

# Public Hearing

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before

## SENATE TRANSPORTATION COMMITTEE

"Procedures by which New Jersey Turnpike  
Authority chooses contractors"

**LOCATION:** Room 319  
State House  
Trenton, New Jersey

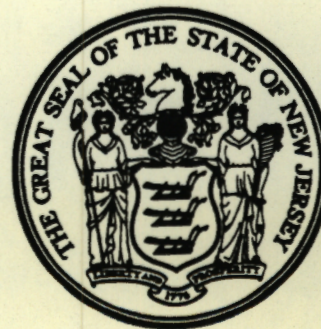
**DATE:** October 22, 1993  
10:00 a.m.

### MEMBERS OF COMMITTEE PRESENT:

Senator C. William Haines, Chairman  
Senator Andrew R. Ciesla  
Senator Randy Corman

### ALSO PRESENT:

Senator John O. Bennett, District 12  
  
Peter R. Manoogian  
Office of Legislative Services  
Aide, Senate Transportation Committee



**Hearing Recorded and Transcribed by**  
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Public Hearing

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C. WILLIAM HAINES  
*Chairman*  
JOHN P. SCOTT  
*Vice-Chairman*  
ANDREW R. CIESLA  
RANDY CORMAN  
THOMAS F. COWAN  
WALTER RAND

## New Jersey State Legislature

SENATE TRANSPORTATION COMMITTEE  
LEGISLATIVE OFFICE BUILDING, CN-068  
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**R E S C H E D U L E D**

### COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE TRANSPORTATION COMMITTEE  
FROM: SENATOR C. WILLIAM HAINES, CHAIRMAN  
SUBJECT: COMMITTEE MEETING - October 14, 1993  
RESCHEDULED MEETING - October 22, 1993

*The public may address comments and questions to Peter Manoogian, Committee Aide, or make bill status and scheduling inquiries to Kim Johnson, secretary, at (609) 984-7381.*

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The Senate Transportation Committee which was scheduled to meet on Thursday, October 14, 1993 at 1:30 PM in Committee Room 9, Legislative Office Building, Trenton, New Jersey, will meet on Friday, October 22, 1993 at 10:00 AM in Room 319, State House, Trenton, New Jersey.

The committee will discuss and receive testimony concerning the procedures by which the New Jersey Turnpike Authority chooses contractors, with particular reference to the recent decision by the authority to require a pre-hire labor agreement with AFL-CIO Building and Construction Trades Council affiliated unions, thereby resulting in an apparent low bidder not receiving a construction contract even though he employed union employees.

Issued 10/07/93  
Postponed 10/13/93  
Rescheduled 10/18/93



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**SENATOR C. WILLIAM HAINES (CHAIRMAN):** Thank you all for coming. If you wish to testify, bring your requests up to Peter here, and he will -- we will honor them in order.

We've called this hearing today because of the controversy surrounding the adoption by the Turnpike of a resolution which requires all contractors working on the Authority's widening program to sign project labor agreements with member unions of the building construction trade unions of the AFL-CIO, and to use those unions exclusively on the project. In mid-September, the Governor signed Executive Order No. 99, which also permits project labor agreements on public projects, but this Order differs somewhat in its scope.

We're here today to examine the circumstances under which the Turnpike Authority adopted its resolution, and also to examine the public policy aspects of this type of agreement. The Turnpike has expressed some concern about its testimony in view of the fact that litigation is pending, but our legal counsel has assured me that there is no legal impediment to the Committee holding a hearing to discuss an Authority policy which is subject to litigation. I have assured the Authority that it is not the intention of the Committee to compromise any party's legal position; moreover, all of the documents which we have used for this inquiry are matters of public record. Actually, legislative committees have frequently held hearings on matters which have been in litigation without compromising any of the parties' interest, and that will be the case today.

We would like all of the speakers to keep their formal comments limited to 10 minutes, as we have a number of speakers and the Committee has a number of questions to ask. We would first like to hear from the Turnpike Authority through its Chairman, David Goldberg, and we have with him Don Watson.

**D A V I D J. G O L D B E R G, E S Q.:** Good morning, Mr. Chairman.

SENATOR HAINES: Mr. Goldberg, the floor is yours.

MR. GOLDBERG: Thank you, Committee members. Chairman Haines, and members of the Committee, first of all, let me express my appreciation for the scheduling of this meeting for today. I was not available for the date the Committee originally had selected. You have already pointed out that the Authority is engaged in litigation in both State and Federal court, and to that extent it may limit the extent to which the Authority can discuss some aspects of this.

On the other hand, I think the Committee has a perfect right to ask questions about the actions of the Authority, and the attempt here this morning will be to give you an adequate basis. As you've mentioned, we have already supplied the Committee with a great many documents, and this is a duplicate set of what the Committee already has, so that you've got, I think, most of the material that explains what the Authority did, and the Authority's statements as to why they felt it was an appropriate action to take.

As you've also mentioned, the Authority has specified the use of project labor agreements for the completion of its 1990-1995 widening projects between Interchanges 11 and 11E -- I mean 15E -- which I refer to as the widening project. On the chart to my left is a breakout of that project area and an indication of the contracts that have been awarded -- the name of the contractors; the amount of the contract -- so you can get a sense of what the project is. The widening-- We have done this to assure that labor unrest will not interfere with the timely completion of this entire project. The project is on a strict timetable for completion by December 1995 for several reasons:

First, the bulk of the remaining construction is in the most heavily traveled and the most dangerous portion of the entire Turnpike; that is, the Southern Mixing Bowl between Interchanges 14 and 15E. The rendering off to the -- or the

plan that's off to my right details the section that we refer to as the Southern Mixing Bowl. For public safety modification of this 2.1-mile stretch of road, where multiple lanes merge, cross, and then separate into the westerly and easterly spurs of the Turnpike, it must be completed as soon as possible.

Second, the presence of construction zones is itself a concern to the Turnpike and, I think, to the general public. The longer construction zones are in place, particularly in an area as congested as the Southern Mixing Bowl, the greater is the danger to motorists and workers. Construction zones have the potential of increasing roadway accidents. Among other things, they may cause slowdowns that result in collisions; they can present obstacles that vehicles can hit; and they can divert drivers' attention.

I will tell you that the Turnpike recently was highly concerned by an accident that killed three construction workers on the Bayonne Bridge. We've done a number of things to try and make sure that the men who work on our highways are adequately protected and not exposed to undue accidents. But the reality is that when you're out there doing construction work, there is an exposure. The less time it takes us to do the construction, the safer the work will be and the safer the traveling public will be.

Third, the Authority's environmental permit from the Army Corps requires completion of all aspects of the widening by February 28, 1996. To meet this deadline and complete required inspections and cleanup, construction must be completed by the end of December 1995.

Fourth, timely completion of the widening project is an integral element of New Jersey's efforts to meet its obligations under the Federal Clean Air Act to reduce air pollution by 1996. If the State does not adequately reduce air pollution by '96, the State could forfeit hundreds of millions of dollars in Federal Transportation money.

The Authority has agreed, at the urging of environmental agencies, as a matter of policy to use the high-occupancy vehicle, or HOV lanes between Interchange 11 and 14. These HOV lanes should assist in achieving the State's clean air goals, but the Authority cannot implement these HOV lanes until construction on the widening project has been completed.

Finally, timely completion of the entire widening project is essential to improving the roadway's level of service. Until completion of construction in the Southern Mixing Bowl, which is north of Interchange 14, the Authority cannot open new lanes under construction to the south between Woodbridge and Newark. The project, in essence, is all tied together, and to make the project functional we need it all.

These are major reasons why completion of the widening project is considered essential by the Authority. Let me also explain why the use of a project labor agreement can help achieve this objective. A project labor agreement -- sometimes called a prehire agreement -- is an arrangement whereby a union is designated as the exclusive bargaining agent on a construction job in return for assurances that the union will not strike or otherwise disrupt the job. A project labor agreement is a prehire agreement that applies to all contractors on a given project. In this case, the project is the widening.

From the project owner's perspective, prehire agreements serve several purposes. Not only do they assure labor peace, but they allow contractors to precalculate labor costs, and they assure employers of a pool of workers. From the perspective of the construction workers, the designated union provides job stability for the workers by acting as an employment agency and a collective bargaining representative.

Prehire agreements are permitted by the National Labor Relations Act only in the construction industry. Generally,

the NLRA forbids employers and unions from executing a collective bargaining agreement until the union achieves majority status by means of an election. In 1959, recognizing that employment in the construction industry is short-lived and sporadic, Congress amended the NLRA to permit the use of prehire agreements in the construction sector. It was clear from the outset that private project owners had this right, but it was unclear whether public agencies also had it.

In the Boston Harbor case, which was decided in March of this year, the U.S. Supreme Court answered this question, ruling unanimously that a public Authority charged with the cleaning up of Boston Harbor could designate the Boston area BCTC -- the same union we're talking about -- as the exclusive bargaining agent for workers engaged in the cleanup, in return for a no-strike commitment.

After the Boston Harbor decision came down in March of '93, the Authority staff began to examine the feasibility of using project labor agreements on the remainder of the widening project. In fact, the Authority was analyzing the Boston Harbor case and drafting a proposed form of project labor agreement when a strike occurred on the widening project itself on July 1, 1993, following the expiration of the collective bargaining agreement between Local 825 and various contractors working on the widening project.

The strike continued for three weeks until July 22. It was the longest strike in Turnpike construction history. Several other unions struck in sympathy with Local 825. News reports indicated that the job action halted bridge resurfacing contracts in South Jersey, Parkway resurfacing contracts, and various State highway jobs, as well as monorail construction at the Newark Airport.

On the day the strike ended -- by happenstance, I would add -- July 22, as Chairman of the Authority's Law, Finance, and Policy Committee, I met with, actually, Authority

staff to discuss possible implementation of prehire labor agreements. The Director of Law at that time recommended such a policy, and although it's in all of these documents, a copy of that statement is attached hereto. As Chairman of the Committee, I directed staff to draft a proposed resolution that would require project labor agreements for the widening project.

On the morning of August 24, the Authority's Committee again met and discussed the implementation of project labor agreements. At that meeting, the Director of Law again renewed his recommendation that the Authority require all current and prospective contractors on the widening project to enter into such agreements. At the Committee meeting, the staff was directed to finalize the appropriate resolution and to schedule the matter for action by the full Authority Commission at its August 31st meeting, which was then scheduled.

During the afternoon of that same day, bids were opened on a particular contract -- Contract No. W-6411. The low bidder was George Harms Construction Company. Because of the Committee's decision to require prehire agreements for all widening contracts, staff was directed to contact Harms and ask if Harms would agree to the inclusion of such a provision in the contract. Harms was advised that staff would recommend the rejection of all bids unless the contract was to contain such a provision. Staff also advised Harms that staff would recommend the award of the contract to Harms as low bidder if the contract contained such a provision.

Harms refused to accept such a provision. Upon Harms' refusal to accept a prehire agreement with the BCTC, Authority staff recommended the rejection of all bids on the contract.

On August 31, 1993, the Commissioners adopted Resolution 19-93, requiring widening projects to enter into -- requiring widening project contractors to enter into project labor agreements with BCTC unions. Again, a copy of that resolution is included with my statement for the convenience of

the members. Thereafter, a resolution rejecting all bids and readvertising Contract No. W-6411 was likewise considered and approved as permitted by the Authority's regulations and its Standard Specifications. The Authority's specifications gave the Authority the right to reject all bids. The Authority then rebid the contract with a supplemental specification requiring the low bidder and all its subcontractors to enter into project labor agreements.

Harms' bid on Contract No. W-6411 was rejected, as were all the other bids on that contract, not because the Authority disapproves of Harms as a contractor or favors any other contractor, and not because the Authority favors BCTC labor to the Steelworkers. Bids were rejected on that contract because the bid specifications did not contain a requirement that project labor agreements be entered into with the BCTC for widening projects only.

At present, all of the work on the widening project is being done by BCTC labor, and all contractors on the widening project have collective bargaining agreements with member unions of BCTC. Thus, BCTC is the dominant labor force on the Authority's widening project. In fact, BCTC has been the exclusive bargaining agent for labor on nearly all Turnpike construction contracts.

Moreover, BCTC is likely to remain the dominant labor force on the widening project, not only because BCTC labor is already there, but also because all the bidders on these projects -- other than Harms -- have collective bargaining agreements with BCTC unions. As a consequence, the Authority had good reason to assume that successful bidders on widening contracts would use BCTC labor even in the absence of a project labor agreement.

As the dominant labor force on the widening project, BCTC is in a position to delay this critical project merely by exercising the union's lawful right to picket or strike.

Because of its standing among its sister unions, even an informational picketing could cause sympathetic unions to refuse to enter a job site. The work stoppage in July 1993, which was a perfectly legal job action, threatened the timely completion of the widening project. Had a project labor agreement been in place, no work stoppage could legally have occurred. To prevent further work stoppages, the Authority elected to seek a prehire agreement with BCTC.

In a project labor agreement, only one union or group of unions is designated as the exclusive bargaining agency. In return for this exclusivity, the union gives up the lawful right to picket or strike. In this case, not only did BCTC unions commit to no-strike agreements on newly awarded widening contracts, but the BCTC unions committed to project labor agreements on the 28 previously awarded widening contracts. To the Authority, this was a critical and extremely important concession.

We got back what, in my opinion, was what we had to have; that was, the guarantee that we would have no further work stoppages not simply on the contracts that we award hereafter, but on all of the contracts that have been previously awarded, because, as I've mentioned, this entire project is tied together, and the completion of all of the contracts on schedule is critical to the attaining of our objective, which is the completion of this work by December of 1995.

I think, because of the shortness of time, the remainder of my statement pretty well speaks for itself. It does point out in detail, Mr. Chairman, that in terms of our record on this job -- and there is attached to this statement a detailing of the bids that we have received on this -- that we have satisfied ourselves that this is not going to adversely affect us in terms of competitive bids and in terms of cost of bids.

We have also pointed out that this was not an across-the-board comprehensive requirement. The Authority, in addition to the widening program, has substantial other capital programs. We commit approximately or nearly \$50 million a year in other construction contracts separate and apart from the widening. Those contracts at the present time are not subject to prehire agreements. So what the Authority has done is carefully craft a limited approach to this whole question to prehire agreements, which admittedly is a relatively new area for all of us in the public sector, because it follows upon the decision of the U.S. Supreme Court that occurred only six months ago.

This is an area where I think all public agencies are going to be feeling their way. We have deliberately tried to craft a midcourse approach to it that's limited and is tied to what we feel is a critically important objective; that is, the completion of this project on schedule.

As I note in my concluding remarks, we will monitor what happens. We have the same interests that, I think, some of the Committee members may have: to make sure that the use of a prehire agreement is not counterproductive; that it doesn't by virtue of giving one union, in effect, the right to be the sole representative on construction jobs, create a situation where that union acts arbitrarily or improperly, or makes it difficult or impossible for contractors to carry out their commitments to the Authority.

That's critically important to us, and obviously, in terms of what we do in the future, it will be affected and determined by what our experience turns out to be. But as far as the widening is concerned, it is essentially at the end. We're down to the point where, I think, we have two major contracts now remaining to award. Therefore, in return for agreeing that those several contracts are going to be contracts in which BCTC will be the representative union, we have

secured what is to us critically important; that is, a guarantee of labor harmony which puts us in a position, hopefully, to finish this project on time.

I have, to the extent that I understand it, tried to anticipate areas of concern to the Committee. But obviously, to the extent that I haven't answered questions that you have, at this point, Mr. Chairman, I'd be happy to respond to any questions you may have.

SENATOR HAINES: Thank you very much.

Senator Ciesla?

SENATOR CIESLA: Thank you, Mr. Chairman.

In order for me to understand perhaps a little bit better, I wanted to focus on a couple of the items that you mentioned in terms of the completion of the project relative to the Federal Clean Air Act, that I guess we've been so concerned about here in the Committee. You have indicated that if we were not able to achieve what you've done in terms of the labor agreement that you have, that we wouldn't be able to comply with the 1996 deadline. I guess my question becomes right now, based on your testimony, that the only labor unrest that I've heard of on the Turnpike to date was apparently three weeks this year?

MR. GOLDBERG: That's correct.

SENATOR CIESLA: And as a result of that, where are we in relationship to achieving the '96 necessary completions?

MR. GOLDBERG: We are on schedule. Our present projections indicate that we will make that schedule. They also indicate that we have essentially no slack or float in that schedule. In other words, it will not take much delay or disruption, for any reason -- not simply a labor dispute, but for any other reason -- to jeopardize the completion schedule. In short, that's a very ambitious schedule. We have been driven to it for the factors I've given. We do not have a lot of room to make it, and that's part of our concern. We don't

know what the future is going to produce in terms of possible delays. Any kind of delay, not simply a labor delay, would be a matter of great concern to us.

SENATOR CIESLA: It's my understanding -- and you have to excuse me for not having familiarity with all of the proper union vernacular -- but the disagreement or the labor unrest was with the -- is it the BTCT (sic)?

MR. GOLDBERG: It was Local 825, I believe.

SENATOR CIESLA: And that's the union that you've entered into the labor unrest agreement with--

MR. GOLDBERG: That's correct.

SENATOR CIESLA: --to give exclusivity?

MR. GOLDBERG: That's correct. It's also the union that represents all of the workers on all of our existing construction contracts on the project -- in the widening project, I mean, as a matter of fact.

SENATOR CIESLA: But it's not the union that the Harms contract -- Harms contracting firm normally uses?

MR. GOLDBERG: No, it is not. Harms has arrangements, I understand, with the Steelworkers Union.

SENATOR CIESLA: With respect to the Harms bid for work to be proposed, have they done work on the Turnpike before?

MR. GOLDBERG: Harms hasn't been a successful bidder on the Turnpike since I have been at the Turnpike. In addition, Harms up to this point -- up to this low bid that it submitted -- had not submitted a successful low bid on the present widening project. However, Harms has previously done work for the Authority. The work history of Harms is on the chart that's attached to it. I believe they were awarded a group of contracts between 1987 and '89, where they did work on an earlier section of the widening from 8A to 9. So Harms is a contractor that has worked with the Authority. I want to emphasize the Authority's actions here were not predicated on Harms, or any position of the Authority that Harms was not a competent contractor or a capable firm.

SENATOR CIESLA: Mr. Chairman, I'm not-- I don't even want to get into specifics with respect to contractors or particular unions. My concern, quite frankly, is that when I reviewed the bids that were submitted, I saw a \$6 million spread of public funds from, roughly speaking, \$26 million to a low bid of \$20 million that was submitted, apparently, by George Harms, which was rejected. My only concern is ensuring that as we make money available through the budgetary process, that all other public agencies are maximizing the use of their funds properly. So I'm more concerned with the policy issue and the issue of competitiveness now and in the future, because as you correctly concluded in your remarks, when you remove competition -- particular competition among unions from effectively bidding -- it's at least my fear that we may not always have the most competitive price.

But let me ask a further question, because I don't know that I got an answer about the amount of work that Harms had done. There was some amount of work that had been completed by the Harms firm on the Turnpike at some time in the past, and was there any disruption on those jobs at that particular time?

MR. GOLDBERG: Not to my knowledge, I don't recall. No one has brought to my attention anything about a disruption, although I have to tell you, all of those jobs occurred before I was at the Authority, so I don't have any personal recollection.

SENATOR CIESLA: So it's fair for me to at least understand that the low bidder on this particular project had worked on the Turnpike, and I would suspect that all of the Turnpike widening projects are in the multimillion dollar range?

MR. GOLDBERG: Yes, I would say. Although some are a matter of a few million, and some are a matter of \$20 million to \$25 million.

SENATOR CIESLA: And is it fair for me to conclude, based on that, that the Harms firm was successful in completing the project on time and under budget?

MR. GOLDBERG: I would assume so. I don't have those facts in front of me, but I would presume that they had done so. As I say, our actions weren't based on Harms or a concern or dissatisfaction with Harms as a contractor. So I mean, we don't -- we haven't focused on whether Harms is good or not.

SENATOR CIESLA: And no-- Again, Mr. Chairman, it's not my concern about the individual contractor. I'm looking at the quality of work in light of the overall cost to the State of New Jersey and with the development, obviously, of this policy. One other item that you had indicated as the reason that you had believed a need for this particular project arrangement was that the environmental permit that was issued by some organization-- Was it the--

MR. GOLDBERG: The Army Corps.

SENATOR CIESLA: -- the Army Corps?

MR. GOLDBERG: But at this point, the EPA is--

SENATOR CIESLA: The EPA is administering the project?

MR. GOLDBERG: --intimately involved in it, as well.

SENATOR CIESLA: What normally would happen under Authority regulations in an ongoing project when an existing permit expires?

MR. GOLDBERG: Well, it wouldn't be governed so much by our regulations; it would be governed more by the regulations of the Federal agencies. But essentially, if we can't meet the conditions or the time periods in the permit, we would have to go back to the agencies and try to renegotiate. But if we do that, first of all, it is up to the Federal agencies to decide what they will do. Secondly, it will open the Authority to the potential of revised or new conditions, which could add to the cost, or the complexity, or whatever. So we would be forced to go back and seek an extension of the

permit, and we would obviously have to take that extension on whatever revised terms and conditions the Federal agencies might choose to impose at that time.

SENATOR CIESLA: Isn't it really, though, these particular permits-- Aren't they routinely extended for jobs that are underway?

MR. GOLDBERG: Nothing is routine in the area of environmental permits. The best proof of that is, when I came in as Commissioner, I was told by a number of sources that this widening project would never be permitted; that we could not get the permit, and we would not be able to use the funds for it. One of the things that I take a great deal of satisfaction in, and I give a lot of credit to Don Watson for doing the hard work, is that we were able to process to completion those permits in a timely fashion. But the delay in getting those permits, which took, I think, like, five years, is one of the reasons why we're confronted with a tough, tight completion deadline.

There is no way that I would willingly reopen an environmental permit. If I have no other choice, then we'll do it. But trust me, I will not go back to those agencies unless we're forced to.

SENATOR CIESLA: But based upon what you've testified before that your project completion date, according to your Authority projections, is on schedule?

