Keystone Chapter

Testimony/Comments: HOUSE BILLS 1367 & 1685

Good morning Majority Chairman Miller, Minority Chairman Keller, and members of the House Labor & Industry Committee. Associated Builders and Contractors (ABC) is a construction trade association representing the commercial, industrial, and institutional markets with over 25,000 member companies throughout the country. Together with the Central Chapter, the Keystone Chapter boasts nearly 1,000 member companies covering the Central, South Central and Northern tier areas of the Commonwealth. We are the only construction association that represents equally the entire construction team. Our mission is to be the leading authority in the construction industry and to promote, protect and defend free enterprise. We take great pride in advocating principled competition, safety, education, training, and "green" construction. Combined with ABC Chapters in Eastern and Western Pennsylvania, there are 1700 members employing over 50,000 workers.

We appreciate the committee affording us time to discuss the two very important bills you are considering today.

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House Bill 1367

(Occupational Wage Bill)

The Pennsylvania Prevailing Wage Act, in Section 9.103, states that "The general prevailing minimum wage rates including contributions for employe(sic) benefits as determined by the Secretary which shall be paid to the workmen employed in the performance of the contract." Section 9.103 goes on the say, "The contract shall contain the stipulation that workmen shall be paid at least the general prevailing minimum wage rates and other provisions to assure payment thereof as set forth in this section." Finally, Section 9.105 states, among other things, that "the Secretary may ascertain and consider the wage rates and employe(sic) benefits established by collective bargaining agreements" when determining the "prevailing wage rate".

A few weeks ago much was said about the history behind the Federal Davis-Bacon law and the subsequent mini-Davis-Bacon or state prevailing wage laws. The federal legislative record shows very clearly that at least some of the reasoning behind the federal Davis-Bacon law was to protect local workers and the local wage scales from being undercut by cheap outside labor from other states. Another line of discussion during the last hearing held by this committee on the subject unveiled a disagreement whether in fact the current state prevailing wage rate was based upon union collective bargaining rates. In later hearings before the House Appropriation Committee, in response to questions from Representative John Bear, then acting secretary Beaty explained that prevailing wages were set *mainly* through collective bargaining agreements. These agreements accounted for the bulk of the data used.

At present, over 70% of the construction industry does not belong to a collective bargaining unit or union. Therefore it makes no sense that a true prevailing rate can be established using the collective bargaining rates. In fact, in many areas, collective bargaining rates from an entirely different area are

used. These "out of the area" rates amount to a higher rate being paid than what a particular area would normally call for.[1]

Why is this important and 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 and two, the taxpayers pay a higher premium for construction labor than private project owners for the same work. Fortunately there is a simple solution.

The state collects data on a county-by-county basis that shows the occupational wages for every profession. These wages are a true prevailing rate, not the union rate found in the collective bargaining agreements, although the collective bargaining rates are in fact used when determining the occupational rates. This is an important fact because under the current system, collective bargaining agreement rates are almost exclusively the main determinate for establishing the prevailing rate. Occupational wage rates take in to account all of the wages for a given profession in a particular area. Opponents of using this common sense and money-saving approach will tell you that organizations like ABC want to pay the lowest possible rate and race to the bottom. While this argument is laughable at best and an outright lie at worst, we'll address it nonetheless. If open shop contactors are paying their employees the lowest possible rates, why aren't we losing employees to the unions? This is still America and employees are free to go and join a union if that union will provide them better opportunities for their careers and for their families. The fact is open shops pay their employees excellent wages and benefits. The difference between open shops and unions is simply this: Open shops treat every worker FAIRLY based on ability, seniority, skill, aptitude, etc., while the unions treat every member EQUALLY regardless of individual ability, seniority, skill, aptitude, etc. Trade unions should not be permitted to continually make blanket statements that are not supported by facts. Secondly, another argument commonly used in this discussion is that there is a wide variety of job

[1] ABC has not been contacted to participate in any wage surveys in many years. Using wage surveys that include the current prevailing rate makes no sense when trying to determine the actual prevailing wage rate. A "false" rate should not be used to establish a "true" prevailing rate.

descriptions far exceeding the simplistic approach used by the occupational wage rates. While we agree there is some validity to that statement, it should be pointed out that the Prevailing Wage Act was meant to set a MINIMUM rate to be paid to protect the local wage scale. There is nothing prohibiting paying more money. There is nothing prohibiting paying certain workers more and certain workers less. The prevailing wage rate is meant to establish a wage floor and not a wage ceiling. The taxpayers of the Commonwealth should not be held hostage because the union business model has refused to adapt its practices. For instance, a 20 year master electrician makes more money than a new first year journeyman electrician for an open shop company. In a union setting, everyone, except for apprentices in training, makes the same rate.

My third point is that there are no real cost savings or a minimal cost savings. The reality is the current prevailing wage rates are higher than the occupational rates. That is a savings, period. To say that the unions are more efficient or more safe and therefore can save money on a job insults a huge majority of working, tax paying, construction persons in this state. Although we do not concede that current prevailing wages rates result in only a slightly higher cost (we believe it is significant), in this economy, shouldn't government be in the business of protecting every single tax dollar and not in the business of creating and protecting what amounts to an artificial fixed price?[2]

Combined with these three points, today we have the opportunity to take the "political football" prevailing wages has been and ensure a fair game is played with common sense rules.

