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# *Public Hearing*

before

## ASSEMBLY LABOR COMMITTEE

*“Consider the findings of the State Commission of Investigation in its report entitled ‘Contract Labor: the Making of an Underground Economy,’ and evaluate what progress has been made in implementing the recommendations of that report”*

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**LOCATION:** Committee Room 9  
State House Annex  
Trenton, New Jersey

**DATE:** March 11, 1999  
2:00 p.m.

**MEMBERS OF COMMITTEE PRESENT:**

Assemblyman George F. Geist, Chairman  
Assemblyman Kenneth C. LeFevre, Vice-Chair  
Assemblyman Kevin J. O’Toole  
Assemblywoman Mary T. Previte



**ALSO PRESENT:**

Gregory L. Williams  
*Office of Legislative Services*  
*Committee Aide*

Jarrod C. Grasso  
*Assembly Majority*  
*Committee Aide*

Michael H. Harper  
*Assembly Democratic*  
*Committee Aide*

***Hearing Recorded and Transcribed by***  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**ASSEMBLYMAN GEORGE F. GEIST (Chairman):** Good afternoon, and welcome to the Assembly Labor Committee hearing. Today continues a series of legislative hearings by this Labor Committee. The Chair believes this Committee should listen and learn before legislating. Today we will listen and learn.

At the outset, I'd like there to be a roll call.

MR. WILLIAMS (Committee Aide): Assemblywoman Previte.  
(no response)

Assemblywoman Friscia. (no response)

Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Here.

MR. WILLIAMS: Assemblyman Kramer. (no response)

Assemblyman DeCroce. (no response)

Assemblyman LeFevre.

ASSEMBLYMAN LeFEVRE: Here.

MR. WILLIAMS: Assemblyman Geist.

ASSEMBLYMAN GEIST: Here.

Thank you.

Our first hearing during the session focused on the Workforce Investment Act. Legislation will be forthcoming on the implementation of New Jersey's Workforce Investment Act. Today we shift focus, and today we focus on our SCI. Our New Jersey SCI authored a report entitled Contract Labor: The Making of an Underground Economy. Our SCI found -- I'm quoting the report -- "Elements of New Jersey's agricultural and manufacturing industries have been subverted at taxpayer expense by a lucrative underground

economy that benefits unscrupulous contractors who trade in cheap, and sometimes illegal, immigrant labor.”

This Committee has been active in a legislative agenda to be probusiness and prolabor. And today, consistent with that tradition, we proceed with today’s focus. We would be glad to make available copies of this State of New Jersey Commission of Investigation Contract Labor Report. I believe that after today’s hearing we will seriously consider legislative action to do right by New Jersey, to do right by responsible businesses in New Jersey, to do right by New Jersey labor in New Jersey, and to correct a wrong. Today I’m really proud as Chair to welcome as we do this together in a together endeavor.

The authors from the SCI today, I understand, in attendance we have the Executive Director, James J. Morley, and Counsel Charlotte Gaal. Welcome to our Committee. Please come forward and begin our hearing. You are the reason why we’re here today in that your report came to my attention. I believe it’s time that we take action. We welcome your guidance, and we thank you for your report.

Good afternoon and welcome to this Committee--

**JAMES J. MORLEY:** Thank you.

ASSEMBLYMAN GEIST: --in your debut appearance before me. I welcome you and thank you for your report.

MR. MORLEY: Thank you for your invitation, Mr. Chairman.

As you’ve noted, with me here today is Charlotte Gaal, who is Counsel to the Commission and who lead the investigative team that conducted the investigation that lead to this report.

The Commission undertook its investigation of contract labor practices in response to a referral from the United States Department of Labor's Office of Labor Racketeering in Mays Landing. The information provided to the Commission suggested a range of fiscal and administrative abuses involving unscrupulous providers of labor who were at taxpayer expense taking advantage of gaps in statutory, regulatory, and law enforcement oversight. The investigation confirmed such abuses and found evidence indicating that they are widespread to the point of contributing significantly to the underground economy.

The findings of the investigation along with a series of recommendations for systemic reforms were detailed in a report issued in September of 1977 (*sic*). In a moment, I will discuss the scope and substance of this investigation, and Ms. Gaal will then provide a summary of our recommendations as they bear upon potential legislation.

First of all, I would like to define a couple of terms so that it is clear what we are talking about. In the context of our investigation, the term contract labor provider refers to an individual or entity that supplies workers to private industry in exchange for monetary payment. These labor providers include individuals known as crew leaders, as well as the owner/operators of only some temporary help service firms, and I'd like to emphasize some because we are not talking here about legitimate office temp agencies that offer skilled clerical, secretarial, or data processing help. The contract labor providers who are the subject of our investigation, however, trade primarily in unskilled, minimum-wage workers who perform a variety of menial jobs in the poultry, seafood, and agricultural processing or manufacturing sectors.

Quite often, however, the labor providers contrive to cloak themselves in the guise of legitimacy in order to evade their legal obligations. I should also point out that the concept of temporariness is something of a misnomer in the context of our investigation because, in fact, in many instances the employment arrangements have become regular, even daily, and long term in nature.

For many years, of course, large farms have relied upon crew leaders as central figures in a system through which groups of migrant laborers are provided under contract at planting and harvesting time. Starting in the 1980s, however, this system began to expand as a source of labor for agricultural postharvest production, as well as poultry and seafood processing. It has also gained something of a foothold in manufacturing. Retained by plant management, these labor providers are paid lump sums, totaling in excess of \$3 million per year in some cases, in exchange for providing workers for various shifts. The labor pool consists predominantly of immigrants from Southeast Asia and from South and Central America. Typically, the labor providers receive an average of between \$6.25 and \$6.75 per hour per worker and are directly responsible for meeting the payroll of their crews, which payroll is usually dispersed in cash.

The contract labor providers are also responsible for all employment-related paperwork. It falls to them to ensure that workers possess proper identification and legal work credentials. Further, the labor providers are responsible for supplying all appropriate tax forms for withholding, reporting, and submitting State and Federal payroll taxes; for submitting employer payroll taxes to cover unemployment insurance, temporary disability

insurance, and related payroll deductions; and for furnishing workers' compensation in the event of job-related injury.

In essence, while the laborers who make up the crews work shifts of up to 10 hours per day inside the confines of a plant or factory and receive assignments, training, and supervision from plant managers, they are for all practical purposes treated as employees of a third party operating from outside.

The Commission found that it is precisely this arm's-length relationship between management and contract labor providers that lies at the heart of the abuses uncovered during its investigation. Management officials repeatedly told the Commission that they routinely assume that labor providers comply with appropriate identification, payroll, and tax requirements, but also said that they do not regularly raise questions or check to confirm their assumptions. At the same time, contract labor providers do not volunteer questionable information about their work crews or about their financial practices because it is not in their interest to do so. In many instances, there is no explicit written agreement between plant management and labor providers defining respective roles, duties, and expectations. State and Federal regulators meanwhile struggle to keep pace. All too often their efforts are defeated notwithstanding current laws designed to protect the system from abuse and subversion.

During its investigation, the Commission conducted extensive inquiries into the background and operations of 25 separate contract labor providers and their relationships with various segments of New Jersey's food processing and manufacturing sectors between 1993 and 1996. During that period, these 25 labor providers collected a total of \$44.5 million in gross

revenues from 10 businesses in exchange for supplying workers. This was determined to be a substantive sample, and every single case yielded evidence of systemic abuse that was flagrant and consistent across the entire spectrum in the following ways:

1. Millions of dollars in State and Federal income taxes went unpaid based upon substantial underreporting and nonreporting of gross receipts by contract labor providers for corporate, business, and personal income tax purposes. As a result, thousands of individual workers supplied by the labor providers failed to pay State and Federal income taxes.

2. The Commission found that nearly \$5 million in Federal payroll tax liabilities, not including interest and penalties, went unpaid by these labor providers, all of whom failed to report or substantially underreported these obligations.

3. Most of the labor providers examined by the Commission underreported to the New Jersey Department of Labor both employee wages and the required contributions to State Unemployment and Disability Insurance funds. In other instances, no filings were made at all.

4. Some contract labor providers avoided their payroll tax obligations altogether by designating their workers improperly as independent contractors despite operating in a traditional employer-employee relationship. Treating workers as independent contractors allows an employer to ignore key Federal and State income tax withholding and payroll responsibilities.

5. Identity fraud is a serious problem in this area as well. The Commission examined 650 randomly sampled Social Security numbers listed for workers employed by eight contract labor providers and was able to identify

only 15 of them, roughly 2 percent, as being genuine. Twenty-two percent could not be positively identified as having been issued to the employees listed in the records, and the vast majority, 76 percent of the sample, were either complete fabrications or had been assigned to another individual, who in many cases was, in fact, deceased. Evidence and testimony received by the Commission demonstrated that in some instances the workers themselves found it in their interest to conceal their true identities because they were attempting to avoid income taxes, were simultaneously collecting public assistance, or were undocumented aliens.

In closing, I would like to emphasize that the Commission and its staff spent considerable time carefully examining every facet of these issues in an unprecedented and comprehensive investigation. Thousands of documents were subpoenaed and analyzed, numerous individuals were questioned, and extensive fieldwork was conducted in order to develop an accurate picture of the contract labor system and how it has evolved into a significant and growing element of the underground economy. It is a phenomenon that threatens the integrity and stability of legitimate industries and individual businesses, undermines confidence in our regulatory system, and robs revenue from State and Federal taxes coffers.

As part of its report, the Commission offered a range of recommendations for addressing these problems, and Counsel Gaal will now brief you on those.

ASSEMBLYMAN GEIST: Thank you.

Welcome, Counsel Gaal.

**CHARLOTTE K. GAAL:** Thank you.

When we set about to formulate recommendations, we attempted to devise a system that would be as simple, effective, and efficient as possible. And to that end, we made seven major recommendations. The ones which we felt were legislative initiatives I'll mention first. The first of those -- and I think this was a key recommendation -- was that the contract labor provider and the processor or manufacturer using the provider's labor supply be recognized as joint employers of the workers for all Federal or State tax and other reporting requirements.

ASSEMBLYMAN GEIST: As you're proceeding with these recommendations one by one, can you tell us to the best of your knowledge whether there is no law enabling the implementation of your recommendation?

MS. GAAL: Well, with respect to -- yes, I will -- that particular recommendation, my review of the Federal law and the State law frankly supported the joint employer concept. I've read a number of cases, and I read both the State and Federal law. But it did not seem to be viewed in that light in this state, and we felt that it would require a legislative initiative to basically put the burden on both parties.

