let's do more things to make it difficult for open shop contractors to be in business and try to do Prevailing Wage."

Relative to the 1685, the job classification bill, had some great arguments and I think Steve and Tim and Mr. Zipfel did a great job of covering all those issues. We certainly are supportive of that; the fact is that good companies are trying to do the right thing and they're charged with violations, they're forced to spend countless time and money to defend themselves and defend themselves successfully many times. In the last eight years I heard Mr. O'Brien proudly say how many cases had come before L and I and how many disbarments had occurred. Then he was very nebulous on how many of those are open shop versus merit shop and he said well over two-thirds. Well, it's well over two-thirds. I would challenge him to say is there any union contractors that seem to be coming up before L and I in the last eight years. The fact is fair and simple way to assure compliance is our obligation. The Federal Occupational Handbook does that for us; it may not be perfect, we're willing to work on that, and make it perfect if that's what it is but I applaud the Representative for bringing forth this bill and I'll be glad to answer any questions.

CHAIRMAN MILLER: Thank you gentlemen for your testimony. I just have one question that I'd like to start with and it's for Mr. Leer. Question: you said right now I'd have to

guess and when I ask someone from L and I, I cannot rely on their answers because the answers change, but more importantly you said they are not written down anywhere. If you call somebody from L and I or talk to one of these five, six people and you ask the question on the classification. Will they give you the answer in writing or do you always get it verbally?

MR. LEER: I always get it verbally. If I get anything in writing, they'll send me their little pamphlet that the State sends that describes Prevailing Wage and it really does not give me anything in there that – it's the Act. From my experience, they don't follow that anyway because, well, there's several things that are written in there that they do not follow. For instance I think they, according to one of the things that sticks in my mind, they can't go back more than two years for a violation but in reality, they go back as far as they want to go.

CHAIRMAN MILLER: But you don't get that answer in writing, normally?

MR. LEER: No, I don't get that answer in writing.

CHAIRMAN MILLER: Thank you. Chairman Keller.

REPRESENTATIVE W. KELLER: Thank you Mr. Chairman. As I see it, there's two problems that constantly come back into this discussion every time we've had it and I know this panel has been here before. One is that the taxpayers are not getting the value for their dollars on Prevailing Wages and Mr. Zimmer says that there's a 40 percent difference. First of all, I would like to see that. I don't think you can just do – an electrician makes \$50 an hour times 2,000 hours, \$100,000 – that's not how you determine it. If somebody could show me how you really get to a number, I think we're open to that. But you know, very few people that you hire in the construction trades work 2,000 hours a year. Very few. As contractors, very few of you work twelve months a year, so that industry is different in that. I know Mr. Zipfel said that everybody

is afraid to fill out these forms, right, or send in what their wages are. If they weren't afraid would that lower the Prevailing Wage in those specific areas?

MR. ZIPFEL: I raised the issue; I don't statistically, I can't answer that statistically but I would expect that it would have some effect on it, undoubtedly.

REPRESENTATIVE W. KELLER: I would like it if somebody – because we're here and we're trying to gather information – if somebody has some statistics of how much lower the Prevailing Wages in those areas would be if your members would fill out the wage information. I think that'd be very helpful. You just can't keep coming here saying, "It's too high, it's too high, too high," and it's determined by the Department of Labor and Industry by information that they garner and you guys refuse to send them the information. I'm just saying, I don't know how you come here and have it both ways. You could say, "I could do it cheaper but I'm not telling you how much cheaper I could do it."

MR. WOOLFORD: Chairman Keller I'd just like to address that. You know, I'm not taking a partisan position here but I can tell you that it has been under oath, the testimony of L and I officials that they have no obligation. They proudly explain that they have no obligation to consider wage rate information other than that that is contained in the collective bargaining agreements. So, I think to suggest that the problem would be resolved if non-union contractors suddenly went on a campaign, an organized campaign, to submit wage rate information, I believe that's been done; the Secretary refused to consider it as I understand it; I wasn't involved, I wasn't here before.

REPRESENTATIVE W. KELLER: I don't know, isn't there a case law on these? Hasn't this been to court?

MR. WOOLFORD: Well, evidently the Secretary's refusal to consider wage rate information from non-union companies was upheld as permissible under the Prevailing Wage Act.

REPRESENTATIVE W. KELLER: Was it appealed?

MR. WOOLFORD: It was appealed and it went to the Supreme Court, but it was based upon statutory interpretation. So, that's another place where the Prevailing Wage Act should be revised. The Secretary ought to be required, not just may, ought to be – because right now it says “may” – the Secretary may consider such data as –

REPRESENTATIVE W. KELLER: Well we have a new Secretary now.

