
Committee Meeting

of

ASSEMBLY LABOR COMMITTEE

ASSEMBLY BILL No. 2889

(Regulates temporary help service firms as employment agencies, enforces collection of unemployment insurance taxes and other payroll assessments)

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

DATE: March 22, 2001
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman George F. Geist, Chairman
Assemblyman Samuel D. Thompson, Vice-Chairman
Assemblyman Nicholas R. Felice
Assemblywoman Arline M. Friscia
Assemblyman Gary L. Guear Sr.



ALSO PRESENT:

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

Victoria R. Brogan
*Assembly Majority
Committee Aide*

Jennifer Sarnelli
*Assembly Democratic
Committee Aide*

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

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(The Assembly Labor Committee held a meeting on March 22, 2001 at 10:00 a.m. in Committee Room 9 of the State House Annex. The recorded portion of that meeting follows.)

ASSEMBLYMAN GEORGE F. GEIST (Chairman): The Chair wants to be crystal clear on one issue, and I want to make sure people understand this. There will be only one more bill for discussion -- only one more bill for discussion, and that is A-2889. There will be a public hearing on A-2889 only. If anyone is here expecting a public hearing on any other legislation, there is no other legislation for a public hearing. So, if any of you are here for a public hearing, that is not on this schedule today. Some of you may have some expectancy of a public hearing, but the agenda is crystal clear on what is before the Committee today, and that is A-2889. No other bills are the subject of a public hearing.

With that, because it is a public hearing, we have OLS to record the proceedings today. The proceedings are ones in which we will listen and learn. And I'd like to do another roll call for purposes of the record.

Gregory, roll call on the public hearing on A-2889 only.

MR. WILLIAMS (Committee Aide): Assemblyman Guear.

ASSEMBLYMAN GUEAR: Here.

MR. WILLIAMS: Assemblywoman Friscia/

ASSEMBLYWOMAN FRISCIA: Here.

MR. WILLIAMS: Assemblyman Felice.

ASSEMBLYMAN FELICE: Here.

MR. WILLIAMS: Vice-Chairman Thompson.

ASSEMBLYMAN THOMPSON: Here.

MR. WILLIAMS: And Chairman Geist.

ASSEMBLYMAN GEIST: Here.

Today is a public hearing on this legislation only. On this legislation only, the public hearing is one where if you desire to participate, I once again repeat for some of you who may be just arriving, that this public hearing process is one where we ask that you declare your intent to participate, provided through Office of Legislative Services, and the hearing shall begin. There will be no vote on any other issues before the Committee today. So I want all the members just to relax, listen, and learn, and we will proceed.

Just to let those of you in attendance know, the prospective witness list is now double digits, so get yourselves comfortable. The double-digit list will probably be approximately 20 in number, and we will begin.

The Chair recognizes Gary Finger, Reliable Personnel Service, Incorporated, as the first witness.

Welcome, Gary.

GARY E. FINGER: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: Welcome back.

MR. FINGER: Thank you.

ASSEMBLYMAN GEIST: Will you reintroduce yourself to our Committee?

MR. FINGER: Thank you.

ASSEMBLYMAN GEIST: Thank you.

MR. FINGER: My name is Gary Finger. I'm the President of Reliable Personnel Services, located in Pennsauken, New Jersey. Given the

number of people that are here, I will keep my comments very brief. I have a sheet I can pass out to everyone.

Mr. Chairman, I applaud your efforts, and that of the Assembly Labor Committee, to address the inequity that has existed since the publication of the State Commission Investigation Report, *The Making of the Underground Economy*, back in September of 1997.

It's one thing to investigate the report on the situation that costs the taxpayers millions and millions of dollars and then collect the taxes. It is quite another matter to commit the time and money to stop it. The Assembly Bill No. 2889 goes a long way to provide the necessary support and hopefully the funding that would send a message of reassurance and confidence into an industry that is plagued for -- by contempt for the law.