ASSEMBLYMAN GEIST: Thank you for that precise answer. We are having this hearing recorded so that we will learn specifics for implementation of legislative action. So I appreciate you addressing these questions by enabling us to focus through a legislative action program.

Thanks.

MS. GAAL: Okay. Along with, or as part of, that recommendation, we felt that the Department of Labor should be given the authority to hold the contract labor provider and the entities for whom they

supply workers jointly and certainly liable for the proper withholding and submitting of State income and employment taxes.

Also, as part of that recommendation, we felt that the businesses or entities using contract labor providers should have a written agreement with the labor provider spelling out the responsibilities for the withholding and remitting of tax and the payment of tax liabilities, and we felt that both parties should be required to make that document available to proper authorities upon request.

Our second major recommendation was to move toward a single regulatory scheme. We thought that there should be one single regulatory scheme set up with adequate resources committed to regulate this growing segment of the underground economy. It did not seem to make sense to us for there to be an artificial designation between crew leader or temporary help service firm, and depending upon which category you were in, you resulted in two different types and levels of scrutiny. That did not make sense to us particularly when the workers were, as we actually saw in one factory, working shoulder to shoulder doing exactly the same work. There was a crew in one factory that was brought in by a crew leader. There were also workers brought in by a temp help service firm working together.

Based upon our review of the requirements and the history of contract labor providers in New Jersey, it was our opinion that the Department of Labor seemed to be the more suitable location for this single scheme. We also felt that--

ASSEMBLYMAN GEIST: Interesting choice of words -- scheme.

MS. GAAL: Regulatory scheme.

ASSEMBLYMAN GEIST: Thank you.

MS. GAAL: We also felt that--

ASSEMBLYMAN GEIST: The word scheme is an interesting selection.

MS. GAAL: Okay. We also felt that the regulatory system, if you will, should be reviewed for overall requirements and consistency because right now there are different requirements depending upon which category the labor provider is in.

In addition, we concluded that the specific designation of crew leader, under New Jersey's Crew Leader Registration Act, should be limited to those labor providers who supply seasonal migrant workers to farms for initial stage, onsite agricultural processing under the Agricultural Compliance Unit within the Department of Labor. And, I think, arguably, that was the intent of that legislation. It has now come to be that the crew leader designation is being used for labor groups going into factories and processors, and so forth. We felt the crew leader unit dealing with migrant workers and seasonal workers should be separately handled.

Thirdly, we felt that a number of changes should be made to New Jersey's Unemployment Compensation law to expand the Department of Labor's authority. And I should add here that these particular recommendations were brought to our attention by the Department itself. We felt that the Commissioner of Labor should be authorized to require the posting of adequate security by labor providers to guarantee the payment of State income and employment taxes. We felt that the Department of Labor should be granted the authority to issue, collect, and enforce certificates of

debt if employers lack assets in New Jersey sufficient to pay the balances due on fines, monies, assessments, and so forth. We felt the Department of Labor should be granted the authority to retain agents or counsel outside the State of New Jersey to collect monies due, and further that they should have the authority to ask the Attorney General to bring suit in other states to collect monies due.

We felt that the maximum penalty for criminal violations of that act should be increased from a \$1000 fine and/or a 90-day term of imprisonment to a \$5000 fine and a one-year term of imprisonment. We recommended that the Department of Labor be authorized to serve writs of execution rather than having to rely and, frankly, wait on county sheriffs to do so. And finally, we recommended that the Department of Labor be granted the authority to garnish the wages of individuals or officers of any corporation for unpaid assessments and penalties owed by the company.

Turning to administrative recommendations, we recommended that the Unemployment Insurance and Temporary Disability Insurance, the UITDI, collection functions should be brought under the Department of Treasury, the Division of Revenue, to coordinate and facilitate the collection of payroll taxes in that office, which has the most up-to-date technology for processing and collection of such payments in the state. We also felt that the UITDI registration forms should be included in the New Jersey tax registration packet, which contains forms that are distributed to a business when it registers with the Division of Taxation.

Secondly, we recommended that of all business registrations and licenses issued in the State of New Jersey should automatically be forwarded

to the Department of Labor's UITDI financing section and to the Divisions of Revenue and Taxation. For example, we found instances where contract labor providers were registered with the Department of Labor's Agricultural Compliance -- that's the crew leader unit -- but they were not registered with the Department of Labor's section that handled the UI and TDI collections for those purposes.

Thirdly, it was a particularly arduous job, we found, to find out exactly what was going on in this underground economy; therefore, we recommended that more comprehensive audits be conducted. This means that both the records of the contract labor provider and the processors or manufacturers utilizing that labor force must be examined to obtain an accurate picture and to verify the wage reporting. Those were the administrative recommendations.

There is one remaining recommendation in the report, and that recommendation had to do with what is called the Basic Pilot Program. The Commission recommended that a then about-to-be implemented Federal program, which is called Basic Pilot, be considered for availability in New Jersey. Basic Pilot is an electronic, on-line system which is used to verify employment and immigration status for all newly hires. At the time, it was about to be implemented, and there were seven states under consideration. It is handled by the Federal government out of Washington. They approved implementation of the program, and it is currently implemented in five of the states: California, Florida, Illinois, New York, and Texas. Arizona was state No. 6 and New Jersey was No. 7.

We would urge an assessment of the success of that program, and if the program has been as successful as we believe, we would recommend that action be taken by the Legislature and by the New Jersey authorities to urge its implementation in New Jersey.

Attorney General Reno has authorized approval of states involvement in the program. The entities who would need to be contacted with respect to that are obviously the Congress and the Immigration and Naturalization Service Subcommittee in the House of Representatives, which is chaired by Congressman Lamar Smith of Texas -- would be the appropriate subcommittee to contact, as would Doris Meissner, the Commissioner of the INS, and Kenneth Apfel, Commissioner of the Social Security Administration.

That concludes our recommendations.

ASSEMBLYMAN GEIST: Thank you very much. It's certainly an action and plan to be considered. We really appreciate your presence, Counsel Gaal.

Today is a day for the members to ask the SCI, if they have, any questions or comments on the report.

Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Yes. First, I want to commend the Chair for holding this hearing.

Chairman Geist, I think it's a very important issue; and frankly, it's news to me, as I sit here, about this contract labor underground economy that we've heard about but really never seen much evidence of.

My first question, to either the Chair or to Mr. Morley, is -- this report was done, completed September 1997. Is it being made public for the first time some 18 months after the completion of that report?

MR. MORLEY: No. No. That's when the report was issued.

ASSEMBLYMAN O'TOOLE: Okay.

MR. MORLEY: The report was issued in '97.

ASSEMBLYMAN O'TOOLE: Okay. In terms of your findings, I am astounded and somewhat impressed by the comprehensive nature of your report. I commend your agency for doing a job well done. And I think it has opened up our eyes a little bit as to what we can do legislatively or administratively to chase down some of these cheats. And it's really on two sides of the issues here: those individuals who want to profit on these labor agreements by circumventing payroll taxes and workers' compensation packages and income taxes, Federal deductions, and whatnot; and the flipside of that are those employees who want to take advantage of the system, of the scheme as you've indicated, of using erroneous Social Security numbers. So they're actually collecting welfare or public assistance beyond their accepting of wages without paying for income taxes. So it's really -- there are several abuses with the same acts of what we're talking about.

What have you done with your findings other than forward them to the agencies listed here? Have we had any criminal investigations, indictments of the individuals who are these tax cheats from the contract-employer side and the employee side?

MS. GAAL: Well, I'm not aware of any indictments. We have forwarded it on to quite a number of agencies, and we understand that they

were working on the referrals. I'm not really at liberty-- I don't have any specific information.

ASSEMBLYMAN O'TOOLE: Do we know if there is an active criminal investigation? I'd be shocked and I would say it's a waste of taxpayer money if we, in fact, at the end of the day we don't have individuals and entities responsible for these outrageous scams and schemes that are being perpetrated on the taxpayers.

MR. MORLEY: That's certainly true. There are various difficulties I think that a criminal investigative agency would encounter. Some of the companies actually went out of existence during our investigations, so at least the companies aren't out there to be gotten after. Some of the people running these things were fairly elusive figures as well. Although we did refer these things, various information to the Attorney General and to some Federal agencies, I can appreciate that there would be significant difficulties in pursuing criminal cases in a lot of those instances.

ASSEMBLYMAN O'TOOLE: In terms of the 25 contract agreements that you reviewed to, I'd imagine, give yourself some information for your thesis or report here, have we documented or publicized the names of the individuals or the operations that have abused the system, Mr. Morley?

MR. MORLEY: No. We did not.

ASSEMBLYMAN O'TOOLE: Okay.

MR. MORLEY: No. Well-- I'll leave it at that.

ASSEMBLYMAN O'TOOLE: Okay.

ASSEMBLYMAN GEIST: I'll ask a follow-up. Is that a matter of public disclosure?

MR. MORLEY: Well, it was a matter of-- There were certain changes made in the Commission's statute a couple of years ago when it was renewed. In order to include a name in a report, you have to afford the individual the opportunity to respond. That's been a particularly problematic procedure for us for a couple of reasons. And that's not the purpose for our being here today, but the Commission has made the decision in the case of a couple of reports simply to leave names out feeling that the problem could be adequately illustrated without naming names. By leaving the names out, we don't delay the report any longer than we have to.

ASSEMBLYMAN GEIST: Thank you.

Assemblyman O'Toole, do you want to continue?

ASSEMBLYMAN O'TOOLE: No. That's it. I'll hold the questions, but at some point, Mr. Chair, I'd like to sit down with you and this Committee to go over some legislative remedies that could, hopefully, bring about some real distinct changes here.

ASSEMBLYMAN GEIST: Excellent. I thought this hearing might increase enthusiasm, and I appreciate your early enthusiasm. The Attorney General's Office has been invited. The Attorney General's Office has a representative.

Vice-Chairman LeFevre, always a pleasure.

ASSEMBLYMAN LeFEVRE: Yes, a couple quick questions here. To me anyway the definition of food processing, does that include picking, like picking blueberries?

MR. MORLEY: No. No. It's the postharvest processing, the cleaning, the cutting, the washing.

ASSEMBLYMAN LeFEVRE: Okay.

MR. MORLEY: That sort of thing.

ASSEMBLYMAN LeFEVRE: But that aspect of the agricultural industry, where is that included? I'm talking now again the farm laborer.

MS. GAAL: Well, that comes under the traditional crew leader. The referral that came to us had to do with the appearance of crew leaders in factories and those types of facilities. So we focused on what was a new sort of phenomenon that crew leaders were now going into factories, and we did not look at the farms.