MR. WOOLFORD: I understand.

REPRESENTATIVE W. KELLER: I'm going to meet with her this afternoon.

MR. WOOLFORD: That's correct. If you amend the Prevailing Wage Act to require the Secretary to consider wage rate information from all different segments from the construction building industry, it will solve the problem. Because right now, if this current administration decides to consider that information, that might change in four years so now we're back, the pendulum keeps on swinging. The changes that we're addressing, including Representative Bear's change here, would eliminate the politics from the process. That is the inherent problem.

REPRESENTATIVE W. KELLER: I believe everyone here – and I don't think there's anyone Democrat, Republican, labor, open shop – everybody would be satisfied if we could get the true Prevailing Wage in that area; I don't think anybody would have a problem with it.

MR. WOOLFORD: I think that's absolutely true.

REPRESENTATIVE W. KELLER: Anyone. Well that's what we should start to get to. And we can't do that until we actually have people send in the wage rates and we'll make sure that it's considered.

MR. WOOLDORD: That's correct. With that piece, then I think you would see; if you require the Secretary to consider that information, legislatively, then I suspect you would see an organized campaign that would result in a more accurate Prevailing Wage.

UNKNOWN: It's already drafted.

REPRESENTATIVE W. KELLER: Can I attach my amendment to your amendment?

MR. ZIMMER: Hopefully there's assurance on the union sector that they won't sue the results when they don't like them though, which is what I think ---

REPRESENTATIVE W. KELLER: I don't know, I think these lawyers like that word. So I don't know.

MR. ZIMMER: Keeps them busy, that's for sure.

REPRESENTATIVE W. KELLER: You fill out time sheets, right? Just like you have to fill out time cards? So the lawyers do it, construction guys do it, everybody fills out time cards. Now to get to Representative Bear's bill because the other part of this is the custom and usage and jurisdictional issues, alright? Alright. If this is going to solve it all, and again, this is just me reading it – it may be wrong. I'm sure we have people that are here today in attendance could probably answer this better than I do. But from the Occupational Outlook Handbook, right, under boiler makers' nature of work, it's talking about if you're replacing probably a turbine or something, "If the plate sections are very large and heavy cranes are used to fit the parts into place," – I can just about see this – "boiler makers align sections using plumb bobs, levels, wedges, and turnbuckles." This is supposed to – this is what we're going to use as, it's going to

take away all jurisdictional custom uses. Now, the little bit I know about this, I would think the mill rights and the operating engineers would have something to say about the boiler makers doing what the handbook says they should do.

MR. WOOLFORD: Maybe they can? But that would be an issue between them and their respective collective bargaining agreements and the arbitration processes there. But that shouldn't be a part of Prevailing Wage. In other words, was that the pipe fitter definition?

REPRESENTATIVE W. KELLER: Boiler maker.

MR. WOOLFORD: Okay, fine. If I'm a contractor in Pennsylvania and I refer to that source and I see the information that is described there then I should be able to assume and rely upon it and say if I have people, workers, on the job doing that work, then I will pay them at the boiler maker wage determination. Now, if the boiler makers somewhere are in some jurisdictional dispute with the riggers over whether or not which trade that belongs to, that's their issue. They can work that out between themselves as between their respective unions but it shouldn't be an issue that should entangle, and I take issue with the speaker that said 33 percent of the construction in Pennsylvania is done by unions – I think it's less than 20 percent – but it shouldn't affect 80 percent of the rest of the industry whether there's some jurisdictional dispute between two trades.

REPRESENTATIVE W. KELLER: But how will this solve the problem? If we're going to this and look, I've worked down at waterfront and we ran cranes all the time, I ran cranes on the ship. When we would bring land cranes in, we didn't run them. We had to go get the operating engineers. They ran them, right. I don't even know if boiler makers have the skills to run heavy cranes but yet according to the Occupational Handbook, its saying – and I just pulled this out – there's always going to be a problem with jurisdiction and custom and usage, I believe.

MR. ZIMMER: Well, maybe I can help with this Chairman. The rub comes from not what someone can do; the rub comes when there is overlap in the trades. Then the jurisdictional problems that the unions have become the Prevailing Wage enforcement problems that now open shop are left out in the cold and now they're being said you misclassified them when in fact they thought they were doing the right thing but because we don't have proper written guidelines, there was no recourse for them to come back until we had twenty-two days and seventeen days of protracted testimony.

REPRESENTATIVE W. KELLER: But Mr. Zimmer you were here at the last hearing when –

MR. ZIMMER: Yes I was.