I have read the opinions of the New Jersey Staffing Alliance regarding the proposed bill. From what I understand, they believe the bill to be unnecessary and counterproductive. One of the comments that I read in the report was, "The few agencies engaged in wrongful conduct should be sanctioned and corrected." I hope that the New Jersey Staffing Alliance would have read the SCI report and understood the growing problem about illegal agencies operating in the South Jersey area.

I am aware that it is sometimes difficult to accept that a problem exists in one's backyard. The more people that deal in the light industry area, the more people have an understanding of what this problem really is. It is very naive to think that all firms involved in the staffing industry follow the law just because it is written down. If citizens would only follow traffic laws, we would need less police officers to protect our safety.

Proliferation of illegal agencies promotes the use of illegal aliens and undercompensated workers. When left unchecked, as it has been, those workers are left to the mercies of crew leaders, who pack them into tenant houses like sardines. Obviously, these workers, being paid in cash, contribute nothing to the tax base to the State and puts additional burden on services of this State.

I think it's important to have random inspections of job sites to ensure that the workers that are being supplied by staffing industries are coming from legitimate agencies which would guarantee the compliance and would help the workplace management have reassurances, because their interest should not be-- I should say, their interest is that of protecting a good base for their workers, as well as supporting the foundation of the State of New Jersey.

At this point, I want to thank you, Committee, just for considering this bill. There are a lot of considerations that I realize have to be taken into account. I certainly applaud your efforts. It's been very time consuming. Prior to 1997, I know the State Commission on Investigations spent three years studying this problem, and it is a problem. Anything that can be done to help this industry, I think, would go a long way.

Mr. Chairman, thank you very much.

ASSEMBLYMAN GEIST: Gary, while you're there, a personal thank you for coming back. Thank you for being the first to ask this Chair to pioneer on uncharted waters to try to establish responsibility. You are representative of the responsible. This legislation is to focus on the irresponsible, to establish accountability like never before. Obviously, as you know, the challenge will be how to do it the right way to be respectful over the

responsible, but obviously with condemnation for the irresponsible with accountability to comply with the laws, to establish a fairness within the marketplace. You follow the rules, others don't. You pay the taxes, others don't. That's an understatement.

You are here today, and I appreciate you being involved with this legislation from moment one. You're right, some of the constructive criticism has captured my attention, because the legislative intent is crystal clear. We're going to recognize the responsible, and we're going to condemn the irresponsible and hold them accountable, period. And this Committee will take on issues like have never been taken on. You personally saw the deliberations on the first two bills.

MR. FINGER: Yes.

ASSEMBLYMAN GEIST: The Chair had a modus operandi today in letting everyone in this room know that we will do it the right way, even if it means slowly, with careful deliberation and exchange of information. And that's why this is being recorded. After today, anyone who wants a copy of the transcript, it's a matter of public record. All the members are going to get both transcripts, and we're going to work on this legislation and get it done the right way. And I thank you for being here, as always.

MR. FINGER: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: Any questions for Gary Finger? (no response)

Thank you, Gary.

MR. FINGER: Thank you.

ASSEMBLYMAN GEIST: Mark Longo, International Union of Operating Engineers.

MARK LONGO: (speaking from audience) Mr. Chairman--

ASSEMBLYMAN GEIST: Mark Longo.

MR. LONGO: --we strongly support the bill in light of--

ASSEMBLYMAN GEIST: The Chair would respectfully ask everyone to recognize that this is a public proceeding. I recognize you are trying to be courteous with your brevity, but nevertheless, we want to get everyone on the record, identification of the witnesses, and give you a chance to show off a little bit -- your good voice. (laughter)

MR. LONGO: Okay. My name is Mark Longo. I'm the Director of Government Affairs for the Operating Engineers, Local 825. We strongly support this bill. And given the testimony that the State AFL-CIO will give, as well as the laborers, I would be happy to give them the time.

ASSEMBLYMAN GEIST: And why do you like this bill?

MR. LONGO: Well, from our perspective, it would bring more accountability and responsibility to the temporary service firms.

