

Testimony of Paul Bachman

Labor and Industry Committee, PA State Senate

October 11, 2011

Good morning Chairman Gordnor, Chairman Tartaglione and Pennsylvania State Senate Labor and Industry Committee members. I appreciate the opportunity to offer some perspectives on Senate Bills 820, 821 and 822 which are presently pending before this Committee. I am Paul Bachman. I am a Business Representative for the International Union of Operating Engineers, Local 542. Our members live in Pennsylvania and work, virtually every day, on construction, pipeline, utility and the heavy equipment service industries in Pennsylvania. I also offer this testimony in my capacity as President of the Central Pennsylvania Building and Construction Trades Council, a Federation of Construction labor organizations whose affiliates' members represent highly trained and deeply skilled construction workers in every construction trade and craft from site preparation to roofing and everything in between that relates to the construction, alteration, renovation, demolition and repair of buildings, roads, waste disposal, water, utility and all other construction based activities in the Private and public sectors.

I am addressing you today on behalf of our over 6,000 members of the International Union of Operating Engineers Local 542. Our Local Union represents Heavy Equipment Operators, both Apprentices and Journeymen and women, in 34 counties in eastern Pennsylvania. I'm also commenting to you on behalf of thousands of construction workers who are members of the affiliated unions of the Central Pennsylvania Building and Construction Trades Council and our hundreds of contractors, Pennsylvania employers who pay their employees community market based family sustaining wages and family supporting benefits and finance the training of highly skilled, highly qualified Journeymen and women and Apprentices in Pennsylvania's construction industries pursuant to jointly negotiated and achieved Collectively bargained agreements.

The intent of the Pennsylvania Prevailing Wage Act is to ensure that taxpayers get value for their public construction tax dollars, that taxpayer funds are not used to finance a race to the bottom for Pennsylvania workers, to protect Pennsylvania Contractors...home grown Pennsylvania small businesses...from unfair competition and to ensure that locally established wages, benefits and conditions are not compromised in conjunction with taxpayer financed public works projects. Taken together, these statutory goals are aimed at establishing, ensuring and maintaining a level playing field for contractors...particularly Pennsylvania small businesses... to bid on Pennsylvania's taxpayer funded public works projects and have a meaningful chance at securing and performing a reasonable share of such work.

The first issue I would like to discuss is the subject matter of SB 820 – statutorily requiring the application of a so-called “average wage” in determining Pennsylvania’s minimum Prevailing Wage and Employee Benefit rate for every skilled trade and craft classification performing work on taxpayer financed public construction projects that do not utilize federal tax dollars. The so called, “average wage,” in construction classifications, as presently computed by the Pennsylvania Department of Labor and Industry’s Center for Workforce Information and Analysis, calculates wage and benefit rates attributable to 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 our industry operates in our Commonwealth. Using these “average” wages as the prevailing wages is not the “fix-all” others have made it out to be.

Initially it must be recognized that any “average wage” is clearly a “wage” that we know, with absolute certainty, is not the prevailing wage as it is a product of a calculation of wages paid that are both higher and lower than the so called, “average.” Whatever the definition of the word “prevailing” it certainly cannot be reasonably described as meaning “average.” To suggest otherwise simply is an intentional evasion of the plain meaning of the word’ “average.”

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. At the same time, the calculation fails to account for the number of skilled person hours worked on the various projects considered. Thus no weight in the calculation is considered regarding the work, for example, associated with the excavation for a single family residence verses the work associated with the excavation for a new community high school or County courthouse or urban high rise corporate headquarters. These “average” rates are, in a word, arbitrary, and therefore not merely unreliable, but totally irrelevant as a measure of determining the Prevailing Wage and employee benefit rates in any particular Pennsylvania community for any identifiable trade or craft of construction worker.

Some of the additional specific 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 years old, stale and not currently reflective of presently paid wages and employee benefits. It may not be relied upon and utilized as reflective of statutorily contemplated “Prevailing” rate because it is not only an improperly weighted and calculated average as I have previously described but because its hypothetically current conclusions are 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 a not particularly representative, solely voluntarily and selectively responsive 8000 Pennsylvania companies whose responses are not subject to any meaningful verification process.
- Another issue is the failure of the so called “average” construction wage calculation of the department of labor and industry to include any information for the calculation of employee benefits...a basic and irrefutable element of Prevailing Wage rate determination required as a matter of law and regulation pursuant to our Prevailing Wage Act.
- Finally, This particular Pennsylvania Department of Labor and Industry data set is so unreliable for the stated purpose of the legislation before this Honorable Committee that the US Department of Labor refuses to use its results in the compilation or calculation of the Federal Davis-Bacon prevailing wage rates.