REPRESENTATIVE W. KELLER: When Mr. Wanner brought in four operators – four construction companies. Three of the four were open shop and I believe they were probably members, a few were probably members of your organization. They didn't have a lot of problems with Prevailing Wage as it stands now. Sure we can fine tune, and I believe we should probably look at some jurisdictional issues, but there's always jurisdictional issues. Okay?

MR. ZIMMER: Well, listen, I just want to clarify that that was an issue relative to rates and Prevailing Wage as an Act. They definitely have issues with what they're here – you notice they weren't here with Mr. Wanner today.

REPRESENTATIVE W. KELLER: But we're talking about the wage here, also.

MR. ZIMMER: Well, I'm just saying Farfield was there on an issue and, by the way, they've figured out a way to be very competitive at doing Prevailing Wage work and do it all over the State although right now they're having a hard time doing Prevailing Wage work in Philadelphia, as you know.

MR. ZIPFEL: Chairman Keller, let me see if I can help you with the issue you just raised because I think it's an important question, which is just describing, like for your example you just described what a boiler maker can do and it's rather succinct. I mean it's very specific as to what it says. How does that make things better? From my experience and from the company I represent's experience is it changes the conversation permanently with Labor and Industry. No longer will the conversation be like, from what I've heard Mr. Leer say, I had a conversation with one representative of L and I said this and the other one said that, or I didn't get anything in writing or it changes from jurisdiction to jurisdiction. From that point forward, the conversation between employers and L and I will always be, "Here's the written definition. You're relatively in it or out of it." And while always there, I agree with you, there will always be a gray area; that gray area has shrunk considerably and now we won't, you won't have people coming here, pounding on the table, talking about the indiscretions of Labor and Industry.

REPRESENTATIVE W. KELLER: This is very helpful. I'm going to meet with the Secretary at two o'clock; we'll bring some of this stuff up. But I don't know if just changing everything – you know, I'm always trying to work things out within the framework we have – I don't know if the Occupational Handbook is the --- that we're talking about here today. Thank you. Thank you Mr. Chairman.

CHAIRMAN MILLER: Next person, Representative Boyd.

REPRESENTATIVE BOYD: Thank you Mr. Chairman. I want to, I believe Mr. Woolford you have your computer with you?

MR. WOOLFORD: I do.

REPRESENTATIVE BOYD: You testified that when you bring up the L and I website that there is not detailed descriptions on job classifications. Did I understand you correctly?

MR. WOOLFORD: That's correct Representative Boyd. I have the page in front of me now. I'd be happy to say the address but it's quite lengthy but I believe this is the page to which Mr. O'Brien was referring and it only has information – very limited information at that – concerning operators and laborers which are just two of many different crafts and classifications. There are really dozens and dozens.

REPRESENTATIVE BOYD: So, to Representative Keller's conversation earlier about an electrical – he asked some very specific questions – can an electrician hang conduit? Yes. Can a laborer hang conduit? Yes. So the question is is that described in there? Is there a detailed analysis of what an electrical contractor can do in there?

MR. WOOLFORD: No.

REPRESENTATIVE BOYD: Alright. Mr. Chairman, and I'm actually – Mr., Chairman Keller I would like you to hear this too – one of the things that I'm, I've had enough of with some of these hearings is testimony that I believe is erroneous and I would suggest directly false. We've had diametrically opposed testimony about an L and I website; this isn't a matter of opinion, this is objective fact. One of the testifiers has a website up in front of us; another testifier who should know this exclusively and exhaustively said that that information is easily accessible. To my point, I believe that that testifier, I would suggest tried to embarrass a Member of this Committee, I don't care if that Member was a Republican or a Democrat, I'd be saying the same thing. Democrats on this Committee have taken up my cause in the past when I was embarrassed. I would suggest that in the future that it be clearly stated to the testifiers who come before this Committee that they're expected to tell the truth, the whole truth, and nothing but the

truth; and if we need to swear them in and have a – do it like Congress does where we can hold them in what, subpoena them and have would be what, perjury for false testimony – this is very serious business and to have hyperbole and have what I would directly say maybe just flat out factually faulty information, I'm offended by that, I put my time in to do this, to try and make educated decisions and work with Members on both sides of the aisle to try and fix this problem and for people to come into this room and lie to this Committee offends me and I don't believe that either Chairman should allow that to happen in the future.

CHAIRMAN MILLER: Let me just chime in and say this: I believe that the gentleman in question did offer to help walk any Committee Member through that website and I think we will take him up on that offer. At least I will, as Chairman, and we'll see what he's referring to and what's there and what's not there. But I appreciate your concern. Representative Bear? Representative Perry?