MR. GOLDBERG: We are on schedule, with little or no slack in terms of meeting that schedule. Of course, that's a projection. You know, this particular set of contracts is probably among the most complex that the Authority is going to carry out on the entire widening from 8A all the way up to 15. I don't know how much time you want to take, but I could have, for example, Wally Grant, who is the Chief Engineer here, take you through the Southern Mixing Bowl. I think there are something like seven contracts that are going to have to be

carried out by different contractors in that stretch of two miles of road. It will take little or nothing, in terms of problems of any kind, to make it difficult if not impossible for us to carry through to completion that set of work there, because--

I think everyone knows the Turnpike. What we call the Mixing Bowl is that narrow stretch where from the north the western spur and the eastern spur come together, and the traffic crisscrosses and then goes down into the area where they're divided in the dual/dual section. That area right now produces more accidents than any other part of the Turnpike. In addition, it's an area where, in particular, handling the truck traffic is extremely difficult.

SENATOR HAINES: Mr. Chairman, I hate to butt in here, but at this point I do think we're aware of the complexities of the situation that you're facing, and I do think we're getting a little bit off the subject. Now, unless some of the other Senators want to get into the complexities of this project, I think that we should go on and get back to the basics which the whole hearing is about, and the reasons for your decision in choosing one union over another.

And, Senator Ciesla, are you finished?

SENATOR CIESLA: Two questions. I just have two quick questions.

The first one being -- and, again, I'm not familiar with the unions -- but with respect to the Harms organization, which has not been successful, do they, if you know, work with the BCTC or Building Trades Group at all? Do they have a real relationship, or is it they can't work with one another? I don't know.

MR. GOLDBERG: Well, the Authority, in its September 24, 1993 letter briefed to the Appellate Division, set forth that Harms has a corporate structure and union agreements specifically tailored to allow Harms the flexibility to perform

construction work with either the Steelworkers or BCTC as needed. It is our understanding that Harms, through its corporate structure, has the ability to work with either union. So to the extent that we know or understand -- and we are not, I guess, an authority on Harms -- it is really a decision of Harms as to which union it chooses to work with, for whatever business reason, you know, it exercises.

SENATOR CIESLA: So if I interpret the answer to that question correctly, it's that they apparently have a relationship with both unions that they work together amicably?

MR. GOLDBERG: That is my best understanding.

SENATOR CIESLA: That is what I thought you said. Then the last question that I have, and I want to be sure I understand this: Harms has done some work for the Turnpike Authority that was completed apparently without labor unrest?

MR. GOLDBERG: I think that's correct.

SENATOR CIESLA: However, as a result of labor unrest by the BCTC, the Harms' unions that are-- The Harms' unions are now precluded from doing work as a result of labor unrest by the other unions?

MR. GOLDBERG: The selection of the BCTC means that the Steelworkers will not be in a position to do any of this work on the remainder of the widening projects, whether it's Harms or whatever.

SENATOR CIESLA: Okay. Thank you, Mr. Chairman.  
Thank you, Mr. Goldberg.

SENATOR HAINES: Senator Corman.

SENATOR CORMAN: Thank you, Mr. Chairman.

Chairman Goldberg, I just want to start off by saying that I think that in the abstract, project labor agreements can be a useful tool. I think the Supreme Court decision in Boston Harbor was correctly decided. As to their application, there is, I guess, a cost benefit analysis that you had to go through to decide whether or not the Authority should adopt that as a policy.

As a practical matter, does it add to the cost of a project, but also something that -- and is that balanced out by the ability to complete the project more expeditiously?

MR. GOLDBERG: Well, I think you, you know, put your finger in the area which is really the policy area, or for the Authority initially, but certainly for this Committee as well. There are trade-offs. If you've got a prehire agreement, there are certain advantages. But if you have a prehire agreement, there are potential disadvantages, I think, as Senator Ciesla was approaching. There is a concern which starts at the Authority that we not spend any more public money on this kind of construction activity than is required by market conditions. We fully understand that when we select one union as against leaving it open to competing unions, there is a potential that we could end up paying more.

Now, in point of fact, in the particular contract that we've talked about here today -- the contract on which Harms was the low bidder -- there are a couple of things that we knew when we made the decision, and which we know now, after the fact, as well. One is, at the time that we had that bid before us, Harms was the low bidder, but there were several other bidders who were very close in terms of their bids. So it wasn't a situation where I had a bid from George Harms, and \$6 million more was the bid of the second bidder. There was a \$200,000 or \$300,000 discrepancy.

So we have had on the Authority an extremely competitive situation on widening contracts not because of us, but because of the economy. It's a tough economy. The contractors find it difficult to get good work, and they are all out there competing. That indicated to me, as Chairman, that while we were rejecting a low bid -- a bid which from a dollar standpoint might have been an acceptable bid -- that it was a risk that was not an inappropriate risk, given the fact

that it was critically important to the Authority to have on the widening project in its entirety this prehire agreement that I have discussed.

Now in fact, we've rebid the job, so I don't have to speculate whether the rebidding cost us more money or not, because we now know. The rebids have come back in. For reasons that we don't know, the Harms organization chose not to bid. They could have if they wished, but they didn't. On the rebid we were able to award the contract for \$600,000 less than Harms' low bid. So the rebidding didn't cost us money. It actually saved us money. And what's more, there were, I think, three bidders on the rebid who came in below Harms. So this one contract in and of itself certainly doesn't indicate that by designating BCTC we've lost control of the cost.

Now it also in my mind doesn't guarantee that we're not -- we don't have the potential of getting higher bids in the future. There is, I think, a risk that if you have a prehire agreement with one union, that you may put yourself in a position where you're going to be paying higher costs than you would if it were fully competitive. In this particular case, in my judgment, that was an appropriate policy decision for us to make, because first of all, we don't have a substantial exposure. We have only several more contracts to let. So even if for some reason those contracts are not as competitive as we would like, our exposure in terms of cost increase is not substantial.

Secondly, this is an area that I think public agencies are going to have to deal with. We're going to have to go through it step by step, and we will have the advantage of seeing how the union acts. It is perfectly possible that the union may feel, now that it's got an exclusive arrangement, that they are in a position to act unreasonably with the contractors. I don't expect that to happen. I certainly hope

it doesn't happen, but I can assure you if it does happen, I'll hear. I mean, the one nice thing about our contractors is that if they're unhappy about something, we'll hear it.

If, in fact, that does occur, as I said in my opening statement, that will influence the Authority in terms of what it decides about prehire agreements in other areas as we move ahead with our various programs.

SENATOR CORMAN: So I guess it sounds like you're agreeing that there is a trade-off and--

MR. GOLDBERG: There certainly is a trade-off.

SENATOR CORMAN: --there is a potential for a higher cost?

MR. GOLDBERG: Yes.

SENATOR CORMAN: But that's balanced out by a guarantee of labor peace that ensures a swift completion of the project. Is that correct?

MR. GOLDBERG: I think that's a fair statement.

SENATOR CORMAN: Okay, now just to -- and not just looking at this particular project, but looking at this as an overall policy, now anytime there has ever been any kind of proposal from the Legislature affecting any of the authorities -- not just the Turnpike Authority, but the Parkway Authority, and the Atlantic City Expressway Authority -- any time some proposal has been made which might increase expenses to the Authority, we have heard from them almost every time. We've heard from counsels from the authorities that, "Anything that increases our expenses or diminishes our revenues impairs the obligations -- could impair our obligations to the bond holders." Consequently, that kind of a law would be invalid.

Now, the question that I've got is, if it were the case that the Legislature were to mandate that all Authority contracts include a project labor agreement, would that or would that not violate the obligations to the bond holders?

MR. GOLDBERG: I'll give you my best opinion. As I believe you're an attorney and I'm an attorney, we all know that attorneys find it easy to have opinions on things that perhaps they shouldn't have, and I'm certainly no exception. But having said that, I don't hold myself out as the counsel on the question of bond covenants, but it seems to me -- you know, subject to my attorneys overruling me at some subsequent date, which they might well -- that it is within the competence of the Legislature to legislate on this issue for public agencies either way. It would be competent, I think, for this Legislature to make a policy decision as a matter of law that either public agencies must have prehire agreements or cannot have prehire agreements.

I mean, the reality is, until March of '93, we pretty well assumed not because of bond covenants, but because of interpretations of Federal law that we really couldn't have prehire agreements whether we liked them or not. The Supreme Court finally answered that question as far as we were concerned in Boston Harbor, and it is our belief legally that we have the right to do it. This all followed from that. But where, I think, public agencies are really beginning to examine this area now for the first time--

For example, I asked so I'd have an awareness, "What are other public agencies doing?" I mean, you know, we're out there, I guess, kind of early, but we're not the only ones. The best information I have, for example, is that this issue has already been addressed in Bergen County, Mercer County, and Middlesex County, and that in those three counties they have already adopted prehire agreements. I don't know the details of them; I don't know the scope of them. I think that they're just a precursor of what's going to be happening in most public entities.

I think, therefore, it's perfectly appropriate for this, a Committee -- whether it's this Committee or the Labor

Committee, I mean, you pick that out -- to look at prehire agreements and to decide to what extent it is in the public interest either to permit them or not. But until the Legislature acts, and until we have direction from the Legislature as to what we can or should do, we're stuck with the obligation of dealing with the issue. We've done that.

Now we've done it in a way that we think is responsible; we think it's limited; we think it's legal; and we think it was justified. That's our opinion. As you know, we're in court, and obviously since we're in court, there are people who have different opinions. Someday, you know, the court will tell us whether we were right or wrong. Although, at least to the extent that the courts have spoken, what the Authority has said and what the Authority has done has been upheld. The Appellate Division, in one of the cases, has ruled in our favor.

But our effort was to face this issue, deal with it responsibility, and do it in a way that achieves something critically important to us; that is, getting that project done on time, and doing it in cooperation with what, in reality, is the union that's in a position to either help make that happen or make it very difficult for us to achieve that objective.

SENATOR CORMAN: But the bondholders haven't taken the Authority to court, have they?

MR. GOLDBERG: No. Again, the bondholders have their rights, and if anybody feels that we have done something inappropriate, they certainly have forums to litigate it in. The Authority's position would be if they did that, that what we did was legally correct, and that we did not take an inappropriate risk or expose them to any kind of substantial adverse impact because of what we did, because this was a rather modest impact on our overall finances.

I didn't do it to save money, or I didn't do it to spend money. We did it to try and eliminate a potential for disruption that could interfere with what is a high priority: the completion of the project. I don't think the money issue on the widening either way -- costing more or costing less -- is going to be significant. In that sense, I would really be surprised if anyone could establish, as a matter of law under our covenants or anything else, that the covenants really control what we do. The Legislature could. You pass a law--

SENATOR CORMAN: Okay, so there is at least one example of something the Legislature might mandate which would not violate the obligations of bondholders.

MR. GOLDBERG: Well, that's my opinion, subject to being overruled by my lawyers, who periodically do that to me.

SENATOR CORMAN: Okay, but just to continue a little bit more, get to the specific one. The Boston Harbor decision came down in March of this year, correct?

MR. GOLDBERG: Yes.

SENATOR CORMAN: And it was at what time-- At what time did the Authority decide that this was a good idea, to implement this on an Authority-wide basis as part of the Authority's contracts?

MR. GOLDBERG: Well, we went through a process. The process started pretty shortly after that decision. The decision came down on March 8. In April through June, the Authority staff, particularly the lawyers -- including our outside counsel, labor counsel -- were examining what this decision meant, and you know, how it would fit in with us. We had pretty well, I think, reached the point that we had made the policy decision to go with the prehire agreements at the Committee meeting that I mentioned in July.

So, from at least the standpoint of staff and the Chairman's posture, the decision to go with a prehire arrangement probably had been made in July, and it was firmed

up at the Committee meeting on-- I think it was on August 24. It was formalized by the vote of all of the members at the August 31st meeting.

SENATOR CORMAN: Now, at what point in time was this particular project bid?

MR. GOLDBERG: The project was advertised for bids, I guess, during-- It was advertised in June.

SENATOR CORMAN: It was advertised in June. When did the bids come in?

MR. GOLDBERG: Well, the bids came in, I guess, on August 24.

SENATOR CORMAN: I guess the next logical question is, why was a project labor agreement not included in the bid specs that went out in June, as opposed to July?

MR. GOLDBERG: I think the answer is pretty self-evident. The bid specs went out -- or the request for bids went out before we had come to that conclusion. Then of course what follows from that is the decision we had to make, and I essentially made it in terms of making the decision and then satisfying all of the members that my position was correct. I view that as part of what I'm stuck doing as Chairman. Having decided in advance of receipt of bids that we were going to require prehire agreements on all remaining widening contracts, in return for which we expected to get from the BCTC what we got, a commitment of labor peace on everything.

I emphasize what I wanted was a commitment not on the three or four contracts we were going to award, but all of the preexisting contracts, because that's what counted. Given that, what do we do? Now, it was by one of these wonderful happenstances of life that on this job, where Harms either didn't bid or wasn't the low bidder, that Harms ended up being the low bidder. If he hadn't been the low bidder, you know, nobody, I guess, would be paying much attention. But in this

case he was what he was. He ended up being the low bidder. When that happened, I indicated to staff, as a matter of policy as I viewed it, that all of the contracts were going to be subject to prehire agreements; that this contract would have to be subject to a prehire agreement.

However, in view of the fact that all of the contractors had bid on the specs as we had advertised them, and Harms had done that -- the contractor hadn't done any thing wrong with what the contractor had submitted -- we should offer to the contractor -- the low bidder, which in this case happened to be Harms, the opportunity to agree to do the job subject to the condition that we were going to impose; that is, that there be a prehire agreement.

I dispatched Wally Grant to Harms, and my instructions to Mr. Grant were to explain to Harms what we had done and to make it clear to Harms that since they had submitted the low bid, we would honor that low bid provided they were willing to do what we were going to require; that is, to agree to a prehire condition; that if they did that, we would award it to Harms if he-- He was not obligated to do it. There was no way in which the Authority was going to compel him to do it. But if for any reason he was unwilling to do it, then both the staff and the Chairman would recommend that all the bids be rejected and that we rebid. The rebid now would contain within the specifications that particular requirement. So in order to obtain these jobs, it was going to be necessary for all contractors to accept the policy that the Authority had decided upon.

As I mentioned, Harms made the decision, for whatever reason, that they would not agree to a prehire arrangement. We rejected the bids; we readvertised them; and we added in the readvertised bids the requirement for a prehire arrangement.

SENATOR CORMAN: Now that happened in August, correct?

MR. GOLDBERG: That's correct.

SENATOR CORMAN: Now, wouldn't it-- Why didn't the Authority say in July-- It was in July that, I guess, a preliminary decision had been reached to go with prehire agreements, and I would gather that the decision was reached that you were going to require it for all agreements, including the one that was out for bid. Why did not the Authority simply send out an addendum to those specs to all prospective bidders indicating that this was going to be a new requirement, this would be part of the specs? So this way, before the bids came in and before they made their bids, there would be a-- Everybody would know what the rules were before the bids came in. Wouldn't that have looked better, saved everybody a lot of aggravation, and prevented a lot of acrimony?

MR. GOLDBERG: Well, that was not possible in my mind for several reasons:

One was that the change in specification, with regard to prehire agreements, presumed the adoption of an Authority policy. I considered that a significant action. I considered it an action that should not be done at the staff level. In my view, if we were going to do that, I thought it was appropriate for that policy to be adopted by all of the members. Given the sequence that I've already explained, that didn't occur until August 31. Therefore, for us to have presumed what the full membership would do in advance of their actually voting would have been, I think, an inappropriate action on our part.

I would also add as a practical matter that I certainly didn't envision, and I suspect nobody else did at the Authority, that we would end up with the factual sequence that actually occurred. You have to remember that--

Where is the large chart? (ehibits chart to audience)

--that up to this point in my limited experience at the Authority-- You know, we're all sort of captives of what we know. It's all right. We had awarded on the widening

contracts up to that point somewhere around 30 contracts. They all went to contractors who were working with BCTC, and Harms was not a player.

There was nothing, I think, in anybody's mind, "Well, what would the situation be if we get a bid in August, George Harms turns out to be the low bidder, and George Harms either can't or is unwilling to sign this agreement? What would we do with that possibility, and what should we do to avoid it?" I mean, quite frankly, I wasn't that perceptive, and it was not something that anyone had focused on.

But even if we had focused on it, I don't think that we could have acted any differently than the way we did. Quite frankly, the idea of rejecting bids, while it's not commonplace, is something that occurs with some degree of regularity at all public agencies. The Authority specifically reserves the right to take such action when it's in the public interest to do it. So it was not a matter of, you know, direct focus when all is said and done.

SENATOR CORMAN: So it just never occurred to anybody at the Authority that maybe somebody might bid on this that didn't want to sign a project labor agreement? It just kind of was a blind spot in your thinking?

MR. GOLDBERG: Well, I don't know that it was a blind spot in everybody's thinking or not. I can only tell you that in my involvement with it as Chairman it was not something that I thought of in particular. My focus was on the policy. But if I had thought about it, if I had thought about the remote -- what I would have considered the very remote -- possibility of that happening, it would not have influenced the course of events. Because if that's what was happening, we could deal with it. We could deal with it exactly the way we did deal with it. We would go to the contractor. We would allow the contractor the opportunity to accept the revised condition.

We would expect that in at least most cases it would not be an issue with the contractor, because they all had agreements with BCTC, and therefore it was not going to be a problem. But if in the unlikely -- very unlikely -- circumstance that there would be a contractor, whether Harms or anyone else, that would be unwilling to accept that, the Authority was protected. It had the right to do what it ended up doing, and therefore it was not a focus or a concern of the Authority, at least as I approached the problem.

SENATOR CORMAN: If you had to do it all over again and knew, and had some presentient notion of what might transpire, wouldn't you have -- wouldn't the Authority have adopted a project labor agreement policy either before the bids went out, or before they were opened? Wouldn't that have saved the Authority a lot of grief? Wouldn't that have prevented any allegations that are being made of favoritism one way or another after bids were opened? Wouldn't that, you know-- If you had to do it all over again, wouldn't you have done it a little differently?

MR. GOLDBERG: Probably not. First of all, as far as the Authority is concerned, it hasn't had a lot of grief. We're here before the Committee, but I don't define that as a lot of grief. We are in court, but I have found that I end up in court quite often, and I'm prepared to live with that.

My concern was to act on this as quickly as possible, to come to the proper decision as quickly as possible, and to implement it in a fair and effective way consistent with not slowing down the contracting. The last thing in the world that I would have done would have been to hold back the rate at which we were advertising these contracts, because some people might misunderstand what we did. Some people might conclude that we did things for reasons that, in fact, were inaccurate, but in their minds could at least be the subject of conjecture.

So Mr. Grant, who sits back there (gesturing) has standing orders from me to do nothing to slow down the contracting. We'll deal with these problems as they come up. If I've got to deal with them, we'll deal with them in a way that minimizes any possible grief, complication, or delay. But I don't hold back contracting when I don't have any time to spare.

SENATOR CORMAN: Okay. When you say you wanted to move this as quickly as possible--

MR. GOLDBERG: I mean the contracts.

SENATOR CORMAN: You mean the contracts. You wanted to deal with them as quickly as possible. Why did you not want to move the policy as quickly as possible?

MR. GOLDBERG: I did move the policy as quickly as possible. As a matter of fact, we apparently have the pleasure of being first. And so when I look around, with all of the other public entities I don't see that anybody has leaped ahead of me. So, if you're asking me did we act pretty quickly, I think the record speaks for itself. We acted very quickly. You want to tell me, "Why didn't you act quicker?" Well--

SENATOR CORMAN: Why couldn't the policy have been adopted in July?

MR. GOLDBERG: Because I was-- Why? Because we went through a process that, I think, we had to go through to determine what was in the best interests of the Authority. That process, given the demands that we have to do a variety of things, and the question of this one contract, I have to assure you was not the priority for the Authority during this period of time -- you know, limits the rate at which you can address issues. We addressed this issue pretty fast. I mean, I've got a March 8, 1993 decision of the U. S. Supreme Court, and I got an August 31, 1993 action by the Authority. You're

certainly entitled, Senator, to your opinion as to whether we acted expeditiously or not, but I submit we acted pretty responsibly and promptly.

SENATOR HAINES: Okay, Senator.

I have a couple of questions for Chairman Goldberg. Harms has done some work in our area, and as I remember, my recollection of it is that they came in well before they were supposed to finish the job and did an excellent job. I want to ask you, Commissioner or Chairman -- either of you -- how Harms came in on the 8A to 9 section of the Turnpike? Did they finish it on time?

MR. GOLDBERG: Just a moment.

Wally?

W A L L A C E R. G R A N T: (speaking from audience) Yes.

MR. GOLDBERG: According to Mr. Grant, they finished on time.

SENATOR HAINES: Okay. The concept is here that what you did in your decision-making here was to throw one union out in favor of another union. And why can't-- Why could not Harms have complied with your idea of a preconstruction agreement on the basis of the Steelworkers Union?

MR. GOLDBERG: Well, that-- Because that would have been Harms' idea of what the policy would be, but it wasn't the Authority's policy.

SENATOR HAINES: You picked one union over another here. That's what you've done.

MR. GOLDBERG: That's right, and we picked the union that on this particular project -- and bear in mind that this policy deals only with this project-- We picked the union that had represented the workers on all of the jobs that had led up to that point.

SENATOR HAINES: See, I know nothing--

MR. GOLDBERG: To pick the Steelworkers would have been mind-boggling. I would have been asking for--

SENATOR HAINES: Mr. Chairman, why would it have been mind-boggling, when in fact Harms had done some work on the Turnpike using the Steelworkers Union and had done a satisfactory job? Now, I'm not trying to pick one union over another, or one contractor over another, but we are very much concerned as a Legislature here that we not spend more money; that we not throw out a low bid because somebody wants to pick a particular union. That's almost not only unconstitutional, but it's -- it doesn't seem to be within common sense.

MR. GOLDBERG: Well, Mr. Chairman, this is obviously an area where people can differ, and from your comments it sounds like we differ. But let me finish--

SENATOR HAINES: Was the reason for this the commitments that the Governor made to a particular union, or was the reason for this that the Governor got a bigger contribution from a particular union? I'm asking questions here. I'm not trying to make a decision, but I'd like to know the answer to these things.

MR. GOLDBERG: Well, the answer is really very simple. What the Authority did was not driven by or affected by whatever the Governor did or didn't do with the unions. Our decisions weren't dictated by the Governor's Office. We weren't doing anything on this--

SENATOR HAINES: Mr. Chairman, it seems that you made your policy after the low bid came in. You've stated that, that you changed your policy after the low bid came in.

MR. GOLDBERG: Mr. Chairman--

SENATOR HAINES: Why did you change your policy after the low bid came in?

