
Committee Meeting

of

ASSEMBLY LABOR COMMITTEE

ASSEMBLY BILL No. 1556

(Includes custom fabrication work under the Prevailing Wage Act)

ASSEMBLY BILL No. 1926

(Concerns public works contracts and project agreements with labor organizations)

ASSEMBLY BILL No. 1929

(Concerns compensation for care and treatment of public safety workers exposed to communicable diseases)

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

DATE: March 11, 2002
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Arline M. Friscia, Chairwoman
Assemblyman Paul Sarlo, Vice-Chair
Assemblyman Neil M. Cohen
Assemblyman Joseph V. Egan
Assemblyman Robert J. Smith
Assemblyman Guy R. Gregg
Assemblyman George F. Geist



ALSO PRESENT:

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

Victoria Bostic
*Assembly Majority
Committee Aide*

Victoria R. Brogan
*Assembly Republican
Committee Aide*

Meeting Recorded and Transcribed by
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ASSEMBLYWOMAN ARLINE M. FRISCIA (Chairwoman):

Good morning, everyone.

Before we begin, I would like everyone to know that we are holding A-1556, the custom fabrication. I knew that wouldn't clear the room, but -- (laughter)

The first bill we'll hear today is A-1929.

Greg, would you please read the summary.

MR. WILLIAMS (Committee Aide): Assembly Bill 1929 provides that if a public safety worker is exposed to the blood or other bodily fluids of another individual in the course of employment or is otherwise subjected by the other individual to potential exposure to a communicable disease, all care and treatment of the worker, including testing, diagnosis, surveillance, and other services needed to ascertain whether the worker contracted any communicable disease, and all time during which the worker is unable to work while receiving the care and treatment shall be compensable under Worker's Compensation, even if, after the care or treatment, it is ascertained that the worker did not contract a communicable disease. If it is ascertained that the worker has contracted a communicable disease, there shall be a rebuttable presumption that any injury or death caused by the disease is compensable under Worker's Compensation.

ASSEMBLYWOMAN FRISCIA: Assemblyman Egan.

ASSEMBLYMAN EGAN: Thank you.

Madam Chairlady, fellow members, thank you for considering this bill today. This bill, as the Assembly reflects, deals with compensation for those who come in contact or assume to have come in contact with a

communicable disease. It covers public safety workers, and the public safety worker explanation is broad. It deals with nurses, doctors and anyone who, on a regular basis, comes in contact with working men and women who might have this disease.

There were some concerns about what a communicable disease is, but I think the definition is pretty clear in the analysis. And I wish the Committee would consider this bill today.

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you, Assemblyman.

We have some people who wish to testify today. I'd like to call on Bob Yackel from the Professional Firefighters. Is Bob here?

ROBERT YACKEL: Thank you, Madam Chairman for hearing this bill this morning. This is a very important bill to firefighters and emergency response personnel. I'd like to thank Assemblyman Egan for sponsoring this legislation.

Joe, this is a very important bill to us, and we really appreciate your help.

As the first and primary responders to fires, technical rescues, and emergency medical incidents, firefighters have precious few moments to worry about anything other than rescuing and treating victims. One thing they should categorically not have to concern themselves with in the performance of their duties, should they become injured, stricken ill, or die, is whether or not they and their families will be treated fairly and in recognition of their selfless actions, on the part of the communities they serve.

Accordingly, Assembly Bill 1929 endeavors to afford public safety personnel with the refutable presumption that the injury and illness they experience resulting from occupational exposures to communicable diseases will be recognized and covered under the State's Worker's Compensation statutes.

Firefighters responding to situations, including motor vehicle accidents and crime scenes in particular, where blood soaked jagged glass and metal often surrounds them; where mucocutaneous events might take place in the performance of lifesaving procedures; treating gunshots, stabbing, and needle sticks; and where communicable diseases might be of such an infectious nature that merely being near or speaking with a patient in tight quarters might result in the responder's exposure to infection, deserve nothing less than the very best training, equipment, and coverage only this initiative can afford.

Primary and compelling reasons why firefighters and other emergency personnel require this legislation center upon the fact that symptoms of communicable disease either go undetected or are so mild in nature that they are misdiagnosed or misread or disappear completely, only to surface upon manifestation and serious, most often, irreparable injury and illness has occurred, and, in many cases, after they have unwittingly infected their loved ones.

No vaccination program, nor safety garments, can afford complete protection under any and all circumstances to which firefighters and other emergency personnel might operate under the dynamic environment that is in their profession. Therefore, such legislation, as offered for your review today, affords the very best and last safety net for firefighters and their families.

That being the peace of mind in knowing that you can operate at an emergency scene to the very best of your ability, armed with the certainty that in the event you are injured or become ill as a result of your activities, you will neither be forsaken nor forgotten.

We sincerely thank you for your deliberations and support of A-1929 affording communicable diseases presumption protection to firefighters and related emergency personnel under our State's Worker's Compensation system.

We are one of the few states -- or surrounding states already have this protection. New Jersey for some reason is way behind the times when it comes to emergency service workers and their protection. Whether it be a cancer, presumed heart and lung legislation, or just a bill such as this, we need to get our act together here in New Jersey and start protecting the people that protect us.

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you, Mr. Yackel.

Richard Stokes, from the Alliance of American Insurers.

Good morning.

RICHARD M. STOKES, ESQ.: Thank you, Chairwoman Friscia.

Good morning members of the Committee. Again, my name is Richard Stokes, and I represent the Alliance of American Insurers. And we're a national trade association representing over 325 major property-casualty insurance companies throughout the country.

We're here in opposition to the legislation. And not so much in terms of the intent or the effort that the sponsor has -- and I think as the

previous speaker indicated, this is certainly an issue that needs to be discussed. We have problems with the legislation because we think it is overly broad in many different areas.

One is the definition of communicable disease. In our reading of the legislation, this could include such things even as minor as flu and the common cold. And we would recommend the Committee take a look at the language and try and narrowly define exactly the areas that the sponsor is looking at.

We're also concerned because the legislation would apply to a very broad category of people. It could include even coworkers associated with people that may come in direct contact with people with communicable diseases. And that's another area we would recommend the Committee take a look at.

In the definition of public safety worker it is very broad as to who it might even apply to, in that sense, of a nurse and medical technician and so forth. And we think that needs to be tightened up quite a bit.

The final point that I would make is that, in terms of the exposure itself, we would recommend that the bill be modified to make it much more central to an exposure if there's an actual exposure of a communicable disease. With that we would be willing to work with the Committee, but again we think the legislation is very broad -- very broad in the sense of the definitions of both the public safety worker and also the communicable disease.

ASSEMBLYWOMAN FRISCIA: Any comments from the Committee?

ASSEMBLYMAN EGAN: Madam Chair.

Would you feel a lot better if we made it for all employees?

MR. STOKES: Well, certainly that's an option the Committee would -- you may -- if you want to take a look at it. The question is how far do you go to provide the types of benefits that you're looking for and what that cost may be on the worker's comp system itself. That I have not looked at as to what that might mean, but certainly, you know, if that is the way you want to look at it. But certainly, from our prospective, we think it needs to be much more narrowly defined.

ASSEMBLYMAN EGAN: Thank you.

ASSEMBLYWOMAN FRISCIA: Assemblyman Geist.

ASSEMBLYMAN GEIST: Thank you, Chairwoman.

Richard, have you provided to the sponsor any proposed specificity with language that the Committee could consider today?

MR. STOKES: Not today, but I would be more than happy to supply that as it goes through the system or as the bill is considered.

ASSEMBLYMAN GEIST: Well, you've raised some pretty --

MR. STOKES: This was our first chance to really take a look at it.

ASSEMBLYMAN GEIST: Respectfully, you've raised some pretty broadbrush criticisms. This Committee, last session, focused on this topic, and the bill came out of Committee under the circumstances today. If you want us to consider specificity perhaps we could consider such. Do you have any specific language at all?

MR. STOKES: No. Our home office just had -- this is the first opportunity. And as you know, I just joined the Alliance so this is our first

opportunity to really look at this legislation from that perspective. And I don't have anything to offer the Committee today in terms of specific language, but I'll be more than happy to work with the Committee to supply that.

ASSEMBLYMAN GEIST: Thank you, Chairwoman.

ASSEMBLYMAN GREGG: Madam Chair.

ASSEMBLYWOMAN FRISCIA: Yes.

ASSEMBLYMAN GREGG: Just a question, to the Chair.

Do we have the Department of Insurance testifying today on this bill at all or --

ASSEMBLYWOMAN FRISCIA: No.

ASSEMBLYMAN GREGG: -- are they in the room to answer questions?

ASSEMBLYWOMAN FRISCIA: No, they're not scheduled to testify.

ASSEMBLYMAN GREGG: Is there anyone in the room from the Department of Insurance?

ASSEMBLYWOMAN FRISCIA: Not that I'm aware of.

ASSEMBLYMAN GREGG: Are there any testifiers that will be speaking for other insurance companies?

ASSEMBLYWOMAN FRISCIA: Yes.

ASSEMBLYMAN GREGG: Okay. Then at that point, I'll reserve to ask them questions.

Thank you.

C H A R L E S W O W K A N E C H (speaking from audience): Madam Chairwoman, I apologize for not filling out a slip, but I rise to support this legislation.

HEARING REPORTER: Madam Chair, he won't be on the tape. We can't hear him.

Thank you.

ASSEMBLYWOMAN FRISCIA: You have to speak into the tape, Charlie.

HEARING REPORTER: Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you.

You're on the Internet today, Charlie.

MR. WOWKANECK: Thank you.

Madam Chairwoman and members of the Committee, I rise in support of this legislation.

I think is -- Mr. Yackel, from the firefighters, has testified in a number of the states around the country. But, particularly, bordering us, New York and Pennsylvania, have passed this kind of legislation. And while I heard Assemblyman Guy Gregg ask for the insurance department, I think the most appropriate venue to ask the questions would be from the Director of Worker's Compensation, Director Calderone, who would be able to -- if that is the Committee members' concerns, would be able to give some statistics on how this impacts the fund, and it's really not a huge impact on -- I mean, the history in other states. So I -- just a word of caution. I think if there are further questions, that Director Calderone would really be helpful in this area. But we support the legislation as is.

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you.

I also believe this is on second reading and going to Appropriations, and I would assume that Mr. Calderone would be testifying at that. At least I would hope so.

Connie Calisti, from New Jersey Manufacturers.

C O N N I E F. C A L I S T I (speaking from audience): The Alliance testified on our behalf.

ASSEMBLYWOMAN FRISCIA: Oh okay. Thank you, Connie.

And Richard Van Wagner, from the American Insurance Association. Is he here? (no response)

Is Richard here?

UNIDENTIFIED SPEAKER: He's not here.

ASSEMBLYWOMAN FRISCIA: Okay.

Art Kravitz.

A R T H U R K R A V I T Z, E S Q.: Good morning, Madam Chair.

ASSEMBLYWOMAN FRISCIA: Good morning.

MR. KRAVITZ: Arthur Kravitz. I'm here for the New Jersey Advisory Council on Safety and Health. And we are in support of this bill.

Mr. Yackel did an eloquent job in speaking for the bill. I'd like to talk about some of the technical issues that have been raised. We believe that the bill would have less of a cost impact than any -- than others might have you believe, because it simply requires an employer to provide the testing and treatment to workers exposed to bodily fluids until it can be established one way or another the course -- the cause of the disease.

This bill recognizes the risks run by medical workers from doctors to nurses, aides to EMTs, to police and fire, who become exposed to communicable diseases everyday. It is the exposure to the bodily fluids itself that limits the class of individuals who are to receive this protection. Obviously, in the normal course of a day, you or I are not going to be in the class of individuals because we're not exposed to bodily fluids or blood. So it is designed -- its broadness of scope is designed simply to accommodate everyone who is in that position.

I'd like to point out that over the last five years, we've seen a decrease in Worker's Compensation premiums of at least 20 percent. And we believe that the cost for one group of workers, to give them the protection they need to do their job and to give them the security of knowing that they're going to be taken care of in doing their job justifies this bill.

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you very much.

Any other comments? (no response)

I'll entertain a motion to move the bill.

ASSEMBLYMAN EGAN: So moved.

ASSEMBLYMAN SARLO: Second.

ASSEMBLYWOMAN FRISCIA: Moved and seconded.

Roll call.

MR. WILLIAMS: Okay.

Assemblyman Gregg.

ASSEMBLYMAN GREGG: Yes.

MR. WILLIAMS: Assemblyman Geist.

ASSEMBLYMAN GEIST: Yes.

MR. WILLIAMS: Assemblyman Smith.

ASSEMBLYMAN SMITH: Yes.

MR. WILLIAMS: Assemblyman Egan.

ASSEMBLYMAN EGAN: Yes.

MR. WILLIAMS: Assemblyman Cohen.

ASSEMBLYMAN COHEN: Yes.

MR. WILLIAMS: Vice-Chairman Sarlo.

ASSEMBLYMAN SARLO: Yes.

MR. WILLIAMS: And Chairwoman Friscia.

ASSEMBLYWOMAN FRISCIA: Yes.

Next bill is A-1926.

Greg, would you read the summary please.

MR. WILLIAMS: Okay.

Assembly Bill 1926 permits but does not require any public entity that undertakes a public works project to enter into a project labor agreement with one or more appropriate labor organizations. The bill authorizes that public entity to include the project agreement in public works projects, on a project-by-project basis if the public entity determines that the agreement will promote labor stability and advance interests of the public entity in cost, efficiency, quality, skilled labor force, safety, and timeliness. The public entities to which this authorization is extended includes any agency, authority, or instrumentality of the State, or any of its political subdivisions.

The bill requires that to be eligible as a party to a project labor agreement, the labor organization shall represent, in collective bargaining,

employees in the crafts or trades involved in the public works contract and subject to the Prevailing Wage Act, that it had entered into labor agreements with building and construction employers, and have represented employees in public works projects like those under the project agreement, and be able to refer, provide, or represent sufficient numbers of qualified employees in the crafts or trades required by the contract.

The bill makes a project labor agreement binding on all contractors and subcontractors working on the project but permits the agreement to allow the contractors and subcontractors to retain a percentage of their own current workforce and provides that contractors and subcontractors need not be parties to any project labor agreement other than for the project covered by the agreement.

Each project labor agreement entered into the bill must: one, advance the interest of the public entity with respect to cost, efficiency, quality, timeliness, skilled labor force, and safety; two, contain guarantees against strikes, lockouts, or similar actions; three, provide binding procedures that resolve the jurisdictional and labor disputes arising before the work is completed; four, be made binding on all contractors or subcontractors in the public works project through the inclusion of appropriate bid specifications and all relevant bid documents; five, requires all of the subcontractors and contractors to have registered apprenticeship programs; and six, conforms with all requirements of the law regarding set aside goals for women and minority-owned businesses.

The sponsor has proposed Committee amendments, which have been made available to the public. The amendments would modify the finding

sections of the bill to emphasize the project labor agreements and are frequently, but not always, helpful in achieving the indicated benefits for public entities that underlies the need for the public entities to consider, in each case, whether the project labor agreement will help it meet its goals in that case. Two: the amendments define the labor organizations, which may participate in project labor agreements under the bill, as any labor organization which represents sufficient numbers of workers with needed skills, removing the requirements that the organization has entered previous agreements and has represented workers in similar, previous projects. Three: require that a public entity take into consideration the size, complexity, and cost of a public works project when determining whether the project labor agreement would benefit that entity. Four: directs the Commissioner of Labor to assist in facilitating the negotiation of the project labor agreement and review the finalized project labor agreement. Five: require that each project labor agreement includes a plan which is in full compliance with provisions of the law and is mutually agreed upon by the public entity and the participating labor organizations regarding the share of employment and apprenticeship positions in the public works project for minority group members and for women.

ASSEMBLYWOMAN FRISCIA: Thank you.

Assemblyman Egan.

ASSEMBLYMAN EGAN: Madam Chairlady, fellow members of the Committee, I am proud to be a cosponsor today with Assemblyman Malone of 1926, and I'm thankful to the Committee to consider this today.

I'm also proud, but not surprised, by the bipartisan support, because I firmly believe project labor agreements authorized by this bill will be a valuable and a positive tool for the State of New Jersey and for our taxpayers.

Briefly stated, project labor agreements that may be entered into, in connection with public works contracts, serve the public interest by providing an effective tool in resolving jurisdictional and other labor disputes. They help assure job efficiency, timeliness of completion, quality of work product, worker safety. And perhaps most importantly, they help ensure that public projects enjoy the most lowest reasonable cost with the highest degree of quality. I am convinced that this legislation, if enacted, will benefit all of us: contractors, working men and women, and the taxpaying public.

During testimony we will hear today, we'll likely hear from opponents of project labor agreements who might claim that these agreements will result in union only contracts virtually monopolizing public works projects, that these agreements would also drive up the cost of public works projects, and that these agreements are in violation of competitive bidding laws. I submit that all three of these are myths. They simply do not stand up to the glare of scrutiny.

In this State and other states, where project labor agreements are in place, there is no evidence whatever that nonunion contractors are excluded. Indeed, Federal and State statutes assure that all workers are eligible to work on project labor agreements, regardless of their union affiliation or lack of it.

Secondly, I know of no evidence that these agreements drive up the cost of public works projects. Indeed, there is evidence that these agreements actually save taxpayer dollars by assuring positive and open

communications between contractors and the workforce to head off and avoid strikes, slowdowns, and other stoppages of work.

The third myth, that project labor agreements are in violation of competitive bidding laws, simply do not stand up to the facts. The U.S. Supreme Court has upheld the use of project labor agreements, and as recently as this past November, the Bush Administration Executive Order that would ban them was permanently -- would receive a permanent injunction.

As I have stated, project labor agreements work. They are good for contractors, good for labor organizations, good for the taxpayers. The time has come in New Jersey, and I commend this bill to you for your support.

ASSEMBLYWOMAN FRISCIA: Thank you, Assemblyman.

We have several people who wish to testify today, and I'd like to start off with Eric Richard, from the AFL-CIO -- excuse me, Assemblyman Malone?

ASSEMBLYMAN JOSEPH R. MALONE: (speaking from audience) Yes.

ASSEMBLYWOMAN FRISCIA: I see you at the table with us.

ASSEMBLYMAN MALONE: I just wanted to be -- I'll just be brief.

When I was given the opportunity to sign onto this piece of legislation, I had the privilege of being one of the co-prime sponsors on the School Constructions Bill last -- two years ago and had the opportunity to work with many individuals in this room both from labor, construction, and all aspects of that process.