ASSEMBLYMAN GEIST: Any other questions? (no response)

Are you going for the brevity award of the day? (laughter)

MR. LONGO: I'm trying to.

ASSEMBLYMAN GEIST: You might win.

Any other questions? (no response)

Thank you.

MR. LONGO: Thank you.

ASSEMBLYMAN GEIST: Steve Gardner, Laborers International Union of North America, Eastern Region. Your title is longer than your presentation, probably. (laughter) Say that again for the record?

STEVE GARDNER: Hi. I'm Steve Gardner. And I'm actually with the New Jersey Laborers'-Employers' Cooperation and Education Trust. It's a labor management firm that has half contractors and half laborers. We are in support of the bill. And actually one of my colleagues today, who I work very closely with from the Alliance for Competitive Contracting, is going to actually testify in much more depth than I am. We're just here to support the bill. We'd like to see it a little bit stronger, and we'll be submitting written stuff later.

ASSEMBLYMAN GEIST: Great.

MR. GARDNER: All right.

ASSEMBLYMAN GEIST: Thank you.

Louis Sancio, Alliance for Competitive Contracting.

Even as I read your names, please also declare your self-introduction for the record.

Good morning.

LOUIS SANCIO: Good morning, Mr. Chairman.

ASSEMBLYMAN GEIST: Welcome to our Committee.

MR. SANCIO: I'm Lou Sancio, Director of the Alliance for Competitive Contracting.

ASSEMBLYMAN GEIST: And what is that all about?

MR. SANCIO: The Alliance for Competitive Contracting, we're designed to level the playing field for contractors in New Jersey doing public

work on construction projects in New Jersey by monitoring the prevailing wage and other requirements to help protect the taxpayers that are paying this bill.

ASSEMBLYMAN GEIST: Great.

MR. SANCIO: We're here in support of the bill today, A-2889. It provides comprehensive regulation and oversight for the temp staffing agencies. We support this. This new oversight will help ensure these firms make the appropriate payments for workers for their compensation, unemployment, as well as making sure the firms pay prevailing wages, as applicable, to construction projects in the State of New Jersey.

This new oversight is critical. While New Jersey has not yet had significant difficulties with the temp staffing agencies in construction, our experience seems to be pretty unique in the country. They're starting to work throughout the state a little bit in various construction projects.

And for an example, last month in Washington state, the State Department of Labor and Industries -- they found one such temp staffing agency involved in construction. They misreported many of their workers' activities, which allowed the company to reduce their workers' compensation payments by almost 75 percent, which was a total of \$383,000.

Oregon, another temp construction staffing agency, they failed to maintain the proper records for their prevailing wage jobs in construction, and they didn't keep proper records of hours and other such public records required. They were fined \$13,000 by the Commission of Labor and Industries in that state.

There are a number of other human resources issues that are outlined for the Committee. But I do have one important note, that New Jersey

is not alone in trying to address these issues. A number of other states, such as Florida, Washington, Oregon, New York, and even Georgia, are currently considering or have legislation that deals with temporary staffing agencies, specifically for the -- not only just for white-collar workers, but also for construction staffing agencies.

We also have a concern about how these companies train their workers when they do our public projects. One construction staffing company reports -- they report themselves. They have an injury rate of 25.7 workers for every 100 workers. That's three times higher the injury rate for construction, in general. That leads to approximately 10,000 worker injuries a year for just one temp staffing agency, because the untrained workers who perform work are performing it unsafely. They increase the overall costs of a project through higher insurance premiums, construction delays, and workers' compensation claims, and these costs go directly to the taxpayer of New Jersey and the other states.

Another area of our concern, which I know you, Mr. Chairman, do share with us, is the payment and accurate reporting of prevailing wages, as required by State law. Some of these staffing agencies involved in construction pay the appropriate rate, and sometimes they add on a series of deductions for the workers that reduce the overall amount received by the worker. And that does lower beyond -- to below the prevailing rate. Sometimes they're called benefits. Sometimes they're just charges. They charge things like lunch and rides to work and things of that and other human resource things -- safety equipment they rent to these workers, and that brings them below the prevailing wage when they finally do get their check.