MR. GOLDBERG: Mr. Chairman, I must respectfully say that there is absolutely no basis for what you've just said. Based on--

SENATOR HAINES: The--

MR. GOLDBERG: Wait just one minute now. Look, I've spent a lot of time giving detailed answers here this morning. I went through a scenario which made it clear how we came to make this decision. I also indicated that I, as Chairman, at the Committee meeting on the morning of August 24, which was before the bids were in, had come to a final decision on that. I find that statement, that we changed our policy after the bids came in, to be not only without any foundation, but a statement I can in no way fathom. If you choose not to accept my statements, there is nothing I can do about it.

SENATOR HAINES: Mr. Chairman, you said that if a low bid came in and it was not your union that you wanted, you would have changed your policy if it hadn't been Harms. Now you made that statement, and I heard you make that statement, so what's going on here?

MR. GOLDBERG: Now, wait. Mr. Chairman--

SENATOR HAINES: You as much as said if the contract came in with the right union, regardless of who it was, that you would have gone ahead and awarded it. But what you did was to change your policy, which you would have done had any contractor come in with the wrong union.

MR. GOLDBERG: Mr. Chairman, what I said is on the record--

SENATOR HAINES: I heard it.

MR. GOLDBERG: --and it can be typed up, and I'd be happy to stand on it. But if there is any confusion, let me try and set the record straight.

SENATOR HAINES: What we're trying to do, Mr. Chairman, and I hate to shout about this thing--

MR. GOLDBERG: If you're confused, I'd be very happy to set the record straight.

SENATOR HAINES: What we're trying to do is find out what your policy is and why. It seems to be a peculiar-- It seems to be an unusual policy to go out and pick a particular union.

MR. GOLDBERG: And I submit to you, sir, that it's not an unusual policy. I think you're going to find even in Burlington County people dealing with this issue. I think that every public agency is going to have to make the kind of decisions that we have already confronted. I have tried to explain, and perhaps inadequately, the reasons why it was in the best interests of the Authority and the best public interests to make the decision to limit the widening contracts to the Building Trades Council. If you don't agree with that, I understand that.

SENATOR HAINES: I'm trying--

MR. GOLDBERG: But I-- My difficulty is not that we have a difference, because we all have differences.

SENATOR HAINES: I'm trying to find out why, when--

MR. GOLDBERG: I have trouble with the suggestion that there was something sinister here, because I can assure you, Senator, that to the extent that someone believes there is something sinister, there is no basis for that conjecture.

SENATOR HAINES: I can tell you, Mr. Chairman. Mr. Chairman, I've talked to probably 10 different businessmen that consider what you did a very unusual act, and these are businessmen that have just read what was done in the paper. Now, what we're trying to do is get to the reasoning behind this: why you took the action and how you took it administratively. That's what we're after.

MR. GOLDBERG: Well.

SENATOR HAINES: I guess I've taken enough time. One of the other Senators wants to question--

Senator Bennett.

SENATOR BENNETT: Thank you, Mr. Chairman.

Mr. Chairman, Mr. Director, I'll try to be brief, but one of the things-- I'm not normally a member of the Committee and I'd just like to, if you don't mind-- We're talking a lot today about how contracts are awarded, how policy is set, how

the Turnpike takes certain actions. Could you go back for me, if you would, just to tell me how does the Authority operate in general procedures? How do you implement a policy? How do you do a contract? What procedure does one have to go through in order for a contract to be awarded? How does it get on the agenda, for instance?

MR. GOLDBERG: Well, I--

SENATOR BENNETT: Generically.

MR. GOLDBERG: Generically? We advertise for bids. The advertisement, you know, sets forth what it's all about, and has a date on which bids are opened. The provisions set forth the circumstances under which the contractors are bidding. Those circumstances include: One, a recognition that the Authority has a period of time to decide what to do with the bid -- 30 days or whatever -- and that the bid is subject to certain provisions, such as the right of the Authority for whatever reason to reject all bids. When bids are received, they are opened in, I believe, a public session. They are recorded so that we know, and whoever chooses to knows who bid. The bids are then examined by counsel to determine whether the bids are in compliance with all of the requirements of the law, and the Authority's regulations and its specifications.

The engineers also review the bids and the numbers to satisfy themselves that we have a responsive bid; that the contractor appears to have not only given us a bottom-line number, but has calculated it in a way that makes sense and hasn't made some kind of major error. We have found on a number of occasions that bidders who have been the low bidders, when they relooked at what they have given to us, have told us, "We made a mistake." You know, and whatever-- So the engineers try and satisfy themselves. There is a review that among other things compares the bid with our estimates as to what the bids might cost us, and how that bid compares with the remainder of the bids.

When that process is completed, the contract will go before one of the Authority's committees, along with whatever else there is, and those bids are reviewed and explained. The decision is made at the Committee as to whether this should be placed on the agenda for the next meeting.

Now the agenda itself-- Maybe I ought to let Mr. Watson deal with that.

SENATOR BENNETT: That's fine.

MR. GOLDBERG: Because he does the agenda, and while I understand it, his understanding probably is more accurate than mine.

D O N A L D L. W A T S O N: You're doing fine, Mr. Chairman.

The Chief Engineer in this particular case would write a letter to the Executive Director indicating the status of the project, a recommendation, and it be put on the agenda. I would review that, and then schedule it for the meeting. It's not unusual in some instances, where the work comes in rather late, that the first agenda that goes out -- normally a week before the regular business meeting -- sometimes does not include all the items we subsequently have to deal with. We put out an addendum to the agenda, and those addendum then become also part of the meeting.

SENATOR BENNETT: When you say the agenda goes out, to whom does the agenda go out prior to the meeting?

MR. WATSON: To the Commissioners.

SENATOR BENNETT: And only to the Commissioners?

MR. WATSON: Yes, the Commissioners review it.

SENATOR BENNETT: And only the Commissioners?

MR. WATSON: Yes.

SENATOR BENNETT: The agenda doesn't get sent to the Governor's Office?

MR. WATSON: There is a member of the Governor's Oversight Council of the Authorities who attends all the

meetings and usually asks for a copy of it. Most times we get it to him the same time that the Commissioners have it. Sometimes we're a day or so late.

SENATOR BENNETT: It's also made available to the public, isn't that correct?

MR. WATSON: Yes.

SENATOR BENNETT: So then it's available to the Commissioners, the Governor's Office, and the public -- an agenda approximately a week before the meeting?

MR. WATSON: As close to as we can make it, yes.

SENATOR BENNETT: So if an item of a contract that is scheduled to be considered on a meeting-- It goes through the process that the Director explained, then it gets submitted from the Committee to you, and then you place it on an agenda to be distributed to those -- to the distribution list, whomever that might be, okay?

MR. WATSON: Yes.

SENATOR BENNETT: How about with a policy? If there is a policy that a Committee makes, or an individual Commissioner makes a recommendation that they want to have a policy established by the Authority, how is the procedure that gets to you and to the full Board of Commissioners a policy of the Authority?

MR. WATSON: The policy normally originates with the staff, who develops the policy, whether it's about a sound barrier or whatever. That policy gets developed, reviewed by the Law Department to see if we have any legal problems with the policy, and then that policy gets reviewed by the Commissioner's subcommittee -- the Finance, Policy, and Law Committee. They meet normally a week before the Commission meeting. That policy gets reviewed by that Committee, and indications are made at that time either to move ahead with the policy, or to make some adjustments to it. Then that policy is brought forward at the Commission meeting for the full Commission to act upon it.

SENATOR BENNETT: Excuse me. Is it brought forward at the Commission meeting without ever going on an agenda?

MR. WATSON: No. Following that Committee meeting--

SENATOR BENNETT: Then it goes, how? From the Committee meeting to--

MR. WATSON: There is a decision to put it on the agenda, yes.

SENATOR BENNETT: Right, and then is that in the same manner as a contract? Is that proposed policy then given to you, as the Executive Director, to be put onto an agenda?

MR. WATSON: Yes.

SENATOR BENNETT: And then is that agenda distributed to the same people that the contractual agendas are? It goes to the distribution list again, the Governor's Office, the public, and to all the Commissioners?

MR. WATSON: Yes, that's the general practice.

SENATOR BENNETT: And until a formal action of the Authority, the proposed policy is not in effect, or is in effect?

MR. WATSON: It's not in effect.

SENATOR BENNETT: Thank you. That's true with even payment of bills, isn't it?

MR. WATSON: That's true.

SENATOR BENNETT: That the payment of bills go through the same policy--

MR. WATSON: Personnel actions.

SENATOR BENNETT: --and personnel. All of the actions from the agenda go to the full Commissioners -- the full Commissioners' vote to approve or disapprove what's on the agenda.

MR. WATSON: That's correct.

SENATOR BENNETT: And then when is that action of the Commissioners final?

MR. WATSON: It becomes final after the 10-day veto period that the Governor has. There are 10 days allowed for the Governor to act, and until those 10 days have expired, the action is not final. Except there have been instances where the Governor's Office has given advance approval, prior to the 10-day waiting period expiring, whenever we have had a situation where it appeared that it would be the appropriate thing to do.

SENATOR BENNETT: So that if there is an existing policy and there is a proposal to change an existing policy, it goes and requires the votes of the Commissioners, the full body, and then 10 days thereafter before it would go into effect, because the Governor would have the authority to veto it-- (public address system feedback)

See, the administration is here again. (laughter)

MR. WATSON: In general, that's true; that's true. There have been instances that I mentioned where we do get advance approval before the 10 days have expired.

SENATOR BENNETT: And now we go back to, Mr. Chairman, when you and the Chairman were having, I guess, a disagreement as to when the policies were changed. I want to go back to a determination as to with the prehire agreements. Certainly--

MR. GOLDBERG: You said there was some. I missed part of Mr. Watson's testimony.

SENATOR BENNETT: He just went through procedure with me--

MR. GOLDBERG: Okay, I--

SENATOR BENNETT: --what the general operating procedure is.

MR. GOLDBERG: Okay, go ahead.

SENATOR BENNETT: No, the disagreement was between the two Chairmen--

MR. GOLDBERG: Oh, okay. Yes, we were clearly having a disagreement.

SENATOR BENNETT: --that you were having, not between you two. You two were in agreement. All my questioning was generic, so that I-- I'm not thoroughly familiar with how the operation worked, and I wanted to know generically how you go through the different operations. -

Now I want to go, though, to the -- on the specifics. At some point in time -- I think it was August 24 or 25 -- the bids were opened up in the morning for one of the projects in the widening project.

MR. WATSON: In the afternoon.

SENATOR BENNETT: I'm sorry. Okay, in the afternoon. And the process of reviewing those bids began, as you set forth, that all bids do. But then, according to the documentation that's been furnished by the Turnpike, there was also some correspondence. There was a letter that was written by Chief Engineer Grant, who I understand is here today, that was written to Harms, who apparently appeared to be the low bidder on the particular project in question. It said that with respect to the contracts on W-6411, that Harms must enter into a project labor agreement, "with the appropriate union." How could Mr. Grant impose such a condition when at this point there hasn't been a vote to implement a policy by the full Commission?

MR. GOLDBERG: The answer is very simple. He was following my direction.

SENATOR BENNETT: Do you, as the Chairman, then have the authority to establish policy of the Authority?

MR. GOLDBERG: As Chairman, one of my functions is to have a clear understanding of what the Authority will or won't do, or is likely to do. As a practical matter, I do a number of things in anticipation of what the members will do. As a practical matter, in this case, I certainly had, I think, a basis for expecting that the Authority would adopt the policy. So we-- That's not uncommon, and in this case, particular

with widening contracts, while in theory you could stop and wait -- you know, wait until you adopt a policy -- in reality, particularly with these contracts, we didn't do that.

SENATOR BENNETT: Mr. Chairman, with all due respect, in reality, I just had your Executive Director tell me what is the standard operating procedure. So clearly, then, if you, as the Chairman, are going to depart from the operating procedure, that is different. Now, I would like you to specifically inform me how you can anticipate what your Commissioners are going to do. Because I have been a Chairman, and I can assure you that when I am a Chairman of a Committee of legislators, there is no way in hell's bells that I can anticipate what they're going to do at any given time.

So if you could enlighten me upon this: How are you able to anticipate in advance how the Commissioners are going to act; how they're going to change a policy; and in fact, how you can anticipate how the Governor is going to act? Did you have a conversation with the Governor on this policy?

MR. GOLDBERG: No.

SENATOR BENNETT: Well, my understanding -- and again, I'm new at this -- my understanding is that the policy has the opportunity when it's set by the Commissioners, it can be vetoed or not vetoed by the Governor. So perhaps when you're telling me now how you can anticipate how your members -- you anticipate what your members are going to do, you can tell me how you could anticipate what the Governor was going to do, who you didn't talk to.

MR. GOLDBERG: Well, as far as the members are concerned, over the period of time that we were discussing a prehire agreement, the concept of a prehire agreement was something that all the members had a general awareness of, and there was no indication that I had from any members that they had any objections or unwillingness to take that approach. As I say, one of my functions as Chairman, to make this agency

work, is to understand what is going to be acceptable to the members or not. While I can appreciate that in some cases that may be difficult, I basically have a good idea of what the members will do, particularly if it's being recommended by the staff and the Chairman.

As far as the Governor's Office is concerned: One, I had no conversations with the Governor on this. It is true that one always has the uncertainty, potentially, that a Governor may disagree, and the Governor does have a right of veto. He is, however-- My policy, having worked with five governors, and having served on the staff of a governor for more than 10 years, is to try and deal with the Governor's Office in a way that is least likely to create problems for us in terms of what we want to do. So while I did not talk with the Governor, I did brief some of the Governor's staff as to what we were doing.

I told them what we contemplated doing, and that, in effect, put the ball in the Governor's court. My expectation would have been--

SENATOR BENNETT: What members of the--

MR. GOLDBERG: Wait a minute. Let me finish.

My expectation would have been that if there was a concern, as a matter of policy, that what we were doing was going to be inconsistent with what other State agencies would be doing or the like, I would have received such an indication. I did not get an indication that what we were doing would be inconsistent. In fact, I had an understanding that the Governor's Office was looking at something along the same lines, and therefore, I was satisfied in my judgement that what we were doing was not incompatible with State policy.

That could have been wrong, and if, in fact, the Governor chose to veto it, notwithstanding the vote that we took, it would not have been the policy. That would have led to a revision of the provisions in the contracts that had been rebid, and we would have made those changes. But I will

also say that in the 3.5 years that I have been Chairman of the Authority, the Governor has not chosen to veto a single one of the actions that we have taken.

So, yes, you have to make certain assumptions, and, yes, I did make certain assumptions. I believe that the assumptions I made were proper and realistic assumptions, and events have proven them out to be correct.

SENATOR BENNETT: Mr. Chairman, what members of the Governor's Office did you specifically discuss this change in policy with?

MR. GOLDBERG: Scott Weiner.

SENATOR BENNETT: With Scott Weiner. And can you tell me specifically when you had the conversation?

MR. GOLDBERG: No, I can't, but it was before the August 24th Committee meeting.

SENATOR BENNETT: Excuse me. You mean before the August 24th Committee meeting, or the August 31st Committee meeting?

MR. GOLDBERG: No, the August 24th Committee meeting. It was before that meeting.

SENATOR BENNETT: Prior to the receipt of the bids?

MR. GOLDBERG: Yes.

SENATOR BENNETT: At any time subsequent to the receipt of the bids did you have any conversations with the Governor's Office, Mr. Scott Weiner, or any other members of the Governor's Office?

MR. GOLDBERG: I don't think so. It's possible, but I don't recall any.

SENATOR BENNETT: Although you had the conversation--

MR. GOLDBERG: I mean, I had a specific meeting that dealt with, among other things, that the Authority was proceeding on a prehire arrangement. I wanted the Governor's Office to be aware of that, since we were likely to take that action at the August 31st meeting. I didn't want them to be surprised by it.

SENATOR BENNETT: But although you had no-- You had-- Well, now I don't know if you had a conversation or didn't. Although you didn't specifically have a conversation with the Governor, you talked to members of his staff. You-- After the bid was received, you did or did not have a conversation?

MR. GOLDBERG: I say I don't recall whether I had any conversation on any subject between the Committee meeting or receipt of bids on August 24 and the 31st. I can tell you this: While I don't recall with certainty whether I may or may not have had a conversation, I can tell you that the decision with regard to rejection of bids, or the requirement that the bid be awarded subject to the new policy, was a decision that the Authority arrived at. It was not a decision where anyone outside, whether the Governor's Office or anywhere else, sought to influence or affect.

SENATOR BENNETT: But you authorized for Mr. Grant to send the letter that he sent to Harms?

MR. GOLDBERG: I directed him to deal with Harms, and the letter was part of the follow-up to that direction.

SENATOR BENNETT: And on August 27--

MR. GOLDBERG: He met with him. He did more than send him a letter. He went and he talked with him.

SENATOR BENNETT: Okay. On August 27, Mr. Grant prepared the agenda which provided that the vote would be on the rebidding of the contract of W-6411, according to what you've given us -- that that was on there. How could that have possibly been prepared before you even know what Harms Construction's response was going to be?

MR. GOLDBERG: Well, it's pretty simple. We were dealing with several possibilities, and we were prepared to go either way.

SENATOR BENNETT: On August 30, Harms had submitted the letter back to Mr. Grant, and enclosed the copy of the

original letter asking that Harms agree to a project labor agreement. Isn't it true that Harms was subsequently informed that the only project labor agreement which would be acceptable was an agreement with the Building Trades Council?

MR. WATSON: That's correct.

SENATOR BENNETT: Who authorized that exclusive arrangement?

MR. GOLDBERG: Look, there is a limit to how far I'm going to go with this. There is counsel here for Harms. We're in litigation. If, in fact, some court were to conclude that we did anything improper, Harms has his remedy. I've already explained--

SENATOR BENNETT: So does this Legislature, Mr. Chairman.

MR. GOLDBERG: I understand it's Legislature, and I'll address any policy issue you want.

SENATOR BENNETT: And I am trying to determine how you, as a Chairman, determine policy and set policy absent a vote of the Commissioner and the full Authority. I'd like to know the answer to that question. How do you do that individually?

MR. GOLDBERG: That's based on my judgment of a circumstance and what--

SENATOR BENNETT: What law?

MR. GOLDBERG: What law? I have that responsibility as Chairman, and it's part--

SENATOR BENNETT: Where does it say that you have the right to set policy of the Authority? If I am wrong, I would be happy to apologize.

MR. GOLDBERG: I think that the Turnpike law, as written, vests that responsibility in the Chairman.

SENATOR BENNETT: Well, with all due respect, Mr. Chairman, that's why lawyers disagree. Because you and I are

both lawyers, and frankly, I find nowhere that you have the authority to set or establish policy for the New Jersey Turnpike Authority.

MR. GOLDBERG: Well, I--

SENATOR BENNETT: Thank you for answering the questions.

MR. GOLDBERG: Oh, all right.

SENATOR BENNETT: Mr. Chairman, I'm completed with this witness.

SENATOR HAINES: Do we have comments, other questions for this witness?

Senator Ciesla?

SENATOR CIESLA: Only one confusion that I have. When Senator Corman had asked what I thought was a simple question, "Why didn't you send out an addendum, so that you could incorporate this prior to the bids being received?" You testified that there was no policy in effect which would authorize you to send out an addendum. Yet what you just -- in the colloquy that you went through with Senator Bennett, you testified that you could direct Harms to enter into this particular agreement because you could anticipate policy.

MR. GOLDBERG: Let me--

SENATOR CIESLA: Was your vision clarified in a couple of days?

MR. GOLDBERG: Let me try and clarify--

SENATOR CIESLA: Please, do.

MR. GOLDBERG: --what may be a point of confusion. As of the time that the bids went out in June, we were still in the process of deciding how to approach the prehire agreement. As I indicated, even as of the July meeting of the Committee, we were still at a point where at least the staff and the Chairman had not reached a final decision, although it was pretty clear at that point what we were likely to do. By the Committee meeting of August 24, both staff and the Chairman had

come to a final decision on that. We can have whatever back and forth we want about what is the responsibility of the Chairman, but I can assure any of the people here that if you ever end up being Chairman of the Turnpike Authority, first of all, be my guest.

Secondly, I think that the abstract discussion of what the law does or does not permit is unrealistic. It is the responsibility of the Chairman to understand what's going on in the Authority and what the Authority is likely to do, and to act on that, particularly when we are dealing with critical time periods. Having come to the conclusion that we should adopt a prehire decision, I directed staff to take certain actions consistent with that occurring. Someone could say, "Well, you could have been wrong. You could have misanticipated. The Governor might not have agreed. The members might have agreed."

Yes, I could misanticipate. And when I, as Chairman, begin to misanticipate regularly what my members will do, or what the Governor will do, I will no longer be Chairman. But I can tell you right now, I don't misanticipate very often. I understand pretty well what the Authority will or won't do, and that direction, therefore, was based on my judgement as to what will happen, and what, in fact, did happen on August 31.

SENATOR CIESLA: So the answer to my question is, then, I believe, that the anticipation of what would happen with respect to the adoption of the policy was finally concluded in your mind on the 24th, the same day that the bids were opened?

MR. GOLDBERG: Correct.

SENATOR HAINES: Is there-- Are there--  
Senator Corman.

SENATOR CORMAN: Just to clarify a few final points for me if you would, Mr. Chairman. I would gather that the Governor's Office must have been informed as to whether or

not-- You kept the Governor's Office informed as to your deliberations on entering into project labor agreements.

MR. GOLDBERG: No, that's not quite accurate.

SENATOR CORMAN: That's not?

MR. GOLDBERG: No, I didn't keep them-- I had one conversation in August, in which I advised, in general terms, the things that the Authority had under consideration that we were likely to act on, or might act on at the August 31st meeting. Among several items, I briefed them on the prehire agreement -- briefed in terms of explaining about the Boston Harbor decision that we were wrestling with it. We were moving to the point where we were likely to adopt such an agreement. It has not been my experience with the Governor's Office that they expect or intend to get into the day-to-day details of the Authority, or what happens in sequence.

It has been my policy -- not necessarily even sought by them, but I feel it's in my best interests to do it -- to keep them advised on what I consider to be the major issues. I generally, you know, make the judgment as to what is a major issue based on my experience, and I thought the prehire agreement was a policy issue that was important enough to mention. Having said that to the Governor's Office and explaining it to it, and having had no indication at that meeting and nothing subsequently that indicated that the Governor would be likely to object to that if we chose to do it, we proceeded. We were not told to do it. We were not told not to do it. We simply briefed the Governor's Office as to what we were contemplating and doing.