I looked at this piece of legislation, and given the concerns that I've had on ensuring that these projects will be done in an orderly, efficient manner, I look at this piece of legislation as something that we all can live with. I think it is a piece of legislation that will promote harmony. I think it will promote effective and efficient work processes. And I think it also ensures that potential contractors, who may want to skirt some of the issues of prevailing rate, apprenticeship issues, I think their feet will be held to the fire because of this piece of legislation. And again, I wholeheartedly support this, and I'm very proud to be a co-prime sponsor with Assemblyman Egan on this.

ASSEMBLYWOMAN FRISCIA: Thank you, Assemblyman.

I know you share my concerns about all that construction money out there for the new school projects, and I would like to ensure that there are enough laws there to make sure the money is going where it belongs.

Thank you.

Eric.

ERIC RICHARD: Members of the Committee, good morning.

My name is Eric Richard. I'm representing the New Jersey State AFL-CIO.

Thank you, Chairwoman Friscia for posting this bill and for your cosponsorship of this important legislation.

Assemblyman Egan, thank you for your prime sponsorship and leadership on the issue of project labor agreements.

And thank you, Assemblyman Geist, for your cosponsorship of this legislation and your continued support on issues important to organized labor.

We would also like to thank Assemblyman Joe Malone, the co-

prime sponsor of this bill, and the leadership of the State Assembly, both Democrat and Republican alike, and, in particular, Majority Leader Roberts and Minority Leader DiGaetano, both of whom are cosponsors of project labor agreements.

The New Jersey AFL-CIO appreciates the broad support this legislation enjoys, which includes a current 32 sponsors in the Assembly.

A project labor agreement, or PLA, is a type of collective bargaining agreement that is often used on large construction projects. A PLA forms a centerpiece of labor relations by standardizing terms and conditions of employment among multiple contractors. It also provides a single dispute resolution mechanism which insulates the project from costly delays of potential strikes, slowdowns, walkouts, pickets, and other disruptions arising from workplace disputes and promotes labor harmony for the duration of the project, ensuring that the projects are completed on time and to construction specifications.

PLAs benefit all parties involved, including taxpayers, because they help to avoid cost overruns, missed deadlines, and faulty craftsmanship, while promoting efficiency, safety, and quality completion of projects.

PLAs enjoy a successful record in New Jersey. Governor Christie Whitman issued Executive Order No. 11 on March 21, 1994, indicating that the State's agencies may consider the use of PLAs for public works projects asserting the State's public policy on this issue.

The fact that PLAs are used on both private and public projects is an important point to stress because it further supports that PLAs provide a significant economic cost saving advantage. Throughout the nation, PLAs are

being requested more often on private construction projects. Examples of recent PLAs used in New Jersey include: the Bogota Hotel and Casino in Atlantic City, the \$650 million Goldman Sachs Office Tower in Jersey City, the \$900 million Newark Airport Continental Airlines Terminal Project, the \$750 million Seabrook Senior Living Complex in Tinton Falls, as well as the construction of the Hudson-Bergen Light Rail Transit System in April of 1996, and for the construction of the Essex County Correctional Facility in June of '98 by the Essex County Improvement Authority.

Over the past ten years, PLAs have become a contentious issue. Because the public debate concerning PLAs is rife with misconceptions, it's important to provide information to help separate rhetoric from reality. There are five major issues I must briefly address, the first of which is cost.

One of the most frequently raised issues involving PLAs is whether they increase cost on construction projects. Evidence illustrates that not only are PLAs cost effective, but they are increasingly requested by private contractors for economic reasons. Bill A-1926 mandates compliance with the advancement of State's interest of cost, efficiency, quality, safety, timeliness, skilled labor force, labor stability, and the State's policy to advance minority and women-owned businesses. Simply stated, if it is determined that a PLA is cost prohibited, the PLA will not apply to that project.

Further, the cost of labor, which accounts for a substantial portion of a traditional bid on a public works project, is not increased when a PLA is used. Despite this fact, on the topic of cost of labor and, in particular, the payment of the prevailing wage rate, some organizations argue that the payment of the prevailing wage would drive up the cost of projects covered by

PLAs. This statement is false because the payment of the prevailing wage is already mandated by law on all government works projects and therefore, by law, should be built into the cost of the bid.

A-1926 simply seeks to ensure that contractors comply with current statutes regarding the payment of the prevailing wage. A-1926 does not increase salaries or benefits for workers in anyway.

Finally, on the topic of cost, it is important to note that interest groups that state that PLAs increase cost to taxpayers have never provided evidence to prove their claims, besides naming a very small number of individual projects that went over budget, which could have occurred for many different reasons. This type of generalization should not be considered a valid argument. In fact, recent findings from a study conducted by the California Research Bureau, which is a nonpartisan research bureau similar to that of New Jersey's Office of Legislative Services, illustrates that PLAs save money not only on public sector projects, but also on private sector projects.

Because New Jersey has not yet commissioned a study on PLAs, we must rely, unfortunately, on data from other states. Specifically, this report found that private industry project managers requested that contractors use PLAs for economic reasons.

The second issue is the scope and application of PLAs under this legislation. Project labor agreements negotiated through the parameters of this bill are permissive, not mandatory, and specifically state that the application of a PLA would be determined on a project-by-project basis. This legislation is specifically written not to require PLAs on all projects, but instead to authorize public authorities to make case-by-case determination about the

need for a PLA on a project and the appropriate terms of the PLA tailored specifically to that project.

Therefore, this legislation does not grant a monopoly on State contracts to union contractors. In fact, over 30 percent of projects, in which PLAs apply, are given to nonunion contractors. Rather, the PLA language grants a public entity the specific legal right to insert a PLA requirement in its bid specifications for a project when the public entity determines that a PLA will advance the interest of cost, efficiency, quality, safety, timeliness, skilled labor force, labor stability, and the State's policy to advance minority and women-owned businesses.

Some organizations have expressed that PLAs require contractors on State construction projects to use union labor. This statement also is false. Under Bill A-1926, neither nonunion contractors nor nonunion workers are excluded from bidding on working on any project. Any contractor may bid on work as long as they adhere to the conditions established on that particular project. If a contractor is in compliance with these conditions, then the State's bidding laws shall determine who receives the contract, regardless of whether the contractor is union or nonunion.

Third issue: market share, union versus nonunion. New Jersey is one of the top five most heavily unionized states in the nation, and hundreds of thousands of public trade workers support their families through this honorable profession. For this reason, it is disingenuous to assert that nonunion labor accounts for the vast majority of construction professionals in the State. In regard to market share, industry dialogue has consistently expressed in a 80/20 figure in regard to nonunion versus union workers.

As of January 2002, a national market study of all industrial segments has never been conducted to legitimize the 80/20 statement. This statement is based strictly upon a flawed premise that market share and percentage of nonunion and union construction workers are the same, without taking into consideration the status of industry workers. The 80/20 figure cited by the Bureau of Labor Statistics does not reflect an apples to apples comparison. The BLS surveys do not offer a breakdown of union and nonunion craftspeople because their data covers all industry employees, including professionals and clerical workers, not just tradesmen.

Professionals and clerical employees are highly unlikely to be union members even in contracting firms where all craft workers are members. The only way to obtain accurate union and nonunion craft percentages is to remove managers, engineers, and secretaries which account for over 25 percent of industry employment covered in the BLS data.

Therefore, in two different respects, the statement that PLAs lock out 80 percent of qualified contractors from bidding is false. It is false because this PLA legislation does not disqualify any contractor from bidding regardless of their union status. Secondly, the 80/20 figure, often stated, is inaccurate in regard to union versus nonunion market share.

Issue number four, minority-owned businesses and minority hiring: Construction projects in which PLAs apply offer several benefits to both minority-owned businesses and minority workers that do not exist on projects built without PLAs or contracts obtained through current laws. Because language in A-1926 mandates full conformity to all executive orders, a PLA entered into, under this legislation, must embrace the State's policy to

advance minority and women-owned businesses. This mandate does not exist on all other construction projects. This basic yet far reaching provision is reinforced by two other specific proposals in the bill.

First, on the topic of minority-owned contracting companies, Section 5(f) of the bill specifies the application and implementation of set aside goals for women and minority-owned businesses. The obligation to comply with shall be expressly provided in the PLA. Therefore, any PLA issued must incorporate, with the provisions of Executive Order 84, issued by Governor Florio, which specifies percentages of contracts that must be granted to African-Americans, Latino, Asian-Americans, and women. These set aside goals do not exist on all other construction projects.

On the topic of the share of minority workers hired by contractors receiving bids under PLAs, amendments to the legislation supported by the State AFL-CIO specify that PLAs must include provisions that are agreed upon by the governing body and the union, regarding a proportion of minority members and women employed on that project. Therefore, under a project in which a PLA applies, the local government may agree upon the proportion of minority workers hired by the union for the construction project. This mandate also does not exist on all other construction projects.

Clearly, PLAs strongly advance the interest of minorities, whereas all other construction contracts granted without them are mute on this issue.

Finally, the topic of court hearings: It is important to clarify the impact of past court decisions on project labor agreements legislation. This bill has been written in terms that are very different from past PLA legislation and executive orders in order to assure compliance with all State bidding laws. If

enacted, we believe the law will survive possible future lawsuits for several reasons: first, it is permissive; two, it's application is determined on a case-by-case basis; and three, it does not require the use of a particular union, trade council, or labor organization to construct a project.

A testament to the legality and benefits of PLAs is being illustrated time after time in the courts. After years of court challenges, the evidence clearly illustrates the legal authority and validity of project labor agreements. In fact, a study reviewing all Federal and State PLA court battles on the issues, up until December of 1999, shows that prounion rulings have been received in 30 out of 36 cases. This study does not include the ruling by U.S. District Court Judge Emmet Sullivan of the D.C. Court, in November of 2001, which upheld the National Building and Construction Trades fight to overturn Executive Order 13202, the Bush Administration's illegal ban on PLAs on Federally funded projects.

Although two of the six cases that were overturned were heard in New Jersey, both of those decisions were based upon language which is not contained in this bill. Furthermore, amendments have been proposed in order to observe strict compliance with these court rulings.

The first decision, *George Harms Construction Company v. The Turnpike Authority* in 1994, invalidated a PLA, entered under Executive Order 99, due to the designation of a particular labor organization. In this case, the Supreme Court stated that the legality of PLAs on New Jersey public construction projects should be resolved by the Legislature. This is why the sponsors of this bill are now fighting on behalf of project labor agreements. If signed into law, it will provide valuable legislative intent.

The second ruling, which is *Tormee Construction, Inc. v. Mercer County Improvement Authority* in 1996, invalidated the PLA because the successful bidder was required to contract within the guidelines of an extremely limited definition of appropriate labor organization. The New Jersey State AFL-CIO support the amended version of this definition in A-1926, which is broader and more inclusive.

Finally, the National AFL-CIO has provided the New Jersey State AFL-CIO with technical language on the bill, which is aimed at avoiding suggestions that this legislation is regulatory or impermissible due to preemption principles. This language is also included in the amendments to the bill.

And again, to conclude, Madam Chairwoman, the bill you are debating today is very different from past PLA legislation. Sections of these bills have been carefully written in order to balance the concerns of many interested parties. With this in mind, it is important to reiterate a few points.

If it is determined that a PLA is cost prohibitive, the PLA will not apply to that project. The bill is permissive, not mandatory, and specifically states the application of PLAs will be determined only on a project-by-project basis. Three, the bill does not grant a monopoly on State contracts to union contractors. Four, construction projects in which PLAs apply offer benefits to both minority-owned businesses and minority workers that do not exist on projects built without PLAs. And finally, although two of the six cases that were overturned were heard in New Jersey, both of those decisions were based upon language that is not contained in the amended version of this bill.

Thank you very much. Madam Chairwoman, we hope you favorably consider this bill at this time.

ASSEMBLYWOMAN FRISCIA: Excellent analysis, Eric. Thank you, well done.

ASSEMBLYMAN SARLO: Good job, Eric.

ASSEMBLYWOMAN FRISCIA: Any comments from the Committee?

Assemblyman Geist.

ASSEMBLYMAN GEIST: Thank you, Chairwoman.

I have a question about the amendments.

MR. RICHARD: Certainly.

ASSEMBLYMAN GEIST: Have you read the amendments?

MR. RICHARD: Yes, I have.

ASSEMBLYMAN GEIST: Are you familiar with them?

MR. RICHARD: Yes, I am.

ASSEMBLYMAN GEIST: Do you support them in their entirety?

MR. RICHARD: Yes, we do.

ASSEMBLYMAN GEIST: I have a question about, "replacement Section 3 to read."

Chairwoman, I'm seeing these amendments today for the first time, and I have a question about the one particular provision.

ASSEMBLYWOMAN FRISCIA: Go right ahead.

ASSEMBLYMAN GEIST: Under that, on Page 3 of the amendments, "replace Section 3 to read;" midway down, "the Commissioner

of Labor shall assist in facilitating the negotiation of the project labor agreement, and shall review the finalized project labor agreement.”

Respectfully, why do you believe this provision is necessary to (a) assist in facilitating the negotiation, and (b) review the finalized project labor agreement? Why do you think both are necessary?

MR. RICHARD: Well, Assemblyman, to be perfectly frank that was requested by the Department of Labor.

ASSEMBLYMAN GEIST: Do you personally believe that they are necessary?

MR. RICHARD: Well, the way this is written, Assemblyman, is --

ASSEMBLYMAN GEIST: I am asking you on behalf of the AFL.

MR. RICHARD: We support the Department in their concerns.

ASSEMBLYMAN GEIST: Do you believe it's necessary?

MR. RICHARD: Yes, we do. We appreciate this language. We think it's been written to address both the needs of our concerns and the needs of the Department.

ASSEMBLYMAN GEIST: I have a concern. Let me see your response. I have a concern that this will delay the implementation of project labor agreements. I have a concern that this will delay and defeat some of the purposes of implementing them sooner than later. I have a concern that we're asking for one individual to participate in, hopefully, what will be many project labor agreements at every level of government. Aren't we asking a lot from our Commissioner? Isn't there possibly inherently a delay process? Isn't there also a possible cost impact, where we're going to have them, the lawyers, becoming

even more involved, the AG's Office becoming more involved? Isn't this possibly an impediment to the expeditious processing?

MR. WILLIAMS: We don't think so. I think there could be some language included that could specify a time period of review. I think that might be beneficial, but I think we should leave that up to the Department of Labor to decide.

ASSEMBLYMAN GEIST: Respectfully, does the Commissioner have any voice? It says, "shall review the finalized project labor agreement." So he reads it. Is that all?

MR. RICHARD: I don't think the definition of exactly what a review is, in terms of if he needs approval or if he just needs to read it. I think it's basically once a project labor agreement is declared upon by the public body and the appropriate labor organization, then it's sent to the Department of Labor strictly for review purposes, not that they need to sign off on the agreement, but it's simply there for them to observe.

ASSEMBLYMAN GEIST: Are these provisions incorporated right now in the executive order?

MR. RICHARD: I'm not sure. I don't think so.

ASSEMBLYWOMAN FRISCIA: No.

ASSEMBLYMAN GEIST: So, we're possibly adding a step that's not required in the executive order.

MR. RICHARD: Well, it is again -- the executive order was issued by the Governor, and this is the language requested by the Department of Labor.

ASSEMBLYMAN GEIST: I'm respectful of that. Under the Governor's executive order, does the Commissioner of Labor have the same requirements and responsibilities?

MR. RICHARD: I don't want to say for certain, but I don't think so.

ASSEMBLYMAN GEIST: All right.

Respectfully, I appreciate your answers and look forward to hearing from the Department of Labor on these provisions.

Thank you, Chairwoman.

ASSEMBLYWOMAN FRISCIA: Thank you, Assemblyman.
Assemblyman Sarlo.

ASSEMBLYMAN SARLO: Thank you, Madam Chair.

I just -- to follow up on that, I believe it's just being sent down to the Commissioner of Labor more for an advisory -- you know, as a courtesy to them. They don't have to sign off on these actual agreements. If I'm the contracting agency, and the contractor has come to an agreement, it's just being sent down there to make sure a lot of these agreements are uniform and consistent with the intent of the law, but I don't believe they actually have to sign and seal. I don't think that's the intent of this legislation.

MR. RICHARD: No, it's not. It's --

ASSEMBLYMAN SARLO: It's more -- they're serving as an advisory type of capacity if needed. But the --

MR. RICHARD: Well, because the legislation does contain certain mandates, it was expressed by the Department that they would like to basically ensure that project labor agreements, agreed upon by the union or by the

collective bargaining unit and the public entity, basically take in consideration all these different measures that are incorporated into the bill.

ASSEMBLYMAN GEIST: If I could just add devil's advocate. This legislation is incorporating a major league assumption that all Commissioners of Labor will be PLA friendly. By requiring their involvement in the negotiation process, respectfully, you are making an assumption that they are PLA friendly. And that is an assumption, personally, I'm not ready, willing, and able to automatically embrace.

I'm now here in my 11th year, and I have not seen too many Commissioners of Labor come before the Labor Committee and wave the PLA banner. So, under the circumstances, respectfully to my colleagues, I think we better look at these amendments with a microscope. I think there are some serious assumptions about longevity of policy that, candidly, is not well established here in Trenton.

ASSEMBLYWOMAN FRISCIA: Any other comments?

ASSEMBLYMAN EGAN: Madam Chair.

ASSEMBLYWOMAN FRISCIA: Yes, Assemblyman.

ASSEMBLYMAN EGAN: Through the Chair, to Assemblyman Geist.

I think, Mr. Richard's analogy of how that wording got in there is correct. It was requested by the Commissioner of Labor. I believe his concerns were from the legal aspect of it. I understand your point exactly, and I believe that if this moves out of this Committee, I think we have time before it hits the floor to look at that again, but that's exactly how this wording came in.

ASSEMBLYWOMAN FRISCIA: Thank you.

Thank you, Eric

MR. RICHARD: Thank you, Assemblywoman.

ASSEMBLYMAN SARLO: Thank you, Eric.

ASSEMBLYWOMAN FRISCIA: Mr. Reilley, from the Patriot Roofing.

JOHN E. REILLEY: How you doing?

ASSEMBLYWOMAN FRISCIA: Good morning.

MR. REILLEY: My name is John Reilley with Patriot Roofing.

It's my first time here. I've made some notes.

ASSEMBLYMAN MALONE: Madam Chairwoman, could I just interrupt for one second.