Another issue on the prevailing wage is, they don't disclose how much they charge for the services. The charges generally tend to be in the range, for a construction worker, between \$5 and \$10 an hour on top of whatever wage they're paying the worker. I don't see how, in my experience, any contractor can possibly be competitive in procuring a contract with the State or a municipality, how they can be competitive when the mandated wage rate is the prevailing wage in the State, and they're paying another \$5, \$10 an hour. That's, at the lowest, you're talking \$40, \$50 a day per employee.

I propose this amendment requires the employer to disclose such deductions to the workers prior to sending them to work, especially on a prevailing wage job, so they know what they're getting. So, in other words, they don't come back that day for their paycheck and find \$20 missing, \$15 missing that they didn't know about. And if they don't like it, they don't come back tomorrow for another job.

And as I discussed earlier, in Washington state, by misclassifying workers, the staffing association attempted to circumvent the prevailing wage and other such laws in order -- they do it in order to generate a larger profit. Whenever they cheat on these prevailing wages, they don't only harm the individual workers, they harm the state as a whole, and they really put it in on the taxpayers of this state who are paying that contractor for the prevailing wages.

I understand that the prevailing wage statute does already govern these companies, but I recommend a paragraph in the legislation that reinforces the prevailing wages are strictly to be enforced on all public construction projects regardless of who supplies the workforce. The legislation doesn't deal

specifically with who's responsible and accountable for any back wages owed. As the legislation progresses, this area should be examined. If at the end of the day, a worker reports that he was not paid the prevailing wage, and in fact, was not, who's responsible -- the temp agency, the contractor, or are they jointly responsible? This is something that does need to be addressed.

I have some written testimony here, and I've attached a copy of the current New York law that's being considered. I don't know if you've seen it or not. And it does address some of the human resource problems that I've mentioned here today in my testimony.

ASSEMBLYMAN GEIST: Excellent testimony.

Questions for the witness? (no response)

We will accept your written proposal. Let me welcome you to look to future Labor Committee agendas where we'll focus exclusively on prevailing wage issues. The Chair has introduced legislation that really establishes the prevailing wage will prevail. So, if there's absence of compliance with the prevailing wage, there will be accountability. So we look forward to seeing you at our future meetings on the prevailing wage topic, and we thank you for your testimony today.

MR. SANCIO: I look forward to it. Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: Thank you. Well done.

Irma Shaw, President, Mexican American Chamber of Commerce.

Irma, good morning.

IRMA SHAW: Good morning.

ASSEMBLYMAN GEIST: Welcome to our Committee.

MS. SHAW: Thank you.

ASSEMBLYMAN GEIST: Thank you.

Please reintroduce yourself for the record.

MS. SHAW: Thank you. My name is Irma Shaw. I am President of the Mexican American Chamber of Commerce of Central New Jersey, and I'm also Vice-President of Federation of Mexican American Communities in New Jersey. Thank you for letting us be here today. We really strongly support this bill. As one of our concerns is that the State government act to keep the playing field level so that legitimate businesses and temp agencies are not undermined by their disreputable operations.

ASSEMBLYMAN THOMPSON: Excuse me.

MS. SHAW: Yes.

ASSEMBLYMAN THOMPSON: Is your mike on, or if so, would you move it a little closer to you? (referring to PA microphone)

MS. SHAW: Like this? Thank you.

We need that employers or the temp agencies be responsible for any unpaid taxes. They call to the employer to be more careful and therefore not give business to these low-end, illegally operating agencies. As has been mentioned, these workers are exposed to abuses, like minimum wage and unpaid salaries, unpaid overtime. And they don't pay holidays, they don't pay vacation. And if there is an accident, they'd never get paid for that. They also get charged for transportation. And when they are transported, they always ride on vehicles that most of the time are driven by people who have no driver's license, and they have no insurance. And if there is an accident and people are hurt, nobody covers those payments, and that includes everybody there.