SENATOR CORMAN: Actually, my question regarding keeping the Governor's Office informed-- I don't mean to imply that there is anything sinister about it. I mean, I'm not-- In fact, so you can just dispel any of that now, I know-- I'll ask the question, you can dispel it: You didn't get any calls

from them to check out what bidders contributed how much to what campaign? You weren't asked any questions like that, were you?

MR. GOLDBERG: No, and if I had I wouldn't know.

SENATOR CORMAN: Right. Okay, so now that we've got that dispelled-- The reason why I asked the question is that, you know, Boston Harbor agreements-- As I said that before, I think that's a useful public policy tool. We went through the whole cost-benefit analysis, and I would think that this would be something that the administration as a whole might have a position pro or con. I don't know if Commissioner Bramucci has taken a position pro or con on Boston Harbor-type agreements. As of this particular-- Whether it be in March or up until August, I don't know whether or not the Governor's Office had taken a position on that. I was simply curious as to whether or not you would keep the Governor's Office informed as to this new direction that a major Authority would be moving on. There is a representative of the Governor's Office at your meetings, correct?

MR. GOLDBERG: Yes, there is a representative of the Governor's Authority Unit that regularly attends. The fact is that I did keep the Governor's Office informed. I believe, and my recollection is not as clear, that I had briefed the Governor's Office a month or two earlier that we had started to look at this subject. But, of course, the briefing would have been a more preliminary briefing; that is, "We're starting to look at it. We don't know what we're going to do."

By the August meeting, we were pretty clear as to what we were going to do, and in my mind I wanted the Governor's Office to understand it was quite possible, you know, with caveats, that we would take action at the August 31st meeting. My purpose in briefing the Governor's Office was to head off the possibility of the Authority perhaps going off in the direction that was contrary to what the Governor would find

acceptable, because the Governor, as a matter of law, must review our actions and must approve them. That's the purpose of periodically briefing the Governor's Office on what I consider to be significant matters.

SENATOR CORMAN: So when the Authority made their preliminary decision back in July that they were going to go forward with project labor agreements, there would have been someone from the Governor's Office there at that meeting?

MR. GOLDBERG: No.

SENATOR CORMAN: No?

MR. GOLDBERG: They don't sit in on the Committee meetings.

SENATOR CORMAN: Okay. So that wasn't the--

MR. GOLDBERG: I haven't encouraged that.

SENATOR CORMAN: So they hadn't-- Back in July, they hadn't had a clue that you were going to do--

MR. GOLDBERG: No. That's not true. I just said there was an earlier discussion--

SENATOR CORMAN: Earlier than--

MR. GOLDBERG: --probably prior to the July meeting.

SENATOR CORMAN: Okay.

MR. GOLDBERG: Which advised the Governor's Office, or briefed the Governor's Office that as a result of the Boston Harbor decision, we were looking at the question of prehire agreements. The Governor's Office had an awareness. They didn't-- My experience has been that I tell them a lot of things and they listen, and that's it.

SENATOR CORMAN: Some goes in one ear and some comes out the other.

MR. GOLDBERG: I don't know what happens to it. Look, from my standpoint, if I told them, I've done what I'm obligated to do.

SENATOR CORMAN: You did your job.

MR. GOLDBERG: After that, it's up to them. My position is really very simple. If I tell you that we're likely to do something and we do it, I don't want to hear anything about being unhappy about what we did. If you've got any problem with what we're doing, I'd like to know it in advance. That's my working relationship with the Governor's Office. Most of the time I don't hear anything from them.

SENATOR CORMAN: So actually, before July you had a conversation with somebody in the Governor's Office briefing them that you were looking into project labor.

MR. GOLDBERG: I had a conversation, I'm quite sure, with Bob DeCotiis at some point -- probably June.

SENATOR CORMAN: Probably June, that you were going to look into project labor agreements.

MR. GOLDBERG: Not that we were going to look; that we were in the process of, you know, following up on the Boston Harbor decision, and that we would at some point make some decision as to what to do with a prehire agreement.

SENATOR CORMAN: Did he express any approval or disapproval--

MR. GOLDBERG: No.

SENATOR CORMAN: --or he just noted it for the record.

MR. GOLDBERG: He did whatever he did. I don't recall either DeCotiis or Weiner getting into substance, other than Weiner indicated that that was an area that the Governor himself was looking at; that he might do something in this area; and that what we were telling him we would do was not likely to be inconsistent with what the Governor might do. At that point-- As I recall, I don't think -- at least as he explained it to me -- that the Governor's action had crystallized in specifics. I don't even know that it crystallized, in terms of having made a final decision, that he would issue the Executive Order; that he would-- But obviously that was being discussed within the administration.

Again, my concern was a very limited concern: that the Governor's Office have an awareness of what we might do on a major policy issue, and that we, in turn, would have an awareness as to whether our actions might possibly run counter to what the administration might do. Because obviously, if we were going to do something inconsistent with general State policy, that certainly would be something that we would look at very carefully.

SENATOR CORMAN: Now the Executive Order that the Governor issued, when was that issued?

MR. GOLDBERG: Sometime after our action in September.

MR. WATSON: September 13.

MR. GOLDBERG: September 13, two weeks after we acted.

SENATOR CORMAN: Okay. So after that, I guess it was the Governor's expression of approval of your adoption of a project labor agreement policy.

MR. GOLDBERG: Well, if I wanted to look at it most favorably, you could say that. But I think it represented the Governor's decision as a matter of policy, as to what he felt should be the position of public agencies on this question of prehire agreements. He certainly didn't do that to approve what we did. He approved that by not vetoing it. He did that because that was his judgement as to what the general policy should be for State agencies in general. You know, as you look at them after the fact, his is different from ours in some respects, as it should be, but I think the two policies are totally consistent. They're not identical; ours is much more specific. We limited it to a given project. We tied it down to a specific union. His is, as I think it has to be--

SENATOR CORMAN: Broader policy.

MR. GOLDBERG: --it's a broader policy.

SENATOR CORMAN: Did you have any inkling that an Executive Order of this kind might be coming down the pike?

MR. GOLDBERG: Yes.

SENATOR CORMAN: When did you?

MR. GOLDBERG: When I talked with Weiner.

SENATOR CORMAN: That was when?

MR. GOLDBERG: Mid-August.

SENATOR CORMAN: So in the middle of August, you had an idea that this was the way the direction--

MR. GOLDBERG: I had an awareness that the Governor's Office-- I don't know about the Governor. You know, these things, like on our level, are worked up by staff. I had an awareness that within the administration consideration was being given to the formulation of the policy on prehire agreements; that it might well be done sometime in the near future, probably by way of an Executive Order. I had an awareness that that was being considered. I also had an awareness that, at least as far as they were telling me, that the final decisions on the Governor's level as to what he would do, when he would do it, and whether, in fact, he would end up doing it, had not been made.

So while this was being contemplated, I did not assume that it had been finally concluded, although it may have been. What was important to me was not where the Governor was in his process, as to whether what we were contemplating was either compatible or incompatible with what might happen on the Governor's level, because we did not want to do anything that would turn out to be inconsistent with State policy.

SENATOR CORMAN: Okay. Now, just this last concern I've got, and this is the one-- I spoke about this before. I just want to come back to it. The retroactivity of this policy being applied to a bid that had already gone out -- actually had already come back in, is it-- How many times in the

past-- At least how many times while you've been on with the Authority has a new condition been added to a contract after the bids have been received?

MR. GOLDBERG: I don't know that I can answer how many times, but it is my belief that we have revised specifications periodically -- from time to time. This was not the only time, or an isolated incident.

SENATOR CORMAN: So there were other times when specs went out, bids came back in, a new spec was added -- or a different spec was added, and the low bidder was told, "You've got to comply with that."

MR. GOLDBERG: Now, normally-- What we did here that was a little unusual and, quite frankly, we did it-- (laughter)

The nice thing about being in court is that all of the other brilliant ideas that other people have-- They all have an opportunity to argue. But until we get to that point, let me just tell you that what happened here that ordinarily wouldn't have happened was not the rejection of the bid, because I consider that routine and well within the authority of the Turnpike. What happened here was my direction to the Chief Engineer to reach out for the contractor, and to give the contractor the opportunity that they would not have otherwise been entitled to; that was, to save their low bid -- which was an acceptable bid, in abstract -- by agreeing to accept the change in the specs that we were going to impose. We didn't have to do that. We could have simply rejected all the bids, and we could have not given the contractor a chance to, in effect, hold the low bid by reaching such an agreement.

I thought that under the circumstances we were changing the rules; that while we were not obligated to do that, that it was an equitable thing to do. So the Chief Engineer, at my instruction, did talk with Harms, did make that offer to Harms, and Harms did what he chose to do. I thought

that was a fair thing under the circumstances, you know, given the reason that you pointed out. Quite frankly, at the time that we did that, I did not presume that Harms would necessarily find it either unacceptable or impossible for him to make that change. I did that in the hopes that he would be able to agree to that, and in the hopes that we would save the low bid. Because while we were rejecting, and while, in fact, the low bid that we ultimately received was lower than Harms, that was not a guaranteed certainty.

I would have been very happy for Harms to have had this job, provided Harms was prepared to do what the Authority wanted; that was, to agree to the prehire agreement along with all of the other contractors that were working on the job.

SENATOR CORMAN: Just so I understand, in the event -- we'll look at contracts in the abstract, not just this particular case -- in the event a particular job went out to bid, and while the bids were still out there waiting to be received it turned out that some new condition had to be added to the specs -- you had to use an extra quarter inch of asphalt or a different turning radius on a turn, for whatever reason -- what would be the Turnpike's procedure? Would they wait for the bids to come back and then tell the low bidder, "Well, we're going to change this. We've got to have extra asphalt or a different turning radius"? Or would you send out an addendum and say, "Whoops, this is what it is, so make your adjustments accordingly in your proposals"?

MR. GOLDBERG: Look, as we-- When there is time, we do send out addendums on contracts, and, in fact, on this one there was a series of addendums that were sent out before bids were received. From what I have in front of me, we apparently sent out six addendums to this contract, and that's not an unusual process. That's something that contractors understand they have to deal with in order to bid. The difficulty that existed in this case was that we -- at least staff and the

Chairman had not come to a decision with regard to the prehire agreement until the morning that bids were due. If we had come to this decision a week earlier, then we could have conceivably done exactly what you have suggested. We could have put out an addendum. We could have said, "There is a, you know, prehire requirement, and you're going to have to do that."

The difficulty in doing that was: First, while I think as a matter of law, and as a matter of the general powers vested in the Chairman and the staff, that we could possibly incorporate such a policy without formal Authority vote, even assuming that was correct, it was my belief that this policy should be acted upon by the full membership, having decided that the policy was not going to be formally in effect before the August 31st meeting, or until the Governor had run the veto period.

Now, under those circumstances there are a variety of things we could do. The bid came in on a Thursday. We had a meeting, I guess, on Tuesday. We had 30 days to award. We could have said nothing to Harms. We could have taken up the policy at the meeting, and we could have done the actions that we did. We could have rejected the bids because, as a matter of policy, the Authority would not award a contract without prehire agreements. We could have done that, and in fact, we did do that. What we did in this case was, however, to take an extra step to allow the low bidder an opportunity to save his low bid.

As I've told you, we didn't have to do that. I thought it was fair, under the circumstances, to extend that option to the contractor, and we did. The fact that it didn't resolve the problem, I think, is unfortunate, because obviously if he felt comfortable with the prehire agreement, he would have had the contract and we would not have, at least, the litigation. I don't know whether I'll have a Committee meeting or not, because that's your call. But it didn't happen that way.

The point is that I was not prepared -- staff probably was -- to come down finally on the prehire issue until I had a chance to be fully briefed by staff. On the Committee meeting on the morning of the August 24, I got that briefing, which included counsel, included the engineers, and included Mr. Watson. That briefing didn't deal with the bids since the bids hadn't been received, other than to note that we had contracts that had been advertised and bids were coming in that afternoon. So we had an awareness that we were going to get bids. They would be whatever they would be. But the decision that we were going to impose a prehire decision, at least as far as the Chairman and staff, had been made that morning.

SENATOR CORMAN: Now, the decision to impose the prehire agreement on this particular contract was made on August 24?

MR. GOLDBERG: It had been made, as a matter of a policy determination by the Chairman and staff, as of that morning.

SENATOR CORMAN: As of that morning?

MR. GOLDBERG: It was made, as a matter of Authority action, at the meeting on August 31, and was confirmed by the Governor's acceptance of the Authority's action within the allotted time. I don't remember whether in this case it ran the full 10 days, or whether we got an approval in advance of that. I don't recall.

SENATOR CORMAN: All right. So you, the Chairman, and your staff, I guess, anticipated that on the 31st, when the full Authority met -- when the full Commission met -- they would go along with your decision to impose the requirement that there be a project labor agreement on this particular contract?

MR. GOLDBERG: Not on this particular one, on all of them.

SENATOR CORMAN: On all, including this particular one?

MR. GOLDBERG: Yes, including this particular one.

SENATOR CORMAN: Now, as to why it was imposed on this particular contract: There must have been some sense of urgency. You indicated that you wanted to get this stuff done.

MR. GOLDBERG: There was a sense of urgency.

First of all, in seeking to find out whether the low bidder would agree to the new policy, one reason that we undertook that was the fact that if that was acceptable to the low bidder, we would not have to go through a rebidding process, and that was desirable. To rebid the contract, while we were satisfied that we could live with that 30-day delay, given the mix and the way that these contracts were going to work, we could have avoided that time span.

SENATOR CORMAN: Now, this sense of urgency that you had--

SENATOR HAINES: Randy, are you pretty well through? Because I'll tell you, if lawyers had to pick peaches, we'd never get any damn peaches picked. (laughter) Really, we've got a whole--

SENATOR CORMAN: I'm getting to the point, Mr. Chairman.

SENATOR HAINES: --list of witnesses here to go through, and I hope you can--

SENATOR CORMAN: I'll wind it up, Mr. Chairman.

SENATOR HAINES: Good.

SENATOR CORMAN: I'll wind it up.

This sense of urgency that you had, was that because you had reason to believe that there would not be labor peace if there was no project labor agreement on this particular contract? Did you have reason to believe that there would be a problem?

MR. GOLDBERG: On the Harms contract?

SENATOR CORMAN: On this contract before you knew what the bids were, or even after.

MR. GOLDBERG: I'm not sure what would be-- I did not

have, I guess, as of that day, as full of an awareness of the differences -- at least in the minds of the parties -- between Harms, the Steelworkers, and BCTC. I had, probably, myself a sort of general awareness of that, but I certainly didn't have it to the extent that I now, you know, come to understand it.

I did not have a sense of urgency about this contract and labor peace, in a sense that I presumed one way or another what would happen if Harms had gotten the job. My sense of urgency had to do with the timing of the awarding of the contracts. I knew that if we were going to impose this policy and have it as an effective policy: One, it should be retroactive to all of the other agreements, and therefore, it was of necessity limited to the BCTC. Secondly, that if we could not satisfy the low bidder, or find that the low bidder was willing to take the job in accordance with our policy, we would have to rebid the job. While I was satisfied after talking with staff that we could live with that, if I could avoid that delay, I would have liked to avoid that delay.

SENATOR CORMAN: Okay. Let me wind this up, Mr. Chairman, if that pleases you.

The questions that I-- I appreciate you answering all these questions. The questions that are still in my mind, and this is the inconsistency I see: If there was some sense of urgency that you had to have a project labor agreement on this contract in order to get this job moving, I could understand that. But if that were the case, why could the Commission -- why could the Authority not have a-- Why couldn't they have a special meeting in order to adopt the policy before the bids came in, okay?

If there was no sense of urgency-- If it wasn't all that urgent that there be a project labor agreement on this contract, why was it applied retroactively? That's the-- Those are the unanswered questions that I see.

MR. GOLDBERG: I think I have really explained what we did. The idea of a special meeting was unrealistic as of August 24, because we -- that was a Thursday. By the time bids came in, that was the afternoon. We had a meeting scheduled for the following Tuesday. That was about as fast as we would put together a meeting if it was going to be an emergency meeting. The only way in which we could have eliminated the situation where it ended up with the rejection of the Harms bid was to have presumed that there was a high probability that we would get a bid that would come from a contractor who would be unwilling to accept a prehire agreement with BCTC, and to come to that conclusion, you know, well in advance of the August 24th date.

Now, by hindsight, that turned out to be the sequence of events as they occurred. But I can assure you that at that time, where Harms had not successfully competed for a single contract in more than 30 instances on the widening project, it was not something that was at least within my contemplation. Was it possible that he could be the low bidder? Obviously, because he ended up being the low bidder. Was it something that was a matter of concern or focus by the Authority, or by me? The answer is no.

SENATOR CORMAN: So from your perspective the bids came in, but they came in wrong?

MR. GOLDBERG: No, the bids came in fine. All I wanted was the contractor to do what every other contractor is prepared to do. We gave him that choice. He chose not to accept that opportunity. That was his right. He chose to dispute what we did, and that's also his right. His lawyers are sitting here listening to everything that I say in the hopes that all this questioning may give them a better shot at us in court. My hope is that I've explained adequately and correctly what we did and why we did it.

SENATOR HAINES: I'm not asking a question. I'll just sum up that at -- a decision was made by the Chairman that was arbitrary and not made by the full board until a later -- so it was a predecision; and that the Chairman didn't want Harms to get the contract for some reason. To say that he could go for a preconstruction contract and change unions in the middle of the stream is utterly ridiculous. It doesn't hold water. Anybody in business that would lay off all his workers and hire another group of workers-- That just doesn't happen, and I'm not that naive to assume that it could ever happen. If you had been fair and said to Harms, "Give me a preconstruction agreement with your current union," that would have been something that would have been a little bit different.

Mr. Chairman, I'm sorry to say, but I think that you acted arbitrarily, and you acted for some reason that seems to make no sense to myself from a practical standpoint. But I do appreciate you coming here to this hearing, and I appreciate you being patient, as we all have been.

We are strictly here to see whether we need legislation. Maybe some legislation will come out of this. We are not making decisions, obviously, because the Legislature cannot make decisions on this matter.

We have a large list of people coming. Certainly Commissioner Bramucci has been more than-- He's been wonderful to sit there and listen all this time.

I don't know really why we invited you at this, because I don't know that you're really involved. But, Commissioner, come forward, and if my colleague has some questions for you, I don't have-- I'd like you to stay for a little bit. I hope we can conclude this pretty fast. I know it's lunchtime.

MR. GOLDBERG: Mr. Chairman, I will say briefly--

SENATOR HAINES: Well, let's hear what the Commissioner has to say.

MR. GOLDBERG: I certainly would like--

SENATOR HAINES: I don't know why he's here, but Commissioner--

MR. GOLDBERG: Let me just say that you and I have agreed to disagree, and I understand your--

SENATOR HAINES: That's absolutely right.

MR. GOLDBERG: Okay.

**R A Y M O N D L. B R A M U C C I:** Mr. Chairman, it's a pleasure to be here.

SENATOR HAINES: I appreciate you waiting, Commissioner.

MR. BRAMUCCI: Well, thank you. I guess maybe you wanted to give me an opportunity to see exactly where I've been backed up over the past 25 years trying to get on and off the 15E.

SENATOR HAINES: We need the road. There is no question.

MR. BRAMUCCI: Yes.

I've been asked, Mr. Chairman and members, to state the broad policy objectives of Executive Order No. 99. I fully support Executive Order No. 99. I think that at this stage in our economy and in our State the citizens of New Jersey are served by a broad policy of requiring policy agreements.

SENATOR HAINES: Commissioner, I hate to interrupt you, but the one thing that I don't understand -- just as a layman, and I have no connection with unions -- I basically don't understand why -- and maybe I'm reading the thing wrong -- why do you have to pick out one union? Is there leeway in there for more than one union, Commissioner?

MR. BRAMUCCI: The Executive Order No. 99 does not preclude any union--

SENATOR HAINES: Okay.

MR. BRAMUCCI: --or state that as a matter of principle that one union wins out over another union. This is a project-by-project order that says where it serves the State

of New Jersey in terms of efficiency, cost, safety, it's better to settle things before you put the shovel in the ground than after. I think that for my policy, Mr. Chairman, looking at labor peace, looking at efficiency, and looking at the relationship between workers as an example-- In other words, if I didn't come here today, I would have been made available to work out jurisdictional disputes going on presently in South Jersey -- in the South Jersey Port. So it is a complicated issue that courts have had difficulty dealing with.

In my experience, after 35 years in this business, it makes sense to say to a contractor who bids low on a contract, "You settle all this stuff up with your subs, and your people are going to work. Let's get this job done without any nonsense: no stoppages, no jurisdictional disputes, no arguments, no conditions, and whatever."

SENATOR HAINES: Commissioner?

MR. BRAMUCCI: That's what we've done here.

SENATOR HAINES: Commissioner, under your 99 deal -- and I'm not -- that's not part of what we're here for today -- but under that agreement, could Harms have gone to the Turnpike and said, "We have an agreement with the Steelworkers Union -- a preconstruction agreement with the Steelworkers Union," and that be accepted? Or is this-- I'm confused why that couldn't be done.

MR. BRAMUCCI: Well, I don't want to comment on what the Turnpike did on that particular order, because it made a decision as to the best set of circumstances to do that job. But theoretically, in future biddings and future jobs around the State of New Jersey, with different instrumentalities and different Authorities, the issue is that the contractor and that contract with those workers is not categorically ruled out of business or out of possibility of being accepted. In that particular case, the Turnpike made its decision. In the long

future what we're talking about here is appropriate unions and appropriate employers that can accomplish the work efficiently, safely, on time, and at a good price.

SENATOR HAINES: Okay. I don't think that this Committee is really reviewing your Executive Order.

MR. BRAMUCCI: Okay.

SENATOR HAINES: But I appreciate you coming here. Do we have questions, Randy? (no response)

SENATOR HAINES: Thank you very much.

MR. BRAMUCCI: Thank you very much, Mr. Chairman.

SENATOR HAINES: Thank you for taking the time.

I'd like to have the gentleman from Harms Construction Company, George Harms. Is George here?

**T H E O D O R E W. G E I S E R, E S Q .:** Mr. Chairman and members, my name is Ted Geiser. I'm counsel for Mr. Harms. This is Mr. George Harms to my right. (indicating) With your permission I'll intrude for only about four minutes on your time, subject to any questions you may have.