I had the privilege of -- Mr. Reilley lives relatively close, and I had the privilege on Friday of talking to Mr. Reilley. I want to assure him that the attitude and atmosphere in these kinds of hearings are not what you might read or hear about over the newspapers. And I'm pretty sure the Committee is more than interested in hearing what you have to say, and we'll consider it with due diligence.

MR. REILLEY: Thank you.

ASSEMBLYMAN GREGG: Mr. Reilley, would you press your button. (referring to PA microphone)

ASSEMBLYWOMAN FRISCIA: Red means on.

MR. REILLEY: Red means on. Okay, I'm sorry.

We're a small company. We employ 50 to 60 men and women. We have an apprentice program. We are open shop. Ninety percent of our

work is public work. This bill will pretty much put us out of business. Everything in this proposal is union. I'm not antiunion.

I'm in the roofing business. I do work side by side with other unions, and I'm -- like I said, I'm not antiunion, but everything in this language -- it says we can use a percentage of our employees. It doesn't say what percentage. It mentions minorities. Do the minorities have to sign a union contract also?

I don't believe that the unions have enough people in the State to do all of this work. I feel that a lot of the paychecks will go back to the surrounding states. I like the -- I see your point. You're trying to eliminate some bad contractors, which is good, but I just think that, you know, without public bidding and, you know, keeping it to the lowest qualified bidder is the point here. And this language, please, look at it. Everything in here is public (*sic*) labor agreements. It's all union.

That's all I have.

ASSEMBLYWOMAN FRISCIA: Any comments?

ASSEMBLYMAN GREGG: Madam Chair.

ASSEMBLYMAN SARLO: Mr. Reilly.

ASSEMBLYWOMAN FRISCIA: I'm sorry.

Assemblyman.

ASSEMBLYMAN SARLO: Go ahead. I was just going to try--

ASSEMBLYWOMAN FRISCIA: Assemblyman Gregg.

ASSEMBLYMAN SARLO: -- help him answer some of these questions, but go ahead, Assemblyman.

ASSEMBLYMAN GREGG: Go ahead first. That's fine.

ASSEMBLYMAN SARLO: This doesn't -- and just so you have a better understanding. It doesn't preclude anybody from bidding on public works projects. I mean --

MR. REILLEY: Yes, it does.

ASSEMBLYMAN SARLO: Your company still can go ahead and--

MR. REILLEY: No, it clearly says the contract, plus all subcontractors, must sign a PLA. That's what it says.

ASSEMBLYMAN SARLO: That PLA has to be included in the bid specifications and depending on the type of project and the size of the project and the magnitude of that project --

MR. REILLEY: Well, I understand now that it's, what, over \$38 million?

ASSEMBLYMAN SARLO: Excuse me?

MR. REILLEY: The agreement now is, what, over \$38 million?

ASSEMBLYMAN SARLO: The original bid threshold in this particular piece of legislation --

MR. REILLEY: Well, that's my point. There is no threshold.

ASSEMBLYMAN SARLO: -- there's no bid threshold.

MR. REILLEY: Right.

ASSEMBLYMAN SARLO: What kind of size -- I mean, if I may --

MR. REILLEY: Well, last year we did a little over \$7 million in business.

ASSEMBLYMAN SARLO: In business.

MR. REILLEY: And we were --

ASSEMBLYMAN SARLO: Specific projects. How much per specific --

MR. REILLEY: School -- Ninety percent public work. You know, school work --

ASSEMBLYMAN SARLO: No, I mean the magnitude on one contract.

MR. REILLEY: Oh, my biggest job?

ASSEMBLYMAN SARLO: Yes.

MR. REILLEY: One point five million.

ASSEMBLYMAN SARLO: Again, each -- each set of contract documents that come out may include a PLA. If there's -- if it's -- if the contracting agency, whether it's a municipality, county, or State, feels it's necessary and they're able to come up with some good strong language that supports it -- they need supporting documentation -- that doesn't -- still doesn't prevent you because you still have an opportunity to retain a portion of your employees, plus I had --

MR. REILLEY: What percentage?

ASSEMBLYMAN SARLO: That's all a part of the negotiation process. It's part of the agreement that's specific -- project-by-project specific, which leaves it negotiable with you as the contractor and the contracting agency. So I don't want you to think that you're going to have to go out of business. By no means will you go out of business --

MR. REILLEY: The way I see it --

ASSEMBLYMAN SARLO: -- as this legislation is put into law.

MR. REILLEY: Okay. Thank you.

Is that it?

ASSEMBLYMAN GREGG: Madam Chair.

ASSEMBLYWOMAN FRISCIA: Assemblyman Gregg, did you want to speak?

ASSEMBLYMAN GREGG: Yes, Madam Chair.

Mr. Richard (*sic*), I think your testimony is going to be the crux of the testimony that represents the opposition to this bill. So I want to give you a little more time, perhaps, to -- and I can sense your frustration up there. I have --

MR. REILLEY: Well, I'm a little nervous, but --

ASSEMBLYMAN GREGG: I have been there, done that 20 years ago, prior to coming here. Perhaps, in a few years you might want to join me. (laughter from audience)

MR. REILLEY: I'm thinking about it.

ASSEMBLYMAN GREGG: But let's -- let's walk through a little more specifically --

MR. REILLEY: Okay.

ASSEMBLYMAN GREGG: -- with some of your concerns because I think they're valid concerns. What you're telling me is you have a company that employs about 60 people.

MR. REILLEY: Yes, sir.

ASSEMBLYMAN GREGG: And they are predominately roofers.

MR. REILLEY: Yes.

ASSEMBLYMAN GREGG: Not management people. Mostly your employees are workers.

MR. REILLEY: Yes.

ASSEMBLYMAN GREGG: And they get paid on the premise of how much work you do?

MR. REILLEY: Well, the prevailing wage.

ASSEMBLYMAN GREGG: And they get paid, by law, the prevailing wage, when they're on public projects, which is the majority of your business?

MR. REILLEY: Yes.

ASSEMBLYMAN GREGG: So, if you were to do \$20 million a year, \$18 million of it probably would be the public sector.

MR. REILLEY: That's correct.

ASSEMBLYMAN GREGG: Now, let's walk through a potential PLA, because I think that your concerns are valid that there's nothing in the bill that says how many employees might you be able to use that are yours. Let's say a PLA said that you could use 50 percent because -- when we're in the world of nonreality, 50 percent sounds fair until you attach it to real faces and real workers that have kids and families and mortgages. So if you go into that project labor agreement and they say only 50 percent of your employees can work, what's your response going to be, Mr. Richard, through the Chair?

MR. REILLEY: I'm not sure if I want to get 50 percent of the qualified, willing employees. You know, the unions can't stand nonunion contractors and their men. You know, we're classified as scabs. I don't think it would work.

ASSEMBLYMAN GREGG: And how would you do your bid, through the Chair, if you don't -- if you're not sure who's going to be working for you? Would that be difficult too as well?

MR. REILLEY: It would escalate the price as will this proposal. Basically, it limits the companies to union companies. I don't know how well your -- if you were to work for me, I don't know how you're going to work for me, you know, as an employee.

ASSEMBLYMAN GREGG: How long have you been in business, Mr. Richard?

MR. REILLEY: Twenty-five years. I was an union contractor for probably 15 years.

ASSEMBLYMAN GREGG: And I know this is speculation, but this is your business, through the Chair, so I assume you know your competitors as well.

MR. REILLEY: Yes, sir.

ASSEMBLYMAN GREGG: Many of the folks that are doing this kind of business. In your field, how many are there? What --

MR. REILLEY: I could safely say that the roofing projects in New Jersey are probably 75 percent done by open shop roofing companies.

ASSEMBLYMAN GREGG: And your testimony to this Committee today is that if this bill were to pass -- and we can't go into the future -- but if these project labor agreements that are, at this point, fictitious but could be real, that if those project labor agreements that these public entities came up with were not very, very, very pro small business, that you probably would not be able to compete?

MR. REILLEY: I know I won't be able to. I know for a fact.

ASSEMBLYMAN GREGG: Thank you, Mr. Richard. And thank you, Madam Chair.

ASSEMBLYWOMAN FRISCIA: Any other comments?

Assemblyman Egan.

ASSEMBLYMAN EGAN: Yes, Mr. Richard. (*sic*)

UNIDENTIFIED SPEAKER: Mr. Reilley.

ASSEMBLYMAN EGAN: I'm sorry, Reilley.

ASSEMBLYMAN GREGG: I'm sorry. I did it to you. It's my fault.

ASSEMBLYMAN EGAN: Did you say Richard before? I thought I --

ASSEMBLYMAN GREGG: Yes, I started the rumor.

ASSEMBLYMAN EGAN: Mr. Reilley, I'm sorry.

MR. REILLEY: Yes.

ASSEMBLYMAN EGAN: When you undertake projects that require more than your existing workforce, where do you get the people from?

MR. REILLEY: I don't take work more than what I can handle.

ASSEMBLYMAN EGAN: Okay.

And the prevailing wage is the union wage in New Jersey?

MR. REILLEY: Well, if I asked the Department of Labor that they probably wouldn't say that, but it's pretty equal.

ASSEMBLYMAN EGAN: It's pretty equal. So your employees get the equivalent wage of the union roofers' wage?

MR. REILLEY: It depends on what county that the -- pretty much. It's pretty close.

ASSEMBLYMAN EGAN: Okay.

And you submit certified payrolls to -- for them?

MR. REILLEY: Yes.

ASSEMBLYMAN EGAN: Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you, Mr. Reilley.

MR. REILLEY: Thank you.

ASSEMBLYWOMAN FRISCIA: Frank Wade, from the Building Trades.

FRANK WADE: Madam Chairman.

ASSEMBLYWOMAN FRISCIA: Good morning, Frank.

MR. WADE: Good morning to you and the members of the Labor Committee. Thank you very much for --

ASSEMBLYMAN SARLO: Hit the red button.

MR. WADE: It's on.

ASSEMBLYMAN SARLO: It's on.

ASSEMBLYMAN GREGG: He's just not close enough to it.

MR. WADE: -- allowing me the opportunity to come here before you today.

I really -- there is not much you can say after the testimony that was complete and comprehensive from Eric Richard, representing the AFL-CIO, but myself, as the Chairman of the New Jersey Building Trades Labor Management Council, are here to support A-1926 in its entirety. And I think if I could speak more on it -- due to the fact of the time and those people that

are going to testify, I think it was justifiably said in his testimony. And again, not to be repetitive, but we do support that. And I'd also want to thank Assemblymen Egan and Malone for their support and sponsorship.

Thank you very much.

ASSEMBLYWOMAN FRISCIA: Thank you.

Tracey --

TRACEY SYPHAX: Syphax. (indicates pronunciation)

ASSEMBLYWOMAN FRISCIA: Syphax.

MR. SYPHAX: I usually get stuck on last names, so I'll help you out.

ASSEMBLYWOMAN FRISCIA: Thank you, Tracey.

And what is MTAACC?

MR. SYPHAX: MTAACC is the Metropolitan Trenton African-American Chamber of Commerce in which I am Director of the Construction Division.

ASSEMBLYWOMAN FRISCIA: Thank you.

MR. SYPHAX: Thank you.

Good afternoon, Madam Chairwoman, Assemblymen.

I'm in front of you today to speak on my opposition to Governor McGreevey's Executive Order No. 1, PLA agreement. First, as a minority contractor that has spent plenty of time and money getting my firm in position to compete on school construction, and second, as a person of color who was at one time a union roofer.

Looking at this order from both perspectives, I can clearly see that this order will do nothing for minority contractors in the State or benefit

minorities in the *Abbott* districts in which the majority of this money is going to be spent.

It is my understanding that the unions now are about 4 percent minority in a State where the minority make up almost 24 percent of the State population. These numbers clearly show who will benefit from this agreement.

I remember clearly, many days spent sitting in the union hall as a journeyman roofer and watched many people go out on jobs ahead of me who were less qualified but was the nephew or the uncle of someone in charge. Many days spent in that hall is probably the main reason why I'm in business today.

Today -- me -- myself -- what brings me to -- recently -- what brings me here today, recently, was a situation where I had the opportunity to work along with a union contractor on a job that is local, as a matter of fact, right here in Trenton. I'm not going to go into details, but I can suggest, as a nonunion contractor, my experience with sitting down with this union was not a friendly experience, and it was not harmony.

As a union contractor sitting down with a nonunion contractor, just as Mr. Reilley stated, we are considered as scabs. And considering working alongside a union contractor would open up nothing but a can of worms for me. As a nonunion worker, to say that you will have a company that will allow you to use 50 percent of your workforce, we have to ask the question, what do I do with the other 50 percent of my employees that can't work on that project?

As I stated, without going into details, I am totally against this PLA agreement. And I know for sure, in speaking the same as Mr. Reilley said,

that any agreement like this that is put forward will actually put me and the 15 employees that I employ, as a minority contractor, which is nonunion, will keep us from competing on any school construction that are in the *Abbott* districts in which I live and pay taxes.

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you.

Any comments? Assemblyman Gregg.

ASSEMBLYMAN GREGG: Mr. Syphax, thanks for being here today.

You have 15 employees, and you started as a union worker.

MR. SYPHAX: I started out as a union, yes, a union roofer back in the '80s. I was a union roofer for nine years.

ASSEMBLYMAN GREGG: For nine years. Then you started your own business?

MR. SYPHAX: Yes, I did.

ASSEMBLYMAN GREGG: And you have 15 employees now.

MR. SYPHAX: We have 15 employees now, yes.

ASSEMBLYMAN GREGG: And perhaps you can share with the Committee how you perceive this bill will affect you as it deals with school construction from the standpoint of the actual walking through the process that ultimately will be a PLA. You and your 15 employees will look at that project labor agreement, and in the event, again, as you just stipulated, that perhaps there's a requirement for 50 percent union workers, what will you do with the other seven?

MR. SYPHAX: That same question -- and put it into real life terms as I stated -- there was an agreement whereas that I was supposed to work with a union contractor on a project that is local, and that question was brought up. And this bill says that it is negotiated, but I can tell you from sitting down with the union recently, it wasn't negotiable. It was, "You can't have none of your employees, which are nonunion, working on this project." You have to hire all union contractors -- all union workers to work on this project. And this is real life. I'm talking about something that, you know, just happened recently. So, you know, in my perspective it just doesn't work.

ASSEMBLYMAN GREGG: And through the Chair, what did you do when they required you to have all union?

MR. SYPHAX: I just refused to work on the project. It was basically telling me that I would have to shut my shop down, which I spent, you know, seven years building to where it is now, and hire union workers to work on that project, which was a good project for me. It's a high profile project. It would have been good for my company, but what am I going to do with my 15 employees that can't work on that project?

ASSEMBLYMAN GREGG: One last question, through the Chair. You were a union worker for nine years, and you've had your own business for the last seven years. How do you judge the qualifications of your employees versus the union workers you work with?

MR. SYPHAX: Well, my employees are some of the best employees that are in the State. And I can testify -- and it's ironic that I'm testifying right after Mr. Reilley, who I've worked for for six years, who is open shop, and I know he hires great employees, good employees. I'm a product of

him, which is a nonunion shop. So I know what kind of employees that come out of nonunion shops. They are some of the best employees.

ASSEMBLYMAN GREGG: And would it be true to say that many of those people in nonunion shops are former union workers in many cases?

MR. SYPHAX: In some cases, yes. In some cases, yes.

ASSEMBLYMAN GREGG: And so your testimony, in front of the Committee, would be -- it really is the people that they're working for that creates the standard, as opposed to whether they're union or not?

MR. SYPHAX: Oh, yes. Most definitely. Just recently we just, as I stated before, I'm Director of the Construction Division for MTAACC, which involves about 26 minority-owned companies. One of our recent members who just joined has been a member of the union for 11 years, and he basically told me the same reason why he's in business now. He's not getting any work from the union.

ASSEMBLYMAN GREGG: Last question, through the Chair. Would it be your opinion or testimony, in front of this Committee, that project labor agreements, in general, will not be a positive situation for minority-owned businesses?

MR. SYPHAX: Most definitely.

ASSEMBLYMAN GREGG: Thank you.

ASSEMBLYWOMAN FRISCIA: Assemblyman Egan.

ASSEMBLYMAN EGAN: Through the Chair. Sir, you made a statement that 4 percent of the workers in the union are minorities. What did you base that on?

MR. SYPHAX: I based it on some information that I read. I don't know what the exact numbers are, but I based it on some information that I read on the unions: what the makeup of the unions are today compared with what the makeup of the State is.

ASSEMBLYMAN EGAN: Thank you.

ASSEMBLYWOMAN FRISCIA: Anyone else? (no response)

Thank you, Mr. Syphax.

MR. SYPHAX: Thank you.

ASSEMBLYWOMAN FRISCIA: Tom DiGangi, from the Building Contractors Association.

T H O M A S D I G A N G I: Thank you, Chairwoman Friscia and members of the Committee, for the opportunity to address you this morning. Again, my name is Tom DiGangi. I'm the Director of Government Affairs of the Building Contractors Association of New Jersey.

As you know, the BCANJ is the single largest organization of union general contractors and construction managers in New Jersey. Members are responsible for billions of dollars in commercial, industrial, and institutional construction projects annually and employ tens of thousands of skilled craft workers statewide. The Association is committed to raising the standards of construction in New Jersey through quality, integrity, skill, and responsibility. And there is no better way to ensure that these important characteristics -- quality, integrity, skill, and responsibility -- become part of a lexicon of public construction than through the institution of project labor agreements.

PLAs help to finish important construction projects on time, within budget, and a superior level of quality. New Jersey citizens demand nothing less. PLAs guarantee labor availability and stability, traditionally one of the most volatile elements of any construction project. They provide that proper wages are paid to our State's workers, and in turn, those workers pay taxes.

The argument I most often hear is this bill is a sweetheart deal for unions. This bill is a sweetheart bill for taxpayers. Project labor agreements are designed to create the most advantageous environment for the public entities building projects and the taxpayers who finance them. This is not a sweetheart deal for contractors or labor or anybody else. Contractors and labor both will be asked to sacrifice a little on each project in the interest of accommodating the public need for timeliness and cost savings.

Contractors and labor are willing to make sacrifices to have benefits: the guaranteed employment, safe work sites, good partners. This makes it worthwhile for employers and employees. It's the old adage: the bird in the hand is better than two in the bush.

I also hear that this bill is only about hiring union labor. I believe that to be false. Page 3, Section 4, I'm just going to quote this very quickly: "Any negotiated project agreement may include provisions that permit contractors and subcontractors working on the public works project to retain a percentage of their current workforce and provisions, that the successful bidder need not be a party to a labor agreement with the labor organizations other than for the public works project covered by the project agreement." It's

clear that nonunion workers and nonunion contractors are in no way barred from participating in PLAs.