ASSEMBLYMAN LeFEVRE: Okay. Is there any concentration of this type of activity? The 25 that you looked at, is it safe to say that its more the north of Trenton, south of Trenton?

MS. GAAL: It was definitely south of Trenton. I may not have every county, but it was Camden County, Cape May County, Cumberland County, Burlington County, Gloucester County. There may be one other, but by and large the southern part of the state.

ASSEMBLYMAN LeFEVRE: Okay. I guess I should have known that when you mentioned the Mays Landing office of the Labor Racketeering Office, but, nonetheless, they cover all of New Jersey I would suspect.

MR. MORLEY: I'm not sure what the Federal jurisdiction is. Sometimes -- some Federal jurisdiction in New Jersey is centered in Philadelphia, some is centered in Newark. We went where the problem took us, but I think the obvious reason why so much of this is focused in South Jersey is because that's where the agriculture is. You don't want to truck the beans to Bergen County to clean them and cut them; and similarly, when

you're dealing with the seafood -- the greater seafood, the shellfish, this is mostly shellfish -- and that is obviously centered in the Cape May, Cumberland area.

ASSEMBLYMAN LeFEVRE: Thank you.

ASSEMBLYMAN GEIST: Thank you, Vice-Chair.

Assemblywoman Previte -- I'm an equal-opportunity Chairman -- always a pleasure, my Camden County colleague.

ASSEMBLYWOMAN PREVITE: I have a couple of questions. How did you find out about these 25 that were your sampling?

MS. GAAL: We basically followed or we went where the investigation went. The Federal Department of Labor brought to us an example, and I think I should indicate what it was. They had become aware of a situation where a union factory had nonunion workers working there in addition to the union workers and in looking at it discovered that they were being brought in by crew leaders. So we started with that example.

Once we determined who the crew leader was, we then looked at the crew leader and tried to find out if that crew leader was supplying labor to any other factory, so that took us to other factories. In the mean time, we looked at every source of supply at the factory where we found the crew leader, so we then found other crew leaders coming into the factory. We would follow that one out to the next factory, and therefore, we went to 10 factories and about 25 crew leaders. Somewhere toward the end of the investigation, we found that there were individuals who were holding themselves out as temporary help service firms also supplying work crews. But that's how we got to the 25.

ASSEMBLYWOMAN PREVITE: Do you have a sense that this is a tip of the iceberg? That if you were to say how much of this is being done in the state, that this would be a drop in the bucket? Is that the sense that you're getting from the inquiry of these 25?

MS. GAAL: My personal sense is that's correct. I know of at least in one scenario we came upon, which we did not investigate because it was being looked at by another agency involving construction crews being brought in the same way-- I have had a number of conversations with United States Department of Labor officials, and they tell me that this is happening all over the country. This is not just a phenomenon in New Jersey, but it is a significant problem. I would suspect that it's happening in a number of areas here in New Jersey.

ASSEMBLYWOMAN PREVITE: And if this were in a garment industry, you would call it a sweatshop?

MS. GAAL: That's exactly right. Now, I've looked at the garment industry, and it's exactly parallel to a sweatshop.

ASSEMBLYWOMAN PREVITE: So in addition to the peon wages, which you said was about \$5 an hour that these workers were doing, the people were not paying taxes, there was no unemployment insurance, really there was no record keeping of any kind or almost no record keeping from the workers themselves. I mean, there's no knowledge of what they actually are being paid.

MS. GAAL: That's correct. I spoke to a couple, and they said they were getting around \$4 an hour, but you have to remember that the crew leader usually charges them for transportation on a daily basis. In one

instance, I talked to someone who had to pay the crew leader to live in a house that the crew leader owns. The crew leader was being paid, say, the \$6 an hour, but from that they would deduct certain expenses. It's virtually impossible to know what the workers were getting.

ASSEMBLYWOMAN PREVITE: Now, make me see this, help me get a picture in my head. Did I understand you to say that there were union workers working side by side with sweatshop workers, if we would call them sweatshop workers if they were in another industry? Is that what I understood you to say?

MS. GAAL: That's what the United States Department of Labor was looking at. Yes.

ASSEMBLYWOMAN PREVITE: Did you see that?

MS. GAAL: By the time we got involved, the particular facility that they had been looking at, I think, was just about out of business.

MR. MORLEY: Correct me if I'm wrong, you know better than I, but I believe there were instances where we found these contract workers working side by side with individuals who were, in fact, employees of the plant.

MS. GAAL: That's correct.

ASSEMBLYWOMAN PREVITE: Then they were then doing the same thing but getting different wages.

MR. MORLEY: Doing the same thing, but doing it on a different basis. Whether those regular employees were members of unions was not an issue for us.

ASSEMBLYWOMAN PREVITE: Did you hear anything from union workers about people working side by side doing the same thing, getting a different amount of money?

MS. GAAL: That was a very limited issue, and that was what the United States Department of Labor was working on. We did not pursue that area. I can tell you that we did look at facilities where there were substantially different wages being paid to different workers depending upon how they came to be working at the facility. If they came by a crew leader, they were getting one wage; if they came in by a temporary help service firm, they were getting substantially more; and if they were a regular employee, they got even more, as I recall.

ASSEMBLYWOMAN PREVITE: Would you even attempt to make an estimate as to how many workers are doing this in this state?

MR. MORLEY: It's--

ASSEMBLYWOMAN PREVITE: I mean, would it be thousands, millions?

MS. GAAL: I couldn't do that, but I can tell you just in one example. We had one example where the crew leader had 3900 employees.

ASSEMBLYWOMAN PREVITE: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: Thank you, Assemblywoman.

Any other questions for the Executive Director or Counsel? (no response)

Can you continue your presence here for the afternoon proceedings?

MR. MORLEY: Sure.

MS. GAAL: Sure.

ASSEMBLYMAN GEIST: We are momentarily contemplating postponing part two of this afternoon's hearing schedule to enable a better hearing of part one. We're exploring the possibility of postponing the second portion on the implementation of the Carnival-Amusement Rides Safety Act, so that we can enable a better hearing of all of the witnesses on part one on your SCI report.

Your SCI report has attracted more attention than many expected, and the testimony has been enlightening, and appreciate your willingness to stay for the afternoon.

MR. MORLEY: Sure.

ASSEMBLYMAN O'TOOLE: One more question, Mr. Chair?

ASSEMBLYMAN GEIST: Yes, Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Just one question. I appreciate the expanded time for this very important topic.

To the chief counsel, you talk about supporting a Basic Pilot Program here in New Jersey which has been supported in California, New York, Texas, Illinois, and Florida. Do we have any idea what the price tag is for that program, number one? Number two, do you know is it a cost that the Federal government will absorb or a grant will underwrite?

MS. GAAL: I'm not certain about the price. I know it's a voluntary program. The temporary help service firms agreed to undertake the program, and I know it puts a terminal right at their location where if they get an individual, they can check on-line right away. I don't think-- I may be wrong. We can check further for you. I don't think it was a big cost factor.

ASSEMBLYMAN O'TOOLE: Any information you have, can you just forward to this Chair?

MS. GAAL: Sure.

ASSEMBLYMAN O'TOOLE: And I ask the Chair if you can forward it to the Committee members?

ASSEMBLYMAN GEIST: Done.

ASSEMBLYMAN O'TOOLE: Thank you.

ASSEMBLYMAN GEIST: Thank you, Assemblyman.

Thank you for your commitment to stay the course this afternoon.

For those of you in attendance for today's public hearings, there were two segments. The second segment to begin at 3:00 was to enable a hearing reviewing the efforts of the Department of Community Affairs to enforce the Carnival-Amusement Rides Safety Act. As the author of that Act, I said that we will continue legislative oversight on the implementation of that new law. That hearing on that topic will be continued to the next Labor Committee session. So for anyone in attendance on the implementation of the Carnival-Amusement Rides Safety Act, we welcome your personal presence at the next hearing.

We will continue now with the hearing on the SCI report. This afternoon the Executive Branch is well-represented with representatives from the State Department of Labor. On our witness list is the Assistant Commissioner, Leonard Katz, and Assistant Commissioner, JoAnn Hammill.

Welcome to this distinguished team.

Welcome back to our Committee, Assistant Commissioner Katz.

**ASSISTANT COMMISSIONER LEONARD KATZ:**

Thank you.

ASSEMBLYMAN GEIST: Good afternoon.

ASSISTANT COMMISSIONER KATZ: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: The SCI report is eye-opening. We look forward to your testimony about an action plan. Thanks.

ASSISTANT COMMISSIONER KATZ: Thank you.

I'm going to defer first to Assistant Commissioner Hammill.

ASSEMBLYMAN GEIST: Good afternoon.

**ASSISTANT COMMISSIONER JOANN HAMMILL:**

Good afternoon. I'm JoAnn Hammill, and I'm the Assistant Commissioner for Administration and Finance in the Department of Labor. One of the program areas in my directorate is the Division of Employer Accounts, formerly known as UIDI Financing. The Division is responsible for collecting employer and worker contribution payments for the Unemployment and Disability Trust Funds, as well as the employee wage data that's used in the determination of unemployment insurance benefit entitlement. The Division has a field staff of 105 who conduct audits and investigations to ensure employer compliance with the Unemployment Compensation and Temporary Disability Benefits Laws. Field-workers also supplement the efforts of our Central Office Collection staff in obtaining delinquent reports and payments.

During the course of the investigation of the contract labor, the Department of Labor worked cooperatively with the SCI in conducting this investigation. Division personnel provided SCI members with information on

specific contract labor employers and submitted proposals to the Commission that would enhance the effectiveness of the Department of Labor collection effort. The Division also requested and received evidence receipts from the SCI that were used as a basis for subsequent audits.

In 1997 and 1998, the Division participated in informational sessions for agricultural employers at Farm Bureau Preseason Labor Conferences throughout the state and addressed crew leaders, farmworker advocates, and growers regarding compliance issues and initiatives at the New Jersey Department of Labor's Crew Leader and Growers meetings in Hammonton. Division employees are also participating in the conferences scheduled for the current year.

The Division worked closely with the Department of Agriculture and the New Jersey Farm Bureau to notify stakeholders about the crew leader compliance issues and our planned enforcement actions both in the agricultural and the food processing industries. The Division sent written notices to all delinquent crew leaders that failure to make payment arrangements would result in the revocation of their licenses. All registered agricultural employers and food processors were informed that they could be held liable for unemployment and disability insurance payments if they engaged unlicensed crew leaders.

Since the release of the SCI report, the Division has audited 15 labor contractors based on the Commission's evidence receipts. Fourteen additional labor contractors were audited as a result of other leads. Of the 29 labor contractors audited, 18 were found in compliance. Audits of the

remaining 11 disclosed underreported contributions in the amount of \$297,000.