We are an advocate for the Mexican and American workers here in New Jersey and see how we can work together on this. We really appreciate, and this law is new for us, but we really want to be part of this and support as much as we can.

ASSEMBLYMAN GEIST: Well, you will really be a part of this. I assure you of that. I want you to know that there are some in this room that are probably in a state of shock that this type of phenomena is going on. And if you could assist this Committee at any time, and this goes crystal clear, and I know that the Department of Labor is here today, that if there is a need for enforcement and you know that, you could work through this chair and this Committee to make sure that we establish accountability even before this bill proceeds further. We want to work with you in every which way. I'm really honored by your presence here today.

MS. SHAW: Oh, thank you.

ASSEMBLYMAN GEIST: We're going to work on this together to do it the right way. I thank you for your presence.

Are there any other questions? (no response)

Thank you.

MS. SHAW: Thank you.

ASSEMBLYMAN GEIST: You're welcome to stay.

MS. SHAW: Thank you.

ASSEMBLYMAN GEIST: Alex Erlam, ACCU Staffing, Cherry Hill, New Jersey.

Good morning.

ALEX ERLAM, ESQ.: Good morning. How are you?

ASSEMBLYMAN GEIST: Good to see you.

MR. ERLAM: Good to see you again.

ASSEMBLYMAN GEIST: Self-introduction, please.

MR. ERLAM: My name is Alex Erlam, General Counsel and Vice-President of ACCU Staffing Services, a service based out of Cherry Hill, New Jersey. I am an attorney with some expertise in employment law.

By way of a brief background, ACCU is recognized as one of the region's largest temporary services. We employ in excess of 20,000 persons on an annual basis. We started in 1979, and we're duly licensed by the New Jersey Department of Law and Public Safety. We consider ourselves to be a legitimate, law-abiding business, which withholds the proper employee taxes, pays all relevant taxes to the respective departments of revenue where we conduct business, and always pays its employees minimum wage or more, always pays overtime in accordance with wage and hour regulations. In short, we operate a business legally and ethically.

For years, we've been trying to survive the unfair competition born out of the unlawful conduct of corrupt and illegitimate operators of staffing enterprises who fail to operate those businesses lawfully. Two years ago, on March 11, 1999, I had the honor of addressing this Labor Committee in support of New Jersey Commission of Investigation's report, *The Making of an Underground Economy*. In my presentation to the Committee at that time, I discussed the horrible and unfair labor practices of these unscrupulous operators of these so-called staffing firms. I do not need to remind this Committee of the findings of the report. We are now all aware of the millions of dollars of lost

revenue to New Jersey and the Federal government as a result of these practices.

I do feel, however, that this honorable Committee should be reminded of the impact that these unfair labor practices have had on our business and other like legitimate businesses. The impact has been absolutely devastating. Since my appearance in front of this Committee just two years ago, our company has lost in excess of \$34 million. I'm going to repeat that figure -- \$34 million in sales to dishonest operators, subject of the Commission's report.

You may ask, how can this happen? It's rather simple. It works something like this. An unscrupulous staffing operator locates a client where ACCU is providing temporary personnel. In many instances, ACCU provides a couple of hundred individuals to a business site.

ASSEMBLYMAN GEIST: Excuse me a minute. Can we have the doorway closed? Those who desire a seat, there are seats. Thank you.

MR. ERLAM: Thank you.

ASSEMBLYMAN GEIST: You deserve every courtesy.

MR. ERLAM: Thank you, Mr. Chairman.

The corrupt operator then promises ACCU's client a much lower hourly bill rate for staffing services than the legitimate bill charged by ACCU, usually \$2 or \$3 less per billable hour per employee on assignment. The client inevitably then turns to ACCU and requests a lower bill rate. If we refuse, which we must to stay in business, the client then starts a business relationship with the other operator. This scenario happens many times a month. Despite our efforts to inform our clients that it's impossible for a legitimate staffing

service to charge those ridiculously low hourly rates, they're still lured by the corrupt staffing service.