Another argument suggests that this bill ends the competitive bidding process. Again, that's false. As referred to in the previous quote, work performed under a project labor agreement is bid like any other public project. Only the conditions of the workforce are set prior to the bid. In fact, when labor commissions are fixed, there are less variables for bidding contractors to address, yielding a more precise bid.

Opponents say that PLAs raise the cost of construction. This too is false. As you know, New Jersey has a prevailing wage. Every public project calls for workers to be paid this prevailing rate. If contractors are not breaking the law by cheating on prevailing wage in non-PLA instances, how can the institution of PLAs cause labor costs to skyrocket?

And finally, opponents argue that the courts have ruled that PLAs are illegal. One last time, false. The courts nationwide have ruled in favor of project labor agreements by a staggering five to one margin. When those PLAs that have been struck have only fallen on technical grounds, this legislation steers clear of technical pitfalls and meets the legal standards set by the courts. A-1926 is good public policy. I urge the Committee to release it with a favorable recommendation.

Thanks for your consideration.

ASSEMBLYMAN SARLO: Thank you, Tom.

ASSEMBLYWOMAN FRISCIA: Thank you, Tom.

Any comments? Assemblyman Geist.

ASSEMBLYMAN GEIST: Thank you, Chairwoman.

Question --

MR. DIGANGI: Yes.

ASSEMBLYMAN GEIST: Have you read the amendments?

MR. DIGANGI: I have.

ASSEMBLYMAN GEIST: Satisfied with the amendments?

MR. DIGANGI: I am.

ASSEMBLYMAN GEIST: Do you, in your capacity, representing the contractors, believe that there is a need for the provision for “the Commissioner of Labor shall assist in facilitating negotiation of project labor agreement and shall review the finalized project labor agreement?” Give us your opinion on that issue.

MR. DIGANGI: Yes, I have indeed read that. In fact, we support that amendment. We think that there’s some positives by going to the Commissioner for review. In fact, one of the big issues that we hear, and we’re going to continue to hear today, is all of these legal concerns, court challenges, and whatnot. A great way to make sure that we’re doing it the right way is that the DOL and the Commissioner has an opportunity to take a look at these and make sure that anything that happens in an agreement -- if there’s something that’s outside of the law there’s an opportunity to take a look at it quickly, address it so that it doesn’t get bogged down in court challenges, and we move faster through the process because that’s what it’s about in timeliness and cost savings is the thing.

ASSEMBLYMAN GEIST: Thank you.

MR. DIGANGI: Sure thing.

ASSEMBLYWOMAN FRISCIA: Assemblyman Gregg.

ASSEMBLYMAN GREGG: Mr. DiGangi, you testified that PLAs will provide that proper wages are paid in the State of New Jersey. Is there a law in the State of New Jersey for prevailing wage now?

MR. DIGANGI: Actually, my comment was mostly that PLAs will not affect costs because the prevailing wage is going to apply to every single one of those projects as is.

ASSEMBLYMAN GREGG: I think it -- your comment was that they provide that proper wages are paid to our State workers. And you were saying that this law would ensure prevailing wages being paid. Is that what you meant?

MR. DIGANGI: Okay, yes. I'm sorry, I can't remember exactly --

ASSEMBLYMAN GREGG: So this law, then in that case, would be redundant?

MR. DIGANGI: I certainly don't view it as that.

ASSEMBLYMAN GREGG: We already have a law. Is that correct? Do we have a law?

MR. DIGANGI: I agree, yes. Prevailing wage is a law that addresses that issue.

ASSEMBLYMAN GREGG: Thanks. That's all I wanted. Okay. You also say that it's a sweetheart deal for taxpayers. I just have a question on, and I think this will be the underlined question of the day. How do we know if we got a deal if everyone didn't bid?

MR. DIGANGI: I don't see how this excludes anyone from bidding.

ASSEMBLYMAN GREGG: It doesn't exclude, but we're going to hear testimony, and I've already heard testimony, that companies will choose not to bid if the PLA is not suitable for their company. And that may go to the other statement you made that you don't think this bill is about hiring union labor. And you said that was false because there is a statement that says the agreement may include provisions that permit contractors and subcontractors working on public projects to retain a percentage of their current workforce. May.

Now I know you testified in front of committees a lot here. I think you know the difference between the word "may" and "shall."

MR. DIGANGI: Indeed.

ASSEMBLYMAN GREGG: Does our prevailing wage law say that businesses may pay the prevailing wage?

MR. DIGANGI: No, no. Businesses shall pay the prevailing wage.

ASSEMBLYMAN GREGG: But if it said "may," would it then mean that they will?

MR. DIGANGI: I'm sorry, I'm not following where you're going with this, Assemblyman. I hope --

ASSEMBLYMAN GREGG: I think your argument, or your statement to the Committee, was that the bill, by being permissive with "may," would ensure that nonunion workers would be allowed to work. "May" does not do that. The word "shall" does. Would you then be testifying that perhaps the bill should say, "PLAs shall include provisions that permit contractors to be nonunion?"

MR. DIGANGI: I think that the bill is fine as is. And I believe that there is no exclusion for anyone to bid on this -- to bid on a PLA.

ASSEMBLYMAN GREGG: Do you believe that this bill will ensure that businesses that wish to bid will be allowed to and use all of their employees always? Do you believe that's what this bill will do?

MR. DIGANGI: This bill talks about a percentage. I do not know what that percentage would be.

ASSEMBLYMAN GREGG: So you understand that this bill will not protect all the employees and all the businesses. So, many businesses may choose not to bid. If they do not choose to bid, the public may never have the knowledge of what the lowest price would be.

MR. DIGANGI: Sir, I believe that's a self-imposed exclusion. If you decide not to bid at the beginning for any number of reasons, you decide not to bid. Many of our contractors decide not to bid on projects regularly for whatever those reasons might be. We encourage all of our contractors to bid on every project that they can. You just never know what's going to happen. I believe it's a self-imposed exclusion.

ASSEMBLYMAN GREGG: Through the Chair, shouldn't the State want to have as many people bid?

MR. DIGANGI: Sure.

ASSEMBLYMAN GREGG: So this bill could, by its -- by becoming law, could actually -- would you submit that it could actually limit the number of bids?

ASSEMBLYWOMAN FRISCIA: Assemblyman --

MR. DIGANGI: I certainly don't support --

ASSEMBLYWOMAN FRISCIA: -- I believe that he answered that it was self-imposed exclusion.

ASSEMBLYMAN GREGG: Thank you, Madam Chair.

Last comment. You mentioned the courts and that we'll be discussing the courts today. I think we will be discussing the courts and rightfully so. Are you familiar with Executive Order 99?

MR. DIGANGI: I do not know that executive order by number.

ASSEMBLYMAN GREGG: Executive Order 99 was Governor Florio's executive order. That executive order was ultimately overturned by the courts. Do you think that Governor Florio willfully wished to break the law when he executed Executive Order 99?

MR. DIGANGI: Sir, you're asking me about something that is not essentially a portion of this bill. I just don't know it. I have to go back -- I have to go back and read it.

ASSEMBLYMAN GREGG: My point in bringing it up is your comment is about whether or not it will have court challenges in the future. I don't think at anytime we'll know what court challenges we'll have. And I'm just walking through individual testimony today trying to respond to it as best as I can. I don't think Governor Florio put that order in knowing it was illegal. I think he had his best intentions there, and I think that this bill also may be walking some of those lines, and that's why I asked you that question.

I thank you for indulging me, Madam Chair.

And, thank you.

MR. DIGANGI: Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you, Tom. Good job.

MR. DIGANGI: Thank you.

ASSEMBLYWOMAN FRISCIA: John Harmon, Metropolitan Trenton African-American Chamber of Commerce.

JOHN E. HARMON: Good morning.

ASSEMBLYWOMAN FRISCIA: Good morning.

MR. HARMON: Good morning, Madam Chair, members of the Assembly. My name is John Harmon. I'm President and CEO of the Metropolitan Trenton African American Chamber of Commerce.

I am an American. And this is why I am strongly opposed to project labor agreements. Project labor agreements clearly provide an unfair advantage in the marketplace. In this country we believe in the free enterprise system that allows entities to compete based on defined specifications. Our judicial system has been clear in regards to this decision with respect to capitalism, what capitalism is, and what capitalism is not. And PLAs have been struck down in New Jersey courts before.

Furthermore, it is unconscionable that our government officials would even consider the implementation of PLAs given the history of PLAs' issues with PLAs in other states. We can ill afford to disregard prudent economic principles such as supply and demand, economies of scale, while utilizing taxpayers' hard earned dollars.

Over the last year, MTAACC has been working with the State of New Jersey's Economic Development Authority and the Trenton School Board to assist in the identification and recruitment of qualified women and minority-owned firms to participate in the \$8.6 billion School Construction Program occurring in 30 *Abbott* districts throughout the State.

The EDA sought our help because, historically, women and minorities were not participating significantly on public projects. And it would be a travesty if these projects were to occur without local minority and women participation. The response from minority firms was that, even with their best efforts, they were not getting the jobs; therefore, why participate?

Subsequently, through intense pleading on our part with these firms, some have come forward, completing the necessary documentation, obtaining the required certification, and have yet to be called to participate in the School Construction Program.

To mandate the use of PLAs on public projects will provide an official license to further exclude full participation of qualified men and women. In closing, the rationale for use of PLAs just do not cut it. They do not ensure efficiency nor are they cost effective. The role of government is to serve the people. One way that government achieves this is by taking actions and implementing laws that afford every responsible citizen an equal opportunity at a level playing field. Project labor agreements do not achieve either. And given the tightness in the economy, recent layoffs, and ongoing efforts in this country to unify we as a people, this bill, in my opinion, and based on my experience with business owners not only in the metro Trenton area, but throughout the State, this bill only divides.

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you for your comments, sir.

Any comments, questions?

ASSEMBLYMAN GREGG: Just one, real fast.

ASSEMBLYWOMAN FRISCIA: Yes.

ASSEMBLYMAN GREGG: Mr. Harmon, just one question. You were here and listened to the testimony of Mr. Syphax. Would you be in agreement with his comments that this bill is not a good bill for minority and women business owners?

MR. HARMON: One hundred percent.

ASSEMBLYMAN GREGG: Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you.

Martin Davidoff.

ROBERT J. TARTAGLIA (speaking from audience): Excuse me, Madam Chairwoman. Marty Davidoff, Earl Hall, and myself are all members of NFIB, and we would like to testify together if that is okay to save time.

ASSEMBLYWOMAN FRISCIA: Fine. Sure.

ASSEMBLYMAN SARLO: Madam Chair.

ASSEMBLYWOMAN FRISCIA: Yes.

ASSEMBLYMAN SARLO: Before we get into it, I just want a point of clarity. Executive Order 99, by Florio, was actually rescinded and superseded by Executive Order No. 11, by Whitman. It actually wasn't struck down by the courts. Just for a point of record.

ASSEMBLYWOMAN FRISCIA: Thank you.

MR. TARTAGLIA: Madam Chairwoman, members of the Committee, I'd like to thank you first for allowing us to testify here today.

I'm going to read a brief statement. As the lobbyist for NFIB, I think it's more important to hear from some of our members that would be affected by this.

Good morning, Madam Chairwoman --

ASSEMBLYWOMAN FRISCIA: For the record -- excuse me, for the record would you please spell out what NFIB is. We are on the Internet.

MR. TARTAGLIA: Okay. The National Federation of Independent Business.

ASSEMBLYWOMAN FRISCIA: Thank you.

MR. TARTAGLIA: Good morning, Madam Chairwoman and members of the Assembly Labor Committee. My name is Rob Tartaglia, and I'm the State Director for the National Federation of Independent Business. We currently represent 11,000 small businesses in New Jersey and 600,000 nationwide. Our member businesses employ between three to five employees.

I'm here to respectfully oppose Assembly Bill 1926 because it does nothing to help the independent business owners except effectively shut them out of the bidding process for all public works contracts. New Jersey small businesses are already very fragile, and the Legislature and the Governor should be looking for ways to help bolster small firms and create jobs, not close them out.

Ending the open bidding process is unfair and discriminates against hard working, tax paying New Jerseyans who have relied on this process, open process, for years. Forcing State, county, and local entities to accept bids from a limited number of approved unions will inflate the costs of public works projects, small or large. Why should a bidding process be selective in who is allowed to bid?

A-1926 contradicts court precedents and policy. It is an attempt to overturn the New Jersey Supreme Court decision that overturned former

Governor Florio's executive order that gave select unions a monopoly on all public works contracts. We are just asking for a fair process that is currently in place to continue.

Thank you very much.

EARL HALL: Thank you, Madam Chairwoman.

My name is Earl Hall. I'm Vice-Chairman of the Leadership Council for the National Federation of Independent Business here in New Jersey.

For those who may not be familiar with NFIB, we represent 11,000 member businesses in the State of New Jersey. This is important to the State and to the government of the State of New Jersey, because those businesses represent somewhere in the neighborhood of 100,000 job holders. They provide employment for this many people, your constituents.

And the way this legislation is written, getting down to the bottom line, avoiding all the smoke and mirrors that have been, you know, preceding us here today -- this is an insult to small business. Rob just stated that we have -- most of our members are three to five employees. We have members that are 50 and 100 employees. This is an important segment of the economy, the State of New Jersey, and it will definitely -- their ability to bid on construction projects in the State of New Jersey will be severely inhibited by the words of this bill. And it comes as an insult to small business.

Small business provides 57 percent of the jobs in the State of New Jersey and has provided 75 percent of the new jobs in the economic recovery. I wish that this bill could be amended to level the playing field so that all small business has an opportunity to compete equally with the organized labor.

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you.

E. MARTIN DAVIDOFF CPA, ESQ.: I guess it is still morning. Good morning.

My name is E. Martin Davidoff. I am a tax attorney and a CPA in Dayton, New Jersey, and I reside in East Brunswick, New Jersey. I'm a nephew of a very proud union member for over 40 years, my Uncle Harold. I'm a former -- I've been involved in government contracts through the Recreation Parks Advisory Board in East Brunswick, where we built a multimillion dollar municipal pool recently, and I've been a delegate to the White House Conference on small business, and for my -- on behalf of my clients and my business colleagues, I consider myself a small business advocate. I've been a proud member of the NFIB for nearly 20 years at this point.

I'm here in support of free enterprise and therefore I'm opposed to this bill. And I appreciate that this bill does not require project labor agreements. That has been made very clear. However, the reality of that is in our real implementation is there is a lot of judgement when in -- when a governing agency can require a project labor agreement. And a mayor or a governor or an executive body that wants to protect its turf, protect the fact that they may have gotten elected by union people, are going to move toward project labor agreements. They're going to do that because that's going to -- that's the political reality in this State. If you pass this bill, that's what's going to happen.

The fact of the matter is, project labor agreements may be good as an agreement between the contractor and its employees or the contractor and

unions, for union contractors. It should not be the government coming in and saying, oh, we want to impose a project labor agreement on this project. Your job is to find the contractor that's going to do the best job at the lowest cost and don't meddle in how that contractor manages his or her affairs.

We're here -- our government is supported by a free enterprise system by free men and women, and that's what has made our government great. And when you begin to get in the middle of how people interact with each other, you're getting involved in something that you shouldn't be getting involved with, in my opinion.

Again, contractors should be free to make agreements as they wish, and then you choose the contractors that are most qualified. You don't need to get in the middle of their thoughts. Small business, as Earl indicated, has brought 75 percent of the growth in our economy in the recovery of the '90s. It has been known as the economic locomotive in the incentives. Unions don't need the protection that ultimately this bill will really provide. They have a strong market share in this State. They are successful. They are doing well. This bill will strengthen unions, give them more support. Maybe such support that it won't even be a fair share. They're already in the top five, and they wouldn't be here supporting it if they didn't.

A couple of interesting comments on -- when Eric Richard was speaking he said, well, we won't use it if -- we won't use a project labor agreement, governments won't use it if it is determined that the cost is prohibitive. We really should be looking at it the other way around. It shouldn't be used unless you are going to get a better project or cost savings. It should be a positive theory used. And if you're going to get a better project

or cost savings, let free enterprise do it. They'll make their own decisions whether they want to enter into an agreement.

The other thing is, clearly, this is an assault -- one of the comments by the -- one of the Assemblyman supporting this bill says, we want to hold, in effect, nonunion -- I don't think you -- I don't know if you used the word, but we want to hold contractors' feet to the fire to make sure they're observing prevailing wage laws. Well, there's an enforcement mechanism for that. There are certifications. You don't need -- how many ways do you need to hold people's feet to the fire and that clear intent?

Just a side comment, Assemblyman Geist talked about the Commissioner of Labor. And I have -- as a tax lawyer, going into a lot of detail, I have some advice on that. First of all, if you need to involve the Commissioner of Labor, if you must, just merely advise the Commissioner of Labor of a pending PLA contract. If he decides he wants to give his opinion, he'll give his opinion. Give him a copy of the contract, all right, that gets him involved and he can look for consistency, but the minute you put things in like review, review requires he signs off on it. The minute you put "assist in facilitating" that requires an involvement. So you may be able to accomplish the same purposes without the -- may be able to get his involvement without getting the delays that Assemblyman Geist is by merely saying -- putting in the statute language, we will advise the Commissioner of Labor that there is a pending PLA and we will give a copy of the contract.

Obviously, that's only if you choose not to follow my advice today. And we're realists, but the fact of the matter is what you're doing here is you're putting a blow to free enterprise. If project labor agreements are good, if the

unions are being effective they will get -- they will be able to convince contractors that it's good for them and not have to go to the government saying, hey, we're going to use our patronage to help you help us. And this is clearly payback. It's not appropriate. And it's really not the appropriate place for government.

I thank you for your courtesy, Madam Chairwoman and the others. Thank you very much.

ASSEMBLYWOMAN FRISCIA: Thank you for your comments, all three of you.

ASSEMBLYMAN MALONE: Madam Chairperson, could I just ask a question?

ASSEMBLYWOMAN FRISCIA: Yes.

ASSEMBLYMAN MALONE: The group that you represent, how many of those individuals are currently involved in any school construction projects right now?

MR. TARTAGLIA: I don't have the exact percentage, but a lot of our minority members will be involved with a lot of the --

ASSEMBLYMAN MALONE: I didn't ask that question. I said, how many are currently involved?

MR. TARTAGLIA: I don't have that information.

ASSEMBLYMAN MALONE: Okay. Could you maybe, through the Chair --

MR. TARTAGLIA: I'll go -- I'll make -- through the Chair, I'll --

ASSEMBLYMAN MALONE: -- possibly supply that information?