We have an investigator from one of the field offices in the southern region assigned full-time to the crew leader compliance efforts. From January 1998 to date, this individual has completed 90 investigative assignments and has collected \$167,000 in unemployment and disability insurance contributions.

The Collections Section in the Central Office tracks crew leader reporting and payment delinquencies and in 1998 entered judgments totaling in excess of \$1 million against unlicensed crew leaders or crew leaders with revoked licenses.

The Division of Employer Accounts and the Division of Workplace Standards have coordinated our compliance efforts and have also conducted joint investigations and audits of the crew leaders. This combined approach has resulted in the identification of \$600,000 in underreported unemployment and disability insurance liabilities. The Division of Employer Accounts has made recommendations to the Division of Workplace Standards regarding the suspension and revocation of licenses of crew leaders who have failed to pay unemployment and disability insurance.

Investigators have attended crew leader licensing hearings held by the Division of Workplace Standards to collect outstanding payments from labor contractors who will otherwise face revocation of their licenses.

The Department is in the process of developing a PC database of labor contractors that will be accessed and updated by the Employment Service, the Division of Employer Accounts, and the Division of Workplace

Standards. This project has not yet been completed due to the priority we've had to place on our year 2000 effort.

Although the Division of Employer Accounts pursues a special collection program for labor contractors, we believe that efforts to ensure compliance with the Unemployment and Temporary Disability laws would be strengthened by an expanded statutory authority comparable to that of the Division of Taxation. For this reason, the Department would ask your support for statutory amendments that would hold corporate officers liable, would provide for posting of a security bond, and would allow for the collection to proceed against employers or corporate officers who are no longer residents of this state.

I want to thank you for your attention and would be happy to answer any questions.

ASSEMBLYMAN GEIST: Thank you for your testimony.

ASSISTANT COMMISSIONER HAMMILL: Thank you.

ASSEMBLYMAN GEIST: Questions of Assistant Commissioner Hammill?

Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Thank you, Chairman Geist.

I certainly appreciate your coming here and am heartened to hear that the Department of Labor is moving in the right direction here. My question is pre-September 1997, before this report, what did the Department of Labor do, if anything, regarding these problems, or were you unaware of the nature of these problems and certainly the extent of the magnitude of these problems?

ASSISTANT COMMISSIONER HAMMILL: We have been aware, and this has been an ongoing effort in the Department of Labor to try to determine who these unregistered crew leaders are and to ensure the proper payment of unemployment disability benefits. But as in the report is stated when you read the report, if you had that opportunity, you can see that it's very, very difficult for us to ensure the compliance and enforcement. And as we place judgments, and so forth, they file for bankruptcies, and we have a lot of difficulty in enforcing it.

ASSEMBLYMAN O'TOOLE: Concerning your statement, you say since the release of the SCI report, the Division has audited 15 labor contractors. Well, prior to that time was there a program to audit on an annual basis or semiannual basis those labor contractors?

ASSISTANT COMMISSIONER HAMMILL: As I said, we've been ongoing auditing them.

ASSEMBLYMAN O'TOOLE: When you say that, what does that mean? Is that once a year, twice a year? Is there a program or is it just--

ASSISTANT COMMISSIONER HAMMILL: We have auditors assigned throughout the state, and they will be doing audits randomly throughout of crew leaders and other employers in this state. I have our Assistant Director, Bill Burns (phonetic spelling), who is over the auditors, maybe he can just enhance on that question if you don't mind.

ASSEMBLYMAN O'TOOLE: Okay. Before we get to that--

ASSISTANT COMMISSIONER HAMMILL: Okay.

ASSEMBLYMAN O'TOOLE: --I just have a couple more questions.

In concerning the welfare fraud and the insurance fraud and the payroll fraud and the scams, I understand some of your possible solutions in terms of giving you more power, like the Division of Taxation, I think it's a good idea. The question is, what else can we do to help you combat this terrible problem? Are the penalties not tough enough? Do you not have enough personnel? Do you need more resources?

ASSISTANT COMMISSIONER HAMMILL: I think at this point if we have the legislative support of having almost statutory power this would help us tremendously in enforcing it.

I don't know if Commissioner Katz wants to add something because he does the enforcement.

ASSISTANT COMMISSIONER KATZ: If I may add, Mr. Chairman, I think as Assistant Commissioner Hammill indicated and I think we can answer today, we're doing a very good job when it comes to the crew leaders. But as the SCI report and as the testimony just before you, and as I am sure you will hear after our testimony, there's something falling through the cracks here.

Our Crew Leader Registration Act enables us to take up-front action on crew leaders. Crew leaders, and you can call them in all different areas of employment, but crew leaders under the law, our Registration Act, only pertain to labor contract providers in the agriculture or food processing industries. And as the SCI report indicated and as we're finding out more frequently and as we were here before you, I think, last month, this is expanding into other industries -- light manufacturing, construction -- and we need authority to take some up-front action in that regard.

Since we register crew leaders before they can bring workers onto a farm or into a processing plant, and since a farmer or a processing plant is not to engage a crew leader unless registered with us, we have some up-front action we can take. And now since the SCI report, we've tightened up our Act internally, and we do not register a crew leader until we give him a UI tax number. It used to be after the fact. Since working with the SCI on this, that's an up-front requirement, and we educate the crew leaders continuously as to all of their tax obligations. But we don't have jurisdiction up front with the temporary help services or the contract labor providers, especially the ones coming in from out of state. A big influence in the food processing industry and light manufacturing in the South Jersey area you heard from coming in from Philadelphia. Contractors coming up from Texas with work crews from South America and Central America. We need some up-front action.

We've for the first time -- and it seems incredulous to me, but I've been in the bureaucracy 30 years, and it wasn't until our Commissioner -- and since this is being recorded, I'll put this plug in for him-- It wasn't until this Commissioner and this administration that we finally started working with the Division of Taxation hand in hand. We brought the Division of Taxation in with us on some of these investigations because they do have some of that up-front authority. They will levy equipment. They will levy monies, which again we have to do after the fact. So I think we're working a lot better together. I think we have a better handle on the crew leaders, but this is in other areas where we don't have up-front responsibility or authority.

ASSEMBLYMAN GEIST: Thank you.

Do you have any other questions for--

ASSEMBLYMAN O'TOOLE: No, Mr. Chairman.

ASSEMBLYMAN GEIST: Assistant Commissioner Katz, good afternoon.

ASSISTANT COMMISSIONER KATZ: Good afternoon.

ASSEMBLYMAN GEIST: Did you have testimony?

ASSISTANT COMMISSIONER KATZ: No, I was just rambling on as I usually do, but-- (laughter)

ASSEMBLYMAN GEIST: Do you have testimony in addition to your articulational response to Assemblyman O'Toole's question?

ASSISTANT COMMISSIONER KATZ: No, I don't.

ASSEMBLYMAN GEIST: First of all, I appreciate your thoughts on this. I have a question on the one SCI recommendation. This is a verbatim, "The regulation of 'crew leaders' and 'temporary help service firms,' now split between the Department of Labor and the Department of Law and Public Safety, be consolidated under the Department of Labor." Your thoughts?

ASSISTANT COMMISSIONER KATZ: I think it's a tremendous responsibility because again that's where I think a lot of oversight needs to be. I'm parochial and prejudiced, and I think we do a good job in everything we do. I'm sure the Attorney General's Office and the Law and Public Safety feel that they can handle their end of it. That's about what I have to say on that.

ASSEMBLYMAN GEIST: I know and you know this afternoon's proceedings are being recorded, but your insight is valuable. The Chair's initial impression is that you're focused on crew leaders. The SCI report suggests that

we give you the capability to focus on the temporary help service firms. That's an issue that the Committee will reflect upon. I appreciate your answer.

Assemblywoman Previte.

ASSEMBLYWOMAN PREVITE: Thank you, Mr. Chairman.

I get a horrible feeling that this is an eensey-weensey tip of the iceberg. Now did I understand you to say that your report about these crew leaders is dealing only with agriculture and food processing?

ASSISTANT COMMISSIONER KATZ: No. Our actions in the Department of Labor? No. What I meant to say is that I think we have a good handle on crew leaders that have to register with us. And again crew leaders only have to register with us. Contract labor providers as crew leaders only have to register with us when they work on farms or in food processing. We do have statutory responsibility to ensure that temporary help firms or labor contract providers working in any segment of business or industry in New Jersey pay wages, pay minimum wage, pay overtime or applicable -- make payroll deductions for UI tax. We absolutely have that responsibility everywhere.

Where the issue is difficult for us to administer with these contract labor providers, especially the ones from out of state, is that our action and our authorities too often have to take place after an investigation, after we determine back wages due, back taxes due, and then we have to go to court. Our authority under the wage and hour laws for failure to pay wages are disorderly person's offenses. Nevertheless, we do refer cases, and we have a number of cases that stem from the SCI report over to the Attorney Generals for prosecution, but they will be prosecuted for disorderly person's offenses.

ASSEMBLYMAN GEIST: If I could interject on that, do you think it's time to criminalize it?

ASSISTANT COMMISSIONER KATZ: In some respects, yes.

ASSEMBLYMAN GEIST: Assemblywoman.

ASSEMBLYWOMAN PREVITE: Well, Mr. Chairman, it's possible that I'm not directing my questions to the right experts. It's possible that I ought to be directing them to our guests who spoke from the SCI, and whoever is this proper person to answer my question-- I want to be a crew leader. Now, I would like you to tell me how I may get to be licensed as a crew leader.

ASSISTANT COMMISSIONER KATZ: Okay. When you say that you want to be a crew leader, to me that means you want to provide laborers to work on a farm and a food processing plant only.

ASSEMBLYWOMAN PREVITE: Well, no. I've decided that this iceberg is much beyond agriculture and food. We could have a similar thing by a different name--

ASSISTANT COMMISSIONER KATZ: Absolutely.

ASSEMBLYWOMAN PREVITE: --working in industry or working in a construction or--

ASSISTANT COMMISSIONER KATZ: So as--

ASSEMBLYWOMAN PREVITE: --so you've widened my horizons that what you talked about is not just happening under agriculture and food processing, that it may be happening in all kinds of other areas. Would that be a proper assessment?

ASSISTANT COMMISSIONER KATZ: Yes, but we--

ASSEMBLYWOMAN PREVITE: So it's sweatshops by a different name in all kinds of industries in this state. Would that be fair to say?