Administration of the prevailing wage rates during the Rendell years resulted in greater costs for labor on public projects and less efficient use of labor because of the archaic union work rules. That's a fact. The bigger question to ask, and one that we hope will be asked at future hearings is why are the fringe benefits so high for prevailing wage jobs? Assuming the collective bargaining agreements are used for both the base rate and the fringe rate, one must wonder where all of the fringe benefit money is going?

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[2] Leef, George C. "Prevailing Wage Laws: Public Interest Or Special Interest Legislation?" Cato Journal 30 No.1 (Winter 2010) : 137-154

In some cases, the fringe benefit amount is GREATER than the base pay rate. If, for the sake of argument, a good fringe benefit and retirement package cost $10 per hour, where do the higher fringe benefit amounts ($29.70 per hour in the case of sheet metal workers in Cumberland County) go?

We believe that current flawed method also results in taxpayers paying a grossly inflated fringe benefit package, in addition to the inflated wage scale. We all know how out of touch union fringe benefit packages are---completely out of touch with private sector plans---- and we are paying on a union model that funds all plans with just 1100-1200 hours of work--- not the standard 2000 hours that the private sector uses. In private industry, the average cost of benefits runs between 25% and 50% of the hourly wage of the employee. In the prevailing wage scale the fringes can often run **56% to 71%** of the base wage. It is very typical to see a prevailing wage base rate in the $20-25 range and a fringe package of $30 or more for a total total package of over $50 per hour. A worker who logs in 50—40 hour work weeks makes $100,000 and the unions say this is the "minimum" for a life sustaining wage. Because unions fund their blue chip, exorbitant fringe benefits in just 1200 hours, the Pennsylvania taxpayers are paying a **40% higher** premium than they should.

The Prevailing Wage Act is here and very much alive. That does not mean its application has to remain stagnant, adhere to the whims of the unions, or continue to be broadly and subjectively applied based on the political winds that blow.

We are willing to have serious discussion on these issues while other groups resist even the hint of compromise. We support House Bill 1367 and urge this committee to have the political courage to make changes for the taxpayers of Pennsylvania.

House Bill 1685

(Job Classification Bill)

Imagine playing a game and not knowing the rules. Imagine if our criminal justice system imposed mandatory jail time and fines for offenses that were kept secret from citizens but not from the enforcement agencies. Imagine being in compliance with the "rules" during one administration and being found guilty for violating the rules for the same conduct under another administration.

Welcome to the world of job classifications in Pennsylvania under the Prevailing Wage Act.

The Pennsylvania Department of Labor and Industry publishes what can loosely be termed as definitions of various job classifications on its website. These rules, from the best we can tell, are not consistently applied, interpreted, or enforced in any semblance of what can be considered uniformity by the department or by the investigators charged with investigating complaints and allegations of wrong-doing. On its website, the Department of Labor and Industry provides sixteen different links referring to definitions of trades in at least five different geographical locations throughout the state.

For example, the five county area called the "Philadelphia area" lists the words "Common Laborer" as the Class I definition of laborer while the thirty-three county area including the Allegheny county region list a completely different definition. These discrepancies lead to guessing, unintentional violations, fraud, and in some cases involving unscrupulous companies and intentional violations. Unfortunately, good companies trying to do the right thing are often charged with violations, forced to spend countless time and money to defend themselves, and are faced with even more uncertainty regarding their business on top of the already uncertain economic times we live in.

A simple, reasonable solution to this problem is to remove the uncertainty, the guessing games, the ambiguity, and the subjective and unequal enforcement of job classification issues and establish a single set of definitions that will apply to the whole state.

We do not view this as a union versus open shop issue. Unions cannot agree among themselves and open shop is usually kept in the dark. We view this as a fairness issue. Give us a clear set of rules that apply throughout the state so we can properly pay employees what they deserve based on the jobs they perform. Remove this issue from the political arena and standardize enforcement based on a clear set of rules.

We strongly believe that Representative Bear's bill relying on the Federal Occupational Outlook Handbook is a fair and simple way to ensure compliance. While this handbook is not perfect, it does list reasonably thorough job descriptions that are easy to understand. Furthermore, this book was not written by ABC, nor was it written by the unions. Neither side can claim an advantage.

Unions generally do not have this problem because their job descriptions are given in collective bargaining and other agreements that are not subject to view by the public. All we are asking for is a fair, open, transparent and single set of rules.

We urge this committee to support Representative Bear's bill and are willing to work with you to achieve fairness and transparency.

Written testimony submitted by: Stephen M. Swarney, Director of Government Affairs, ABC Keystone and Central Chapter.

Additional written testimony is incorporated and attached as written by Marc Furman, Esq. of the law firm Cohen, Seglias, Pallas, Greenhill & Furman, P.C. and presented before this committee during a previous hearing.