I see Commissioner Goldberg has left. I'm sorry to hear that, because I think he was wrong on some facts. I just want to cover them very briefly, because you don't want to have a hearing on it.

Bids were taken on the 24th, a Tuesday, not a Thursday. Bids were taken in the morning, at 10:00 a.m., not in the afternoon. The document you have before you, authored by House Counsel for the Turnpike, Herb Olarsch, who I've known for many years, is dated August 24 and says, "Let's adopt the policy."

I would suggest if any Turnpike people are here and say I'm wrong, please correct me, but I'm telling you what happened.

That was a Tuesday. Thursday Wally Grant, the Chief Engineer, called and talked to Ed Nyland, President of Harms. Friday, at the request of the Chief Engineer, who I've also

known for many years, a meeting was had. Harms was given the letter and attached proposed prehire agreement. The letter says, as you know, "You can sign this or we're going to reject all bids." On Monday I learned about it for the first time. Seven o'clock a.m. I got a hold of Herb Olarsch. "Can I have a couple of days to consider it?" He said, "No, no time." I met with George Harms. That afternoon we sent it back signed.

But of course they screwed up. They screwed up because they didn't say a particular union. So the next day I showed up at the Turnpike to see what happened. I had complied. Harms had fully, and said, "We'd be glad to sign it and have our union sign it." That's when I met in executive session -- you have the minutes -- and they said, "Oh, well you misunderstand me. It has to be this union."

SENATOR HAINES: Let me ask you a question along-- Now, maybe I stuck my neck way out, but I-- If it was my employees that I had working for me, I would never lay off employees or ask them to join a union that they didn't want to join.

MR. GEISER: Senator, you have it. There are a half a dozen of them here today who are represented by their own counsel, and--

There is a word, I think, that's critically important to this whole thing. I can't believe I sit here and listen to David Goldberg -- who I've known for 30 years -- and the Turnpike as a whole saying, as they have said in court and everyplace else, "We did it because we're afraid."

Afraid of Harms? No. Harms is fine, responsible, finishes jobs on time: Five projects, \$67 million for the Turnpike on widening since 1987, \$400 million for the State of New Jersey in the last 10 years -- never late. Despite being regularly assaulted by Local 825 and others, that's all true. Local 825 has a reputation -- deserved -- for extreme acts intended to discourage conduct of which it disapproves, i.e.,

not signing up with them. Fear. Here is a pusillanimous part of this executive branch of government that comes out and says without shame, "We're afraid of the other guys, so we gave them a monopoly so they won't hurt us."

SENATOR HAINES: George, you want to say something?

MR. GEISER: I'm ashamed of that.

G E O R G E H A R M S: Yes, Senator. I have a couple of comments I'd just like to say.

Obviously I was born here in New Jersey, grew up my whole life here, so have my two generations before--

SENATOR HAINES: And you've done great, great contracts. That bridge there in Bridgeboro is fantastic. You did a fantastic job there.

MR. HARMS: Well, thank you. Obviously 825 has been after us for many years. We're in a five-year litigation with them. It's very unfortunate that after-- They can't compete with us. They don't have the ability to compete with us at the -- bid place to be low, to do jobs on time, competitively, within the right standards. They have to resort to some different tactics in order to come after us. I'm really appalled over it myself. I sit here just totally upset.

SENATOR HAINES: Well, I think what we're trying to get at is the procedure that was followed. You know, it sounds like I'm a little bit on your side, but the point here is that really we're looking after the procedure. Because we, as a Legislature, can only deal with the procedure. Now, it seems to me that even Bramucci said that if you came in with a preconstruction agreement with your people, that it would be okay as far as the general government is concerned. Maybe I heard him wrong, but I thought that's what the man said.

MR. HARMS: I believe that's what he said. But from what I understand of the policy -- and I have to look to an attorney for it, because it is kind of vague -- that we are

excluded. Our contract, our 200 people that have been working here for many years are excluded under that policy. That's the way I understand it.

SENATOR HAINES: Well, we are not really going after the 99 administrative thing. That's another subject for another day. But the point is what we think is that there was an arbitrary decision made by the Turnpike. Why this decision was made on an arbitrary basis -- that is what we are trying to get at.

MR. HARMS: Okay. I'd just like to make a couple of other comments. Over the last 10 years, the jobs that we were low on-- If we didn't exist, it would have cost the taxpayers another \$25 million or 6.3 percent on just the fact that we're there. Our 200 people in our entire company have no place to go based on this deal with the Turnpike. They are saying, "Take your business elsewhere."

SENATOR HAINES: The State of New Jersey has said that to so many businesses in the last four years through overregulation, overtaxation that it is totally disgusting. How anybody could reelect this person who sits in the Governor's chair is beyond my wildest conception. (applause)

MR. GEISER: May I say two things? Mr. Chairman, may I just say two brief things? (no response)

Number one, anybody out of this State that was considering coming here was told, "If you come here, you know, you're going to have to sign a collective bargaining agreement with" -- I don't know -- "the State will tell you who." Forget it.

Finally, this: Understand what the issue is. The issue-- I'm not going to discuss the lawsuit. The Supreme Court will deal with that. The fundamental difference is that in our view -- legally, in our view, we have lived for generations under legislation which says, "lowest responsible

bidder." That's legislation. Now, if that's to be changed, we think it's a legislative function, not to be done by edict of a Chief Executive.

Thank you.

SENATOR HAINES: Thank you very much.

SENATOR CORMAN: Mr. Chairman, could I just ask?

SENATOR HAINES: Yes, wait a minute, wait a minute. Randy, I didn't see your hand up. I'm sorry.

SENATOR CORMAN: I just want to-- I'm very interested in a few comments you had made. It had previously been testified to, by the Chairman of the Authority, that it was a happenstance occurrence that they decided to adopt the -- he decided to adopt this policy on the morning of August 24.

MR. GEISER: Right, and the bids were taken in the afternoon. No, that's inverted.

SENATOR CORMAN: Okay. You're telling me that the bids were taken actually at--

MR. GEISER: Ten o'clock a.m.

SENATOR CORMAN: --10:00 in the morning?

MR. GEISER: You know, I think Mr. Goldberg pretty much conceded he said, "Gee, I had no idea Harms was going to be low. My God, I was shocked."

SENATOR CORMAN: And you also testify-- He had testified that your client was given an opportunity to sign a labor agreement -- a project labor agreement -- and they gave you a piece of paper.

MR. GEISER: Yes.

SENATOR CORMAN: You-- Now, they sent you something--

MR. GEISER: The mongoose was given a chance to sign up with the cobra. He said, "Nothing doing." I have people working for me for 10 or 20 years who've been assaulted and spat upon by -- by the Local 825. I'm not signing with them, no.

SENATOR CORMAN: And now you testified earlier that they had sent you an agreement.

MR. GEISER: Absolutely, twenty-six pages long. I reviewed it.

SENATOR CORMAN: And you signed it.

MR. GEISER: Said, "Fine, sign it. Give it back."

SENATOR CORMAN: And then they said, "Oh, no. That's not the agreement we want you to sign."

MR. GEISER: Right. That agreement said, "Just agree to use union labor." Fine.

SENATOR CORMAN: Mr. Chairman, all I can say is that these revelations are shocking. It indicates to me that the Authority has not been entirely candid with this Committee. I think that this is something that we'll have to deal with as a legislative -- as a matter of legislative oversight.

MR. GEISER: We thank you for your time.

SENATOR HAINES: Senator Corman, you're exactly correct. We haven't heard the truth here this morning.

The next representative is the Utility and Transportation Contractors Association. Is there somebody here from them?

**S T E V E N E . B R A W E R , E S Q . :** Yes, sir.

SENATOR HAINES: We're losing our audience.

MR. BRAWER: Story of my life, Senator. Thank you.

Mr. Chairman, my name is Steve Brawer. I'm an attorney practicing up in North Jersey. I'm legal counsel to the Utility and Transportation Contractors Association. Sitting with me is Peter Getchell, who is President of PKF Mark III, a substantial contracting firm that's one of our members. Mr. Getchell is also a Director and Vice President of our Association. I'm really here pinch-hitting for Bob Bryant, our Executive Director, who unfortunately couldn't be here when the hearing was rescheduled.

First of all, I thank the Committee for the opportunity to appear. I'm going to try to be very brief, and allow Mr. Getchell to make some comments on some very specific points. This matter has been presented vis the Turnpike in terms of policy.

First of all I think everybody should keep in mind that there already exists in this State a policy regarding how contracts are awarded by the Turnpike and virtually every other governmental agency. That's a policy the Legislature has set in numerous statutes which require award to the lowest responsible bidder. There is a specific statutory mandate affecting the Turnpike that requires award to the lowest responsible bidder. That's not lowest responsible bidder who affiliates with a union, or without a union, or any particular union. It's lowest responsible bidder.

Now, our Association consists of about 950 firms, with the largest heavy construction trade association in New Jersey, and the largest state association in the country. Over the years, we've been successful because we have maintained neutrality on labor issues. We have nonunion contractors; we have Building and Construction Trades Contractors; and we have contractors affiliated with other unions like the Steelworkers.

So we are here not because of any partisan interest regarding Steelworkers, or Building Trades, or union, or nonunion. We are here because of certain principles involved, and because of some real impacts that they have upon the competitive process, our members, and ultimately, the public and taxpayers.

One point that Mr. Goldberg made was that if the Harms Company had not, coincidentally, been the low bidder on Contract W-6411, I think he said, "Nobody would be paying any attention." Well, with all due respect, we certainly would have been paying attention, Mr. Chairman. Because our

Association immediately decided to take issue with the policy adopted by the Turnpike. We did it for a number of reasons: First and foremost is the fact that it represents a revolutionary change--

Let's be clear on this. The notion of conditioning award on the basis of union affiliation and particular union affiliation has never been implemented in this State before. It differs substantially with what the Legislature has prescribed in numerous statutes, including the Turnpike statute, where it says that award is to lowest responsible bidder. That has meant substantial savings to the public over the years because of competition. Our courts have recognized that, and it's really a polestar -- a guiding principle in the entire public procurement area.

What we have here, unfortunately, I think, is a change by Executive Edict, which, if you will, -- a stealth policy, which I don't believe either the Turnpike Authority or the executive, in Executive Order No. 99, had the legal right to implement. I saw that because of an issue that Mr. Geiser referred to: separation of powers. A policy judgement like this, I suggest, rests with the legislative branch. It does not rest with the executive, because this is revolutionary.

There is also a problem that we're concerned about, Mr. Chairman, regarding governmental process. We know now that consideration of this policy change was being given by the Turnpike going back to April. Over the years, our Association has worked closely with the Turnpike Authority, with the Department of Transportation, the Department of Environmental Protection and Energy, and other government agencies to have meaningful input on policies that affect the procurement process, affect our members, and affect the public.

Nobody solicited our views in regard to this policy. Nobody asked what we thought about whether there was a need for this policy, how it should be designed, how it should be

implemented. We found out about the Turnpike policy on August 30, the day before the Turnpike took action on the 31st. Our Executive Director immediately wrote to the Turnpike and requested -- objected to the policy and requested the opportunity to be heard. Needless to say, we weren't provided with that opportunity because the policy was adopted on the 31st.

Also, Mr. Chairman, make no mistake about the extent of this policy. I know it's not the focus of the Committee today to deal with this, but per Executive Order No. 99 and various activities that are being taken on county and even local levels, this wave is sweeping across the State. We are not dealing ultimately with just an isolated program on the Turnpike. We're dealing with the very essence of how public contracting and procurement works in New Jersey.

Now we have a new standard. We have disagreements about the standard itself. But minimally we suggest that if there is going to be a change in that standard, it should arise out of a legislative process -- a deliberative process -- where hearings like this can be held, where the public can be heard, and different views can be expressed and considered.

There is also a very real, practical effect, and Mr. Getchell is really here to address that. One of the aspects of competition is not only competition among contractors, but the competitive balance that exists because of differing labor relations, differing labor affiliations. That translates into real dollars -- real significant dollars.

There are other points that we can talk about regarding the Boston Harbor case. The New Jersey Supreme Court has deemed this case worthy of certification. They will make decisions on the legal points. But I think it's important for the Committee to hear about some of the practical concerns.

With that, unless there are questions for me, I would like to introduce Mr. Getchell to you, hoping to give you some

real world background. I should also add, coincidentally, that Mr. Getchell's company is involved in doing one of the projects at the Boston Harbor. So if there are any questions that you might have about how that situation differs with what we have in New Jersey, Mr. Getchell can respond to you.

Peter Getchell.

**PETER E. GETCHELL:** Mr. Chairman, in addition to the many hats that I wear with the local Contractors Association, I also am a cochair of an organization that collectively bargains with the BCTC Trades in New Jersey. I've been involved in that for the past eight or nine years. The existence of open shop and other AFL-CIO unions in this State has afforded us the opportunity for some real advances in the collective bargaining process with the BCTC Trades.

As a matter of fact, we consider it the cornerstone of our advantage. If you were in these negotiations without this competition, we would be very ineffectual in our ability to negotiate. We think our terms and conditions--

**SENATOR HAINES:** I hate to interrupt you, but I can say this: If I didn't have any competition in the apple business, you'd pay more for apples. (laughter) I mean it's perfectly obvious that we need competition. I agree with you 100 percent, and I'm sure the Legislature does, too. We have competition to get elected to the Legislature. Competition is the heart of the whole American system. It seems to work better here than what they had in Russia. In fact, I think Russia may be coming over to our system because it has worked so well here.

You're absolutely right. It just blows my mind to think that we would eliminate competition and do it in the name of the taxpayers. The poor taxpayer is going to pay the bill.

Go ahead. I'm sorry to interrupt.

**MR. GETCHELL:** Well, I mean, that's exactly right, Mr. Chairman. It does go to the bottom line, and the bottom line

is dollars. We have achieved substantial gains in the past eight or nine years in our bargaining with the BCTC unions. As a matter of fact, we consider them to be in the best interests of both the contractors in this State and the unions, because the people that I represent when I wear the hat of Chairman of the CCLE want to be union contractors. We legitimately want to be that.

Some of us worked in other geographical areas in a different mode, so we know what we're faced with on the other side of the fence from a practical standpoint. So our interest is not only saving money for the taxpayer, but is also advancing the industry. These kind of project agreements are not in the best interests of the industry.

One other comment I'd like to make: There has been a lot of talk today about the widening project. I also happen to be doing one of the projects on the widening project, in addition to doing several jobs on the Boston Harbor. There is no comparison between the two projects, none whatsoever. The Boston Harbor Project on Deer Island is a \$6 billion contract on about 80 acres of property. Every single person that works on that Island is transported either on a bus or a ferry. Every bit of material that is brought onto that island is brought on by ferry.

The project agreement was arrived at with conditions. They not only incorporated the local union agreements, but they also negotiated some very distinct additional items that the local BCTC Trades didn't have: transportation issues, drug testing issues, grievance procedures, arbitration procedures. I mean, there was a direct effort to improve on what was there. There, in fact, was a certain amount of collective bargaining that went on. The project agreement, as I understand it, with the Turnpike doesn't include any of those things.

One last thing: The Boston Harbor agreement, that project is under Federal mandate by the courts. There is a Federal judge who runs that job, and he tells that Authority what to do and when to do it. There are no politics involved in it at all. They do it when they have to, and there are substantial fines that are imposed for not meeting those dates.

SENATOR HAINES: Thank you very much.

MR. GETCHELL: You're welcome.

MR. BRAWER: Mr. Chairman?

SENATOR HAINES: I guess there are no other questions, because I'm the only one left.

MR. BRAWER: Well, all I can say in closing, Mr. Chairman, is that this is an issue that the industry views as perhaps the most important to affect it in the last 20 years. I think everybody should be clear that if George Harms wasn't involved in this case, the UTCA would be. So that Mr. Goldberg and the Authority have no misconceptions about that, we are prepared, and our members and our Board are ready to pursue this thing wherever it leads, both in the judicial forum, and ultimately in the legislative forum, because it's a fundamental precept that's involved here.

SENATOR HAINES: Well, we will probably have you back and talk to you some more, because I think we need some legislation to clarify this whole issue. That's why we're here.

MR. BRAWER: We will always be available. Thank you, Mr. Chairman.

SENATOR HAINES: Morris Schnitzer, is he here?

M O R R I S M. S C H N I T Z E R, E S Q.: Mr. Chairman and Senators--

SENATOR HAINES: I'm sorry it's taken so long and we've delayed you so long. I say, I'm sorry it's taken so long and we've delayed you so long.

MR. SCHNITZER: I'm very willing to wait, and was interested to hear the proceedings. I'm the attorney for some

employees of Harms who are Steelworkers members, and represent them in the Supreme Court case. I asked to come here for several reasons, of which the first is that the policy on project labor monopoly agreements -- for it's in the character of those agreements to be monopoly, or they don't serve the proported purpose you've heard about -- is ultimately for the Legislature. I thought that it would help not only for me to make whatever points I have to you, but for you to see, in turn, the human face of the consequences of government action -- some government action -- in this case, the Turnpike and the Governor's Executive Order.

Sitting to my right is Mr. McMullan, who has been an employee of Harms for over 20 year, I believe.

**W I L L I A M M. M C M U L L A N:** No, 16.

**MR. SCHNITZER:** Sixteen, and whose livelihood is at stake depending upon whether this policy is vindicated in the Legislature or not. I would also like his colleagues who work at Harms, and are members of the Steelworkers Union, to stand, so that the Committee can observe you. (members of the audience comply)

Listening to project labor monopoly agreements as a new approach, most everybody who spoke about it left out one indispensable element; that is, not only is a labor monopoly conferred on work on the project by a governmental organization, but that organization delegates to the designated labor organization the monopoly of selecting who may bid. You may not bid unless you have an agreement, but there is no public law that says that the trade unions must take all comers on equal terms.

So you're dealing with a double monopoly. First, labor to be performed; but secondly and, I think, ultimately in your view far more important will be that the key to the door of public works has now been delegated by Mr. Goldberg, his colleagues, and the Governor to a private union, or group of unions.

Secondly, there is a dimension of this controversy, again, that nobody is mentioning today. Why is there such an important difference between the Steelworkers' AFL-CIO and the Labor Trades Council? Why are they so urgently persistent in having a monopoly by law, not by economic competition? It's just this: Every member of the Steelworkers, or nearly every member is qualified across a span of trades. They don't do just one job. They're capable of doing more. The Labor Trades Council is organized entirely differently. Every Steelworker finished with his work in one trade at 11:00 a.m. then proceeds to some other job. At the end of the day, he gets a day's pay for a day's work.

The opposition -- now the monopoly by choice -- has featherbedding. Featherbedding is: You report for work. You do as much as there is available to you, then you take out a cigar and smoke it while watching everybody else work. You wait until the end of the day to get your pay for a half-day's work, two hours of work, or a full day's work. That's what this scrap is all about. That's the choice that the Turnpike deliberately made to foist on the State the cost of featherbedding, and they are perfectly willing to offer up as sacrifices the whole array of my clients.

I'd like to share with the Committee two experiences. One, I was the first counsel for the Highway Authority. During my term of about three years, we put into use, or were on the verge of doing it, 140 miles, including the brief State-owned sections. It would have been totally illegal then to talk about prebid agreements. Nobody did. But the idea that we could build the Parkway under circumstances where bulldozers often arrived before the right-of-way people did, without even thinking or experiencing the necessity for project agreements; the fact that the Turnpike rebuilt it's road three times in 45 years and never needed a project labor agreement till last August, I think, speak for themselves.

There is another experience I'd like to share, and that is this: I was at the 1947 Constitutional Convention as counsel for the Judiciary Committee along with Judge Comfort. While the restructuring of the Courts was the principle achievement of that Convention, second only to that achievement was New Jersey's decision, which still stands alone, to make a part of our Bill of Rights the guarantee that workers in private employment may organize and bargain collectively through a union of their own choice.

The Turnpike and the Governor have essentially decided to deny those rights to my clients and to all other workers who aren't in the Labor Trades Council, and to do it in the face of the New Jersey Constitution. There is no such constitution in Massachusetts, where the Boston Harbor is located, or for that matter, as far as I know, in any other state.

If the ghosts of those delegates to the Convention who claimed the new Bill of Rights as such a large achievement could walk and were here in this room, they would speak to you very feelingly about a Governor and an important public agency trampling on the work which went so far to make the 1947 Constitutional Convention a precedent-setting event.

Mr. McMullen would like to say something to you, too.

SENATOR HAINES: Sure. Go ahead.

MR. MCMULLAN: As a 16-year employee of Harms Construction and member of the Steelworkers Union, I really can't believe what's happening to us. We're the most honest, hardworking, and competent company in the industry. I would invite any one of you to come out and watch our versatility and harmony in our jobs, and how they are done. I mean, you would have to come and see us to believe what we can do.

We are all versatile, multiskilled employees. We are the cutting edge of the construction industry. There is no question about that. I guess to break the shell off the egg, Executive Order No. 99 -- the Governor brought into existence

-- in my opinion, was targeted at Harms Construction and the United Steelworkers, because the Building Trades really wanted us out of their way. And the only way-- The Trades just can't compete with multiskilled Steelworkers. The only way for them to accomplish this is through campaign contributions to Florio, who, in turn, uses political power to sign Executive Order No. 99. I guess with the stroke of a pen he could end my career in construction in this State.

We completed our Route 24 Project one year ahead of schedule despite picket lines, constant abuse from other unions, and court appearances. We still received the highest quality paving award in 1993 for the State of New Jersey. I guess that should attest to our ability to complete our projects on time with high quality.

Finally, the United Steelworkers are not just multiskilled and efficient, we're proud. We're a family and I hope we can remain that way.

I thank you.

SENATOR HAINES: Thanks a lot. I certainly appreciate your testimony. You're right on the money, and I hope we can help you. It's sad when an outfit-- Maybe Harms is just too good. Maybe that's your problem. You're doing too good of a job. Thanks an awful lot.

MR. SCHNITZER: Thank you for hearing us.

MR. McMULLAN: Thank you.

SENATOR HAINES: Okay, Charlie Marcianti left, I think, didn't he?

UNIDENTIFIED SPEAKER FROM AUDIENCE: He gave up.  
(laughter)

SENATOR HAINES: Fred Palma? Is Fred Palma here?

F R E D P A L M A, Jr.: Yes, sir.

SENATOR HAINES: Do you have a few words?

MR. PALMA: I sure do.