ASSISTANT COMMISSIONER KATZ: Again, to me-- I think I testified when we were here on sweatshops earlier. Sweatshop to me means whether it's in apparel, manufacturing or restaurants or in food processing, on the farm or construction-- Sweatshop to me means workers not being paid properly, working excessive hours, working in unsafe and hazardous conditions, and payroll taxes. To me, all of those are contingent. I would not say that in each and every one of these incidences we have sweatshop conditions. We may very well have workers working excessive hours, not being paid properly, and taxes not being paid. Whether there are unsafe conditions, unhealthful conditions in some of these instances, I wouldn't go that far without having been on the sites myself.

ASSEMBLYWOMAN PREVITE: Okay, now help me to see how I get to be one of these people so I get a sense of how New Jersey is going to license me to do this.

ASSISTANT COMMISSIONER KATZ: Other than being registered as a crew leader for farmwork -- providing laborers for farmwork -- or food processing, if you want to provide laborers for construction work, light manufacturing, it is my understanding you have to register with the Department of Law and Public Safety, Division of Consumer Affairs, as a temporary help--

ASSEMBLYWOMAN PREVITE: This is a third Department that we're getting in on this?

ASSISTANT COMMISSIONER KATZ: No, second. That's the other Department -- us, Labor, for crew leader, and Law and Public Safety, Division of Consumer Affairs for temporary help service.

ASSEMBLYWOMAN PREVITE: So I would go to that Department and say, "I'm Mary Previte. I wish to be a crew leader." Do they give me some sort--

ASSISTANT COMMISSIONER KATZ: Not a crew leader. You want to provide contract labor. You want to be a temporary help service provider.

ASSEMBLYWOMAN PREVITE: So then do they give me some kind of a certificate?

ASSISTANT COMMISSIONER KATZ: I'd be guessing, Assemblywoman.

ASSEMBLYMAN GEIST: Assemblywoman, we're going to continue these hearings, and the Division on Consumer Affairs is well aware of the Chair's interest in this. This morning I spoke with Director Herr through Governor's designated Attorney General to his Division, and the focus will continue. Assistant Commissioner Katz is here today from the Department of Labor.

ASSEMBLYWOMAN PREVITE: Okay.

ASSEMBLYMAN GEIST: We will bring in the rest of the executive branch to focus on this together so we can do right by New Jersey together. I'm impressed by the Department of Labor's implementation of an action program following the SCI report. I'm very interested in hearing from the Department of Law and Public Safety, Division of Consumer Affairs on

this. I have the same interest you do on taking this step by step. I agree with your initial impression about the tip of the iceberg. It sounds like they're focused well on their part of the iceberg.

ASSEMBLYWOMAN PREVITE: Now can I ask another question, Mr. Chairman?

ASSEMBLYMAN GEIST: Absolutely. I just want to assure you that we're going to bring in--

ASSEMBLYWOMAN PREVITE: That you're going to give me all that I need.

ASSEMBLYMAN GEIST: We're going to bring in others to respond to this Committee's interest in doing this in a comprehensive manner.

ASSEMBLYWOMAN PREVITE: Okay.

Once I got registered by the group that you just told me about, Consumer Affairs, now help me to see what your group does. I heard you speaking about, or the Assistant Commissioner speaking about, various training sessions that help me to know what my responsibilities are. Could you help me see now, like, how many times a year and exactly-- I'm a simple person, so I know you'll put it in really concrete terms for me. How many times a year are you going to tell me-- I have a hard time reading comprehensive books and things. How simple do you make it for me to know what I have to do?

ASSISTANT COMMISSIONER KATZ: Again, because we do such a good job in the Department of Labor over what we regulate, and we regulate crew leaders relative to registration-- I don't want to give you any impression that we don't regulate these temporary help services as far as

making sure workers that they provide are paid minimum wage, overtime wages, and payroll taxes are made. We do that on both areas, but as far as our educational outreach for the people we register, the crew leaders, before-- Right about now, we're getting ready to register them. We sit down with each and every one of them, mostly in Hammonton where they come to the Employment Services Office, and we sit down with them. We have, I think, it's about a 26-point list. We have bilingual people on our staff because many of them are from Central or South America and more and more Asian. We make sure that they know all the responsibilities they have under our jurisdiction before we will register them. We monitor them throughout the season.

We have a staff of 10 wage and hour inspectors dedicated strictly during the summer months to visit the farms and make sure that crew leaders are paying their workers properly. Under our Wage and Hour law, unlike the Unemployment Insurance law that requires the payroll taxes to be made, we will hold both the crew leader and the farmer or the food processing plant, or in the other areas where we don't have registration authority where we want wages paid, we will hold both the contract labor provider, the crew leader, and the entity that's taking advantage of that -- and I don't mean taking advantage in the negative sense -- that's availing themselves of that labor, we will hold them both jointly and separately responsible.

ASSEMBLYWOMAN PREVITE: Would you include in your instruction information about child labor standards in this state?

ASSISTANT COMMISSIONER KATZ: Absolutely. We have for years worked with the Department of Education to ensure that child labor

working on farms are issued working papers so that everyone knows what the issuance of those working papers, what the hours of work are, what the minimum wages are. We've done that to both accommodate the parents who want their children working with them when they are of legal age and to accommodate the agricultural industry that needs this help.

ASSEMBLYWOMAN PREVITE: And how would you find out about somebody who is being a pseudo, unregistered crew leader that's doing this without the benefit of the good things that you're doing?

ASSISTANT COMMISSIONER KATZ: By the advocacy groups that a number of the communities that are sadly enough taken advantage of and by the many legitimate businesses in New Jersey. Again, I don't want to steal anybody's thunder, but you'll hear later today of legitimate contract labor providers whose employees being paid minimum wage and overtime and whatever the requirements are and payroll taxes being made working side by side with the unscrupulous employers. And that's where we get our best leads, when we've been working with them to level that playing field for them.

ASSEMBLYMAN GEIST: Assemblywoman, we have a witness list--

ASSEMBLYWOMAN PREVITE: I know you're going to be--

ASSEMBLYMAN GEIST: --and I'm trying to be fair and focused here.

ASSEMBLYWOMAN PREVITE: I appreciate you immensely, Mr. Chairman, and I'm going to be quiet for your next person.

ASSEMBLYMAN GEIST: I'm so appreciative of your enthusiasm--

ASSEMBLYWOMAN PREVITE: I know you are, Mr. Chair.

ASSEMBLYMAN GEIST: --and I welcome all your questions all the time. I appreciate your consideration today. Thank you.

A quick question, one last one from me. The pilot concept that was enunciated by the SCI thought, where other states have implemented it-- We're always proud of being at the forefront. We're at the forefront of workforce investment. What's your reaction to the pilot concept?

ASSISTANT COMMISSIONER KATZ: It sounds good to me. We've always struggled to verify Social Security numbers. We're limited in-- It's news to me. I'm sorry I missed it when it was there in 1997 because we struggled to verify Social Security numbers in some of our areas. My understanding has always been that we are prohibited-- I know we are prohibited from asking workers for Social Security numbers to verify employment. We're not allowed to ask for documentation to verify that an employee is entitled to work in this country. We're prohibited by Federal law from asking for that. So any way we can get some information would be helpful for us.

ASSEMBLYMAN GEIST: Can you and the Department look into that particular implementation component and report back to this Committee before our next Labor Committee meeting this month if possible?

ASSISTANT COMMISSIONER KATZ: Yes, we will, Mr. Chairman. Yes.

ASSEMBLYMAN GEIST: Thank you.

Can you stay for a little while so we can have you learn from our private sector friends?

ASSISTANT COMMISSIONER KATZ: Absolutely. I wanted to stay and hear about carnival amusement rides safety because we used to do that very well, also.

ASSEMBLYMAN GEIST: Yes, you did. And I enjoyed working with you when we implemented the legislation, and then, of course, it was reorganized to another department. We want to make sure that they're doing the job as well as you were.

ASSISTANT COMMISSIONER KATZ: They are. They're doing a good job.

ASSEMBLYMAN GEIST: So we're looking forward to that hearing as well.

ASSISTANT COMMISSIONER KATZ: Okay.

ASSEMBLYMAN GEIST: Thank you for your presence.

ASSISTANT COMMISSIONER KATZ: Thank you.

ASSEMBLYMAN GEIST: Welcome to our Committee.

ASSISTANT COMMISSIONER HAMMILL: Thank you.

ASSEMBLYMAN GEIST: Today we have a private sector-public sector partnership in focus.

And today -- I want Assemblywoman Previte to know that the next witness is one of her constituents, and you know this constituent because he's successful in the public sector and private sector.

And to my colleagues, he's the Mayor. He's the Mayor of one of Camden County's finest communities, and that's attributable to his leadership. And he didn't ask me to give that rave review, but that comes from friendship and familiarity with one of Camden County's finest. He is the Mayor of

Voorhees, but today he is here as a leader in a private sector from Reliable Temporary Services, Incorporated.

We welcome Gary Finger, the honorable Mayor of Voorhees Township. Welcome.

**MAYOR GARY E. FINGER:** Thank you.

ASSEMBLYMAN GEIST: Today you have your private sector hat on, but you wear your public sector hat on well, and I wanted to tell my colleagues about our friend in government. Welcome to our Committee.

MAYOR FINGER: Thank you very much for having me. I wanted to thank all the members of the Labor Committee today for having these hearings on the SCI report The Making of an Underground Economy. And I would also like to publicly acknowledge Assemblyman George Geist's interest in getting to the bottom of matters in this particular area. It's been very important to us, and it's obviously very important to you.

As the Chairman said, my name is Gary Finger, and along with my partner, Phil Kembrel (phonetic spelling), we run Reliable Temporary Services, Incorporated. By stark contrast to other agencies that you may hear of today or you may know of yourselves, we're the small kids on the block. Prior to the start of our company in February in 1997, both my partner and myself were involved in manufacturing operations as plant managers with over 45 years combined experience. We're here today to attest to the accuracy of the SCI report and to implore you to consider giving the necessary tools to these Departments to put an end to this growing stigma within our industry.

We ask not for unfair competitive advantage, but rather just the contrary. Competition is the American way. It's apple pie. It's political

elections. If Reliable Temporary loses a bid to agencies that are larger than ourselves, but are legitimate, it only means we had better be sharper with our quotations. It means we better do a better selling job the next time we go in. When we lose a bid to an agency that has greatly undercut our bid due to the fact that they pay no unemployment taxes, no disability insurance, no Federal taxes, no workers' compensation, that's not my idea of a level playing field.

As a business, it's unjust and as a taxpayer, it's nauseating. If Reliable Temporary Services, Incorporated failed to make any of their tax payments, if we were late in any of our payments to the State of New Jersey, they would be on us in a heartbeat. They would threaten us with threats of our homes being taken away and everything else. That doesn't bother me. We comply with all the requirements of the State of New Jersey. That's the cost of doing business in this state, and that's fine with me. However, we think it's time to make that apply to everybody.