MR. TARTAGLIA: Yes, I will, Assemblyman.

ASSEMBLYMAN MALONE: Also a comment was made that there was something nefarious about the opportunities for municipalities and counties to have a right, if they chose, to enter into a project agreement. Do you feel that that is improper for local entities or counties to have that right to do that? I think that was, you know, the intent.

MR. DAVIDOFF: I think that government at any level should not have the right to enforce a project labor agreement upon -- between a contractor and a labor union or a contractor and its employees. I think free enterprise dictates that an employer and employee are allowed to negotiate at arm's length based upon the labor laws of this country, and that no level of government should require or be in a position to tell a potential contractor how it needs to interact with employees other than the Prevailing Wage Act, which already exists.

ASSEMBLYMAN MALONE: So it's your understanding that the municipality, even though they feel, in their judgment, that they can save taxpayers money by having this kind of an agreement, should not have the right to do so?

MR. DAVIDOFF: I would tell you -- yes, I do.

ASSEMBLYMAN MALONE: Okay. So --

MR. DAVIDOFF: To say clearly, but I would like to --

ASSEMBLYMAN MALONE: So -- just so we get clearly on the record --

MR. DAVIDOFF: Yes.

ASSEMBLYMAN MALONE: -- no municipality or county or authority should have the right, if they choose, basically, to enter into a

contract or an agreement that they feel is in the best interest of the taxpayers that they represent, to do so?

MR. DAVIDOFF: Yes, but I would like to say an aside to that, okay.

People can say that there's a, you know -- they feel that they're in the best interest to lock up certain people in the best interest of the taxpayers. People can say all kinds of things that are in the best interest of the taxpayers. I trust the taxpayers. I trust free businesses and free labor unions to make their own decisions in that vein. And I agree, government should not get into that game. And that's a basic disagreement you and I have about that.

ASSEMBLYMAN MALONE: Okay. Well, I don't know about the agreement, but -- through the Chair, so -- I, as a person who has been involved in local government for 24 years, I take exception to the fact that a local entity, who basically has to be the one who are responsible to the taxpayers to ensure that their money is being effectively and efficiently used -- and if they feel, and it's in their judgment that they can do that by having a project labor agreement, that is a tool that they ought to have the right to be able to use. And so I just find it strange that we would want to put constraints on local government from -- for pursuing that possible tool.

MR. DAVIDOFF: Jack, I understand what you're saying. I understand your concern; however, I think that there are a lot of, you know -- we can tell our municipalities -- well, in their judgment, they should be able to hire people at five dollars an hour because that is going to save taxpayers money. On the same term, you know, I think there are certain things that might help taxpayers that shouldn't be done just because it doesn't make sense

to do it. And again, I'm -- I also dispute whether or not such agreements would allow that. I think that they should choose the contractor and maybe they'll find certain contractors who'd provide a better product at a better price. And that is their right to do, and that is their function.

Thank you, sir.

MR. TARTAGLIA: That's all, Madam Chair.

ASSEMBLYWOMAN FRISCIA: Thank you for your comments. I'm sorry, Assemblyman Geist.

ASSEMBLYMAN GEIST: Thank you, Chairwoman.

Just a quick question. Martin, you were here earlier during the testimony of the BCA, Mr. DiGangi, who I respect a lot -- in his written testimony and in his sworn testimony said, "It is clear that nonunion workers and nonunion contractors are in no way banned from participating in PLAs." Do you agree with that representation by Mr. DiGangi?

MR. TARTAGLIA: We agree. We understand that there is an agreement.

ASSEMBLYMAN GEIST: So if there's no ban or prohibition --

MR. TARTAGLIA: What we're saying is that the terms of that agreement would be to selectively use union workers, which would put a lot of our members out of business because they wouldn't be able to afford to pay them.

ASSEMBLYMAN GEIST: Do you agree with the testimony of others, that what this does is really just provide enabling authority and the discretion for the recognition of PLAs?

MR. DAVIDOFF: Yes.

MR. HALL: Yes.

MR. TARTAGLIA: Yes.

ASSEMBLYMAN GEIST: Thank you.

ASSEMBLYWOMAN FRISCIA: Assemblyman Gregg.

ASSEMBLYMAN GREGG: Thank you, Madam Chair.

Just to respond back to Mr. Sarlo for a second, just so that we're clear on what I was saying, is that Executive Order 99 went into effect in September/October of 1993. In actuality, that created *Harms Inc.* lawsuit that was ultimately completed in about July of 1997. And that lawsuit went in favor of *Harms*. And that lawsuit said that the State of New Jersey could not distinguish between unions and PLAs. Just to clarify that for the record, it was settled by a lawsuit and completed and the State lost. So just -- so we're clear there.

Now over to here, I just want to be clear, through the Chair, on Mr. Malone's questions. I understood where Joe was going, but in essence, Mr. Davidoff, we're not looking at this bill in a vacuum. There are other laws that exist today for bidding. Is that correct, through the Chair?

MR. DAVIDOFF: Through the Chair, that is correct.

ASSEMBLYMAN GEIST: We have a public contracts law here in the State of New Jersey and that is really the issue of whether or not any entity that would be subject to a PLA agreement is either dealing with a PLA or dealing with a local public contracts law. And that is really the default mechanism that I think that we're talking about that -- in order to perhaps not go for the lowest bidder that a local entity or any entity could use the PLA as opposed to that. Is that correct, through the Chair?

MR. DAVIDOFF: Right. Yes.

ASSEMBLYMAN GEIST: Is that your concern? I guess --

MR. DAVIDOFF: Yes, that is correct.

ASSEMBLYMAN GEIST: Thank you much.

ASSEMBLYWOMAN FRISCIA: Anyone else? (no response)

Thank you, gentleman.

MR. DAVIDOFF: You're welcome.

ASSEMBLYWOMAN FRISCIA: Helen Yeldell, from the New Jersey League of Municipalities and Robert Sforza.

HELEN YELDELL: (speaking from the audience) Sforza (indicates pronunciation).

Thank you, Chairwoman Friscia. I have -- I'm Helen Yeldell, from the League of Municipalities, and I have with me Robert Sforza who is a board member of the Governmental Purchasing Association of New Jersey. The GPA is an affiliate organization of the League of Municipalities.

The League of Municipalities, which represents 566 municipalities in the State, has reviewed this PLA legislation -- reviewed such legislation about five years ago. We opposed the legislation then, and we oppose this legislation now. We oppose this legislation, which legalizes the use of project labor agreements on public projects. We understand that the bill is permissive, but the League of Municipalities views this bill as unfair.

Project labor agreements will circumvent, according to our membership, our normal public bidding process. Our current system of awarding bids in open competition to the lowest responsible bidder has proven both effective and cost worthy. This is based on the quality of work,

experience, and cost. This open process maximizes competition and assures our taxpayers receive quality work for the lowest price.

We also oppose this bill because, we believe, PLA legislation is a discriminatory attack on open competition. It limits public contracts to union only shops and, in so doing, freezes out nonunion contractors. This creates the closed shop, in our view. And a closed shop is that which our public bidding laws seeks to prevent. We also believe that nonunion workers deserve the same opportunity to work on public projects as union workers.

Our main objection to this bill, and I've heard it said before, earlier this morning, is that this bill will be costly to taxpayers. We believe that restricted competition and higher costs will lead to higher taxes all at the expense of municipalities and local taxpayers. Union only PLAs will drive up the cost of building schools, libraries, highways, treatment plants, and other public projects. And we believe the cost will be -- the cost will escalate because restrictions on competitive bidding reduces the number of potential bidders. By doing that, the local entity will be forced to accept higher bids from a limited pool rather than being able to choose from all bidders.

We also believe that taxpayers should not be required to support projects that are publicly funded, but not open to all qualified bidders. We believe this is bad public policy for the State. The economic reality is our State's fiscal future does not seem bright. We must be very careful how we spend and allocate scarce resources. We believe project labor agreements do nothing to help alleviate this reality.

We respectfully ask you to not release this bill. We believe that this bill favors favoritism over competition.

ASSEMBLYWOMAN FRISCIA: I have one question for you. I've heard this said several times this morning now. Would you please tell me how a project labor agreement is going to increase the cost of a project?

MS. YELDELL: Well, because it limits or restricts competition in open bidding competition. And it reduces the pool of bidders for local government to choose from. This will drive up the cost because local governments will have to choose from just those big bidders that are left there.

And when I looked at -- my organization looked at a -- one or two examples --

ASSEMBLYWOMAN FRISCIA: Before you go on, why would they be restricted to that?

MS. YELDELL: Local -- the small bidders will be outbid by the big unions. They are nonunion workers. If they go towards the public contracts law, we are supposed to bid or receive people from open competition based on quality of work and cost. We believe if we do not use the open public contracts law and go to PLAs it is not good for local government.

ASSEMBLYWOMAN FRISCIA: But if all workers are being paid prevailing wage, how could this make a difference?

MS. YELDELL: I don't believe this is an issue of prevailing wage. We believe this is an issue of skirting the local public contracts law.

ASSEMBLYWOMAN FRISCIA: That doesn't answer my question, but thank you.

Robert Sforza.

I'm sorry, Assemblyman Geist, you have a question before we go on.

ASSEMBLYMAN GEIST: I'll try with my question, if I may, Chairwoman.

ASSEMBLYWOMAN FRISCIA: Thank you.

ASSEMBLYMAN GEIST: Helen --

MS. YELDELL: Yes.

ASSEMBLYMAN GEIST: I mean, Assemblyman Malone --

MS. YELDELL: Yes, I heard Assemblyman Malone.

ASSEMBLYMAN GEIST: -- and Assemblyman Egan have described this as discretionary --

MS. YELDELL: Yes, we understand that.

ASSEMBLYMAN GEIST: -- enabling authority, which means your mayors and your councils have a choice: if they do it, they do it; if they don't, they don't. Is that right or wrong?

MS. YELDELL: Well, Assemblyman, we know that the bill --

ASSEMBLYMAN GEIST: Respectfully, could you answer that question?

MS. YELDELL: We know that the bill has been -- is permissive.

ASSEMBLYMAN GEIST: Thank you.

MS. YELDELL: That does not change our position. It may be permissive, but we see the bill as unfair.

ASSEMBLYMAN GEIST: Let's go through that. It's permissive, which means your mayors and your councils can do it or not do it, correct?

MS. YELDELL: That is correct in what you just said.

ASSEMBLYMAN GEIST: And then the voters can decide whether they made the right decision, correct?

MS. YELDELL: That is correct in what you just said.

ASSEMBLYMAN GEIST: So what's wrong with the bill?

MS. YELDELL: The bill, according to the League of Municipalities, which represents 566 municipalities -- the bill is unfair. The League of Municipalities understands that you did this permissively. We have reviewed the amendments that were presented to us. My committee, my membership, instructed me that they will continue to oppose this bill. They feel if you want to do project labor agreements, you can do it for the State, but your role should not be to form municipalities off of the local government.

ASSEMBLYMAN GEIST: One follow-up. Do you agree that this bill does not trigger State mandate, State pay?

MS. YELDELL: I know you're referring to a line in that statement that you may be looking at. We just used that -- that's a general statement of the League that if we are being mandated to do something -- we know this is not a mandate.

ASSEMBLYMAN GEIST: Right.

MS. YELDELL: But if we are being mandated or required to do something, or the State is coming in and saying we should do something, then you should provide funding. We are not saying this is a State mandate, State pay issue.

ASSEMBLYMAN GEIST: Thank you.

ASSEMBLYMAN GREGG: Madam Chair.

ASSEMBLYWOMAN FRISCIA: Helen -- all right, Assemblyman, go ahead.

ASSEMBLYMAN GREGG: Thank you.

Helen --

MS. YELDELL: Yes.

ASSEMBLYMAN GREGG: Through the Chair, perhaps, and maybe I can help you with your testimony as well.

My sense is, correct me if I'm wrong, that part of the issue with the League of Municipalities may be that, while this is permissive, that there may be, especially in the case of small municipalities -- when we have the ability to have PLAs that some of the large unions may pressure municipalities to go into a PLA, and if they don't go into a PLA, that perhaps they won't bid. And it might be -- shall we just say that it may -- placing pressure on them. Could that be one of your fears?

MS. YELDELL: That is an accurate assessment. We feel that we will be subject or come under undue pressure.

ASSEMBLYMAN GEIST: And secondly, could it possibly be, and I would certainly hope that it might be, that we have 566 municipalities and perhaps many of those folks would like to use local labor in many cases. And if PLAs were, shall we say, used either by the State or large groups, who are trying to push out the little people, that you couldn't use local folks, which they may like to try to have bid. Could that be a correct --

MS. YELDELL: That's an accurate assessment.

ASSEMBLYMAN GEIST: Thank you very much.

Thank you, Madam Chair.

ASSEMBLYMAN SARLO: Madam Chair.

ASSEMBLYWOMAN FRISCIA: I'm sorry. One more question.

ASSEMBLYMAN SARLO: Thank you, Madam Chair.

Just to expand on what Assemblyman Geist had said. Are you aware that there is a provision in this bill that the local entity, say the Mayor and Council, before they would enter into a PLA, they have to actually prepare a document that takes into consideration the size --

MS. YELDELL: Yes. Complexity and cost, yes.

ASSEMBLYMAN SARLO: -- and the complexity of the project? So that's something that they have to justify to their local constituents, their local taxpayers. So what we're doing here is we're giving them the option whether they want -- and they're the ones that have to turn around and justify it. We're not requiring, we're not mandating them. They have to actually justify it to their own local constituents and local taxpayers.

MS. YELDELL: Assemblyman, we read your amendments. We understand that you -- in your attempt, you were trying to make this bill palatable to municipalities. We appreciate your efforts, but we still oppose this bill. We understand what you're trying to do, but we feel it's not needed.

ASSEMBLYWOMAN FRISCIA: Assemblyman Geist.

ASSEMBLYMAN GEIST: Thank you for the opportunity to ask these questions.

Do you have a preference as to how one of your municipalities can implement this by motion, by resolution, or ordinance? Do you have any specific recommendations on how this can be done?

MS. YELDELL: No, no preference. Actually, our only preference would be if you, the Legislature, care to pass this bill for PLAs, that you just take municipalities out of it.

ASSEMBLYMAN GEIST: If we don't do that --

MS. YELDELL: No preference.

ASSEMBLYMAN GEIST: Do you have a preference as to the legal procedure through which a municipality may approve such by motion, resolution, or ordinance?

MS. YELDELL: No, no, no. We have not discussed that.

ASSEMBLYMAN GEIST: Thank you. Thank you.

ASSEMBLYMAN MALONE: Madam Chairwoman, if I could just ask one additional question?

ASSEMBLYWOMAN FRISCIA: Go right ahead, Assemblyman.

ASSEMBLYMAN MALONE: After 24 years of serving in a local government, I find it almost incomprehensible, for me, to understand why the League would not want to give local officials the ability to think or reason on their own in making a decision. And I represented a town, small town, 5000 people, and I would think, as an entire group of people, it almost sounds insulting to think that they don't have the opportunity or thought process to be able to make a rational decision whether they would like to get into a PLA.

For the League to come out and say, we don't want our constituent members to have that right, bothers me a little bit. And it goes counter to a democratic process of saying the bill is okay, just don't let municipalities do that for fear that the unions are going to threaten them or intimidate them into doing this. There are far more people here today from small businesses, Main Street, U.S.A., that are here today and have a whole host of reasons. I would think if this thing was so onerous at the local level and that you do not want these people to be intimidated, I would think that local store owners, local

constituents would be a far greater deterrent than to say, we don't want our membership to have that right; we don't think that they're capable of making that decision. That, in my opinion, is what you're saying to this Committee and to the Assemblyman and I. I just find that, as a person who spent many years toiling in the local government, that I would feel offended by that statement.

MS. YELDELL: No offense intended, Assemblyman. But as you know, we worked with you for many years to revise the local public contracts law. We worked with you, we've had you before our meetings, before our convention members, supporting you in your efforts to revise the local public contracts law to eliminate what was then seen as collusion between construction workers or unions -- unions or whatever.

The League of Municipalities, when it makes its decision, it is not made by one or two people. Although we represent 566 municipalities, we have representation from all municipalities. So this decision comes from our membership, which represents all municipalities. And it is not to say that we are intending to be offensive to you or to any municipalities. This is the organization's position. I'm sorry if it does not completely jive.

ASSEMBLYMAN MALONE: Just one last point since it was brought up. As you all know, it took me five years to be involved with revamping the entire purchasing and contracting procedures for the State of New Jersey. And I can assure you if I felt that this piece of legislation circumvented five years of work in my life, I would not be a cosponsor. So I can assure you that, in my feelings, that this does not circumvent that piece of legislation.

ASSEMBLYWOMAN FRISCIA: Thank you, Assemblyman.
Robert, finally.

ROBERT SFORZA: Thank you, Madam Chair.

Members of the Committee, after reviewing Bill A-1926, the Governmental Purchasing Association of New Jersey wishes to share their concerns regarding this particular bill.

For over 70 years, New Jersey has been able to manage contracts without labor project agreements. The GPANJ believes that, overall, project labor agreements restrict competition. They skirt the intent of the local public contracts law. And they do not work to trim manning requirements. As we all know, local units are now required to pay the prevailing wage. Most of the problems that municipalities have with construction contracts do not relate to strikes or lockouts.

One very important aspect that has not been addressed adequately are that local units are not trained in negotiation. They would have to hire negotiators to sit down with local unions. Nothing in this bill indicates assistance from the Department of Labor.

And lastly, if the local unit is forced to negotiate within a specific regional area, it may not find enough qualified workers, which can lead to unsafe conditions.

I thank you for your time.

ASSEMBLYWOMAN FRISCIA: Thank you.

Any comments or questions? (no response)

Thank you, both.

MR. SFORZA: Thank you.

ASSEMBLYWOMAN FRISCIA: William Mullen and Joseph Demark, from New Jersey Building Trades Council.

UNIDENTIFIED SPEAKER: (speaking from audience) Yes, Bill Mullen won't be speaking.

ASSEMBLYWOMAN FRISCIA: Thank you.

JOSEPH DEMARK: Thank you, Madam Chairwoman and the rest of the Assembly, for giving me the chance to speak today in favor of Assembly Bill 1926. I'd like to thank Joe Egan and Joe Malone for their sponsorship and the rest of the Committee.

I do have some prepared text. I think I could read it, but I think I'll pass on it. I think it has been beat up pretty good here today. So it's here if anybody would like to read it. It's been presented, I think, already.