Many of these businesses look the other way, because they understand what's going on with these operators, but they look the other way because there is no enforcement within today's statute in New Jersey to--

ASSEMBLYMAN GEIST: Department of Labor, are you listening? Go ahead.

MR. ERLAM: Let me give you, if I may, a real example of what just happened about a week ago. We were engaged by a large company in the southern part of New Jersey to staff its production lines. Although the operation required 100 or more individuals per shift, ACCU was asked to staff 45 individuals on the one shift. We wanted to pay our employees a minimum of \$6 per hour for the unskilled labor needed for production, with a bill rate of about \$8.80 per hour. ACCU's markup would have been about 1.48 percent, which is a typical markup for a legitimate staffing company. After payment of all applicable taxes and overhead, ACCU is left with a small profit, but enough to sustain its business.

ACCU's client then returned to ACCU and said that our competitor, an Asian-run service, bill rate for the same job was 7.75 an hour. And because the rate was \$1.05 less than ACCU's, the company decided to do business with the other firm. ACCU pleaded with the client that this other service was not legitimate, that a field inspection revealed that they were paying their employees below minimum wage at about \$5 an hour in cash at the end of the day out of vans. The client looked the other way and said, "It's not my

concern. No one is coming after me.” Their only concern is that they need a lot of people cheap.

In that particular instance, we lost about \$200,000 in revenues. Now, with the passage of Assembly Bill No. 2889 with the joint and several liability provisions, the plant manager will likely fear the repercussions of doing business with a corrupt operator, and he will likely engage with a legitimate staffing service. Until this bill is passed, the plant manager has absolutely no legal reason to do business legitimately. The business community appears to be clamoring in droves to these agencies that have repeatedly and methodically raped the New Jersey economy of its share of revenue, not to mention its legitimate competitors.

As I told you earlier, ACCU is a family-owned business. It simply cannot stay solvent in a business environment that undermines its ability to run legitimately.

Let me turn my attention quickly to Assembly Bill No. 2889. First and foremost, the owners of our company clearly thank Assemblyman Geist and the Committee for addressing such a comprehensive law to regulate and hopefully mitigate the abuses of ACCU’s wrongdoing competition. In 1999, I asked this Committee to consider a bill which would provide liability to users of unlawful staffing enterprises through coemployment liability fines and public censure; and two, to make the illegal tactics of these agencies criminal acts with real punishment for both the users and their staffing company; and three, to heavily fine the corrupt agencies for their unlawful practices.

Our company generally supports the passage of this bill, but we believe some revisions are warranted. We’re very pleased that the bill appears

to take into account some of the corrective measures proposed by the Commission's report and our requests of two years ago. We're especially happy to see that the bill provides joint and several liability to the staffing companies and the businesses using their services. We feel strongly that joint--

ASSEMBLYMAN GEIST: Why do you feel that, because this is going to be a topic of debate, if I could intercede--

MR. ERLAM: Certainly.

ASSEMBLYMAN GEIST: --to help focus the members on this. And I hope you could stay and hear what others are about to say about what you just said.

MR. ERLAM: Sure.

ASSEMBLYMAN GEIST: Can you amplify this joint factor?

MR. ERLAM: Well, up--

ASSEMBLYMAN GEIST: I appreciate your attendance.

MR. ERLAM: No problem. Up to this point, the client, as I indicated earlier, does not care about who they do business with, because they feel that they are not responsible for any liability. If we now turn to the client and say, listen, if you are aware that the staffing services you're using are not paying their taxes, withholding employee benefits, providing workers' compensation benefits, you are now going to be responsible for that act, I think that this problem will come to an end real quick. Because in our experience, hundreds and hundreds of companies in the South Jersey region -- and I'm only talking about South Jersey, where we do business -- simply don't care. There is no enforcement tool out there.