SENATOR HAINES: Come right up.

MR. PALMA: I'll try to make it as brief as possible. I could be here all through, but I'll make it as brief as possible.

SENATOR HAINES: Yes.

MR. PALMA: My Name is Fred Palma, Jr. I'm a contractor, but I think I'd like to speak today as a citizen of New Jersey -- lifetime -- who is concerned about everything. But I'm especially concerned, too, about my children and everybody else's children and grandchildren down the line, because this kind of a thing would have a definite effect. What everybody has said from the -- since the Commissioner left, I have to agree with.

I'd just like to tell you that the name of my company is Palma Incorporated. My father founded this company in 1927. We're a flooring contractor. I've been a union contractor. I'm now an open-shop contractor. I've served on welfare and pension funds, and on legislative Committees. I work all over this State, all over the country.

I am familiar with project agreements, how they exist now. If I can just share with you, how this thing works presently is that I'm an open-shop contractor. I go on the job even here in New Jersey, and the business agent will come to me and say, "Fred" -- or to my son-in-law -- "we have a mason that does your work. We'd like to put him on." We usually say, "Fine, as long as our man can work along with him," and we'll do that. This has worked very nicely. I do this in cities as large as New York, Philadelphia with no problems.

Something came up here and somebody asked, "What is the real issue?" In hearing this testimony today, I think I know what the real issue is now. You have to remember when an open-shop contractor works, the fringe does not go to the union fund. The fringe benefit goes to the man that works for the open-shop contractor. The State gets fruitful reward for that, because I have to pay taxes on that item, and the man pays taxes on the item.

So therefore, let's look at the other -- the position of the other people and why they want this. They're losing revenue, very much so. I also have read earlier about the -- Mr. Bramucci wanting to delve into the practices that he considered illegal. He wanted to form a committee. Well, I sent out my resume, but I guess I must have been overqualified, because I haven't heard as yet. But you did mention here that some of these other people you'd be calling on in the future--

I'll go away now, but I will say this Committee can call on Fred Palma, Jr. I have an objective way of looking at this, because I will tell you, sir, that I am pro-labor. I am for that working man, and he's got to be treated right. No matter who he works -- what union he belongs to or doesn't belong to, that's his right to work in this State.

I really thank you for the time.

SENATOR HAINES: Thank you very much. We appreciate your testimony.

John Bishop, ABC Contractors. Is John still here?

MR. PALMA: John is not here, but I can leave his position paper.

SENATOR HAINES: That would be great if you could. We could-- I'll put that right into the record.

MR. PALMA: Okay.

SENATOR HAINES: Peter Getchell?

UNIDENTIFIED SPEAKER FROM AUDIENCE: (comment partially indiscernible) --no.

SENATOR HAINES: John Stevens? Jay Stevens, I think you're the last speaker.

**J. J A M E S S T E V E N S:** I'm President of the United Steelworkers Local 15024.

SENATOR HAINES: Can you get a little closer to the microphone?

MR. STEVENS: Yes. I'm President of the United--

SENATOR HAINES: Both.

MR. STEVENS: These two?

SENATOR HAINES: You need a black one and a white one.

MR. STEVENS: Okay. I'm President of the United Steelworkers Local 15024. I'm very proud to be here representing George Harms and his employees, who are all loyal members of the Steelworkers.

What we're basically looking for, gentlemen, is a fair playing field. We don't want to be legislative -- legislatively put out of any bidding process in this country. We always feel that, you know, the lowest bidder will get the job. The ridiculousness of the situation and the Turnpike just boggles my mind; that you can be awarded a bid on Thursday, meet all the criteria that the Turnpike gives to you, then Monday have it taken away from you just because you are not the politically correct union. We feel that they are trying to legislate us out of bidding work in New Jersey.

I was very happy to hear the questions -- the good, commonsense questions that the Senator asked today. They represented a lot of the questions that we would like to have asked the Turnpike, but were never given the opportunity to ask these questions.

I'd like to thank you for the opportunity to speak here.

SENATOR HAINES: Well, I can tell you that they did a good job of dancing around, didn't they?

MR. STEVENS: Yes.

SENATOR HAINES: They didn't answer the questions. They didn't get to the truth. That's one of the difficulties we have. I think we've got a clear understanding here of what the problem is. I think it's very, very clear. I think what's been done is almost criminal. I just-- It just is not -- certainly not in the taxpayers' interests to pull a stunt like this.

MR. STEVENS: Senator, one of the other things--

SENATOR HAINES: And I can tell you, one of your colleagues back there said what I believe: "If you contribute the right amount to the Governor's campaign, you can damn near get anything."

I appreciate you all for coming here, and without--  
Did you have something else to say?

MR. STEVENS: The only-- As a legislator, if you would take a look at the Boston Harbor agreement, the cost overruns that have happened since the implications of that agreement, I think that you will see that they're costing the taxpayers a lot of money.

SENATOR HAINES: Absolutely.

MR. STEVENS: Thank you.

MR. PALMA: I'll give them to you. I have them.

SENATOR HAINES: All right. That would be great for our Committee.

I appreciate you all coming. It's a tough situation. In talking to businessmen throughout the State -- talking to many people throughout the State, I think everybody that I've talked to knows what happened here. It's perfectly obvious to me what happened here. For some reason, the Governor -- and I've got to include him, because I don't think it was done arbitrarily -- the Governor and the Chairman of the Turnpike Authority did not want George Harms to get the contract.

George, that's rotten. It's totally rotten. It's not in the taxpayers' interest, and you've done good work everywhere I've seen it. It's against the best interests of the State, no question in my mind.

I hope the people will wake up to what's going on here. This alone should help us get rid of this -- I don't know what adjective to use -- but the guy that is the current incumbent.

Thank you all.

**(HEARING CONCLUDED)**



**APPENDIX**





NEW JERSEY TURNPIKE AUTHORITY

P.O. Box 1121

New Brunswick, N.J. 08903

(201) 247-0900

**SENATE TRANSPORTATION COMMITTEE HEARINGS, OCTOBER 22, 1993**  
**STATEMENT BY DAVID J. GOLDBERG,**  
**CHAIRMAN, NEW JERSEY TURNPIKE AUTHORITY**

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Chairman Haines and members of the Senate Transportation Committee. I appreciate the courtesies extended in the scheduling of this hearing so that I might attend. Recognizing that the Turnpike Authority is engaged in litigation in both State and Federal courts on the subject matter of this hearing, I will seek to limit my remarks to matters of policy, as you have agreed.

The Authority has supplied the Committee with all the documents it requested. This includes minutes of Authority meetings, agendas, resolutions and all the briefs and affidavits submitted in judicial proceedings. The legal and factual basis for the Authority's actions regarding project labor agreements is fully set forth in those documents.

The Authority specified the use of project labor agreements for the completion of its 1990-1995 Widening Project between Interchanges 11 and 15E (the "Widening Project") to assure that labor unrest will not interfere with the timely completion of the Project. The Widening Project is on a strict timetable for completion by December 1995 for several reasons:

- First, the bulk of the remaining construction is in the most heavily traveled and most dangerous portion of the entire Turnpike -- the Southern Mixing Bowl between Interchanges 14 and 15E, where more accidents have occurred than on any other portion of the Turnpike. For the public's safety, modification of this 2.1-mile stretch of roadway where multiple lanes merge, cross, and then separate into the westerly and easterly spurs of the Turnpike must be completed as soon as possible.
- Second, the presence of construction zones is itself a concern. The longer construction zones are in place, particularly in an area as congested as the Southern Mixing Bowl, the greater is the danger to motorists and workers. Construction zones have the potential of increasing roadway accidents. Among other things, they may cause slowdowns that result in collisions; they can present obstacles that vehicles can hit, and they can divert drivers' attention.

The Administration Building is Located at Exit 9 Where the Turnpike Interchanges with Route 18.

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- Third, the Authority's environmental permit from the United States Army Corps of Engineers requires completion of all aspects of the Widening by February 28, 1996. To meet this deadline and complete the required inspections and clean-up, construction must be completed by the end of December 1995.
- Fourth, timely completion of the Widening Project is an integral element of New Jersey's efforts to meet its obligations under the Federal Clean Air Act to reduce air pollution by 1996. If the State does not adequately reduce air pollution by 1996, the State could forfeit hundreds of millions of dollars in federal transportation money. The Authority has agreed as a matter of policy to the use of high occupancy vehicle ("HOV") lanes between Interchanges 11 and 14. These HOV lanes should assist in achieving the State's clean air goals, but they cannot be implemented until construction on the Widening Project has been completed.
- Finally, timely completion of the entire Widening Project is essential to improving the roadway's level of service. Until completion of construction in the Southern Mixing Bowl, which is north of Interchange 14, the Authority cannot open the new lanes under construction to the south, between Woodbridge and Newark.

These are the major reasons why timely completion of the Widening Project is considered essential by the Authority. Let me also explain why the use of project labor agreements helps achieve this objective. A project labor agreement, sometimes called a "pre-hire agreement," is an arrangement whereby a union is designated as the exclusive bargaining agent on a construction job in return for assurances that the union will not strike or otherwise disrupt the job. A "project labor agreement" is a pre-hire agreement that applies to all contractors on a given project.

From the project owner's perspective, pre-hire agreements serve several purposes. Not only do they assure labor peace, but they allow contractors to pre-calculate labor costs, and they assure employers of a pool of workers. From the perspective of the construction worker, the designated union provides job stability for the workers by acting as an employment agency and a collective bargaining representative.

Pre-hire agreements are permitted by the National Labor Relations Act only in the construction industry. Generally, the NLRA forbids employers and unions from executing a collective bargaining agreement until the union achieves majority status by

means of an election. In 1959, recognizing that employment in the construction industry is short-lived and sporadic, Congress amended the NLRA to permit the use of pre-hire agreements in the construction industry. It was clear from the outset that private project owners had this right, but it was unclear whether public owners did as well.

In the Boston Harbor case, decided in March of this year, the Supreme Court of the United States answered this question, ruling unanimously that a public authority charged with the cleaning up of Boston Harbor could designate the Boston area BCTC unions as the exclusive bargaining agent for all workers engaged in the cleanup, in return for a no-strike commitment for the duration of the project. (Building & Construction Trades Council v. Associated Builders and Contractors, 113 S. Ct. 1190, 122 L. Ed. 2d 565 (1993)).

After the Boston Harbor decision came down in March 1993, the Authority staff began to examine the feasibility of using project labor agreements on the remainder of the Widening Project. In fact, the Authority was analyzing the Boston Harbor case and drafting a proposed form of project labor agreement when a strike occurred on the Widening Project on July 1, 1993, following the expiration of the collective bargaining agreement between Local 825 of the International Union of Operating Engineers and various contractors working on the Widening Project between Interchanges 11 and 14.

The strike continued for three weeks, until July 22. It was the longest strike in Turnpike construction history. Several other unions struck in sympathy with Local 825. News reports indicated that the job action halted bridge resurfacing contracts in South Jersey, Parkway resurfacing contracts, and contracts for work on I-287, I-80, I-95, State Highways 89, 30, and 129, and monorail construction at Newark International Airport, among other projects.

On the day the strike ended, July 22, as Chairman of the Authority's Law, Finance and Policy Committee, I met with the Committee to discuss possible implementation of pre-hire labor agreements. The Director of Law at that time recommended such a policy, as reflected in the attached memo of July 20, 1993. The Committee directed staff to draft a proposed resolution that would require project labor agreements for the Widening Project.

On the morning of August 24, 1993, the Authority's Law, Finance and Policy Committee again met and discussed the possible implementation of project labor agreements. At that meeting, the Director of Law renewed his recommendation that the Authority require all current and prospective contractors on the Widening Project to enter into project labor agreements. At the Committee meeting, the staff was directed to finalize the appropriate

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resolution and to schedule the matter for action by the Commissioners at the August 31 meeting.

During the afternoon of August 24, bids were opened for Contract No. W-6411. The low bidder was George Harms Construction Co. Because of the Committee's decision to require pre-hire agreements for all Widening contracts, staff was directed to contact Harms and ask if Harms would agree to the inclusion of such a provision in Contract No. W-6411. Harms was advised that staff would recommend the rejection of all bids unless the contract were to contain such a provision. Staff also advised Harms that staff would recommend the award of the contract to Harms as low bidder if the contract contained such a provision.

Harms refused to accept such a provision. Upon Harms' refusal to accept a pre-hire agreement with the BCTC, Authority staff recommended the rejection of all bids on Contract No. W-6411.

On August 31, 1993, the Commissioners adopted Resolution 19-93, requiring Widening Project contractors to enter into project labor agreements with BCTC unions. A copy of that Resolution is provided along with these remarks. Thereafter, a Resolution rejecting all bids and readvertising Contract No. W-6411 was likewise considered and approved, as permitted by the Authority's regulations and its Standard Specifications. The Authority then rebid the contract with a supplemental specification requiring the low bidder and all its subcontractors to enter into project labor agreements with BCTC unions.

Harms' bid on Contract No. W-6411 was rejected, as were all the other bids on that contract, not because the Authority disapproves of Harms or favors some other contractor, and not because the Authority prefers BCTC labor to the Steelworkers. Bids were rejected on Contract No. W-6411 because the bid specifications did not contain a requirement that project labor agreements be entered into with the BCTC.

At present, all the work on the Widening Project is being done by BCTC labor, and all the contractors on the Widening Project have collective bargaining agreements with member unions of BCTC. Thus, BCTC is the dominant labor force on the Authority's Widening Project. In fact, BCTC has been the exclusive bargaining agent for labor on nearly all Turnpike construction contracts.

Moreover, BCTC is likely to remain the dominant labor force on the Widening Project, not only because BCTC labor is already there, but also because all the bidders on these projects, other than Harms, have collective bargaining agreements with BCTC unions. As a consequence, the Authority has good reason to

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assume that successful bidders on Widening contracts would use BCTC labor even in the absence of the project labor agreement.

As the dominant labor force on the Widening Project, BCTC is in a position to delay this critical project merely by exercising the unions' lawful right to picket or strike. Because of its standing among its sister AFL-CIO unions, even an informational picketing could cause sympathetic unions to refuse to enter a jobsite.

The work stoppage in July 1993, which was a perfectly legal job action, threatened the timely completion of the Widening Project. Had a project labor agreement been in place, no work stoppage could legally have occurred. To prevent further work stoppages, the Authority elected to seek a pre-hire agreement with BCTC.

In a project labor agreement, only one union or group of unions is designated as the exclusive bargaining representative for all workers on the project. In return for this exclusivity, the union gives up the lawful right to picket or strike. In this case, not only did the BCTC unions commit to no-strike agreements on newly awarded Widening contracts, but the BCTC unions committed to project labor agreements on the 28 previously awarded Widening contracts. This was an important concession by the BCTC to the Authority.

It is true that the Steelworkers, with whom Harms has a collective bargaining agreement, have said they would sign a "no-strike" agreement for any Widening contract. But the Authority has to be concerned with labor peace on the entire Widening Project, not just Contract No. W-6411. Without a grant of exclusivity to the BCTC unions, labor peace on the entire project cannot be assured.

Moreover, the Steelworkers and Local 825 of the International Union of Operating Engineers have long been antagonists and cannot be expected to work without conflict in close proximity on the Southern Mixing Bowl, where the roadways, ramps and bridges flow next to and over each other, and work must be performed simultaneously or in close sequence.

Because the contracts in the Southern Mixing Bowl are tightly integrated physically and in terms of scheduling, tremendous coordination is necessary among the contractors. For example, workers on adjacent contracts must coordinate lane closings, and they must coordinate work on elevated structures with work that goes on below under separate contracts. If critical dates on Contract No. W-6411-1 are missed, the entire schedule for completion of the Southern Mixing Bowl will fall behind.

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Given the well-known antagonism of the Steelworkers and Local 825, the Authority does not wish the timely completion of the Widening Project to depend on cooperation between these unions.

Some concern was expressed that the Authority might pay more by rejecting all bids on Contract No. W-6411-1 and by requiring project labor agreements on the remaining Widening contracts. That has not been the case. On the rebid of Contract No. W-6411, the low bid of \$19,833,985.90, by G. Bishop/J. Sanzari Joint Venture, was more than \$630,000 less than Harms' previous low bid of \$20,464,360.06. Indeed, three of the bids on the rebid were lower than Harms' original low bid. Moreover, the low bid of \$26,500,000 on Contract No. W-6421, which requires a project labor agreement, was more than \$10 million below the Engineer's estimate. Harms did not bid on this contract, nor did Harms bid on the rebid of Contract No. W-6411.

Harms has been neither a frequent bidder nor, in all cases, but one, a low bidder on Widening contracts. Authority records indicate that of 33 contracts awarded thus far for the widening of the roadway between Interchanges 11 and 15E, Harms bid on only six of them and was the low bidder on only one such contract, namely, Contract No. W-6411, on which all bids were rejected. A chart of the bidding history on Widening contracts is being submitted with these remarks.

On two of the contracts where Harms bid, Harms was not the lowest, but in fact the highest bidder. On two other contracts, Harms was, respectively, 13th and 16th out of 18 bidders. Thus, Harms has not been an active bidder on the Widening Project, and the Authority has no reason to believe that the cost of the Widening Project will increase if Harms chooses not to bid on subsequently advertised Widening contracts.

In Chairman Haines' letter of October 15, the Chairman indicated that the Committee is interested in the relationship of the Governor's Executive Order 99 and the Authority's Resolutions requiring project labor agreements. The Authority did not look to Executive Order 99 as the source of its authority to issue Resolutions regarding project labor agreements. Executive Order 99 was promulgated on September 13, two weeks after the Authority issued its Resolutions regarding project labor agreements. However, the Authority did act consistently with Executive Order 99, as stated in the Authority's supplemental specifications regarding project labor agreements.

Executive Order 99 does not specify the selection of any particular union or group of unions for project labor agreements, nor does it preclude the selection of any particular union or group of unions. Executive Order 99 directs that State agencies and independent authorities use project labor agreements

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"whenever feasible," but only when such agreements substantially advance the interests of the State, including the interests of cost, efficiency, quality, safety, timeliness, and the State's policy regarding minority-and-women-owned businesses as set forth in Executive Order No. 84. The Authority's decision to use project labor agreements clearly advances the foregoing interests.

**CONCLUSION**

The requirement of project labor agreements for the Widening Project is not a blanket policy. At present, the requirement is strictly limited to the Authority's 1990-1995 Widening Project, on which only two substantial contracts remain to be bid. The Authority will carefully review its experience with project labor agreements to ascertain whether any adverse economic effects result during the life of the Project, and whether the Authority should use such agreements in the future. No decision to use project labor agreements on other Turnpike projects will be made without thorough review and consideration by the Commissioners.

At this time, I am prepared to answer any questions you may have.

NEW JERSEY TURNPIKE AUTHORITY

July 20, 1993

MEMORANDUM TO: DONALD L. WATSON  
Executive Director

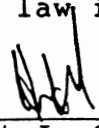
RE: Pre-Hire Agreements - Supreme Court Ruling  
Implications for the Authority

On Thursday, July 22, 1993, Lester Aaron, Esq. from General Counsel's Office will be briefing Commissioner Goldberg on the implications for the Authority of the recent Supreme Court case which focused on pre-hire agreements (herein after referred to as the Massachusetts Case"). Attached are copies of the case - 1. Metropolitan District v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc. et al.; 2. Legal Analysis by Lester Aaron, Esq., dated May 17, 1993 and 3. Proposed Agreement drafted by Schwartz, Tobia & Stanziale.

Pursuant to the Massachusetts Case, the Supreme Court held that an independent government agency, could, through its Project Manager, enter into a pre-hire agreement with the Building and Construction Trades Council and affiliated organizations that would assure labor stability over the life of a given project. Specifically, an arrangement was upheld in which the Massachusetts Water Resources Authority agreed to specify union labor for a project to clean up the Boston Harbor, and in return, the union agreed to a 10-year no-strike commitment.

The Massachusetts Case permits the Authority to enter into a similar pre-hire agreement. Even within the confines of our public bidding laws, the Authority would be able to enforce a valid pre-hire agreement in a construction project, either directly or through an intermediary via bid specifications. Furthermore, any state legislation attempting to impinge upon this authority would be pre-empted and unenforceable.

General Counsel has recommended that, in order to avoid legal challenge by our contractors to such an agreement, the agreement should be structured in a manner similar to the one in the Massachusetts Case. Accordingly, the pre-hire agreement may be executed by our outside engineers charged with overall supervision of the project, in conjunction with the labor organization, and may then be incorporated into the bid specifications. Thus, although the agreement is on behalf of the Authority, the involvement of an employer in the construction industry as a party to the actual agreement will assure protection under the law in accordance with the Supreme Court ruling.

  
Herbert I. Olarsch  
Director or Law

HIO/aw  
cc: Andrea E. Ward  
Enc.

8X

C/M AUG 31 1993

RESOLUTION REQUIRING CONTRACTORS  
TO ENTER INTO PROJECT AGREEMENTS  
WITH LABOR UNIONS

WHEREAS, the prevention or prompt settlement of labor disputes in the public sector is the declared policy of the State of New Jersey, N.J.S.A. 34:13A-2; and

WHEREAS, the New Jersey Turnpike Authority ("Authority") recognizes the need to secure labor stability and to promote harmonious labor-management relations in order to further its policy of completing projects on time and on-budget; and

WHEREAS, the Authority is authorized under law to require the execution of a project labor agreement as a condition of award of construction contracts in order to secure labor stability and to promote labor-management harmony; and

WHEREAS, a project labor agreement is an agreement that recognizes designated unions as the exclusive bargaining representatives for all construction and craft employees, in exchange for the stipulation that there be no work stoppages, slowdowns, or disruptions during the life of the construction contract to which it applies, and which, therefore, contributes to a spirit of harmony, labor-management peace and stability during the life of that contract; and

WHEREAS, it is in the best interest of the Authority and the public to secure labor stability on construction projects by requiring its contractors to enter into project labor agreements with unions on a project by project basis; and

WHEREAS, the Authority has recently experienced labor disturbances namely work stoppages, that may cause delays and increased costs in the performance of the affected contracts; and

WHEREAS, in consideration of the critical nature of timely completion of the 1990-95 Widening Project - Interchange 11, Woodbridge Township, Middlesex County to Interchange 15E, City of Newark, Essex County (the "Widening Project") and the recent labor disruption affecting the Widening Project, it is in the best interest of the Authority to implement the use of project labor agreements with respect to all construction contracts awarded heretofore and hereafter as part of the Widening Project;

NOW THEREFORE, BE IT RESOLVED that, for the foregoing reasons, as a condition of all contracts heretofore and hereafter advertised by the New Jersey Turnpike Authority in connection with the Widening Project, the Chief Engineer shall require contractors and subcontractors of all levels to enter into project labor agreements with the appropriate affiliated locals of the Building and Construction Trades Council of the AFL-CIO of the State of New Jersey, substantially in the form attached hereto as Exhibit A. The Chief Engineer is hereby authorized to issue supplemental bid specifications in such form as he and the Director of Law may deem proper and necessary to carry out this policy.