You know, I'll just tell you what are the New Jersey State Building Trades -- we're over 100,000 men and women who go out everyday and work hard everyday on these construction projects. There's been a lot of, I don't want to say lies, maybe, half-truths that have been said here today. We do the vast, vast majority of commercial and public work here in New Jersey. We're the best trained people in the country. Our members get health benefits for their families, if you think that's a good idea. We get pensions. We're your, probably, Little League coach, maybe the soccer coach in your community. We're a vibrant part of the fabric here in New Jersey. We're not a drain on the economy. And our members support this bill 100 percent.

Some remarks were made about, maybe, women and minorities. There's not a local union in our affiliates that is not out there recruiting minorities and women into the construction field right now. There's set-asides.

There's affirmative action goals. In almost every contract that is written, there's a PLA right now with Continental Airlines at Newark Airport and there were set-asides for women and minorities. And those goals were met. There's one in place, right now, at the Essex County Jail in Newark. And those goals were met.

So sometimes, maybe, we do take a bad rap from people that maybe don't understand us, but this is a new day and we're here to work. And this bill will put the men and women in your communities, where you live and work, to work so that they can pay their taxes and so they can be productive members of the community here in New Jersey.

I thank you very much.

ASSEMBLYWOMAN FRISCIA: Thank you.

Any comments or questions? (no response)

Thank you.

MR. DEMARK: Thank you.

ASSEMBLYWOMAN FRISCIA: Jeffrey Stoller, NJBIA.

JEFFREY STOLLER: Good afternoon, Madam Chair. Thank you very much.

My name is Jeff Stoller. I'm a Vice-President of the New Jersey Business and Industry Association. On behalf of NJBIA's 17,000 member employers in New Jersey, I urge the Assembly Labor Committee to strongly oppose Assembly Bill 1926.

This legislation provides that the State, counties, and municipalities can establish project labor agreements with unions effectively, eliminating nonunion competition on public works projects. Under these

agreements, contractors using union labor get the exclusive right to construct the project and to shut out competition.

A-1926 is shameful, discriminatory legislation that is unfair to everyone. It is unfair to hundreds of highly qualified nonunion contractors and subcontractors who will be denied the chance to win contracts at all levels of government. That's exactly what Section 4 does. It is particularly unfair to small minority-owned and women-owned contractors, which are overwhelmingly nonunion businesses. It is unfair to New Jersey taxpayers who will inevitably pay higher costs for public constructions and face additional delays for projects if qualified competitors are denied contracts. And it is unfair to all citizens of New Jersey who are being asked to sacrifice to solve the State budget crisis while unions are granted a virtual monopoly on billions of dollars in school, highway, and other construction projects.

In short, A-1926 does seek to rewrite New Jersey's competitive bidding laws. It undermines the competitive construction process that gives taxpayers the best work for the lowest price. It makes no sense to gut New Jersey's bidding laws, particularly when taxpayers and employers face an uncertain economy, and State and local governments are searching for ways to contain costs. Competition is the key to a successful bidding process, and project labor agreements have no place in a competitive bidding system.

The New Jersey Supreme Court said it best in the 1994 decision striking down project labor agreements: "Bidding statutes are for the benefit of the taxpayers. Their objects are to guard against favoritism, improvidence, extravagance, and corruption. Their aim is to secure, for the public, the benefits of unfettered competition. The paramount policy of our public

bidding laws fosters unfettered competition in public contracts. The effect of project labor agreements is to lessen competition,” from the *George Harms Construction* case of 1994. And not one word of that has been made irrelevant by any changes implemented in A-1926.

The New Jersey Supreme Court ruled against project labor agreements again in the 1995 case of *Tormee Construction v. Mercer County Improvement Authority*. Yet, today, Assembly 1926 seeks to overturn these rulings by permanently altering the State’s public bidding laws. The result: a competitive process for identifying the lowest responsible bidder for a public construction project would be replaced with a political process where organized labor can demand the exclusive right to build a project at all levels of government.

A-1926's project labor agreements would deny contracts to many nonunion contractors currently involved in many high quality construction projects. Suddenly, years of completing work on time, within budget, and at a competitive price no longer matter. The only criteria that matters is hiring union labor. This will effectively prevent hundreds of respectable nonunion contractors from participating in public works contracts, allowing union contractors free to charge higher rates in the absence of nonunion competition.

The only alternative A-1926 leaves these contractors is no real choice at all, abandoning their usual nonunion work crews, whose efficiency on the job makes them less costly than a union crew, even though they receive the same wages and benefits.

As A-1926 shuts out nonunion contractors, it will deny jobs to thousands of nonunion workers who are their employees. These workers pay

the taxes to finance the State's multibillion dollar School Construction Program and the infrastructure projects of the Transportation Trust Fund, but will not have the opportunity to work on them.

Ultimately, all taxpayers will pay increased costs for project labor agreements. Limiting public contracts to unions only will inevitably lead to higher bids for projects rather than allowing public entities to choose from all bidders for the lowest responsible bid. Sweetheart deals for unions at the expense of taxpayers, employers, and contractors will not save money or avoid delays.

A wide range of New Jersey employers, contractors, municipalities, and taxpayers have reviewed A-1926 and have reached the same conclusion. Project labor agreements will drive up the cost of public construction everywhere in New Jersey. At a time when everyone is being asked to sacrifice in order for State government to regain its fiscal stability, we should defend our competitive bidding process, not undermine it, and judge all contractors on their ability to complete work at a fair price, not on their labor affiliation.

And I'd like to conclude, Madam Chair, by simply alluding to some of the points that have been made by the earlier testimony. We heard that in A-1926, it doesn't matter if you're nonunion. Well, clearly as you've heard other witnesses testify this morning, Section 4 clearly foresees this situation where a nonunion person would not be able to participate or would be restricted to such a small percentage of their usual workforce that it wouldn't make sense for them to even apply and try to seek the bid. Certainly, if you are a smaller contractor, a nonunion contractor, you don't have enough projects that if you had the opportunity for one of these bids, that you could

set your nonunion crew aside and not use them for two months. Obviously, you'd have to walk away from a bid like that.

We heard that there's no problem about cost overruns under A-1926 because you'd be able to anticipate cost overruns and then the PLA would not apply. But clearly, if you look over the history -- and I'm sure the Associated Builders and Contractors and other contractor groups can tell you about some of the problems on record with past PLAs around the country -- it is a mixed record, and clearly the cost overruns didn't emerge until long after the PLA had gone forward. So having something where it would be preempted up front doesn't really address the real issue.

You've heard over and over again. This is permissive. Well, what does it do? It permits to discriminate against the nonunion workers. People who are fully qualified, who could do the job, but again under this language, could be kept out. We wouldn't allow a law -- we wouldn't allow a business monopoly to go forward. The members of this Committee would be all over that. We wouldn't allow a change in the law against discrimination that said, well, we're not saying that in every case you would discriminate, but we allow, on a case-by-case basis, for you to discriminate on the basis of sex or something. You'd never -- you would never even seriously contemplate legislation. And yet this is the model being used here.

You've heard that -- well, the courts -- even though the Supreme Court of New Jersey has twice struck down the project labor agreements -- but this one's okay. A-1926 is okay. Our reading and from consulting for many of the concerned groups is the only way it would become okay is if this legislation was passed and inserted PLAs into the competitive bidding laws. So

clearly, I think, standing on its own, I think, there's questions about Executive Order 1 and others. I believe that the Supreme Court would follow the same arguments it followed earlier.

And finally, I know, Assemblyman Malone, you were asking why wouldn't a municipality take advantage and save money through a project agreement? We believe a project agreement that has special criteria and so forth might very well make sense, but that it would be a project that everyone should be free to bid on and have the chance of winning. What we object to is a project labor agreement where, again, your track record, your ability to do the job, your cost, your price of doing things, your record for getting work done on time -- that ought to count, not your labor affiliation. So, to answer your question, Assemblyman, absolutely, a metropolitan area, a municipality should be able to put together and have special criteria for special projects. But the one criteria that we reject across the board, as you're hearing today, is saying that because you are nonunion, you fall out. We think that that is a huge mistake. And we do believe that -- to answer your question finally, Assemblyman Geist, about why the municipalities do not want to see this? It is, as I said in my testimony, it is taking what is now a straightforward competitive bidding process, based on issues like the ability to do the job, and making it a political decision. Each municipality, each school board, each entity would be put on the spot by this legislation. And they would be under pressure because now the labor groups that would want this to be exercised on their behalf would go direct to them. It wouldn't be a question of let's look at the process we're using.

So, again, let me conclude by simply saying, we believe that a lot of good work has been done here in New Jersey under our competitive bidding laws. We stand by them. As you hear, there are many groups that are standing by them, and we believe that they should continue.

Thank you very much.

ASSEMBLYWOMAN FRISCIA: Thank you.

Mr. Kirschner, we'll take you before we go into questions and comments.

PHILIP KIRSCHNER: Thank you, Madam Chairperson.

Jeff really gave a great summary. Simply, project labor agreements, as we discussed, they're shameful. They are discriminatory. There's no reason we should be sitting here even talking about this when the State is undergoing a fiscal crisis, as it is, for something that is going to increase the cost of contracts.

You've heard time and time again from contractors in the real world what this will do. It will bar them. They are out. They don't sign the PLA, they are out. There's a reason why this was Executive Order No. 1. There's a reason why we're all here today. This is for unions, by unions. The whole idea is to get union construction on as many jobs and as many places as possible, period. So let's call it what it is. And we add all these nice things, but that's what it is. And that's shameful.

It's one thing to be pronion, it's another thing to be pronion at the expense of everybody else. And that's what this does.

ASSEMBLYWOMAN FRISCIA: Assemblyman Geist.

ASSEMBLYMAN GEIST: Two quick questions. Do you have any opinion on the amendments?

MR. STOLLER: I believe that they were looked at and didn't see that they addressed the fundamental problem.

ASSEMBLYMAN GEIST: Second one, what do you think this means for the State of New Jersey in terms of promoting employment within the State recognizing New Jersey workforce first? What's your opinion as to whether it enhances recognition of those that are living in New Jersey to work in New Jersey?

MR. KIRSCHNER: We don't think it has any impact, I'm mean -- the companies that we represent are all New Jersey companies. As you've heard testimony today, the same people working on projects, you know, two months ago can't work on them today. So if anything, it probably would have a deleterious effect on it. These are all New Jersey contractors up here. These are all people that pay fine wages and have been in business for a long period of time, who no longer, as a practical matter, will be able to have their companies get a public contract in the State of New Jersey.

MR. STOLLER: They will continue to pay taxes and their employees would continue to pay taxes to fund these projects.

MR. KIRSCHNER: Well, if they're working.

MR. STOLLER: If they're working, that's true. If there not working --

ASSEMBLYWOMAN FRISCIA: Assemblyman Malone.

ASSEMBLYMAN MALONE: Yes, thank you.

Jeff, or either one of you, do you have any documentation from other states that prove that PLAs cost more?

MR. STOLLER: I think that there's -- again, the contractor groups can provide you with -- I've seen several things that have been circulated in recent weeks that show that some of the cost overruns in PLAs in other states, where they have been tried, have been unbelievable. And it gets, I mean --

ASSEMBLYMAN MALONE: As a result of PLAs or just poor workmanship or --

MR. STOLLER: Well, if the argument is that if we adopt PLAs, we will preclude cost overruns, and that we will ensure quality craftsmanship and so forth -- that is proven to be not true based on some of the experience on some important projects.

ASSEMBLYMAN MALONE: I would be very interested in seeing substantive documentation if you could supply it.

MR. STOLLER: I believe -- yes, I would encourage you to reach out. I think the Associated Builders and Contractors have national affiliates who've looked not just in the --

ASSEMBLYMAN MALONE: Just -- I'd be primarily concerned about the New York, New Jersey, Pennsylvania, Delaware area --

MR. STOLLER: Well, I believe they're on the list to testify.

ASSEMBLYMAN MALONE: -- not a -- I don't want to go down to Texas or --

MR. STOLLER: No, no.

ASSEMBLYMAN MALONE: The other question, and I wouldn't have brought this up, but this is the -- a subtle comment has been made that this basically is being done for purely political influence purposes.

(tape malfunction: momentary loss of testimony)

Both BIA and the labor unions lobby, quite heavily, legislators. So it's not like this isn't -- we all don't know that that happens on both sides of this issue. Is that a fair statement?

MR. KIRSCHNER: I'm saying we're not the ones asking to be handed contracts. We're willing to compete. All we want is to be able to compete under the current bidding laws, and if we win our share, fine. And if we don't, we don't. We're not the ones coming here --

ASSEMBLYMAN MALONE: Okay, but --

MR. KIRSCHNER: -- asking to be basically handed a contract. Compete. If you think you're so good, you think you'll save money, compete.

ASSEMBLYMAN MALONE: So you feel that this thing and -- you individually are absolutely opposed to discrimination?

MR. STOLLER: Well, of course.

ASSEMBLYMAN MALONE: And you feel that this is a discriminatory practice?

MR. STOLLER: Well, absolutely if you're taking people --

ASSEMBLYMAN MALONE: Then let me ask you --

MR. STOLLER: -- who are not being judged --

ASSEMBLYMAN MALONE: Let me ask you this question: If I wish to get New Jersey Manufacturers insurance, what's the criteria for getting New Jersey Manufacturers insurance?

MR. STOLLER: Well --

ASSEMBLYMAN GEIST: I can answer that. I'm a member.

ASSEMBLYMAN MALONE: Go ahead, try it.

ASSEMBLYMAN GEIST: And it isn't easy. I can tell you that.

ASSEMBLYMAN MALONE: Do you have to be a member of NJBIA to get New Jersey Manufacturers insurance?

MR. STOLLER: Or a State employee.

ASSEMBLYMAN MALONE: So it is discriminatory to get insurance?

MR. STOLLER: No, it's --

ASSEMBLYMAN MALONE: Under the guise of your organization?

MR. STOLLER: Well, it's not --

ASSEMBLYMAN MALONE: Thank you very much.

MR. KIRSCHNER: Yes. We're not a public entity using taxpayer money. Shutting out people who you've heard today, the minority contractors and the regular contractors, there's no association or union in this State, for that matter, that doesn't give certain benefits, whether it's insurance, training, that car rental program to its members. It's two different things. So to suggest otherwise is really out of bounds.

MR. STOLLER: And any --

MR. KIRSCHNER: That's it.

ASSEMBLYWOMAN FRISCIA: Assemblyman Gregg.

ASSEMBLYMAN GREGG: Thank you, Madam Chair.

I think Assemblyman Malone brought a question up that continues to come up, which is how can you guarantee that it will cost more? And it's always kind of a tough thing to come up with, but maybe we can go back to the issue of George Harms, Incorporated again. And through the Chair, perhaps, you could agree or disagree or elaborate on the information I have about that lawsuit.

It's my understanding that after Executive Order 99 was put in place that the Harms Company lost their job that they had already bid on through the State. Is that correct? Or do you have information to concur with that?

MR. STOLLER: I don't have specific information on that. I would leave that to the particular company. I wouldn't want --

ASSEMBLYMAN GREGG: Well, either way it is -- that is the information I have is that their contract was terminated. And what they did is they took the contract and gave it -- from the Steelworkers Union, which was a union shop, and gave it to another union, the AFL-CIO. And the reason that Harms was winning the contract was because their employees were more diverse, that they could do more things, and because they were doing more things on the project that Mr. Harm or whoever the President was could have a lower bid. So because of the way one union operated versus the way another union operated, in that case, it actually provided a cost savings for the State of New Jersey. Is that a way that could be happening in this bill?

MR. STOLLER: I suppose that that's a real possibility.

ASSEMBLYMAN GREGG: To me that's where the cost savings is because, ultimately, it's how you do a job is how the cost is driven. So if you

have procedures that are more complex or more time consuming by requirement, in whatever organization you are, it will change your productivity. That productivity could change the bid.

MR. STOLLER: Exactly right, that it isn't just a matter of the wages and benefits. Everyone who is winning a contract for this kind of public work is obliged with, you know -- it's legally obliged to pay the prevailing wage rate and certain level of benefits. And every company that gets those contracts should, nonunion or union. But you are absolutely right. The nonunions that are -- nonunion contractors that are able to still come up with the lowest responsible bid, pay those same wages. And you're absolutely right, they have different work rules, have a team that they've worked with for years that really can deliver the work more efficiently and in a more timely way. And again that's what would be broken up by a PLA because you may have all or, you know, most of your regular crew told, sorry you're off. And if it's even one single project, it may be a long enough project that you would have to lose your entire team.

ASSEMBLYMAN GREGG: Thank you.

And the reason I bring this up, through the Chair, is because this is not even a union/nonunion issue here. This was two unions. This was one union, that was the steelworkers, versus another union. So it's not always that it might be an union/nonunion issue. It may be two unions competing that may not be, necessarily, the benefit of the public as well. So I wanted to bring that up in regard to Assemblyman Malone's questions, because I thought they were valid.

Thank you very much, Madam Chair.

ASSEMBLYWOMAN FRISCIA: Any other comments?

ASSEMBLYMAN EGAN: Yes, Madam Chair.

ASSEMBLYWOMAN FRISCIA: Yes, Assemblyman.

ASSEMBLYMAN EGAN: Through the Chair, are there any members of your Association that are in favor of project labor agreements? Did you poll your members?

MR. KIRSCHNER: Our Association is opposed to project labor agreements and have been for many, many years.

ASSEMBLYMAN EGAN: I've heard you say that, sir, but could you answer my question?

MR. KIRSCHNER: We have a governing structure just like any other association. And the governing structure, through committees, through the board has opposed project labor agreements.

MR. STOLLER: For years.

MR. KIRSCHNER: For years and years and years.

ASSEMBLYMAN EGAN: So the answer is no?

MR. KIRSCHNER: If you're asking if we're for an initiative and referendum, no we're not. We have a representative structure just like you have here a representative committee. Just because all the people on the Committee here -- doesn't mean that -- so we have that structure, as does virtually every association or union that I'm aware of. And we're very much opposed to it.

ASSEMBLYMAN EGAN: Well, you mentioned being in an union it would be one man, one vote. It should be one company, one vote. And all

I asked you was if you polled them. I didn't really want to know how your structure went. I just wanted to know if your members are for or against this.

MR. KIRSCHNER: Our members are against this.

ASSEMBLYMAN EGAN: Thank you.

