



**Testimony of Roger Brubaker  
Director of Construction Services, Meadow Valley Electric  
before the House Labor & Industry Committee  
“Merit Shop Views on the Apprenticeship and Training Act  
and Comments on House Bills 1746, 2041, and 1840”**

Room 60, Capitol East Wing  
Harrisburg, Pennsylvania  
December 17, 2019

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Chairman Cox, Chairman Harkins, and members of the House Labor & Industry Committee.

Thank you for the opportunity to testify. My name is Roger Brubaker. I am the Director of Construction Services at Meadow Valley Electric, which has been in business since 1973. Prior to that I was President of Wilco Electric, an 82-year-old family-owned electrical contracting business in Lancaster County.

I am representing the five regional chapters that make up the Associated Builders and Contractors of Pennsylvania (“ABC PA”). Together, ABC PA represents nearly 1,400 member companies and approximately 67,000 employees. We are a volunteer-led membership association that represents contractors, suppliers, and industry professionals within the merit shop construction industry. We are comprised primarily of firms that perform work in the industrial and commercial sectors.

Meadow Valley Electric is a member of the ABC Keystone Chapter where I have the distinction of serving as the incoming Board Chair for 2020. I am also a member of the State Apprenticeship and Training Council (“Council”), having been appointed by Governor Tom Wolf. The views I am about to give are on behalf of ABC PA and not on behalf of the Council.

Today’s hearing focuses on the provisions of the state’s apprenticeship and training law. Our association views apprenticeship as a workforce development service to our members. ABC PA is pleased that the Legislature and Governor are working together on workforce development, and we look forward to that partnership as reforms are desperately needed to the state’s apprenticeship system.

In today’s economy, there are incredible opportunities to start a career in the trades, which provide family-sustaining wages. I am encouraged to see our educational institutions and communities doing a better job promoting the trades. The action we need to take now is ensuring opportunities are available to get aspiring apprentices into the classroom and on the jobsite – especially when 40 percent of the industry is expected to retire within the next 10 years. The time to prepare is now.

The apprenticeship ratios as written in the regulations discriminates against non-joint programs. What we are advocating for, and what we urge this committee to pass, is legislation which levels the playing field and improves workforce development.

Apprenticeship programs enable workers to become skilled in a trade through classroom instruction and on-the-job experience. Pennsylvania's regulations say non-joint (merit shop) programs are required to have 4 journeyworkers employed per apprentice, after the first apprentice is hired. This is known as a "4-to-1" ratio. Many ABC members, my company included, are limited in the number of apprentices we can hire and the number of projects we can competitively bid on because the ratio restrains us.

When the ratios are multiplied out, you can see the impact on small businesses. A business must have 10 journeyworkers to hire 3 apprentices; 15 journeyworkers are needed to hire 4 apprentices; 20 journeyworkers to hire 5 apprentices; and so on in units of five.

Due to the limited pool of journey-level workers available, small businesses are challenged. In our Western Pennsylvania Chapter, ABC member Westmoreland Electric describes the situation as follows:

"In this labor environment, it is very difficult, if not impossible, to hire 5 fully trained journeyworkers before you can even consider hiring someone to train as a second apprentice. These journeyworkers do not exist in the open labor market. Beyond that, our Western Pennsylvania Chapter has been very proactive in the last 3 to 4 years setting up new sponsorships with local CTC's, and currently sponsor 12 programs in Western Pennsylvania. There are 28 CTC's in our 18-county area, and we are in conversations with 3 more. If those CTC's partner with us, we will have over half the CTC's utilizing our curriculum. These students are all considered pre-apprentices. The most recent census shows there are approximately 1,600 pre-apprentices currently enrolled in our sponsored training. Where are these students going to go when they graduate? The 4:1 ratio stifles opportunities they may have. The Governor and Legislators have been preaching about apprenticeship and pre-apprenticeship, and we took the ball and ran with it. Now we need your help to provide a landing spot for these students. Otherwise, we sold them all a bill of goods with no future opportunities."

In our Eastern Pennsylvania Chapter, ABC member Tri-M prepared a letter included with this testimony.<sup>1</sup> In summary, they say:

"We strongly feel that our biggest impediment to growth are the restrictions placed on us by the State of Pennsylvania. I've heard many arguments that it's a safety concern to lower the ratio below 4:1. I have found that there are many states that fall under the federal Bureau of Apprentice Training ("BAT") that have approved ratios as low as 1:1, which are just as safe as those that are 4:1. I also know that there are joint programs that are 1:1 in Pennsylvania that do not seem to be a safety concern to anyone. Since 1961, safety training and enforcement have become a big part of every contractor's day-to-day commitment to their employees."