9X

C/M AUG 31 1993

## NEW JERSEY TURNPIKE AUTHORITY

SUPPLEMENTAL SPECIFICATIONS  
PROJECT LABOR AGREEMENT104.06 Contractor's Organization

Insert after first sentence: "Each successful Bidder and all levels of subcontractors, as a condition of being awarded the Contract or any subcontract, shall execute and abide by the provisions of the Project Labor Agreement, and will be bound by the provisions of that agreement in the same manner as any other provision of this Contract."

Insert at end of first paragraph: "In addition to any other technical, educational or other qualifications that may apply, a worker shall be deemed "properly qualified" only if he or she is hired and employed pursuant to the Project Labor Agreement."

103.02 Execution of Contract

The Bidder to whom the Contract has been awarded shall within ten (10) calendar days of receipt of Notice of Award:

...

Insert new section "(G) Deliver a fully executed copy of the Project Labor Agreement pursuant to Supplemental Specification 104.06, annexed as Exhibit \_\_\_ to the Supplemental Specifications."

107.02 Pre-Construction Conference

Insert at end of second paragraph: "Contemporaneous with presentation of the list of proposed subcontractors, if any, the Contractor shall present executed copies of the Project Labor Agreement, annexed as Exhibit \_\_\_ to the Supplemental Specifications, on behalf of each proposed subcontractor pursuant to Supplemental Specification 104.06. Failure to present an executed copy of said agreement on behalf of any proposed subcontractor for any reason shall be grounds for rejecting that proposed subcontractor."

III

10X

NORTHERN WIDENING CONTRACTS ON WHICH GEORGE HARMS CONSTRUCTION CO., INC., SUBMITTED BIDS<sup>1</sup>

BID ON CONTRACT	AMOUNT OF HARMS' BID	DATE	BID PLACEMENT	SUCCESSFUL BIDDER
<b>INTERCHANGES 11 - 14</b>				
W-6200	4,111,395.00	4/9/91	12 OF 12	78 CONSTRUCTION 3,199,258.00
W-5100	3,232,825.68	4/10/91	13 OF 18	78 CONSTRUCTION 2,749,085.50
W-6302	14,729,210.65	3/29/93	3 OF 3	SLATTERY ASSOC. 11,000,000.00
W-4103B	2,674,406.45	5/12/93	3 OF 6	CONDUIT & FOUNDATION 2,482,697.66
<b>INTERCHANGES 14 - 15E</b>				
W-6303	27,967,638.85	6/24/93	16 OF 18	BELBOLD CONTRACTORS 23,775,238.70
W-6411 <sup>2</sup>	20,464,360.00	8/24/93	1 OF 12	ALL BIDS REJECTED

XII

<sup>1</sup> On the total widening project, including both the southern widening (Interchanges 7 - 9) and the northern widening, 63 contracts had been awarded as of September 1, 1993. Harms bid on 24 of those 63 contracts and was awarded five (5) of those on which it bid. All five of the contracts awarded to Harms involved construction between Interchanges 8A - 9, and all were awarded between June 1987 and November 1989.

The aggregate of Harms' bids on the 19 widening contracts which it was not awarded amounted to \$ 179,751,641.50. Those 19 contracts were awarded to the respective low bidders at a cost to the Authority of \$ 156,648,806.60 (\$ 23,102,834.90 less than that bid by Harms).

<sup>2</sup> The Authority rejected all bids on Contract W-6411 and the contract was rebid as Contract W-6411-1. Harms did not rebid on Contract W-6411-1, and the contract was awarded at a cost to the Authority of \$ 630,374.10 less than that originally bid on W-6411 by Harms.

October 22, 1993

NORTHERN WIDENING CONTRACTS<sup>1</sup> AWARDED AS OF 9/1/93

AREA OF CONSTRUCTION BY INTERCHANGE	TOTAL DOLLAR VALUE OF CONTRACTS AWARDED	TOTAL NUMBER OF CONTRACTS AWARDED	TOTAL DOLLAR VALUE OF CONTRACTS AWARDED TO GEORGE HARMS CONSTRUCTION CO., INC. ("HARMS")	TOTAL NUMBER OF CONTRACTS AWARDED TO HARMS	PERCENTAGE (BY DOLLAR VALUE) OF TOTAL CONTRACTS AWARDED TO HARMS
11 - 14	215,860,000.00	28	\$ 0.00	0	0 %
14 - 15E	75,315,000.00	5	0.00	0	0 %
TOTALS	\$ 291,175,000.00	33 <sup>2</sup>	\$ 0.00	0 <sup>3</sup>	0 %

12X

<sup>1</sup> "Northern Widening Contracts" includes those contracts involving construction between Interchanges 11 - 15E. This construction began in 1991 and is still in progress.

<sup>2</sup> Three (3) northern widening contracts have been awarded since the institution of the project labor agreements (Contracts Nos. W-6411-1, W-6421, and W-5017). In addition, two (2) substantial contracts remain to be awarded in order to complete the northern widening project (Contracts Nos. W-~~6421~~ and W-6422).

<sup>3</sup> Of the 33 northern widening contracts awarded as of September 1, 1993 (prior to the institution of the project labor agreements), Harms submitted bids on six (6) and was not awarded any of the contracts on which it bid.

15 WILLIAM ST  
CLOSTER, NJ 07624  
(201) 768-1660  
MAIN OFFICE



FAX: (201) 768-9482

RAMSEY, NEW JERSEY  
(201) 327-6006  
GOSHEN, NEW YORK  
(914) 469-5518

**TESTIMONY REGARDING  
GOV. FLORIO'S EXECUTIVE ORDER 99**

**OCTOBER 14, 1993**

**OFFERED BY  
ASSOCIATED BUILDERS AND CONTRACTORS**

15 WILLIAM ST  
CLOSTER, NJ 07624  
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# GURNEE

Heating and Air Conditioning Corp.

RAMSEY, NEW JERSEY  
(201) 327-6006  
GOSHEN, NEW YORK  
(914) 469-5518

Fax: (201) 768-9482

LADIES AND GENTLEMEN:

MY NAME IS JOHN BISHOP, OWNER OF GURNEE HEATING AND AIR CONDITIONING, CLOSTER, NJ, AND IT IS MY PLEASURE TO BE HERE TODAY REPRESENTING ASSOCIATED BUILDERS AND CONTRACTORS. AS YOU KNOW, ASSOCIATED BUILDERS AND CONTRACTORS' MEMBERS ARE OPEN SHOP CONTRACTORS, THE GROUP THAT DOES THE VAST MAJORITY OF ALL CONSTRUCTION THROUGHOUT THE UNITED STATES AND IN NEW JERSEY AS WELL.

THE GOVERNOR'S EXECUTIVE ORDER NOT ONLY VIOLATES EVERY ASPECT OF FREE ENTERPRISE ON BEHALF OF A SPECIAL INTEREST GROUP AND EVERY ASPECT OF ESTABLISHED PUBLIC POLICY OVER MANY YEARS, IT ALSO CAUSES THE CITIZENS OF NEW JERSEY HARM IN MANY WAYS.

IT VIOLATES FREE ENTERPRISE BY DENYING MOST CONTRACTORS AND WORKERS ANY OPPORTUNITY TO WORK ON PUBLIC WORK. IT VIOLATES THE PRINCIPLES OF A FREE ENTERPRISE SYSTEM BY DENYING THE GOVERNMENT THE BENEFITS OF IMPROVED METHODS, EQUIPMENT OR PRODUCTIVITY. IT DENIES ENTREPRENEURIAL OPPORTUNITY TO MOST NEW JERSEY CITIZENS.

THE ORDER VIOLATES LONG ESTABLISHED PUBLIC POLICIES. IT VIOLATES, AT THE VERY LEAST, THE SPIRIT OF THE NEW JERSEY PUBLIC BIDDING ACT, WHICH IS INTENDED TO ALLOW A LEVEL AND HONEST PLAYING FIELD FOR ALL POTENTIAL SUPPLIERS OF GOODS AND SERVICES, AND WHICH DOES NOT ESTABLISH THE USE OF UNION LABOR AS A CRITERIA TO BE A QUALIFIED BIDDER.

IT VIOLATES THE NEARLY CENTURY OLD <sup>CCN'</sup> CENSUS AND RESULTING PUBLIC POLICY THAT MONOPOLIES ARE INHERENTLY BAD, ARE TO BE FORBIDDEN, OR IF ALLOWED AS IN THE CASE OF UTILITIES, HEAVILY REGULATED. THERE HAS BEEN AN OVERARCHING REALIZATION THAT MONOPOLIES WORK AGAINST THE BEST INTERESTS OF OUR COUNTRY AND ITS' CITIZENS.

IT VIOLATES THE MORE RECENTLY ESTABLISHED PRINCIPLES REGARDING DISCRIMINATION BY ENDORSING ORGANIZATIONS WHICH HAVE A LONG AND UNDISTINGUISHED RECORD OF DISCRIMINATION AGAINST MINORITIES AND WOMEN.

IT EVEN PLAYS FAVORITES AMONG LABOR ORGANIZATIONS BY DECIDING ON THE BASIS OF HIDDEN CRITERIA THAT SOME UNIONS CAN SUPPLY LABOR ON THESE PUBLIC PROJECTS AND OTHERS CANNOT. THIS VIOLATES ANY PRINCIPLE OF GOVERNMENTAL NEUTRALITY IN LABOR RELATIONS ISSUES.

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BESIDES ALL THESE ISSUES, THE ORDER HARMS NEW JERSEY CITIZENS IN A NUMBER OF WAYS, BEYOND THE OBVIOUS DENIAL OF OPPORTUNITY.

IT REDUCES JOB OPPORTUNITIES FOR THE VAST MAJORITY OF THOSE IN THE CONSTRUCTION INDUSTRY.

IT DISPROPORTIONALLY REDUCES OPPORTUNITIES IN CONSTRUCTION FOR MINORITIES AND WOMEN.

IT INCREASES THE COSTS TO THE TAXPAYERS BY DENYING THE PUBLIC THE BENEFIT OF BEING ABLE TO USE THE LOWEST PRICED, QUALIFIED BIDDER. FOR THE TIP OF THE ICEBERG, JUST TAKE THE DIFFERENCE BETWEEN CONTRACT PRICES OF THE HARMS COMPANY AND THE NEXT LOWEST BIDDER WHO WOULD HAVE USED AFL-CIO BUILDING TRADES LABOR. OVER THE YEARS, THAT ONE RELATIONSHIP HAS SAVED THE TAXPAYERS SUBSTANTIAL AMOUNTS, I AM SURE.

AS A RESULT OF HIGHER COSTS AND LIMITED BUDGETS, IT WILL DENY THE PUBLIC THE BENEFIT OF NEEDED FACILITIES THAT COULD BE PROVIDED WITH THE FUNDS SAVED THROUGH ADEQUATE COMPETITION FOR PUBLIC WORK.

IT CLEARLY DIMINISHES MANAGERMENTS' ABILITY TO NEGOTIATE RESPONSIBLE WAGES AND BENEFITS WHEN LABOR HAS A MONOPOLY ON THE MANPOWER. THIS, OF COURSE, WILL TRANSLATE INTO WAGES THAT MAKE NEW JERSEY EVEN LESS COMPETITIVE WITHIN THE REGION THAN IT ALREADY IS.

IT DEMONSTRATES AN INSTITUTIONALIZED FAVORITISM WITHIN NEW JERSEY TOWARDS THE AFL-CIO BUILDING TRADES THAT DISCOURAGES NEW PRIVATE CONSTRUCTION PLANS. THINK ABOUT IT, IF YOU WERE A FACILITY MANAGER DECIDING WHETHER TO DO A SUBSTANTIAL CONSTRUCTION PROJECT IN NEW JERSEY, AND YOU SAW THIS TILT TOWARDS ORGANIZED LABOR AND ANTICIPATED SIGNIFICANT FUTURE LABOR COST INCREASES, WHAT WOULD YOU DO IF YOU HAD OTHER, MORE STABLE AREAS AVAILABLE?

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SOMETIMES WE LIKE OUR OWN WORDS, BUT I THINK IN THIS CASE WE SHOULD CONSIDER THE WORDS OF OTHERS.

I QUOTE FROM SEVERAL RECENT ISSUES OF ENGINEERING NEWS-RECORD, A RESPECTED NEUTRAL MAGAZINE WITHIN THE CONSTRUCTION INDUSTRY;

SEPTEMBER 27, 1993 - EDITORIAL HEADLINE "STATES SHOULD NOT PLAY FAVORITES AMONG COMPETING CONTRACTORS." IT GOES ON TO SAY, IN THE FIRST SENTENCE "NEW JERSEY GOVERNOR JIM FLORIO IS TAKING A WALK ON THE WILD SIDE OF CONSTRUCTION INDUSTRY LABOR RELATIONS."

"THE STATE ADMINISTRATION MISTAKENLY IS CUTTING OFF WHOLE CLASSES OF RESPONSIBLE BIDDERS BY PLAYING POLITICS WITH A SPECIAL INTEREST GROUP. IRONICALLY, THE STATE ALSO IS DESTROYING THE FREE MARKET FORCES THAT HELP KEEP BUILDING TRADE UNIONS RESPONSIBLE"

"THE BOTTOM LINE ON ALL OF THIS IS THAT GOVERNMENT HAS A VERY SPECIAL RESPONSIBILITY TO CONTRACT FAIRLY WITH ALL PARTS OF THE INDUSTRY. PROJECT AGREEMENTS MANDATED BY PUBLIC AGENCIES ARE NOTHING BUT AN EXCLUSIONARY TACTIC TO BENEFIT A FEW RATHER THAN THE PUBLIC AS A WHOLE."

OCTOBER 11, 1993 - EDITORIAL HEADLINE "NONCOMPETITIVE STATES CAN LEARN FROM ALABAMA AND ITS NEIGHBORS"

THIS EDITORIAL CONCERNS PLANT SITING AND THE RECENT MERCEDES DECISION. "TRADITIONAL MANUFACTURING STATES UP NORTH SEEMINGLY ARE WEDDED TO KEEPING OUTMODED INDUSTRIES ALIVE, WHILE THEIR POLITICIANS PURSUE HIGH-COST, HIGH-TAX PROGRAMS THAT TEND TO DRAG DOWN THE WHOLE ECONOMY. EXISTING INFRASTRUCTURE PLUS WORK FORCE AVAILABILITY AND TRAINING ARE ALMOST UNSURPASSED IN NEW YORK OR NEW JERSEY, FOR EXAMPLE. YET COMPANIES ARE PULLING OUT RATHER THAN IN."

"THERE ARE SOME VERY IMPORTANT LESSONS TO BE LEARNED...."

LADIES AND GENTLEMEN, ASSOCIATED BUILDERS AND CONTRACTORS, IN SUPPORT OF FREE ENTERPRISE AND THE RIGHT OF EVERY FIRM AND PERSON IN NEW JERSEY TO HAVE AN EQUAL OPPORTUNITY TO SUPPLY GOODS AND SERVICES TO THE GOVERNMENTAL UNITS IN NEW JERSEY, CALL ON YOU TO TAKE LEGISLATIVE ACTION TO REVERSE THE GOVERNOR'S ILL-ADVISED POLICY, TO ASSURE THAT NEITHER UNION MEMBERSHIP, OR LACK THEREOF, IS A QUALIFICATION TO PERFORM ON PUBLIC WORKS IN OUR STATE, AND TO ELIMINATE THIS BLOT ON OUR DESIRABILITY AS A SITE FOR INDUSTRY TO BUILD AND WORK.

THANK YOU VERY MUCH FOR THIS OPPORTUNITY TO PRESENT OUR VIEWS.

16X

## OPEN BIDDING ON FEDERAL CONSTRUCTION PROJECTS

### DESCRIPTION OF ISSUE:

ABC is strongly opposed to union-only project agreements on federal construction projects. Union-only agreements are pre-hire agreements requiring work be performed by union labor, following union agreed upon wages, benefits and working conditions. These agreements not only drive up the cost of federal construction by reducing competition, but also exclude non-union contractors from bidding on projects paid for by their own tax dollars.

### STATUS:

Shortly after entering office, President Clinton rescinded an executive order that was issued last October by former President Bush. The Bush executive order prohibited union-only requirements on federal construction projects. The U.S. Supreme Court handed down a decision against ABC in our lawsuit against the Massachusetts Water Resources Authority over the union-only provision in the \$6.1 billion Boston Harbor Cleanup Project. Senator Don Nickles (R-OK) has introduced S. 546, legislation to prohibit discrimination against contractors based on their labor affiliation. ABC strongly supports the bill, which will guarantee that the federal construction bid process is open to all.

### POINTS OF DISCUSSION:

- The Supreme Court's Boston Harbor decision allows the government to restrict competition in one of the largest industries in our nation – construction. Restricting competition inevitably leads to increased costs.
- With an enormous federal deficit and stagnant economy, the United States cannot afford to pay unnecessarily high costs for construction projects. Further, increased costs mean fewer jobs in an industry with already record levels of unemployment.
- Open shop contractors and their employees, who perform 75% of construction in this nation today, have a right to bid on projects paid for with their own tax dollars.
- The Supreme Court's decision will encourage a dramatic increase in the pressure tactics used by unions to get municipalities to build union-only.
- A Government Accounting Office (GAO) study showed that wages paid on the union-only agreement at the Idaho National Engineering Laboratory at Idaho Falls, Idaho, were 17-21% higher than those already set by the federal government.
- Under union-only agreements, contractor employees are forced to join a union in order to perform any work on the project. Workers should have a right to decide for themselves whether they want to join a union.
- Legislation that would restore equity to the federal bidding process is supported by a broad cross-section of organizations.

April 1993

# Boston Harbor: Union Safety Disaster

By Dan Bennett, ABC Executive Vice President

Although Department of statistics prove the try, for years union have made sweeping tions regarding the record of merit shop ctors. Their contention uring union-only ons, owners would have a ntime and more pro- project. show what owners expect, ABC recently ed the union-only per- ce record on the highly Boston Harbor pProject. Already over , the project is, accord- March 21 article in the *Globe*, "at least six weeks schedule and some ers suspect far more." take matters worse, the *Globe* article reported sponding to growing concerns about the f tunnel workers han- gh-voltage electrical ent in water up to their he Massachusetts Wa- sources Authority has ily suspended work roblem plagued set- tall tunnel project." safety situation is so t, after rescuing 27 onkers from a March cal line 450 feet below a mile from the near- and in the dark, the Fire Department will t response to any fire mel. ported by the *Globe*, if fighter Lt. Richard warned that "if [the above our knees, we in." To date, the Ce- tal Safety and Health train's Boston of-

fice has cited more than 400 safety violations on the union-only project and proposed more than \$650,000 in fines. Two workers have been killed. That, with only 5000 feet of the nine-mile tunnel



Bennett

completed. The project has a long history of safety violations, as documented by numerous press releases from OSHA's Boston office. Some examples include, on August 6, 1991, proposed fines of more than \$113,000 for violations that OSHA Area Director David Crockett called "basic safety standards for this type of work." Little more than a month later, OSHA found another \$69,000 worth of violations. And the next month, October, \$65,000. In December, \$35,000. In the summer of 1992, one worker was crushed when a 1.5 ton precast concrete ring fell from a crane above him. According to a statement made in the *Boston Globe* by Kipp Hartmann, head

of OSHA's South Boston office, "No employee should be working under a suspended load. It is illegal precisely because cranes do fall." OSHA proposed the largest fine in the state that year — \$248,000. Hartmann added that "the safety performance is disturbing and puzzling. Safety has not been given the high priority that is demanded by the nature and complexity of the project." James Barretto, attorney for the family of the crushed worker, told the Associated Press, "It all points to a pattern of carelessness, and that's an understatement." Twenty days after the first fatality, a drill operator was killed on a barge. The union-only Boston Harbor project? Unsafe and already over-budget and behind schedule. As a result, the state's inspector general, Gregory Sullivan, now projects that the average \$500-a-year water bill, currently the highest in the nation, will hit \$2000 within 10 years. Even President Clinton's generous "gift" of \$100 million in U.S. taxpayer money (80 percent of which came from open shop workers) to bail out his Massachusetts political buddies and their union-only project won't reduce the astronomical water rates Boston citizens will be forced to pay. It is precisely this union-only construction track record that prompted a front-page, banner headline in the May 1 edition of the *Boston Globe*: "At what price a nice, clean harbor?"

## UNIONS LOSE BID FOR UNION ONLY AGREEMENT

The Regional Airport Authority of Louisville and Jefferson County rejected a union-only agreement sought by the Greater Louisville, Kentucky Building and Construction Trades Council. The agreement, which included a no-strike clause, would have required contractors on the \$370 million Standford Field project to hire workers from local union halls, and would have forced the employees of open shop contractors to join a union. The airport authority voted against the union-only agreement after four local contractors said they would refuse to bid on the airport work if they were required to use union labor. ABC Kentuckiana Chapter Executive Director Phil Anderson said, "The labor council's no-strike pledge implies the threat of disruption. In a schoolyard, if you have a potential troublemaker, you don't throw out the rest of the kids."

## SEARS WITHSTANDS UNION PRESSURE

Despite an intense campaign from organized labor, Sears Roebuck and Company will continue to build merit shops. In an attempt to sway Sears to build the entirety of its \$4 billion construction program union-only, the building trades unions organized a massive letter writing campaign and picketed several open shop construction sites in the Northeast. The building trades unions also asked union members to destroy their Sears' credit cards and then to return the cards. Approximately 1800 credit cards were returned. ABC members, in turn, launched a national letter writing campaign to Sears thanking Sears for its support. ABC National President Joe Ivey asked ABC members to tell Sears, "We appreciate the stance you are taking. And most importantly, that we are prepared to support those who support us."

## ABC ON THE MOVE

ABC NATIONAL IS MOVING ITS HEADQUARTERS TO ROSSLYN, VA., JUNE 1. ABC'S NEW ADDRESS AND TELEPHONE NUMBER IS 1300 NORTH SEVENTEENTH STREET, ROSSLYN, VA., 2209-3883, (703) 812-2000.