ASSEMBLYWOMAN FRISCIA: I don't mean to contradict you, Phil, but I have a letter from a gentleman who called my office from the Northern New Jersey Chapter, the National Electrical Contractors Association, who happens to be a NJBIA member, and he strongly supports the PLA bill. And I have a letter here from him in support of it. So Assemblyman Egan's (*sic*) question is well taken, and I don't know how many others might also be in the same position.

MR. KIRSCHNER: No, I can't let that stand. That's unfair. The overwhelming 17,000 -- and that's just not fair -- oppose project labor agreements. You know that to be true. So let's not -- let's not get into that.

ASSEMBLYWOMAN FRISCIA: I don't have any idea what the number might be, what the percentage might be, but I just didn't want to let that go either.

ASSEMBLYMAN MALONE: Madam Chair, just for a point of clarification.

ASSEMBLYWOMAN FRISCIA: Yes.

ASSEMBLYMAN MALONE: Since this bill came up, I have received two letters on that. I tried to speak to both of the individuals on that. If this is such a hot issue, believe me I've had other legislative issues that have been much more controversial and generated a lot more interest, and I had two

letters, and I think they came in on Friday to my office, and that's it. No phone calls, no nothing. Just two letters. No -- just leave it at that.

ASSEMBLYWOMAN FRISCIA: Thank you.

MR. KIRSCHNER: We have 400 in our office just from the weekend -- copies to legislators. So -- unless they're just not being sent out and just sent to us --

ASSEMBLYMAN MALONE: All I can say is that I've received two letters.

ASSEMBLYWOMAN FRISCIA: Thank you, Assemblyman.

No other questions or comments? (no response)

Thank you, gentleman.

MR. KIRSCHNER: Thank you.

MR. STOLLER: Thank you.

ASSEMBLYWOMAN FRISCIA: Mike Cantwell, from the Plumbers and Pipefitters.

MICHAEL CANTWELL: Good afternoon.

ASSEMBLYWOMAN FRISCIA: Hi, Michael. How are you?

MR. CANTWELL: Good.

Madam Chairman, I just want to say that I do have a written oratory here that I'm not going to put before you. It's been a long morning for you. I just want to suggest that -- I do represent the Plumbers and Pipefitters, Local 9 and also the New Jersey State Pipe Trades that I'm the President of. We have over 14,000 members that are totally in support of this bill.

And just a couple of projects that we did right here in Mercer County, the ballpark and the Sovereign Arena, were done under a project labor agreement and were done under budget and on time with using all union labor.

And also a comment. Just around the corner, the Marriott Hotel, was done 100 percent union, not under a project labor agreement. But all minority provisions were met and for the women. Totally -- everything that was required on that job was done even more so than was required.

So I just -- my comment -- we would like to move forward and hope you support us.

ASSEMBLYWOMAN FRISCIA: Thank you for your comments.

MR. CANTWELL: Thank you.

ASSEMBLYWOMAN FRISCIA: Any questions? (no response)

MR. CANTWELL: Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you.

Robert Brown. I'd also like to suggest that we try not to be repetitive from here on in because we've heard so much testimony up till now.

ROBERT BROWN: Thank you, Madam Chairwoman.

ASSEMBLYWOMAN FRISCIA: Hello, Robert. How are you?

MR. BROWN: Very good.

My name's Robert Brown. I own the American Asphalt Company. We're a paving contractor. We've done a few hundred different public projects in the past 10 years or so in South Jersey. I'm also here representing the New Jersey Asphalt Pavement Association. We manufacture asphalt through -- all the roadway work throughout the State and, in many cases, laying the asphalt as well. And I believe we have every member -- or every

asphalt plant except for three in the State that we represent. We are unanimous in our opposition to this bill. And to -- I would concur with everything everyone else has said in opposition today so we won't do that.

There is a report that I mailed out to Assemblyman Malone's office, myself, as well as every other Assemblyman that does delineate the back up for the record of poor performance on project labor agreements: cost overruns, adverse impacts of competition, delays, safety problems, and the work. And we have the backup, and it should be in your office so you don't have to listen to that.

But let me cut to the chase and try to be some help to this Committee. What happens in the trenches and why this is anticompetitive as a nonunion company? The bid process. I have to know my own company, what my costs are, its material, the deliver cost, and the labor cost. That's what comprises a bid. That's how I arrive at a price that I'm going to submit to a public entity. Under a project labor agreement, you put a big question mark after labor cost. If I'm forced to take some people from another organization and mingle them with my cohesive work unit, that's a paving crew, I don't know what my production capability will be. There will be two operating engineers in my crew, one's going to operate the paver, one would operate the roll. If I'm forced to take 50 percent, I'm putting a man on one of those two pieces of machinery that will control the speed of my entire operation.

There is an adversarial relationship from the union to the nonunion contractor. I don't feel the nonunion contractors have an ill will to organized labor. We're not antiunion. We do want to compete, but if the

labor unions can put my company in a position, by slowing down my operations by the men that I'm forced to take under a PLA, they hold the success of my company in their hands. And I can't justifiably put the future of my family and everybody else that works for me in the hands of strangers that would come on to work with me for a three-day job or a four-day job paving a school parking lot or road construction project. So it just doesn't work.

The other thing that makes the cost go up. If I were to bid it and think that I would get good quality people that would blend immediately and be cross trained and know how we operate as a company, is the health insurance benefits. As a nonunion company, I have a good and stable workforce that I care about and families that I'm in charge with in providing for, and I must provide them with a pension, health insurance, life insurance, employee assistant program, and a full range of benefits that we give our employees. If I signed and did a job under a PLA, I would be forced to send money for benefits to a labor organization for their health and welfare plan and their pension plan and their other things that they would offer to my employees; however, none of my employees would benefit from any of that money that went in because they would never hit the 1000 hour threshold or the 500 hour threshold or whatever threshold the union would set in order to vest in those benefits. So, in effect, what happens is I'm paying double. I have to continue to pay my health insurance premiums so my people have coverage because that three-day job or one-week job is going to be over very quickly, but the unions would be enriched by my contribution to their benefit plans knowing full well they would never have to give back dollar one. So I'm

unjustly enriching the union. I'm doubling my cost for benefits, and therefore my cost to bid that work would go up. It sort of circumvents the whole prevailing wage statute. I would have to pay the prevailing wage, which we're happy to do, we abide by the spirit of the law, we pay everybody what they're supposed to be paid, but in addition, I would have to pay benefits for something my men would never get.

So I hope that maybe clarifies why it makes it anticompetitive and maybe why it drives costs up.

ASSEMBLYWOMAN FRISCIA: Any questions or comments?

(no response)

No, I'm seeing none.

Thank you, sir.

MR. BROWN: Thank you.

ASSEMBLYWOMAN FRISCIA: Richard Goldberg, Commerce and Industry.

RICHARD GOLDBERG: Thank you, Madam Chairwoman. And I would like to thank the members of the Committee for giving me the opportunity to speak with you today.

On behalf of the members of the Commerce and Industry Association of New Jersey, I'm here to strongly oppose A-1926, which would alter New Jersey's competitive bidding laws to provide for project labor agreements. Under these agreements, we believe you'd shut out nonunion competition, which accounts for about 80 percent of the construction workforce. We believe this bill is bad for the workers and taxpayers of New Jersey. Our country prospered as a result of our free enterprise system. The

taxpayers in New Jersey deserve and expect fair and open competition. Project labor agreements discriminate against many thousands of nonunion construction workers including many small minority-owned companies. They should all have the ability to compete and work.

Limiting public contracts to only unions will result in public entities being forced to accept higher bids for projects rather than being able to choose amongst all bidders for the lowest responsible bid. It's difficult to comprehend that this bill is being considered at a time when our State is trying to overcome a huge budget deficit. The Governor's called for cutting costs, yet this bill would result in increased costs, which are passed along to the taxpayers.

Two New Jersey Supreme Court decisions have declared that project labor agreements are anticompetitive and in conflict with the State's open bidding laws. They are not in the public's best interest.

Our members include union and nonunion companies. We support the ability of all companies to compete fairly and in an open and free market. I urge you to oppose this bill.

And thank you for your consideration.

I also just want to state that our board of directors, which is 60 strong, representing businesses primarily from Northern New Jersey, did vote 59 to 1 to oppose this bill. When our membership was notified about this bill, we received many dozens of letters, which I think quite a few made their way to your legislative offices, in opposition of this. And we have not had any sort of groundswell or effort beyond that one member in support of this legislation.

ASSEMBLYWOMAN FRISCIA: Thank you.

Questions, comments?

Assemblyman Geist.

ASSEMBLYMAN GEIST: Thank you, Chairwoman.

Do you have any comments on the proposed amendments?

MR. GOLDBERG: Well, as far as the Section 4 amendment, which calls for the percentage of the current workforce to be able to remain from a company, I think that was addressed as to why we were probably most opposed to that. To tell a company that they can use part of their workforce and not their entire workforce, we feel, takes away competition. And anything that limits the free and open competition of companies in New Jersey we would strongly be opposed with.

ASSEMBLYMAN GEIST: Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you, sir.

MR. GOLDBERG: Thank you.

ASSEMBLYWOMAN FRISCIA: Kathleen Davis, Chamber of Commerce of Southern New Jersey.

KATHLEEN DAVIS: Good morning, Chairwoman Friscia and members of the Committee.

I'm Kathleen Davis. I'm the Executive Vice-President of the Chamber of Commerce, Southern New Jersey. We have about 2000 member companies that employ roughly 325,000 people throughout the seven southern counties of New Jersey, for those of you who aren't acquainted with us.

I'm going to try to skip through my testimony because you have already heard some very compelling testimony from those contractors who are going to be impacted by this, as well as other business organizations. But

suffice it to say that we do agree that this bill is anticompetitive and not good for business in our State.

As about 85 percent of our members employ 50 people or less, we really urge you to consider the impacts of this legislation on the many open shop businesses that currently perform work on public contracts. Some of whom, again, you heard from today. These are companies that choose to hire nonunion labor and obtain public works contracts because they do quality work at reasonable costs. They're companies that pay the taxes that fund these projects. And these companies will be shut out of the bidding process. They'll be shut out of the process because they may be unwilling to accept the disruption that results from paying workers on PLA projects higher rates than workers on non-PLA projects or because they're unwilling to break up established work teams to satisfy union requirements or they're unwilling to contribute to union benefit programs for which their workers will receive no payout, as the previous speaker had testified, or because their workers don't want to pay union dues because they've chosen not to be a member of the union.

We agree that public works projects should be carried out at the lowest reasonable cost and with the highest degree of quality. The taxpayers of our State are owed that. We agree that union labor can deliver this quality work at a reasonable cost, but so can nonunion contractors. We believe that public dollars should be expended on projects in such a way to ensure that the project is completed by the most skilled workers who produce high quality work and by an organization that is well run, efficient, and able to complete

a job on time and on budget regardless of whether its workers are union or nonunion.

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you very much.

Any comments, questions? (no response)

Thank you.

Kent Weisert, Associated Builders and Contractors of Northern New Jersey.

KENT A. F. WEISERT, ESQ.: Good afternoon, Madam Chairwoman --

ASSEMBLYWOMAN FRISCIA: You've been sitting there very patiently.

Good afternoon.

MR. WEISERT: -- members of the Committee. I would also have to compliment the members of the Committee on their patience on a topic that is of some interest and controversy. You get to hear a lot of things so I will try to be as brief as I can, particularly in light of the comments that have preceded me.

First, let me start off by saying that the Associated Builders and Contractors of Northern New Jersey is strongly in opposition to Assembly Bill 1926 for the reasons that you have already heard. I would like to add a couple of footnotes to those reasons however. One of them has to do with the very nature of labor unions themselves. Now, it does not surprise me in the least that gentlemen from organized labor, who I individually very much respect, as

my father was a working man and belonged to a labor union, are seeking to obtain this particular form of public support for a monopoly.

If one goes back into the history of labor legislation, one recognizes that prior to the passage of the Wagner Act, labor unions were attacked as a violation of the Sherman Antitrust Act. They were successfully attacked because what they seek to do, what their purpose for being is to obtain a monopoly over the supply of labor, in order to do what a monopoly does best, when it gets a monopoly, and that is to artificially jack up the price of what it supplies. This is no different than if General Motors or Chrysler or any other car company were to be given a monopoly by the Legislature or by the Senate and the Congress of the United States and told, you can be the only person from whom the United States government not only will buy cars, but who will be permitted to bid to provide vehicles to the government. What would tend to happen is that the price would go up and the quality would go down.

Well, unions were attacked before they were, in a sense, legalized on that very basis. And they were given a specific exemption because of a whole number reasons at the time. But make no mistake about it, their essential purpose is to get as much as they can. And I'm not saying this is an illegitimate purpose from their point of view, but it is to get, as much as they can, a monopoly over the supply of labor so that they can artificially jack up the price of that commodity as every other monopoly or oligopoly does so. I've only had an introductory economics course in college, but that much I learned from it.

That, on the part of labor, is nothing wrong. That's one of their purposes. However, for government to join as a participant with labor in

seeking to assist labor in this objective, I, as both a representative of the Associated Builders and Contractors and as an individual taxpayer, strongly object. I should also note that the very purpose of the bidding laws is to prevent fraud, collusion, corruption in the award of contracts. I've heard comments made by one or more of the Assemblymen present today that all we're doing today is allowing a town, a municipality, a public entity to do the same sort of thing that a private owner can do in choosing to specify union labor only. Yes, a private owner can do that. The reason a public owner shouldn't do that is for the very reasons set forth in the competitive bidding laws which is, it opens every bid, every award of every contract to improper influence peddling either behind the scenes or right out in front, which is not supposed to be a part of how the public purse is distributed.

You know, yesterday there was an interesting little article in *The Star-Ledger* that talked about the fact that our new Governor said that when he was on the campaign trail, he said that he would change the way that Trenton did business. That article also noted, parenthetically, that in the last campaign the State Carpenters contributed \$410,000 to the Democratic National Committee State Action Fund for political purposes --

ASSEMBLYWOMAN FRISCIA: I think we're getting a little far afield. Could we get back to the bill.

MR. WEISERT: Certainly, Madam Chair.

ASSEMBLYWOMAN FRISCIA: Thank you.

MR. WEISERT: For those reasons I think that the State bidding laws, which seek to keep fraud and collusion out of the public bidding process

are just fine the way they are and should not be amended by this effort to make an end run around them.

Thank you very much.

ASSEMBLYWOMAN FRISCIA: Thank you.

Any comments or questions? (no response)

Thank you.

Ronald Tobia. Am I saying that correctly, Ron?

R O N A L D L. T O B I A, E S Q.: Tobia. (indicates pronunciation)

ASSEMBLYWOMAN FRISCIA: Tobia. I'm sorry.

MR. TOBIA: Thank you, Madam Chairwoman.

I'm here representing the Multiskilled Contractors Association. We're those contractors who have contracts with the United Steelworkers of America. We're here just to ask as to legislative intent, as to whether or not this Committee intends to include the Steelworkers as a labor organization within the definition of the law that you're discussing today?

ASSEMBLYWOMAN FRISCIA: Assemblyman Egan, it's your bill and Assemblyman Malone's.

ASSEMBLYMAN EGAN: I believe that would be up to the public body who decides on the PLA.

MR. TOBIA: So it's not -- it's not automatic in the law that you're intending to cover the Steelworkers?

ASSEMBLYMAN EGAN: That's correct.

MR. TOBIA: Anyone else? Is that -- that's the interpretation for the whole Committee?

ASSEMBLYMAN GREGG: That's the bill.

MR. TOBIA: Pardon?

ASSEMBLYMAN GREGG: That's the bill.

ASSEMBLYWOMAN FRISCIA: There's -- he's the author of the bill.

MR. TOBIA: Let me then -- if we are not included in the bill, then the Association would object to the legislation because of the fact this Committee is -- has decided not to include a valid labor organization in the definition of a labor organization to be included by the bill. And it should not be left to the public bodies to decide and pick and choose between what union is going to be used on a particular project.

ASSEMBLYMAN EGAN: Madam Chairman.

ASSEMBLYWOMAN FRISCIA: Assemblyman Geist.

ASSEMBLYMAN EGAN: Madam Chairman.

I don't believe Mr. Tobia understood me. I said it was up to the public body who do decide. I didn't say anybody was excluded. The bill says any appropriate labor organization. So to answer to your question, it would be up to the public body to decide who is an appropriate labor organization.

MR. TOBIA: So is it your testimony that -- or is it your answer -- (laughter). Excuse me, is it your answer that, basically, if in fact a public body decides that the Steelworkers Union is a valid union, that it could put them on the job even though they're not a Building Trade Union?

ASSEMBLYMAN EGAN: As the bill is written, that's correct.

MR. TOBIA: And the -- you're not -- the Committee is not recommending the bill out of Committee that's going to include -- be specific as to include that union. Correct?

ASSEMBLYMAN EGAN: No.

ASSEMBLYWOMAN FRISCIA: Assemblyman Geist.

ASSEMBLYMAN GEIST: Chairwoman, perhaps the way they should see the proposed amendment, which replaces Section 2, Page 2. I assume some of the witnesses have not seen the proposed amendment.

MR. WILLIAMS: Do you have it?

MR. TOBIA: Yes, I do.

MR. WILLIAMS: Okay.

ASSEMBLYMAN GEIST: Replace Section 2 to read, and I think that, respectfully, somewhat addresses your question.

MR. TOBIA: Well -- I just didn't think it was clear. That's why I --

ASSEMBLYMAN GEIST: Well, let's go through that then.

MR. TOBIA: Okay.

ASSEMBLYMAN GEIST: Labor organization means, with respect to contract the work on public works projects, an organization -- I assume your an organization. Correct?

MR. TOBIA: Well, I'm not the union. I'm the Association that deals with that union.

ASSEMBLYMAN GEIST: Okay.

Well, that union is in an organization. Correct?

MR. TOBIA: Correct.

ASSEMBLYMAN GEIST: Which represents, for purposes of collective bargaining, employs one or more crafts or trades involved in

performance of public works contracts to be eligible to get paid the prevailing wages.

MR. TOBIA: Correct. We are.

ASSEMBLYMAN GEIST: Sounds like you got your answer.

ASSEMBLYMAN SARLO: You're covered.

MR. TOBIA: Thank you.

ASSEMBLYMAN GREGG: Madam Chair.

ASSEMBLYWOMAN FRISCIA: Assemblyman Gregg.

ASSEMBLYMAN GREGG: Just for your clarification, sir, through the Chair, that the good news is that you're covered. The bad news is that you're not going to get the deal. So I think you need to know that because history says that. So the reality check is that the project labor agreement won't be drawn up by you. It will be drawn up by an entity, and if that entity doesn't wish to deal with you, you will not be included. And that's what occurred in the Harms law -- legal case. So, just so you're aware, this PLA is similar to the Executive Order, which excluded your union in 19 -- whatever year that was -- 1994.