In addition to the ratios, ABC PA has concerns with the process. The State Apprenticeship and Training Council is an appointed 11-member board with broad-based authority over apprenticeship programs. If a non-joint program wants relief from the default ratio of 4:1, the program sponsor must get approval from the Council.

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<sup>1</sup> See Enclosure 1. Letter from Tri-M.

In contrast, joint programs can set ratios on a per job basis through a collective bargaining agreement. 34 Pa. Code § 83.5(b)(7).<sup>2</sup> As a courtesy, I included the Council minutes from September 8, 2016. At that meeting, a joint program sponsor was seeking approval of an apprenticeship program for their mechanics. As part of the approval process, they requested a 1:1 ratio. The meeting minutes record that a question was raised on whether state law would prohibit such a ratio. Mr. Mike Shurr, who chaired the Council at the time, stated, “...if they work under a CBA [collective bargaining agreement] they can have whatever ratio they request.”<sup>3</sup> Most recently, at the November 14, 2019, Council meeting, a 1:1 ratio was requested and granted to a joint program.<sup>4</sup>

### **Merit Shop Apprenticeship Programs are Safe**

The Council has been inflexible in approving modifications for non-joint programs. In the past, safety and wages were concerns raised by critics of lowering the ratio for non-joint programs. I am a firm believer and advocate of safety programs. Accompanying my testimony is a list of 300 random joint and non-joint companies.<sup>5</sup> The table breaks out experience modification rates (“EMR”), which are used to determine workers’ compensation premiums. (This information is available to the public.) Insurers use the EMR to calculate the cost of injuries and future risk. You will note there is no difference in the averaged data.

In addition to the EMR data, included with my testimony is data the Occupational Safety & Health Administration (“OSHA”) posts on incident rates. When comparing incident rates in states where the federal government administers the apprenticeship program (“BAT”) to states that administer their own program (“SAC”), the data shows incident rates are better in BAT states – which all have lower ratios than Pennsylvania.<sup>6</sup>

### **Merit Shop Programs are Accredited**

In terms of quality, ABC PA apprenticeship programs are accredited by the National Center for Construction Education and Research (“NCCER”), an internationally recognized program. ABC PA programs are also approved by the U.S. Office of Apprenticeship and the Pennsylvania State Apprenticeship and Training Council. There are routine audits that grade curriculum, instruction, safety, and test scores. We believe both sides operate quality apprenticeship programs and we should be all be

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<sup>2</sup> 34 Pa. Code § 83.5(b)(7). The ratio of apprentices to journeymen should be consistent with proper supervision, training, and continuity of employment or applicable provisions in collective bargaining agreements. The standard Pennsylvania Apprenticeship and Training Council ratio for Non-Joint programs shall be one apprentice employed for the first, second, third and fourth journeymen regularly employed; two apprentices for the fifth, sixth, seventh, eighth and ninth journeymen regularly employed; three apprentices for the tenth, eleventh, twelfth, thirteenth and fourteenth journeymen regularly employed, and so on in units of five journeymen regularly employed. Exemptions to the Pennsylvania Apprenticeship and Training Council’s standard ratios may be granted upon written request and approval of the Council.

<sup>3</sup> See Enclosure 2, Page 2. Mr. Mike Shurr states, “...if they [the apprentice program sponsor] operate under a CBA, they can have whatever ratio they request.”

<sup>4</sup> See Enclosure 3. Thayer Power & Communication program was approved at a 1:1 ratio. The apprentice wage schedule starts at 58% of the journeyworker’s wage.

<sup>5</sup> See Enclosure 4. When averaged, there is no difference in EMR rates for joint and non-joint companies.

<sup>6</sup> See Enclosure 5. The average incident rate in states where the federal government administers the apprenticeship program (BAT) is 2.91. The average incident rate in states that administer their own apprenticeship program (SAC) is 3.17. BAT states all have a ratio below 4:1. Pennsylvania is the only state to have a 4:1 ratio.

proud about producing highly trained apprentices. In fact, ABC Keystone’s Training Trust uses the Sheet Metal and Air Conditioning Contractors’ National Association curriculum, which our joint program counterparts consider to be the “gold standard.”