## VIRGINIA CHAPTER PRESENTS OSHA 500

ABC's Virginia Chapter and the Construction Education Foundation are sponsoring an OSHA 500 Course June 21-25 near Dulles Airport in Herndon, Va. The course, taught by OSHA personnel, certifies attendees successfully completing the class as instructors for 10- and 30-hour OSHA courses. The registration cost is \$650, which covers books, materials and lunches. For more information, contact the Virginia Chapter, (703) 941-8281.

## CRAFT OLYMPICS JUDGES WANTED

The Construction Education Foundation is seeking judges for the 1994 Craft Olympics, which will be held during ABC's annual convention February 12-16 in Miami Beach. The competition will include electrical, plumbing, welding, pipefitter, sheet metal, HVAC, carpentry and sprinkler fitter trades. For more information, contact Tom Obert at the CEF, (703) 812-2000.

## INDUSTRY BRIEFS

- Falling for the second consecutive month, new construction contracts dropped 3 percent in March, according to the F.W. Dodge Division of McGraw-Hill.
- Non-building construction, which includes public works and utilities, increased 4 percent. Non-residential construction decreased 1 percent, and institutional building was down 3 percent.
- A National Highway Traffic Safety Administration report found employers pay more than \$40 billion a year due to on-the-job motor vehicle accidents. Each accident costs approximately \$22,500. Highway crashes account for one-third of work-related injury costs to employers and one in four lost workday injuries.
- The National Highway Traffic Safety Administration issued a new rule that establishes a 20.6 mile-per-gallon corporate average fuel economy standard for light trucks manufactured in model year 1995.
- The Federal Highway Administration began a one-year random roadside drug testing program in Minnesota, New Jersey, and Utah. The program will test commercial drivers for alcohol and controlled substances.

# Construction Industry Facing New Energy Tax

House Ways and committee passed a d version of the administration's pro- lution energy tax. The d tax of 61 cents per BTU (the 26.8 cents on BTU tax plus the

34.2 cents per million supplemental tax) on petroleum based products translates to approximately an 8.5 cents per gallon increase. The use of diesel fuel for off-road construction also will be taxed at 34.2 cents per million BTU.

Some members of Congress are proposing dropping the BTU tax in exchange for cap on entitlement programs. The Senate Finance Committee is expected to consider the bill this month. (See *Washington Review* for details.)



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18X

# The Truth About Construction Fatalities - Open Shop Jobsites Safer

ABC believes it is time to set the record straight and to challenge the unions' claim that its safety record is better than that of the open shop. ABC has reviewed the OSHA report, *Analysis of Construction Fatalities - The OSHA Data Base 1985-1989* and the information is clear. Over the five-year period of the report, the unions experienced a fatality ratio of 20.9 per 100,000 workers, more than 25 percent higher than that of the open shop's 15.1 per 100,000 workers. While construction unions account for one-fifth of the total workforce, they also account for more than one-fourth of the fatalities in the industry. ABC is strongly committed to safety and is doing everything it can to ensure a safe and a secure work environment for its merit shop craftsmen.

The OSHA report's purpose was to emphasize to the construction industry the need for increased awareness and educational programs on the serious nature of safety hazards in the construction industry.

Figure 1 of the OSHA report compares union and open shop fatality statistics. This chart is the basis of the unions' claims; however, the report clearly concluded "the distribution of fatalities among union and open shop worksites is similar to the composition of the construction workforce in terms of union and open shop workers." The statistical difference that does exist clearly shows the open shop sector has a consistently better record of performance.

The table in figure 2, entitled *Fatalities - Open Shop Versus Union*, provides the statistical information OSHA used in figure 1. What do these statistics indicate? Over the report's five-year period, the open shop workforce averaged approximately 2.4 million more workers than the union workforce, or a ratio of open shop to union workers of 3.6 to 1. With just over one-fifth of the total workforce, the union workforce averaged more than one-fourth of all construction fatalities.

Figure 3 presents the fatality rates depicting the number of fatalities per 100,000 workers. This graph shows that rates for open shop workers, over the period of the report, are consistently lower than both the industry average and the union fatality rate. In terms of the number of workers per fatality, the unions have one fatality per 48,000 workers to the open shop sector's one fatality per 66,000 workers.

What does this report mean for the open shop construction industry? It shows that open shop jobsites are safer than union worksites. ABC believes this is due in large measure to the many safety initiatives that ABC has taken to ensure that its craftsmen are being trained to perform safely and productively on the jobsite.

It should be noted that 11 of our country's largest contractors are working together with ABC and the Merit

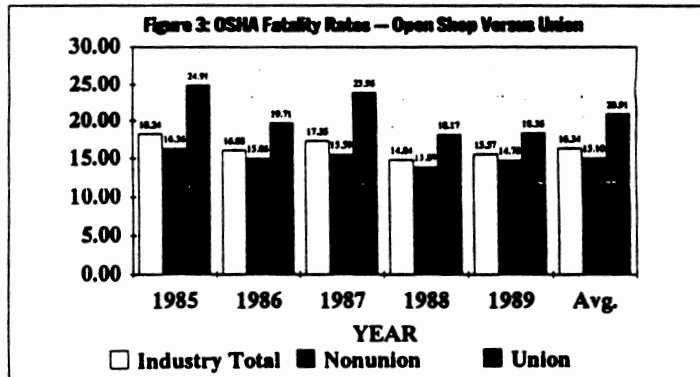
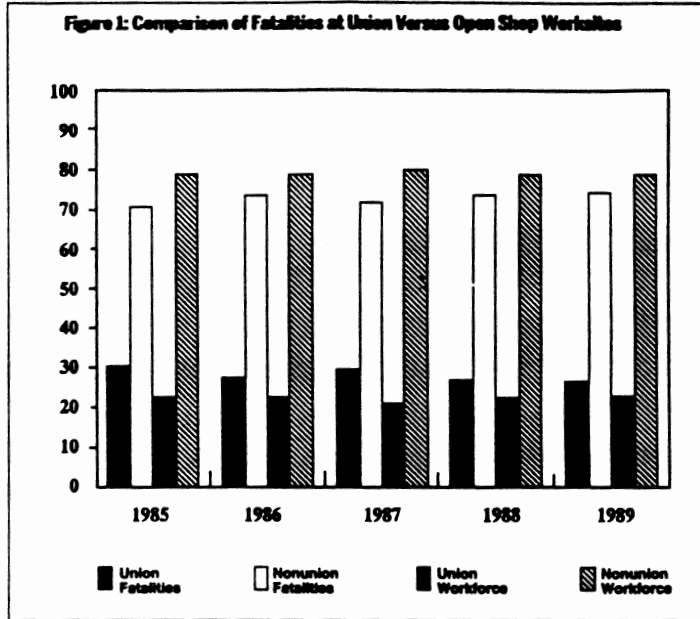


Figure 2

FATALITIES - OPEN SHOP VERSUS UNION						
	1985	1986	1987	1988	1989	Average
Workforce Total	3,996,000	4,105,950	4,173,400	4,052,000	4,257,400	4,276,530
Open Shop	3,117,504	3,201,001	3,296,900	3,785,028	3,320,772	3,544,974
Union	879,296	902,949	876,414	1,067,972	936,628	932,556
Fatalities	729	660	724	720	663	699
Open Shop	510	482	514	556	491	505
Union	219	178	210	194	172	195
Fatality Rates	18.24	16.06	17.35	14.94	15.57	16.34
Open Shop	16.36	15.06	15.59	13.99	14.78	15.10
Union	24.91	19.71	23.96	18.17	18.36	20.91
Ratio	1:8, 483	1:8, 218	1:8, 764	1:8, 739	1:8, 421	1:8, 125
Open Shop	1:8, 113	1:8, 641	1:8, 414	1:7, 196	1:8, 763	1:8, 625
Union	1:4, 015	1:5, 072	1:4, 173	1:5, 593	1:5, 446	1:4, 642

Shop Foundation to create a standardized craft training program which also will improve the safety and the productivity of its craftsmen.

ABC also has created the Safety Managers Academy, a new series of quality safety videos, safety award programs, numerous safety publications, the Safety Directors League and new safety initiatives all aimed at better educating open shop workers to the hazards associated with the construction worksite.

In addition, ABC has formed the Drug-Free Workplace Alliance to help rid the open shop construction industry of substance abuse that causes countless numbers of accidents, injuries and fatalities every year.

What is the bottom line? Much remains to be accomplished in the area of safety, but open shop jobsites are safer than union jobsites.

With current and future initiatives, the open shop construction worksite will continue to become a safer place to work and the goal of zero jobsite accidents and fatalities will move closer to becoming a reality.

19X



# UTILITY and TRANSPORTATION CONTRACTORS ASSOCIATION



## TESTIMONY BEFORE THE SENATE TRANSPORTATION COMMITTEE REGARDING PROJECT LABOR AGREEMENTS AND RECENT ACTIONS OF THE TURNPIKE AND GOVERNOR'S OFFICE

October 22, 1993

I am Robert A. Briant, Sr. executive director of the Utility and Transportation Contractors Association (UTCA). Our membership numbers approximately 940 member firms active in all phases of heavy, highway, utility and hazardous waste remediation construction throughout New Jersey. UTCA firms are both small and large and are responsible for approximately 80 percent of all of the heavy, highway and utility construction at all levels of government, and in the private sector, throughout this state. Association members also construct numerous projects in the surrounding states.

With me today to discuss Project Labor Agreements and their impact on our industry are J. Fletcher Creamer, Jr., president of J. Fletcher Creamer & Son, and Peter Getchell, president of PKF-Mark III. These two companies are major construction firms active throughout New Jersey as well as other states. The individuals also serve as co-chairmen of our Labor Committee and bargaining group which is known as the Construction Contractor Labor Employers of New Jersey. They are well versed in labor negotiations and labor matters with the construction trades active in our segment of the industry.

Also with me today is Steven Brawer, association legal counsel, who is well versed in state bidding and contract law in that he has argued major cases before the State Courts. Our legal counsel is currently involved in the matter regarding our Association and the Turnpike relating to Project Labor Agreements. He is here to assist with questions of law that might develop in connection with our appearance.

Our Association supports free and open competition for public construction contracts, based on reasonable prequalification where appropriate, determined by the low bid system. The basic foundation for awarding public construction contracts, supported by taxpayer funds, is enhanced through competition and the low bid system as it has been for most of this century. Project Labor Agreements which specify particular union involvement lessen competition for the work which in turn will increase the cost of construction in this state.

As you know from earlier testimony, what has brought us here today is the fact that the Turnpike recently instituted a rarely used provision in construction which is known as the Project Labor Agreement. Project Labor Agreements have been utilized in the past, primarily in private construction, usually when a major project has been constructed by national firms, time has been of essence and the Labor Agreement has been negotiated by representatives of the Owner of the project and the unions in the area of the work.

What you heard in earlier testimony today is that a very unique public waste water treatment project is under construction in the Boston Harbor which is utilizing a Project Labor Agreement. This project is particularly unique because it is one of the only public projects utilizing such an Agreement, and it is being constructed on Deer Island, a site in the Boston Harbor itself. Most public projects are not built on islands in the middle of harbors and therefore don't require Project Labor Agreements.

The Boston Harbor Project is so unique that transportation of workers, material and supplies have to be brought in by ferry, barge or ship as well as over a small strip of land that connects the island with the mainland. Also, after many years of neglect locally, the Federal Court stepped in and mandated that Boston upgrade its water pollution control system that had been lacking for so many years. Federal Courts mandated specific dates and time frames for completion of certain portions of the work, with multi-million dollars in penalties if completion dates were not met. As can be seen, some very unique situations, almost unprecedented conditions, exist with this project in the Boston Harbor.

With all of these special conditions facing local authorities and under the enormous pressure of the Federal Courts, the local Authority turned to its construction manager, Kaiser Engineers, which suggested that under the unusual circumstances facing the Authority a Project Labor Agreement might be beneficial for the work. Kaiser Engineers had been familiar with such Agreements with its previous work in the private sector of construction.

After receiving approval from the Authority, Kaiser Engineers began negotiations of a Project Labor Agreement with the Building Trades Council of the Boston Metropolitan District. Finally after considerable discussions, the Project Agreement became effective on May 22, 1989. It is important to note that this Agreement was negotiated with representatives of local unions, just as it has been done in the private sector, in order to achieve the most cost efficient provisions in exchange for the use of such an Agreement for the work. In many instances, the negotiated Project Labor Agreement prevails over the local Agreements in the area.

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I cite the unique circumstances of the Boston Harbor Project Labor Agreement because it has been mentioned so often by the Turnpike in its recent action as well as by Governor Florio in Executive Order No. 99. Our Association has also recently learned that representatives of the County Construction Trades have approached county governments with the story that Project Labor Agreements should be utilized for public construction at that level of government as well. Nothing could be further from the truth for the Turnpike, state government and county government.

Our major concern about the use of Project Labor Agreements is that it upsets the long accepted balance between labor and construction management in New Jersey. UTCA's bargaining group, in conjunction with other construction associations, has achieved major productivity improvements in labor contracts over the past nine years. These productivity gains relate to millions of dollars in savings to the taxpayers in New Jersey and have come after extended and serious negotiations with labor leaders of this state. Many of these productivity gains are listed as an attachment to this testimony.

Government bureaucrats are not versed in construction labor negotiations. That is what we are faced with, if the Turnpike Action and Governor's Executive Order remains as proposed. As representatives of firms that are responsible for the construction of these projects, we resent the fact that government is attempting to usurp our ability and responsibility to negotiate with labor in New Jersey.

Basically, it is unreasonable to even consider the Boston Harbor situation here in New Jersey. The Turnpike, state agencies and other governmental groups are not constructing projects on islands in the middle of harbors. New Jersey projects are also not under severe mandates of Federal Courts, where multi-million dollar fines may be applied. It is ludicrous to compare the two situations. What we have in current New Jersey construction are projects that have been successfully constructed day in and day out on a regular basis, at the rate of about \$1.5 billion annually, for the past three years, without any need for Project Labor Agreements. In fact, by all standards, the heavy, highway and utility construction industry is constructing quality projects on a regular basis, on time, and with considerable savings to the taxpayers. A list of some recent project cost savings is also attached to this testimony.

What is especially troublesome regarding this matter with the Turnpike and Governor's Office is how all of this has been developed behind closed doors and in secret. It could be that the Turnpike Commissioners and the Governor have been ill advised in this matter. The fact that the imposition of the Project Labor Agreement was done without any public notice, and as an after thought to a contract that had already been bid (W6411), is noteworthy. Such actions raise many questions about why this entire process has been pursued.

UTCA has worked closely with state agencies and the Office of Governor for the 20 years of my involvement with the Association. We have supported construction programs involving our work on a regular basis. As it relates to the Turnpike, representatives of our Association have met on a regular basis with officials of the Authority regarding areas of specifications provisions, insurance, minority business, safety, contract sizes, project problems and planning. The fact that representatives of the Turnpike did not consult with our Association, which represents the majority of all firms working on the Widening Project, is hard to believe. It appears as though they and others did not want us to learn of such plans, although our firms are those which sign the construction contracts and guarantee successful completion of the work for the Turnpike.

The entire matter involving the Turnpike and the Governor's Office is unprecedented in public construction in this country. Project Labor Agreement use in construction is not used in public construction, except for the very unique case of the Boston Harbor Project. Our legal counsel has indicated to us that the actions of the Turnpike and the Governor are illegal when state bidding laws and constitutional questions are considered. That is why our argument is now before the State Supreme Court for consideration.

Notwithstanding the final State Supreme Court action, we believe that the Legislature should make it clear that Project Labor Agreements are not in the best interest of public construction in New Jersey. Such Agreements should be ruled null and void and contrary to public policy as they only limit competition, lead to higher costs and deprive construction management from achieving greater productivity gains through labor negotiations which in turn provide greater savings to the taxpayers.

## COLLECTIVE BARGAINING PRODUCTIVITY

### GAINS FROM 1984 TO PRESENT

#### Operators

- \* Moves on earth moving equipment.
  - loaders, pavers, dozers, graders, rollers, combo hoes.
- \* Saturday overtime rate at  $1\frac{1}{2}$  times the regular rate.
- \* No oilers on any size hydraulic backhoe, rough terrain cranes, and, crawler and truck cranes 45 tons and under.
- \* Sewer manning requirements on projects at \$4 million and less and for all projects \$3 million and under.
- \* Drug testing requirements.

#### North Jersey Ironworkers

- \* 4 x 10 hour days with-Friday makeup.
- \* Saturday overtime rate at  $1\frac{1}{2}$  times the regular rate.
- \* Reduced rate for installing reinforcing steel:
  - \* \$1.00 less per hour.

#### Teamsters

- \* Buy out of vacation days.
  - 2 days (# 331 and 676) and three weeks (# 408, 469 and 560).
- \* Buy out of personal and funeral days.
  - 2 personal days (all locals).
  - funeral days (# 408, 469 and 560).
- \* Buy out of 8 hour guarantee for journeyman.
- \* Health and welfare benefits paid on hours worked (#331 and 676). Other locals have a cap.
- \* Saturday over time rate at  $1\frac{1}{2}$  times the regular rate.
- \* Drug free worksites.

#### Dockbuilders

- \* Composite crews.
- \* Utility construction rate is reduced by \$1.00 per hour.
- \* Saturday overtime rate at  $1\frac{1}{2}$  times the regular rate.
- \* No mandatory crew size on utility construction.

#### Carpenters

- \* Elimination of 8 hour journeyman guarantee.
- \* Saturday overtime rate at  $1\frac{1}{2}$  times the regular rate.

#### Heavy Laborers

- \* Drug free worksite.
- \* Saturday overtime rate at  $1\frac{1}{2}$  times the regular rate.
- \*\* The productivity gains that are listed here are only some of all that have been achieved over the past nine years through negotiations.

**NJ TURNPIKE AUTHORITY WIDENING CONTRACTS AWARDED**

October 1988 - Present

	<u>Low Bids</u>	<u>2nd Low Bids</u>	<u>Savings</u>
50 Contracts	\$386,497,814	\$407,388,109	\$20,890,295

- \* Savings of approximately 5.1 percent when the total of low bids is compared to the 2nd low bids.
- \* Although the Turnpike's estimate for each contract is never published, it is estimated by the industry that the savings have averaged between 15-20 percent overall. That amounts to a savings of approximately \$72-97 million to date.

**TOTAL NJ FEDERAL-AID HIGHWAY PROJECTS 1992**

<u># Of Contracts</u>	<u>Total Low Bids</u>	<u>Total Amount Eng. Estimates</u>	<u>% Under Estimates</u>	<u>Savings</u>
37	\$219,702,200	\$248,401,800	11.6%	\$28.7 million

**TOTAL NJ INTERSTATE HIGHWAY PROJECTS 1992**

<u># Of Contracts</u>	<u>Total Low Bids</u>	<u>Total Amount Eng. Estimates</u>	<u>% Under Estimates</u>	<u>Savings</u>
5	\$89,362,300	\$106,037,500	15.7%	\$16.7 million

**MEMBERS OF THE NEW JERSEY  
SENATE TRANSPORTATION COMMITTEE**

- William Haines - Republican (Chairman)
- John Scott - Republican (Vice-Chairman)
- Andy Ciesla - Republican
- Randy Corman - Republican
- Thomas Cowan - Democrat
- Walter Rand - Democrat

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My name is Bruce Robertson and I've been a steelworker for 18 years. I consider myself to be a skilled craftsman, diligent, hardworking and proud to be an American.

I have worked on countless federal and state projects, totalling hundreds of millions of dollars. Recently a new term called "project agreements" has been forced upon us, eliminating us from the competitive bidding process.

For obvious reasons, I have always been in favor of a free and openly competitive bidding system. I cannot believe that project agreements are considered to be in the public's best interest. I believe the State of New Jersey is mistakenly cutting-off whole classes of responsible bidders and skillful workers by playing politics with special interest groups.

The purpose of promoting and ensuring open competitive bidding on federal and state construction projects is in my estimation to: (1) increase competition, the life blood of America; (2) reduce construction costs so our tax dollars are spent wisely; (3) expand job opportunities for those workers who are unable to have access to the building trades; and (4) uphold the rights of workers to freely select or refrain from selecting a bargaining representative.

I feel that government has a responsibility to contract fairly with all parts of the industry. Project agreements are nothing but an exclusionary tactic to benefit a few rather than the whole. The Florio Administration is using project agreements to get votes in exchange for political endorsements. This is a political football that should be eliminated from the open bidding process.

The economies of New Jersey and America are in hard times. Jobs are at a premium and hard to come by. To selectively give jobs to a few who contribute to the right campaign is like stealing the food right off our tables.

If we are to survive in an ever changing economy, we must be competitive and free from special interest groups. Democracy is doomed because special interest groups will be able to vote itself funds from the public treasury. We will all be held hostage by project agreements and deprived of making a livelihood for our families because of this arbitrary and insensitive action.

The Governor should be concerned about the State of New Jersey, not who's contributing to his re-election. If we can build projects and save taxpayer dollars, we should have the same rights as everybody to bid on these jobs.

I have always believed that by working hard and having pride in my work that I would be rewarded of the fruits of my labor. Instead I am forced out of work.



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NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION

October 22, 1993

**TO: Senate Transportation Committee**  
**FROM: Jeff Stoller, Vice President / Industrial Relations**  
**RE: Executive Order 99**

The New Jersey Business & Industry Association, representing more than 13,500 employers statewide, urges the committee to take a critical look at the impact of Governor Florio's Executive Order 99. That order, requiring all state departments and agencies to force their contractors to sign Project Labor Agreements with the New Jersey Building & Construction Trades Council, will inflate costs for both our public and private sectors.

NJBIA's principal concerns include:

- \* the added costs New Jersey taxpayers will endure when legitimate low bids on projects are rejected in order to divert work to the BCTC;
- \* the use of public funds to favor specific unions involved in infighting among various organized labor groups;
- \* the potential that wage rates and work rules imposed on the public sector through Executive Order 99 will increase pressure to extend identical terms to *private* sector contracts as well.

We are particularly concerned that this order is a "back door" approach to extending the New Jersey Prevailing Wage Law in directions previously rejected by legislators in both parties.

Executive Order 99 represents special interest politics of the worst kind. NJBIA asks the committee to determine what *public* interest, if any, is served by adoption of this order.





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