Just so you're clear about that that the good news is you will -- you can be included. What you need to be questioning is whether you will be included. And I can't answer that.

Thank you very much, Madam Chair.

MR. TOBIA: Thank you very much.

ASSEMBLYWOMAN FRISCIA: Thank you for coming today.

Richard Miller, from NJABC.

RICHARD MILLER: Good afternoon, Madam Chairman.

ASSEMBLYWOMAN FRISCIA: Good afternoon.

MR. MILLER: ABC stands for Associated Builders and Contractors. That's just our short acronym. And I'm going to knock out 90 percent of what I planned to testify on because I see we definitely need some speed today.

On two things: On apprenticeship issues, there are many ways into the construction industry, on-the-job training, etc., etc.. Apprenticeship is not the only method of learning construction skills. The other thing I want to bring up, because, I believe, Assemblyman Malone brought it up, was how many of our members, one way or the other -- we did have one member of our Association that firmly believed in project labor agreements and he was double-crossed. And it showed a very bad faith effort on the part of the building trades unions. I'll give you his name, it's Ron Yarborough, Prospect Painting, Vineland, New Jersey.

He did the new stadium in Pittsburgh, Pennsylvania, the new sports stadium. Immediately on achieving a majority status, namely enough union workers on the job compared to the workers that he had, the union immediately moved for an NLRB election and prevailed because they had the majority even though he got sucked into the PLA. At the same time, he also is doing a job in his own territory, in Cumberland County, and exactly the same thing happened. And I know the same result is going to be: the NLRB is going to rule that he should bargain in good faith.

ASSEMBLYWOMAN FRISCIA: Thank you.

Any comments, questions?

ASSEMBLYMAN MALONE: Yes, Madam Chairperson.

What is your understanding of an apprenticeship?

MR. MILLER: A true apprentice, under both law and our own State prevailing wage law, is someone that is indentured -- and I can't even say the word -- and it's usually a four- or five-year program, 144 hours of classroom training.

ASSEMBLYMAN MALONE: Okay, so you're talking about the Bureau of Apprenticeship Training.

MR. MILLER: Yes.

ASSEMBLYMAN MALONE: Okay. So -- just so.

Individuals have a convoluted thought process. An apprentice is not an apprentice unless they are registered through the BAT.

MR. MILLER: Correct. Yes.

ASSEMBLYMAN MALONE: So -- I mean, people come up with a different thought process in some locales that they have people that they call apprentices, want to pay them an apprentice's wage, and they're not legal apprentices.

MR. MILLER: No, in the New Jersey prevailing wage law, if a person is not registered as an apprentice then they're of that craft and must make the full wage of the craft.

ASSEMBLYMAN MALONE: Correct. Okay, I just wanted to get that clarification.

Thank you very much.

ASSEMBLYWOMAN FRISCIA: Thank you.

George -- oh, Steve Ripley, George Stamat, and Robert --

ROBERT SANTALOCI, ESQ.: (speaking from audience)
Santaloci (indicates pronunciation)

ASSEMBLYWOMAN FRISCIA: Santaloci.

STEVEN RIPLEY: (speaking from audience) We're going to yield to -- I'm Steve Ripley. We're going to yield to Rob.

ASSEMBLYWOMAN FRISCIA: Thank you, gentlemen. We appreciate that.

MR. SANTALOCI: And I'll skip through the majority of my testimony. Good morning, Madam Chairwoman.

My name is Robert Santaloci of the law firm Pringle, Quinn, and Anzano. We represent the New Jersey Electrical Contractors Association, a trade association of over 800 licensed electrical contractors who employ thousands of individuals throughout the State.

NJECA opposes A-1926, the project labor agreement legislation, primarily because it unfairly discriminates against NJECA members and other nonunion workers. There is no reason why union only labor is necessary to accomplish the goals of a PLA as stated in the legislation. Members of our organization are licensed by the State of New Jersey under Title 45 and are required to take continuing education courses. It's a highly skilled workforce that is more than capable of meeting the highest standards of safety and quality. NJECA supports open and competitive bidding and resents that this legislation refuses to regard its members as responsible bidders simply because they are not big labor.

We also object to the fact that this legislation goes far beyond the Executive Order No. 1 in expanding the role of PLAs. In the Executive Order

No. 1, Governor McGreevey said its proper scope was to large projects, but in its original form, this bill said “without limitation to the size, complexity, or cost.” And even in its amended version, it simply says that you take it into consideration. There’s no mandate that it be considered for large projects only.

Now supposedly it’s permissive, but there’s no reason why small projects, especially for contractors that are small and midsized, must -- why municipalities have been pressured by labor unions for the smallest projects. Many small contractors live for medium and small-sized projects. And the extension of PLAs to every public project no matter how small is particularly damaging to these small and midsized companies. And it can happen. It may not happen, but it can happen unless we impose a minimum that -- a minimum cost requirement for anyone to talk about project labor agreements because once you establish a project labor agreement, then the municipality’s under pressure --

And, if I can bring up Executive Order No. 1 as well, now we talked about this being permissive, but Executive Order No. 1 simply says, “On a project-by-project basis, the State department or authority shall include a project labor agreement in a public works project where it has been determined.” It doesn’t even say the municipality has to do the determination. It could be from on high. So the determination has been made and therefore that -- the determination has been made that such agreement advances the State’s interest. A very vague standard. And then the State department, authority, instrumentality “shall” include a project labor agreement, not “may.” So it can be imperative that they use a project labor agreement if some determination is made. And I think what we’ll see is that

the labor unions will use either the legislation or the executive order depending on what suits them best in order to advance their own interest.

We talked at length about some of the -- some of the law cases that involved project labor agreements. We know that they were thrown out because they violated or were in contradiction to the State bidding statute. This legislation does not even consider or amend directly the public bidding statute. It simply makes a reference to it, hoping to sort of sneak under the Judicial scrutiny level by saying, well, you're not responsible bidders because you're not conforming to the project labor agreement.

In *Wittie v. the State of New Jersey*, 139 N.J. Super and in a formal opinion by the Attorney General -- this was back in 1975, Attorney General Hyland -- it concurred with *Wittie* that there's no justification for equating responsible bidder to union labor. And that's exactly what this does. It says if you're not union labor, you are not a responsible bidder.

Governor McGreevey's Executive Order, stated that any PLA shall permit contractors and subcontractors to retain a certain percentage of their current workforce, and they shall permit the selection of the lowest qualified bidder without regard to union or nonunion status at other construction sites. This legislation just says "may." And in the legal world, the difference in between "shall" and "may" is enormous. This means that there is no requirement that a State department, under the legislation, include a minimum percentage of the current workforce of the contractor. And there's no requirement that it be a nonunion shop or it isn't -- hasn't signed labor agreements in other projects. So it can be totally exclusive if that is the way the municipality wants it to be.

Finally, one more question that was brought up about *Harms Construction v. the New Jersey Turnpike Authority* -- they also considered the constitutionality of PLAs. Now, Justice O'Hern talked about -- he didn't decide on that issue, but he did bring up a strong argument about PLAs and whether they violated Article 1, Paragraph 19 of the New Jersey Constitution. That declares that "persons in private employment shall have the right to organize and bargain collectively." The courts said that the right to organize and bargain collectively is a fundamental right, and legislation that regulates a fundamental right by limiting freedom of choice in bargaining is subject to strict scrutiny by the courts. In other words, when you tell people how you have to bargain, who you can bargain with, that is, you're taking away a fundamental right, and it's subject to strict scrutiny. This is in New Jersey Constitution.

In a constitutional challenge. The State, in defense of this bill, will have to demonstrate that a compelling need justifies the legislation, and that no less restrictive alternative will accomplish the State's objective. Now you can declare that it's a compelling need that we have PLAs, but aren't there less restrictive alternatives? Can't municipalities simply have agreements with people who have licenses from the State of New Jersey, like the Electrical Contractors Association? Isn't that a less restrictive alternative? Is the compelling need only that you be union labor? Is that the only thing that's required? So we think that there's -- it will be subject to court scrutiny. And the court will ask, has the government unreasonably burdened the exercise of constitutional right by conditioning the award of a public contract on how when it has exercised the right to organize and bargain?

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you very much.

Any comments, questions? (no response)

George Zorovich from the Asbestos --

G E O R G E Z O R O V I C H: (speaking from the audience) Asbestos workers. Don't all leave the room now, all right. (laughter)

It's a pleasure to be here this afternoon, Madam Chairman and the members of the Assembly Committee.

I speak in favor of the bill. And for many reasons, I think a lot of people today painted with their brush on both sides. And I think the union side is taking a beating by a lot of experts and good college people. I came out of the streets in New York. I got my degree on the West Side of New York, in the streets of New York. And I can't speak as eloquently as most of the speakers, but I'll give you what I feel, and that's the best I can give you.

I have a theory that many people in this room, if not all, probably would be shocked at. And I've stated it on many occasions, in many different places. I think we ought to do away with the prevailing rate. And how can a labor man say, do away with the prevailing rate? I'll tell you why. We, in the union sector, do about 80 percent of the private work, yet we do less than 50 percent of the public work. I wonder why? And I'll tell you why. I think that I have the theory, and I think I have the knowledge of it.

It's because the prevailing rate is done unscrupulously against people. They're not paid all of the prevailing rate. They do not live under all the conditions of the prevailing rate. The contractors have many sophisticated ways of getting around the prevailing rate. The prevailing rate, when it isn't

paid or when there's something wrong, the contractor gets disbarred in the State of New Jersey. There are many contractors on the contractors list disbarred.

Everyone is talking about defending the prevailing rate here, not the project labor agreement. And that's what these outside interests and the Chamber of Commerce and businesses -- they're all interested in the prevailing rate because there are ways to get around it and that's their subject. And that's why they want to see no project labor agreement induce the prevailing rate.

Our people -- we pay the taxes, we go to the schools, we buy all the products, we receive a good union wage. Why is it we don't discriminate in the *Abbott* decision and minority contractors? We're looking for them all the time. We are looking for them. We put on career days for -- and vocational days for the young minorities and people of color to come into our business. They are not discriminated against. Maybe they were years ago, but that's been passed for the last 15 years, as far as I know, since I've been a business manager up in New Jersey here.

We're looking for contractors that are minority status. You can't bid on some Federal work. I only have two or three minority contractors out of thirty-five, and it's very, very hard to get minority contractors to be into our unions and stuff like that because they've been taught, and they've been brought along in a way that they don't trust the unions from the past history.

Our people do -- and I say this too, every week we have open house at our union hall, and we have nonunion people come banging on the doors looking to get into the union. And why are they doing that? If my rate is \$48 an hour and the contractor who doesn't have a health and welfare plan

or a pension plan for them -- he's supposed to pay them \$48 an hour in their pay. Why are they coming to my union hall looking to get into my union when they're only getting \$28 and \$20 in benefits? Why? Because there has to be a reason. People are banging on the doors in the unions to get into the union and to be a part of the union system because they know they're treated fairly, and they have a pension plan, a health and welfare plan, and things of that nature.

I think it is a shame what I heard here today against the unions. They're the backbone of America, and they're certainly the backbone of New Jersey. And this project labor agreement only makes it more fair. The way the law is written now, it's unfair. We have laws against the people that go against these prevailing rate provisions, but they're very tough to enforce, and they're very tough to catch. So people are banging on the doors to get less money to belong to the unions per hour under the prevailing rate structure. And many of these people, 90 percent of them, don't have health and welfare. They're supposed to pay \$48 a hour in their pay and they're not. They're getting around it in so many sophisticated ways. This project labor agreement brings fairness to the table. That's what it brings for all parties involved. We've been treated second class for years under this structure in New Jersey of the prevailing rate.

Thank you.

ASSEMBLYWOMAN FRISCIA: Thank you.

And our last person, Kevin Monaco, from the Utility and Transportation Contractors.

KEVIN MONACO: Thank you, Madam Chair.

ASSEMBLYWOMAN FRISCIA: Thank you for being patient, Kevin.

MR. MONACO: I appreciate the honor of being the last speaker.

My name is Kevin Monaco. I'm the Director of Legislative Affairs for the Utility and Transportation Contractors Association of New Jersey. Our organization currently numbers approximately 1200 member firms active in all phases of heavy highway, utility, and environmental remediation construction throughout the State. Although our contractor and subcontractor members are predominately union affiliated construction firms, our Association is opposed to this legislation.

The notion that a public entity can require, as a prerequisite, that construction companies and construction workers must be union affiliated, even for one project, in order to bid on a public works project financed with their tax dollars, runs against the basic principles of freedom on which our nation was built. The freedom for firms and employees to organize is important, but the right to choose not to affiliate is equally important.

UTCA supports free and open competition for publicly funded construction projects. Contractor prequalification, strict enforcement of our State's prevailing wage laws, and intense regulatory oversight from numerous State and Federal agencies help to provide a level playing field for all contractors regardless of union affiliation. If enacted, Assembly Bill 1926 would allow public works owners to discriminate against open shop contractors. This would limit competition and ultimately drive up the costs for the taxpayer.

During a severe skilled labor shortage, this bill would also eliminate an enormous number of qualified construction workers from the labor pool available for public works projects. The Executive Director of the NJEDA was on television just a few days ago describing the difficulty in finding firms and people to complete the State's School Construction Program. This legislation will only exacerbate that problem.

Our organization is also concerned with the ability to negotiate collective bargaining agreements in the future. Assembly Bill 1926 would serve to eliminate incentives for labor organizations to provide productivity improvements in our contracts. This legislation serves as a governmental intrusion into the labor-management relationship.

An important point here, which I think has been raised by this Committee and discussed, is the percentage of your own workforce that you may be allowed to retain. I think it is important to note that the public owner and the labor organization are the ones that determine the percentage of the workforce that a contractor is allowed to retain, not the contractor.

I would also like to point out the billions of dollars of taxpayer funded construction projects that have been completed over many decades successfully, safely, and with a high degree of quality -- without project labor agreements. This legislation, at best, is a cure for an illness that does not exist.

As an organization that works very closely with our friends and partners in the organized labor community on many other issues, I would like to emphasize that our opposition concerning this bill is not antiunion, but rather pro-contractor, pro-taxpayer, and supportive of the rights of all qualified firms to compete for projects funded with their tax dollars.

We've also heard, Assemblywoman and members of the Committee, that this bill is optional and permissive. It is our position that it should not be an option to eliminate qualified firms from doing business in the State of New Jersey.

Thank you very much for the opportunity to express our position on this issue.

ASSEMBLYWOMAN FRISCIA: Thank you very much, Kevin. And thank you for being patient.

Assemblyman Geist.

ASSEMBLYMAN GEIST: Just a quick question.

MR. MONACO: Yes, sir.

ASSEMBLYMAN GEIST: You're colleague, ordinary friend from BCA, Mr. DiGangi, testified almost directly opposite you, yet he represents contractors as well. Can you help differentiate why you two are not on the same side of the aisle today?

MR. MONACO: I wouldn't presume to speak for Mr. DiGangi, obviously, as to why his association has taken the position they have. One of the main differences, perhaps, is they represent the building contractors, the people that do schools, libraries, municipal buildings, and that is a different industry than the people that I represent. We do heavy highway construction, utility construction. They have vastly more subcontractors to deal with and a lot more union affiliations to deal with than the typical highway project or utility project we deal with.

ASSEMBLYMAN GEIST: Thank you.

ASSEMBLYWOMAN FRISCIA: Anyone else?

ASSEMBLYMAN EGAN: Yes, Madam Chairman.

ASSEMBLYWOMAN FRISCIA: Yes.

ASSEMBLYMAN EGAN: We certainly heard a lot of testimony today both for and against, and I appreciate the time that everybody has paid attention to this bill. This bill is very dear and near to me, as most everybody in this room understands. And I still sit here today and believe that the taxpayers of New Jersey and the citizens will be well served with this moving forward. And with that I move this bill.

ASSEMBLYWOMAN FRISCIA: Do I hear a second?

ASSEMBLYMAN SMITH: Second.

ASSEMBLYWOMAN FRISCIA: Moved and seconded.

Roll call.

MR. WILLIAMS: Assemblyman Gregg. Wait, on amendments?

ASSEMBLYMAN SARLO: Amendments.

ASSEMBLYWOMAN FRISCIA: Oh, I'm sorry.

ASSEMBLYMAN SARLO: The amendments first.

ASSEMBLYWOMAN FRISCIA: Yes. Can I have a motion on the amendments?

ASSEMBLYMAN SMITH: Moved.

ASSEMBLYMAN EGAN: Second.

MR. WILLIAMS: Okay, roll call on the amendments.

Assemblyman Gregg.

ASSEMBLYMAN GREGG: Abstain.

MR. WILLIAMS: Assemblyman Geist.

ASSEMBLYMAN GEIST: Chairwoman, I want to comment. I understand that the Commissioner of the Department of Labor has agreed to accept the responsibility to review every proposed project labor agreement. And while I wonder about that assumption of responsibility, I will support the amendments with that assurance.

Yes.

MR. WILLIAMS: Assemblyman Smith.

ASSEMBLYMAN SMITH: Yes.

MR. WILLIAMS: Assemblyman Egan.

ASSEMBLYMAN EGAN: Yes.

MR. WILLIAMS: Assemblyman Cohen has voted yes.

Assemblyman -- Vice-Chairman Sarlo.

ASSEMBLYMAN SARLO: Yes.

MR. WILLIAMS: And Chairwoman Friscia.

ASSEMBLYWOMAN FRISCIA: Yes.

On the bill?

ASSEMBLYMAN EGAN: So moved.

ASSEMBLYWOMAN FRISCIA: Second?

ASSEMBLYMAN SMITH: Second.

ASSEMBLYWOMAN FRISCIA: Roll call.

MR. WILLIAMS: Assemblyman Gregg.

ASSEMBLYMAN GREGG: No.

MR. WILLIAMS: Assemblyman Geist.

ASSEMBLYMAN GEIST: Yes.

MR. WILLIAMS: Assemblyman Smith.

ASSEMBLYMAN SMITH: Yes.

MR. WILLIAMS: Assemblyman Egan.

ASSEMBLYMAN EGAN: Yes.

MR. WILLIAMS: Vice-Chairman Sarlo.

ASSEMBLYMAN SARLO: Yes.

MR. WILLIAMS: And Chairwoman Friscia.

ASSEMBLYWOMAN FRISCIA: Yes.

I thank you all for coming today.

(MEETING CONCLUDED)