### **The Merit Shop Pays Good Wages**

Lowering ratios for non-joint programs will not flood worksites with inexperienced labor. Apprentices are paid a percentage of the full journeyworker wage to start, and as they gain education and on-the-job training, that percentage is increased until journeyworker status is reached. The percentages vary and are a part of the conditions of the apprenticeship program for both joint and non-joint programs. ABC PA apprentices that participate in a three-year program start at 70 percent of the journeyworker wage while a four-year apprentice begins at 60 percent.<sup>7</sup> These rates are the same across all trades. By comparison, the joint program noted above that was approved on November 14, 2019, that 2.25-year program pays 58 percent of the journeyworker’s wage to start. We are proud our program pays apprentices higher wages than many other apprenticeship programs, especially on prevailing wage projects where the hourly wage is set by the government and cannot be changed.

Any business owner knows they must pay competitive wages, create a safe working environment, and competitively bid to stay in business. The merit shop is looking for talent, and we will do whatever we can to attract and keep that talent – and pay them a good wage.

### **Legislation Under Review**

Ultimately, we want to see an advancement of workforce development and eliminate discrimination within the ratios. The current Council and Director have done a great job growing apprenticeship in the state. But the fact remains the law discriminates against non-joint programs in regard to the ratios. As it relates to the bills under consideration at this hearing, ABC PA offers the following comments:

#### **House Bill 1746**

We appreciate the hard work Representative Barb Gleim put into House Bill 1746. The bill defines ratios based on a hazard scale and allows relief from the 4:1 ratio for businesses with fewer than 50 full-time employees. If a joint program in the same industry allows a lower ratio than set by regulation, the bill allows the non-joint program to have the same ratio. We believe the bill would allow both joint and non-joint programs to be on equal footing while allowing the Council to continue to operate.

#### **House Bill 2041**

Introduced by Representative Mike Tobash, House Bill 2041 would repeal state law and turn our program over to the U.S. Department of Labor’s Office of Apprenticeship. From our perspective, the federal Office of Apprenticeship has shown to be a true bipartisan entity that makes decisions for the benefit of workforce development and the apprentice – regardless of which political party is in power.

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<sup>7</sup> See Enclosure 6. ABC Keystone apprentice wage schedule for a four-year program starts at 60% of the journeyworker’s wage; and three-year program starts at 70%.

## **House Bill 1840**

Introduced by Representative Jim Struzzi, House Bill 1840 addresses changes Pennsylvania needs to make pursuant to new federal rules, which were finalized in 2008. The bill requires the Pennsylvania Department of Labor and Industry to submit a report within 90 days detailing what changes are necessary to align with federal rules. The state submitted revised regulations to the U.S. Department of Labor in 2013, which were approved. ABC PA believes a report would provide useful information, but it should not be the only action taken on this issue.

For the committee's reference, enclosed with my testimony are letters date stamped March 11, 2016, and March 17, 2016, from U.S. Department of Labor ("USDOL") to former U.S. Congressman Lou Barletta and Congressman Scott Perry. These letters indicate USDOL reviewed and approved revised regulations submitted by the Pennsylvania Department of Labor and Industry in April of 2013.<sup>8</sup> We encourage the committee to inquire about these approved changes and take the necessary legislative action.

### **Conclusion**

ABC PA is proud to be a part of the effort that makes Pennsylvania a nationally recognized leader in apprenticeship programs. We are encouraged the current Council has been working in a cooperative manner; however, the ratios work against non-joint programs. That's why we are at the table, and why we are eager to work with this committee to bring equality to the system.

Mr. Chairman, the next steps need to be taken. I hope this committee will move forward in advancing legislation to open doors for the next generation of apprentices.

As stakeholders come together, ABC PA stands ready to engage in the conversation. I look forward to hearing from the panel to learn how we can work together to reach a fair compromise and move the ball forward.

Thank you again for the opportunity to testify. I would be happy to answer any questions you and the committee might have.

Enclosures:

Encl. 1 – Tri-M Letter

Encl. 2 – September 8, 2016, State Apprenticeship Council Meeting Minutes

Encl. 3 – Joint Program Approved by the State Apprenticeship Council (11/14/19)

Encl. 4 – Comparison of Experience Modification Rates (EMR)

Encl. 5 – OSHA incident rates

Encl. 6 – ABC Keystone Apprentice Wages

Encl. 7a and 7b – Letters from USDOL to U.S. Congressmen Lou Barletta and Scott Perry

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<sup>8</sup> See Enclosures 7a and 7b. USDOL letters which indicate revised rules were approved in April of 2013.