At this juncture, I think it's important to note that the temporary staffing industry is by far the fastest-growing industry in the State of New Jersey. The vast majority of the staffing industry that operates in the state are in absolute total compliance. We annually supply tens of thousands of jobs and millions of dollars to the State coffers. We provide the best opportunity for reducing the welfare rolls in the state and, thus, reducing the tax burden on the citizens of the state and, ultimately, putting more disposable income into the pockets of recipients and, therefore, back into the state. That's a good cash cycle. It makes good business sense, and it certainly makes for very, very good government.

We have on occasion been speaking with perspective companies, have told them about the ongoing State investigation and have suggested they protect themselves. The response that we've gotten back is, "The rates that were quoted are cheap," and, frankly, they don't really care. They don't care if the staffing companies are legal or illegal. Nobody seems to be checking. That's a great attitude. Frankly, the bottom line to them is the bottom line. This problem is not limited by a long shot to the seasonal workers and crew leaders. This is just the tip of the iceberg.

The audits that are being asked for that have been done-- It's very difficult I would think for auditors to keep up with companies that are constantly changing their names, and that happens all the time. We believe the solution lies in being proactive and not reactive. We don't necessarily need a lot of new legislation, but we do need to allow this report by the SCI to determine a course of action. We need to involve the investigators who work in this industry day in and day out to be given the authority to control the problem before it controls you.

The solution does lie in allowing all the employment agencies and client companies to become joint employers, joint liability. That's where it will clearly be understood. This is not an additional burden to a company. As a plant manager, I can certainly attest to that. But rather, this offers protection and allows them to keep their operation out of harm's way. Speaking quite frankly, you don't fix a leaking faucet by hoping it stops dripping. If left unattended, you're going to soon have a major reconstruction project on your hands.

Members of the Assembly Labor Committee, you have a leaking faucet that is costing the taxpayers of this state millions and millions in dollars in uncollected revenues, as well as sending a signal to businesses that the State doesn't enforce its own laws. Allow the people who are intimately involved in this report to finish the job they've begun, give them the tools that they need to fix this leaking faucet so that the taxpayers don't have a major reconstruction job on their hands.

Thank you again for your genuine interest today. I have a more indepth copy of my statement that I left with everyone. If anybody has any questions, I'm certainly available.

ASSEMBLYMAN GEIST: Thank you for your testimony. We will fix the faucet but never be referred to as plumbers. (laughter) We will strive to do that working with you in the private sector, and we really appreciate your advocacy.

The members of this Committee should know that Mayor Finger reached out to his Senator, Senator Adler, and to me, as a local businessman. Senator Adler, obviously, deferred with emphasis on Labor Committee's capability to focus with the Department of Labor. This is a team endeavor.

We welcome your presence today.

Do any of my colleagues have any questions for Gary Finger? (no response)

Mary, I know what you said, but he's one of your constituents. You're welcome to--

ASSEMBLYWOMAN PREVITE: You know I would not challenge the Mayor, Mr. Chairman.

ASSEMBLYMAN GEIST: He's an excellent witness.

Thank you, Gary.

MAYOR FINGER: Thank you very much.

ASSEMBLYMAN GEIST: You're welcome to stay.

I'm going to ask the Vice-Chair to oversee for a moment so I can address a question today on the witness list.

Going through the list of members of this Committee prepared by Office of Legislative Services is a representative from ACCU Staffing Services, Alex Erlam.

Welcome. Come on up.

Vice-Chair LeFevre. Thank you.

ASSEMBLYMAN LeFEVRE: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: Be right back.

ASSEMBLYMAN LeFEVRE: Alex, you have the microphone.

**N. ALEXANDER ERLAM, ESQ.:** Good afternoon. Good afternoon, Mr. Chairman, Vice-Chairman, and members of this Committee.

My name is Alex Erlam. I'm General Counsel and Vice-President of ACCU Staffing Services, a large staffing service based in Cherry Hill, New Jersey. I'm a member of the New Jersey State Bar Association and have particular expertise on today's topic, employment law.

By brief way of background, ACCU personnel has nine offices throughout South Jersey and Philadelphia. We have employed in excess of 12,000 persons annually. ACCU was started back in 1979 by Doris Damm, a pioneer in the staffing business, together with her husband and three

children. ACCU has expanded to be one of the region's most premiere staffing service firms with a fine reputation.

ACCU has been certified by the New Jersey Department of Commerce and Economic Development as a Woman Business Enterprise and is duly licensed by the New Jersey Department of Law and Public Safety Division of Consumer Affairs as an employment agency. It is also a proud and voluntary participant in the INS's Employer Identification Pilot Program, which I run. For your edification, the Pilot Program allows us to verify the work authorization of individuals who apply at our company. We are the only company, I believe, in the region to have the project in place.

ACCU is part of an industry which is growing by leaps and bounds. Today's economy with its tight labor market, changing worker attitudes, and expanding role of the staffing service has allowed the growth of our industry to unprecedented levels. According to the National Association of Temporary Services, in 1997 alone receipts grew about 15.4 percent to a \$50 billion industry. There are millions of temporary employees working nationwide. Forty percent of our employees become full-time employees of our clients.

Unfortunately, I'm not here to discuss the virtues of the staffing business. The impact of the industry and our company in particular to New Jersey's economy is very clear. In the last five years alone, ACCU has placed over 30,000 New Jerseyans to work. The excitement of our company's growth and the industry's prominence, however, has been tempered by segments of our industry which are operating "staffing companies" outside the confines of Federal and State law.

On behalf of ACCU and its sister company, Corporate Plant Staffing, I have volunteered as a witness in these proceedings to impress upon this honorable Committee ACCU's full support of the Commission of Investigation's findings in the contract labor investigation report. It is important to note before I proceed any further that ACCU was subpoenaed in the investigation and was thoroughly investigated by the Commission prior to the issuance of its report. The Commission has found no wrongdoing on behalf of our company, and in fact, investigators have told us that we are a model citizen as far as temporary services are concerned.

In its 20 years in business, ACCU has undergone many changes and has met many challenges, challenges which many businesses routinely face meeting payrolls, overheads, finding working capital, etc., but never in its years of business has ACCU been threatened with its solvency and existence in South Jersey's marketplace than by the issues brought about in this report. The report's findings are extremely disturbing to our company and other legitimate staffing companies in the marketplace. By legitimate, I mean that we operate within the letter of the law. We are registered with the Division of Consumer Affairs. We withhold employee taxes. We pay all taxes to the appropriate authorities. We pay employees minimum wages or more, we pay overtime when required, we maintain and provide workers' compensation benefits, and we pay into unemployment funds. In general, we operate our business legally and ethically.

The findings of the Commission bring to light something that we at ACCU have known for quite some time. Unfortunately, our cries for help have gone unheard until today. As our reputable competitor, Reliable

Temporary Services, has testified, we in the staffing industry welcome healthy, strong competition, whether it be the national level or the local level. After all, this is what capitalism is all about. In the end, you all gain and we gain from the impact of employing New Jerseyans.

But members of the Committee, please make no mistake about it, allowing the practices which are clearly enunciated in this report to continue will unfairly pose a problem to all of us. This is not fair competition. This is not capitalism at its best. Instead, unscrupulous, irreputable operators of fly-by-night staffing services have found a friend in New Jersey. They have found that they can get away with paying their personnel in lump sums at the end of each working day in cash. They can get away with not supplying payroll forms to their workers, not withholding State and Federal income taxes, substantially understating Federal employment tax liabilities. They can get away with pocketing taxes and failing to report these illicit profits as income for their own personal tax returns. They can get away with identifying workers in payroll records with false names and bogus Social Security numbers and few checks are made to confirm the identities of these workers. They freely know and allow their workers to double-dip for State services by receiving some form of public assistance while they are working, and they can get away with prosecution because they are difficult to track, as we've heard today.

So how can a legitimate staffing company of any size compete with these unlawful practices? It is difficult to sell to a client this notion that we, as a legitimate service, will charge, let's say, 8.50 an hour for our services for employee wages and then pay the employee 6.50 in return. That's a standard transaction. However, they come back to us that another staffing company is

only charging them \$7.00 an hour for the same type work for the employees to do. It doesn't take an accountant to realize that the service that charges the client \$7.00 an hour for service of its employees must be paying employees less than minimum wage or simply underreporting income to avoid liability. Whatever the case is, it is impossible for any legitimate agency to charge these low rates to clients and at the same time meet all legal obligations in the course of its business.

Unfortunately, the problem is running rampant and the users of these corrupt staffing companies are turning a deaf ear. After all, consumers of these services are showing high profits because their labor costs are cheap. No matter what warnings we try to provide the users of these agencies, they know that they will not be audited or prosecuted for using agencies which employ these illegal tactics.

What does this all mean to ACCU and other lawful staffing companies? It's very simple. We will continue to see our business erode, or for the smaller players, they may actually be put out of business. In 1998 alone, we estimate that our company lost more than \$2 million in revenue as a direct result of these unscrupulous staffing services which participate in the illicit tactics which have surfaced in the Commission's report. We must not forget that if we estimate millions in losses for our company, imagine what the State is losing in tax revenue. It is appalling that good, honest operators are being penalized by this form of unfair competition.

We again applaud the efforts of the Commission of Investigation in its diligent effort to uncover this underground economy. We take no offense in the Commission's findings. Frankly, the only offensive part of this

whole report is that it was produced in September of 1997. Here it is 1999 and the problem has only gotten worse. More and more of these agencies are cropping up in our area. More and more South Jersey companies are contracting with these agencies. There are numerous companies in the region which are notorious for hiring this type of labor.

I personally have witnessed children, child labor, at some of these companies that are being brought in by these unscrupulous labor providers. They are easy to find, and more importantly, the Federal and State Departments of Labor are aware of the problem. But as frustrated as we are as legitimate operators, so are the special agents of the Department of Labor, the INS, and the IRS who know of the problem but have very legal basis to do anything about it.

So in closing, I implore you to take a very serious look at ending this form of corruption and competition. We're not looking for toothless regulations which will merely burden our industry. Instead, we hope that the Committee generates a bill that provides liability to users of these unfair competitors, perhaps through effective coemployment liability and fines as we've discussed today. Make the illegal tactics of these agencies criminal acts with real punishment for both the users and the suppliers and heavily fine these agencies for their current practices, including back pay of all lost revenue.