While the PA Department of Labor and Industry Construction Average Wage calculation and information may have any number of possible uses in the bundle of economic and workforce information developed and distributed for various purposes, it is clearly not only unreliable but totally irrelevant to the determination of Prevailing Minimum Wage and Benefits payable to skilled crafts workers and apprentices performing work on our Pennsylvania Taxpayer funded public works projects. Mandatory reliance upon it could only be justified for one purpose and that would be to slash the wages and employment benefits of Pennsylvania workers and, in the process, crush and destroy Pennsylvania businesses that pay their employees market based wages and benefits who would be statutorily denied the ability to fairly compete for taxpayer funded public work. Is that an appropriate or desirable statutory legacy? Moreover, and of extraordinary significance, is the simple fact that absolutely nothing in this legislative proposal would assure that those legislatively imposed wage cuts would result in so much as \$1.00 in savings to the taxpayer funded public bodies undertaking the work...it would merely be an assurance that money intended, as a matter of law, to be paid to Pennsylvania skilled construction workers and apprentices, would be retained by their employers...and ultimately the cost of public construction would predictably rise as the market place destroys competition from employers that had actually paid market based wages and benefits to their employees.

Next I would like to discuss Senate Bill 821. This bill would raise the dollar threshold for Public Construction projects undertaken by the Commonwealth and its Political Subdivisions below which Pennsylvania Prevailing Minimum Wages would not be specified. This idea is fundamentally misguided public policy. If the threshold were to be raised, an extraordinary number of taxpayer funded projects would no longer require Prevailing Wage coverage thereby encouraging out of state contractors to flood Pennsylvania with low irresponsible bids, dramatically increasing the number of out of state workers, many of whom are inadequately and poorly trained. Sadly, another very predictable consequence of raising the threshold would be contractors utilizing and exploiting undocumented workers on taxpayer financed projects costing Pennsylvania construction workers thousands of jobs, Pennsylvania and its communities millions of dollars of income, occupational and sales tax revenues, exacerbation of an already

overwhelming problem and will dramatically decrease the number of construction projects awarded to Pennsylvania domiciled contractors.

There is one common thread among all three of the Senate bills we are discussing here today. That is to dilute the remedial purposes of the Pennsylvania Prevailing Wage Law in a thinly veiled attempt to reduce the wages and benefits of Pennsylvania's construction workers...both union and nonunion alike...while ultimately destroying Pennsylvania businesses that have, for decades, been the best of corporate citizens and the entrepreneurs upon whom a strong and vital economy may be built. These Prevailing Minimum wages are neither the lowest amount nor the highest amount paid to workers in each county, They are the prevailing wage and benefit rates determined on a trade by trade, craft by craft, local basis. The present PA Prevailing Wage calculation is truly a market based wage which, more often than not, is the product of successful negotiations between contractors' associations and representatives of their employees.

Lastly, I would like to state our opposition to the inappropriate language and goals of SB 822. The intent of Senate Bill 822 would reverse the Pennsylvania Supreme Court's 2008 Youngwood Borough decision. Over the years, we have heard all the arguments over the definition of maintenance work, demolition and re-construction. BUT I am certain you will agree with me that digging up a road by milling it, re-building it and then re-paving it is clearly not maintenance work unless you choose to create a massive legislative fiction to the contrary. The Pennsylvania Supreme Court, in a unanimous decision, simply and clearly GOT IT RIGHT!! This work is construction work that should continue to require specification of minimum prevailing wages and benefits. As the Bard once said, "A rose by any other name, would smell as sweet..." So too, legislatively manufacturing a fundamental mistruth, cynically aimed at cutting the wages and benefits of Pennsylvania Workers and their families while decimating legitimately operating Pennsylvania businesses, cannot be morphed into something admirable merely because the General Assembly attempts to codify a family destroying, business busting fiction under the guise of self described legislative reform.

In conclusion, the Pennsylvania Prevailing Wage Act, in its present form, is an admirable flexible piece of organic legislation that has served Pennsylvania's taxpayers, communities, public bodies, contractors and construction workers well. I hope you will agree with our view 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 tax payer funded projects.