REPRESENTATIVE PERRY: Thanks Mr. Chairman. Regarding wage classification, I'm going to direct my question to Mr. Woolford. Previous and previous testimony by the Deputy Secretary said he knew of not one instance where the ratio of apprentice to, say, journeyman on a Prevailing Wage job was different. So that an open shop or a merit shop had a different standard than a union shop or an organized labor shop. Can you testify to any, any difference in that in his opinion? Because I think I have some but I don't want to name the company because I don't have their permission, but I have personal information that that's wrong.

MR. WOOLFORD: I don't have any personal information on that, Representative Perry. I would, however, say that I do have personal information that another thing that Mr. O'Brien said was that collective bargaining agreements are widely disseminated among the community

and that's absolutely false. Those are private agreements between private entities. They are not disseminated, they are not publically available. So they are not a source that contractors can use to assist them in properly classifying work. Furthermore I would only add to that to say that the former executive director that presided over this Department for eight years came in and testified to this Committee that the Outlook Handbook is a useless tool when during his administration he expressly created guidelines or presided over guidelines being created that indicated that it was a source that they consulted. So I would urge the Committee to evaluate the credibility of the testimony in light of those, I believe, statements that are inaccurate. But I do not have specific information on that issue.

REPRESENTATIVE PERRY: Okay thank you; thank you, Mr. Chairman.

MR. ZIMMER: Representative Bloom, I have one; I have a situation. Perry, I mean, excuse me. We had a contractor who was in compliance with this ratio. A individual was sick; they had three journeymen, one apprentice in compliance with our ratio and an individual was sick therefore making it two journeymen, one apprentice. The apprentice was, their correction was [to] have the apprentice be paid full-scale. Things like that happen all the time.

REPRESENTATIVE PERRY: But aren't there instances where literally one company has to provide more supervision over another company based on the same training for the same type of work on a job? On a Prevailing Wage job, similar Prevailing Wage job?

MR. ZIMMER: Yeah, there's a huge swing in ratios.

REPRESENTATIVE PERRY: Why?

MR. ZIMMER: It's an adversary of – the State Apprenticeship Council is adverse to open shop. Plain and simple.

REPRESENTATIVE PERRY: That's your considered opinion – and that's the only reason. There's not some mathematical, there's not some where your training is of lesser value, you didn't provide like equipment; there's not something subjective or objective.

MR. ZIMMER: No sir.

REPRESENTATIVE PERRY: Okay thank you.

CHAIRMAN MILLER: Seeing no other question I would turn to Representative Bear if he has some closing marks. I would just say thank you gentlemen for participating today. Thank you to all the participants but Representative Bear?

REPRESENTATIVE BEAR: Thank you Mr. Chairman. I want to thank the panel here as well as all the panels today. Just a really quick comment and just try to put this in context: we heard a lot of testimony today; we heard why having a common classification definition across the State, why it's important. Why it's important to have it in a place that's easily retrievable for the attorneys, for the workers, for whatever on a website and I don't see why that's such a big thing to ask. I mean, seriously, in where we are as a country, where we are as a government in terms of open records, in terms of transparency, for something as critical as possibly putting someone out of business, is this that big a deal? Listen, I'm not necessarily attached to the Occupational Wage Handbook from L and I and Federal government; it can be one we develop here in Pennsylvania. But the point is, it is one standard across the State. It is transparent. Everyone can get a hold of it and by god if someone breaks it, then hold them accountable. I scratch my head that you have these cloak and daggers going on at L and I or something so serious, I mean, really? Are we even fighting over this? This blows my mind. This is so simple. I can think of a lot of other labor bills that would be much more controversial than just having definitions posted on a website that's standard for everyone to follow. I'm blown away by how

complex people are making this as well as all the little hurdles they are throwing in the way. If you can agree with me on the principle there should be a standard, I think all of us are going to work on that definition and making sure it's fair to all parties. I don't think it's too much to ask. I don't think it's too much to ask for taxpayers either. So, I thank you for your time.

CHAIRMAN MILLER: With that I thank everybody for their attendance today. It's certainly obvious the Committee has a lot more work to do on these bills and any other bills dealing with Prevailing Wage so we'll see where we go from here. With that, this hearing is adjourned.

(Whereupon, the meeting adjourned at 12:50 p.m.)

The above is a full and accurate transcript of proceedings produced by the Official Reporter's Office of the Pennsylvania House of Representatives.

Jessica J. Zook