Thank you for your support and investigation of this problem. Once again, as a major employer in South Jersey, we are looking to you for some relief. Without effective regulation and enforcement practices, our company will suffer continued decrease in sales, and the State will continue to miss out on millions of dollars in revenue, a fact which the general consumer

may not yet be aware of. In addition, hundreds of people will continue to work for these illicit staffing services and not get any benefits which are the foundation of the American workforce. Such benefits as unemployment insurance, workers' compensation benefits, Social Security retirement, and disability insurance.

Thank you for your attention.

ASSEMBLYMAN GEIST: Thank you for your testimony.

As a South Jersey business leader, welcome to this Committee.

MR. ERLAM: Thank you.

ASSEMBLYMAN GEIST: We say in South Jersey, "You-all come back now, you hear." (laughter) You're welcome to come back to this Committee as we step-by-step work on this initiative. I heard of you. I now know you. You're very welcome to this Committee.

Do any of my colleagues have any questions for Alex?

ASSEMBLYMAN O'TOOLE: Excellent comments, really appreciate your comments.

MR. ERLAM: Thank you for the opportunity. We appreciate it.

ASSEMBLYMAN GEIST: I meant that truly, please return.

MR. ERLAM: We will return.

ASSEMBLYWOMAN PREVITE: Mr. Chairman, I really do have just one -- such a little question.

ASSEMBLYMAN GEIST: Assemblywoman, I knew you wouldn't disappoint me with your enthusiasm, so please proceed, Assemblywoman. Thank you, Mary.

ASSEMBLYWOMAN PREVITE: Would you tell me what you do when you suspect that a competitor is doing this that you've just described?

MR. ERLAM: That's a very good question. There's several things we do as a company. We try to inform the client when possible, not under the guise of, but we really do care for the client's well-being, and we say to the client, "You have a problem under your wings here. You should look into this. People are being paid at the end of the day by cash. I don't think the wages are being reported. They're being paid very little. They're not being paid overtime, etc." Some of these employees have come to us. We are working side by side with some of these crew leaders, and their employees have come to us and said, "Hey, what can I do? How can I better myself?" And there's nothing that we can do. But we have tried to inform the client, but that's been of no avail.

We've tried to have gone to the Department of Labor, both New Jersey and Federal, and they've done what they can to investigate the matter, but these are very slippery characters we're talking about, very easy for them to hide all of this, change names overnight -- literally overnight -- and become someone else. I hope that answers your question.

ASSEMBLYWOMAN PREVITE: Yes, but it makes me sad.

MR. ERLAM: It makes us very sad, not only for the employee, but for the legitimate operators of staffing services out there that are being hurt very much by this, such as Reliable Temporary and ourselves. We're probably one of the largest in the state, employing over 12,000, 13,000 employees annually, and it is hurting us. I can only imagine what it's doing to the smaller operator.

ASSEMBLYMAN GEIST: You might be sad. I'm going to make you glad. We're going to have a South Jersey hearing on this topic, a nonvoting session that will be welcoming all of the members to this Committee. We'll start in the south, and we'll have one in the north, and we'll do this the right way and reach out to as many as possible. You can come back to our Committee when we visit your neighborhood, and we're going to work on this together.

So I'll make you glad, and we'll be in our neighborhood, Assemblywoman.

Thank you for your testimony.

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

ASSEMBLYMAN GEIST: Of course, that neighborhood includes that of the Vice-Chair, Assemblyman LeFevre, so we have a presence in South Jersey.

Today's witness list has some add-ons. If there's any of those of you in attendance who desire to testify today, please let Gregory Williams of the Office of Legislative Services know so that the Chair will know that you desire to make a presentation this afternoon.

Next on our witness list, from Home Health Services and Staffing Association, we welcome to our Committee today Jean Alan Bestafka.

**JEAN ALAN BESTAFKA:** Correct, thank you.

ASSEMBLYMAN GEIST: Hi. There you are right in the front row. Welcome to our Committee.

MS. BESTAFKA: Hi. Thank you.

ASSEMBLYMAN GEIST: Good afternoon.

MS. BESTAFKA: So glad you did such a good name -- a good job on my name, Assemblyman Geist.

ASSEMBLYMAN GEIST: Thank you. Thank you.

MS. BESTAFKA: Thank you for inviting me. I'm not going to reiterate what everybody else has said. I will hit the highlights of my presentation.

ASSEMBLYMAN GEIST: Great.

MS. BESTAFKA: I represent more than 200 legitimate agencies licensed by the Division of Consumer Affairs. I want to talk specifically about a specific group of licensees under the Temporary Licensure Act, which is temporary health-care service firms, and the problems that are egregious and that are occurring with independent contractors and underground employees that exists in the home care industry and then respond to the Commission's report.

The health-care service firm is a specific license under NJAC 13:45B 14-15. It was adopted in 1994 "to establish standards to target and identify evils in the placement and referral of health-care practitioners and to provide for improved safety of those who must utilize their services," and at the same time provide less regulation of business-to-business relationships, temporary help service firms, and consulting firms. Those two things did not work out too well together.

Because of the changes that were required in the registration of consulting firms and the ability of employment agencies to place health-care personnel, several suspect scenarios have evolved. A firm opens a business placing a companion, a sitter, an aide in a frail, elderly person's home. If you

think there was a tip of an iceberg before, there are 58,000 certified home health aides in this state. I will guess easily there are double that many being placed by firms like this. They're put in that person's home for a weekly or a daily fee. The client may or may not be told they're possibly liable for taxes and insurances, and it may be hidden in a small print in a contract, or the person winks and says, "Nobody's ever going to check." And I'll tell you that's true, nobody checks, and for good reasons.

The client has two options. They pay the person directly and then pay the agency a fee at an outrageous rate. If they have a live-in in their house and they pay the live-in \$85 a day, in many instances, they're paying this consulting firm or placement firm \$40 a day for nothing. Because of the employment agency regulations, when you apply for an employment agency license, you can submit on your license a daily fee. I don't think that's appropriate if you've put the person in, and I'll tell you how it gets done. Okay. Then the firm denies that they have any responsibility for taxes and insurances and provides no supervision or training for the person who's in that frail, elderly person's home. All they do is tell them when to come and go. Okay. So therefore, "Well, I don't supervise this person. I tell them when to come and go." These care providers are untrained, with minimal English language skills, and maybe in many instances an illegal alien.

This is further confused by the fact that these caregivers perform many or all of the same tasks that a trained, certified home health aide is trained and monitored to do and that home health aide receives nursing supervision and the patient receives nursing assessment and nursing follow-up. Some of the things that they do are administer medications, do tube feedings,

irrigate wounds, with no training at all. This is driven by HMO constraints and the squeeze on reimbursement and many elderly persons' insistence on the lowest possible price. Take a look at the murder in North Jersey last week.

Many of these firms are in somebody's house or they're just a phone number. As the report stated, these people are also very hard to track. More serious, though, are the large nationwide firms who operate in this manner. These firms avoid all of the protective regulations imposed on health-care service firms that protect both the client and the person in the house.

One such large firm has been in litigation with the Department of Labor for almost nine years. Ask Bill Burns how many years I've been talking to him about it. And they have many HMO contracts, so it's not like the HMOs don't know about this. What's happened is because of that a lot of people say, "Well, if he can do it, I can do it." And there are people out there and groups willing to teach you how to do it and get through loopholes in the law. Then that person in the home doesn't have any protection for unemployment, under disability, under Medicare. Aren't you glad we have indigent care in this state because what's going to happen to all these people that will have those benefits when they get older?

As someone else mentioned, they work off the books. They can collect AFDC or welfare. While regulations exist regarding health-care service firms, these firms aren't. They can have other lines of business that appear legitimate, but then you don't know about their side business. One of the biggest problems is when we stopped licensing consulting firms and just registered them. They all became consultants. More firms operate really just

to do this as a sole business line, and we have been very hard pressed to have appropriate legislation in place to take care of this. It's necessary to beef up the regulations with the Department of Labor and allow the Division of Consumer Affairs to relook at their regulations regarding employment firms, temporary help service firms, and consulting firms in this state.

I think it's true that the Department of Labor really doesn't want to go after little old ladies for taxes. I think it's more important that we go after the firms. I support the recognition of joint employer status that says, if the employee or client doesn't pay taxes, then the firm, agent, or the individual, because sometimes it is an individual taking a cut, is going to be responsible and held liable. I think we also have to beef up the law that says you can go after the principals even though they live in another state because I know from the Department of Labor that at this time that's very hard to do.

We need to continue dialogue between the Department of Labor and the Division of Consumer Affairs to work cooperatively. The one thing is I do think that we need to stay within the Division of Consumer Affairs because of all the other businesses that Consumer Affairs regulates. They do much more than contract labor and temporary help service firms. They do employment agencies, consulting firms, health-care service firms. And in the arena of health-care service firms, we're specifically in the Division of Consumer Affairs at the Department because also the Board of Nursing is there that regulates nursing practice and regulates the supervision of those aides. And the Board of Nursing also regulates the certification of those aides. So we wanted a direct line in our licensure, and that's what being in Consumer Affairs affords us.

I do thank you all for working on this issue, and I really do hope if there's any way I can help in the future to get tougher regulations passed to end this--

Thank you.

ASSEMBLYMAN GEIST: Thank you for your testimony, Jean. Any questions for this witness, the Executive Director? (no response)

As they say, "You-all come back now." You're very welcome to.

MS. BESTAFKA: Thank you.

ASSEMBLYMAN GEIST: This is going to be a continuing course. Thanks for your debut appearance before our Committee.

MS. BESTAFKA: Thank you.

ASSEMBLYMAN GEIST: Thank you.

I can't say debut appearance for the next witness. I think he has perfect attendance. New Jersey Business and Industry Association is always very well represented by Jeffrey Stoller.

Good afternoon.

**J E F F S T O L L E R:** Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: How's that for an introduction?

MR. STOLLER: Wonderful.

ASSEMBLYMAN GEIST: Good afternoon.

MR. STOLLER: Good afternoon to you. It's a pleasure to be in on the conversation. We've learned a lot of information just being here in the audience today.

I believe staff has distributed a statement we put together when we heard of the announcement of today's hearing. What I did was try to reach out to some of our members in the food processing area, people who have some experience working with the various contract labor groups and who would obviously be the ones most clearly affected with this. And I just thought I'd share some of the feedback that I got from those companies in regard to the report. And, in particular, we passed on the seven recommendations from the SCI report and asked people, "Is this something that you can give us an idea of how you would react if this were moved and put into law?"

Largely, the reaction has been very positive. Clearly, no one is interested in doing business knowingly, deliberately with people who are violating these basic workplace laws. Certainly the recommendations in the list of seven that are focused on improving the regulatory structure to ensure that the policing function goes more effectively than in the past that fills in some of those gaps in enforcement that everyone was describing earlier in the hearing -- clear support for those. The same with the various recommendations regarding comprehensive audits, the recommendations regarding better coordination between the Department of Labor and Treasury. All very strong, unambiguous support there.

But what there are on a few of them are some questions, some issues we hope the Committee and the SCI and the others will keep in mind as they go to the next step in shaping legislation that would come out of these recommendations. One major concern was how an employer who is trying to deal in good faith out there in the market but does from time to time or maybe

even regularly work with some of these contract labor groups -- how is the issue of liability going to be resolved under this new system?

For example, under Recommendation No. 1, there was a suggestion that all of the contracts that are entered into are written contracts where the parties sit down and, I think the words they use in the recommendation are, detail their respective responsibilities. The question that came back said, "Well, okay, fine. If we do that for an employer, we sit down, have a written contract with this provider, what if under that contract we say very clearly they are responsible for the UI, for the disability, for the payroll taxes -- that becomes part of our written contract -- does the employer under this new legislation that you envision still retain ultimate responsibility?" And the question was, "Well, if you do, first of all, what's the point of having a written contract then?" Does that make the written contract meaningless if -- in the case of a default where the other party, the contractor -- the provider I should say, simply does not follow through? We've made the payment to this group. We the employer have paid money. They default under this system, are they still holding us responsible?

If the answer is yes, in that case again the second question besides, well, then, why have a written contract if it's always going to be the employer's responsibility -- the question became in just a general sense, what kind of incentive is there then for the bad actors? Is this going to be the illegitimate provider liberation act inadvertently? If we simply come in and say, "Hey, you've been doing everything the wrong way, and guess what, under this new legislation, the employer that you've talked into doing business with you is going to be sent the check--" Again we raise the issue. We don't have the

answer, but it's something that is on the minds of people who would in good faith enter into these agreements, as we heard before.

The 25 groups that were looked at, and I forget what the figure was, 18 or so came back they were legit. How under this system is the employer that wishes to operate with these in good faith know that they're working with an ACCU Temp or a reputable group as opposed to Super Temps across the street that may or may not have that record? What is the information they're going to have available to them to make that judgment? Because, believe me, they're going to have a lot of second thoughts about legitimate or illegitimate temp groups or any of these groups if the word goes out, "Look, you can sign a contract with these folks. You can do anything, and the bottom line under the new law will be you pay anyway." That's a major concern.

The same kind of concern, I think, is underlying the reaction to Recommendation No. 5, which as we read it targets the contract laborers. And this is the suggestions that they post security, that there are to be steps taken -- if this is a group that's based out of state, there is a way of compensating people if they don't follow through on their obligations. There's talk about garnishing the wages of the officers involved, and so forth. Again the people who read this over the past week or so felt that made sense if, in fact, your target is the provider. If this is, in fact, a provider that has pledged to provide these services to pay this money and they failed to, their concern was-- In reading through the language, at least as it appears in the SCI recommendations, is -- it uses terms like employer, officer. Do you mean the employer being the provider or the officer of the provider? Is that the intent?

Because again Recommendation No. 5 makes sense to them if that is the focus, but it raises other issues if, in fact, you're going to say these are things we're going to ask of both sides of that partnership. Again it's an issue that ought to be clarified one way or the other.

And finally, the Recommendation No. 7, there was interest in the suggestion about the Pilot Program, the employee verification program. The sentiment seemed to be with some of our companies, again the ones who would be on the employer end of these kinds of arrangements, wondering, could we wait this time? And we've got five states out there. Is it possible to see what the bugs in those pilot programs are before New Jersey signs up? Maybe that information is already available. I assume these are the kinds of questions the Committee will be asking as you move toward legislation.

But they raised that question because again they would like to know based on the experience in California, Florida, whatever, have they come to grips with some of these liability-assignment issues. For example, they said, "What if we get bad information from the database?" I'm presented with a list of people who we're considering to bring in, who we're trying to verify their identity. The word comes back from INS or Social Security Administration that these two individuals you can't hire because they aren't -- their information is not matching up. And you go to them and you say, "We can't hire you. We will not hire you. We have information from the government that you are illegal." If that information is wrong, and that could happen, what is the liability for that employer? Because now I have turned Greg Williams away. I have told him, "I will not hire you because I am informed that you are

illegal, and I cannot accept you.” I have some liability there unless it’s clearly spelled out.

The reason this kind of scenario is brought home to me is I’m spending part of this week in conversation with the Internal Revenue Service and the Social Security Administration because this week, when we went to file our taxes for the year, income taxes last year, electronically, I was informed that they don’t believe what I say, and have said for many years, is my birthday. And I have filed for years and years with the Internal Revenue Service, and there’s never been any question with Social Security Administration or the Internal Revenue Service what my birthday is. We are being told-- And I have to go back and make some phone calls now to convince the Social Security Administration that my birthday is the day I say it is. Now, that’s just an example. If it can happen under those kind of circumstances where they have a track record of me of 20 years-- They have not ever complained as they have collected taxes from me for 20 years.

We just raised the question -- these things do happen -- what is going to happen under this system? And if a glitch or something causes me to start rejecting otherwise qualified candidates, legitimate candidates, nonillegal candidates for employment, what’s the liability if I’m using whether it’s the base pilot program or any other employee verification system? If the government makes an error, who has the liability? It’s a question, and it could turn out to be a costly question if we don’t have the answer.

So again, in conclusion, the sentiment is you’ve got a real problem here. Certainly, BIA and the other business community members are going to be eager in participating. We are the people who pay the taxes.

Overwhelmingly, we are the people that want to see the system upheld, but we do want to be part of this conversation as you move ahead, Mr. Chairman. Because again there are some issues that this raises, and we just really feel that we should come to grip with them as we craft the legislation and not sort of find out by default, or as I say, plunge into a pilot program where these same issues may still be unresolved.

ASSEMBLYMAN GEIST: Excellent points, Jeff. I believe the Assistant Commissioner was hearing your comments about the implementation of the pilot program.

So as you're reporting back to the Committee, if you could have some consideration for some of those concerns already expressed by the business community.

Any questions to Jeff Stoller, Vice President of the New Jersey Business and Industry Association?

ASSEMBLYMAN O'TOOLE: Just the obvious? What his birthday date is? (laughter)

MR. STOLLER: It's changing by the minute. They keep rolling it back.

ASSEMBLYMAN GEIST: It is recorded?

MR. STOLLER: It is recorded. October 27, 1956.

ASSEMBLYWOMAN PREVITE: Oh, he is so young. (laughter)

MR. STOLLER: I am so young, but where does that hair go? (laughter)

ASSEMBLYMAN GEIST: Assemblywoman Previte, do you have a question?

ASSEMBLYWOMAN PREVITE: I do.

Mr. Stoller, several of our experts today that are testifying have suggested some sort of legislation that has more teeth in it, or as a response, does your set of businesses and industries have something to add to that as to what would be the form that would help to address these kinds of abuses?

MR. STOLLER: Oh, sure. Well, again, I assume that as this process goes forward you and the other Committee members know how to reach us here, and we'd be glad to take your questions or your proposals and relay them through the Human Resources Committee, which advises me, which are made up of HR people. As I said, I tried to in the short time that I had reach out to people in the industries in South Jersey who are facing these real issues. This was not just sort of a theoretical exercise that we threw out to any business. Obviously, the scope of what the Committee's considering has been raised this afternoon. We were looking at it in the context of agriculture and food processing, but certainly in terms of this immediate legislation, we'll be glad to reach out to our companies and get back to you. I really wouldn't want to second guess what their concerns are beyond the ones they've already raised here. But certainly if you have new structures, new proposals--

All I can tell you is the general immediate feedback was that -- in terms of the SCI's call for more coordinated, uniform, unitary system of enforcement, that met with immediate, positive response, that they said, "Yes, that would make our lives easier." It certainly makes sense if there are people outside the scope of the coverage which seems to be the clear message of the report. That was news to some. That was not news to others, but they all

seem to support doing something now. We'll have to look at the specifics and be glad to work with you on that.

ASSEMBLYMAN GEIST: Thank you, Jeff.

MR. STOLLER: Thank you very much.

ASSEMBLYMAN GEIST: Thank you.

Are there any others who desire to testify this afternoon? I emphasize this afternoon. Comments? (no response)

First of all, to all of those of you in attendance, thank you for your presence. I extended an invitation to you to continue your focus on this issue as you express your interest in this issue. All of the members of this Committee welcome your insight on this issue.

To the SCI, you have a standing invitation to these meetings. It's the Labor Committee's meeting, you have a standing invitation. We will continue to focus on this.

I would like some input from the colleagues as to priorities. The Chair has already announced an interest and focus on early implementation on the Workforce Investment Act. Last week I met with the Commissioner on this. The Commission is meeting on the 22nd, immediately following that a meeting with the Commissioner again. New Jersey will be an early implementor on the Workforce Investment Act, and the legislation will come through this Committee. And the members will be welcome to be sponsors on it as we do New Jersey's Workforce Investment Act.

The topic of amusement ride safety was one that this Committee crafted the legislation, and it's now law. Before we go into the season, I want to hear more. I understand regulations are being promulgated on the

implementation of the legislation. I do want to revisit that issue at the next hearing.

In terms of this, I do want to have some more hearings on it. My plans are to work with the members, to have some regional meetings on this issue where we bring private sector, public sector, and government together. Today's testimony should also incorporate a written report from the AFL-CIO that was issued.

There's been more interest in the SCI report than the Chair envisioned, candidly. The timetable today reflected that. The personal interest has been impressive. To those of you who engaged in this issue, please stay engaged so we can do this the right way.

This Committee will have another meeting this month. This Committee will meet again on Thursday, the 25th. The regular grouping session of this Committee will lead to another Committee session. The Chair is open for some ideas on bills. The Chair is open for ideas at any time. Today we will adjourn this session with a commitment that we will continue.

To those who made their debuts, please come back.

To the SCI, the Chair really appreciates your personal focus, your presence, your involvement, your report. We are going to take an action plan. This will not be a SCI report that sits on the shelf, not with this Chairman, not with this Committee, and we really appreciate your involvement.

Seeing no other matters, is there a motion to adjourn?

ASSEMBLYMAN O'TOOLE: Motion to adjourn.

ASSEMBLYMAN GEIST: Second?

ASSEMBLYWOMAN PREVITE: Second.

ASSEMBLYMAN GEIST: All in favor? (affirmative response from all) Done.

Thank you, ladies and gentlemen.

**(HEARING CONCLUDED)**