And I feel sorry for the Department of Labor who try to enforce the laws out there, and there is really no teeth. People just don't care.

ASSEMBLYMAN GEIST: So you think this is with teeth?

MR. ERLAM: I think that providing joint and several liability provides the teeth that we need to stop this practice, so long as it's enforced.

ASSEMBLYMAN GEIST: Thank you.

MR. ERLAM: And the enforcement provisions, I think, are another issue we need to discuss, but--

ASSEMBLYMAN GEIST: Thank you for understanding my questions and addressing them.

ASSEMBLYMAN THOMPSON: I would ask you a follow-up question. You said if--

ASSEMBLYMAN GEIST: Vice-Chairman Thompson, through the Chair.

ASSEMBLYMAN THOMPSON: --they know-- If they knowingly are aware that the workers' comp, etc., is not being paid--

MR. ERLAM: Yes.

ASSEMBLYMAN THOMPSON: --how would one determine whether they know it's not being paid?

MR. ERLAM: You know, it's in practice out there, when you're out in the field, it's very clear that the client, the users of these agencies, know what is going on. Because it's simply, pragmatically impossible to compete in an environment where employees are getting paid \$5 an hour and to stay legitimate and pay the correct taxes with that kind of environment. The clients know-- I

think that the legitimate operators out there have made it pretty clear through their billing practices. In our business, we generally have to--

ASSEMBLYMAN THOMPSON: I'm looking here from a perspective of the Department of Labor. If the Department of Labor has to essentially prove that they knew, then how do they accomplish that?

MR. ERLAM: Oh, I'm sorry. That's a different question. I just think that the only way is through some type of field audits and inspections.

ASSEMBLYMAN THOMPSON: I mean, it's one thing to say that-- I feel certain they must know because of the amount they're paying--

MR. ERLAM: Right.

ASSEMBLYMAN THOMPSON: --and so on. But it's another thing if the Department of Labor is attempting to take punitive action against them and having to make a case that they knew that these things weren't being paid.

MR. ERLAM: It's a very difficult question for me to answer. I can only tell you that they do know. How that comes to fruition as far as an investigation is concerned, I really don't know how you can find that out. But certainly, they know.

ASSEMBLYMAN GEIST: We look forward to your language ideas on how to do this the right way. Okay. Thank you.

MR. ERLAM: Thank you.

ASSEMBLYMAN GEIST: Good questions, Vice-Chair. Thank you.

MR. ERLAM: We believe that regulating the temporary help industry under the same law as employment agencies is problematic, insofar as these two industries are wholly different. It's true that--

ASSEMBLYMAN GEIST: Can you go over that again?

MR. ERLAM: Yes. We believe--

ASSEMBLYMAN GEIST: I'm sorry about these interruptions, but I really want this hearing to be productive with the record, and your valuable testimony we want to make sure is enhanced.

MR. ERLAM: Thank you. I appreciate that, Mr. Chairman.

We believe that regulating the temporary help industry under the same law that we would regulate employment agencies is problematic, insofar as these two industries are wholly different. True, both industries provide personnel to businesses; however, the temporary help industry does not charge a fee to its applicants for its service. I'm here representing a temporary staffing company. Employment agencies do charge, and much of their regulation is warranted in light of the protections that are required to protect the public against corrupt agencies that charge a fee. We therefore ask that Assembly Bill No. 2889 generally differentiate between a temporary help service and an employment agency, and that it focus more in enforceability measures of existing law than overregulation of the temporary help industry.

No state that I know of regulates the temporary help industry in the manner proposed in the bill. So let's not overregulate here. Let's provide more teeth to the enforcement provisions of existing law, keep joint and several liability as the foremost enforcement tool in the law. Let's increase the potential

finances and penalties and reconsider criminal liability for all the wrongdoing parties.

We also agree with 2889's prohibition against supplying any replacement workers during strikes. I'm sorry, we disagree with that provision. We believe such a provision is antibusiness and probably unenforceable and preempted by the National Labor Relations Act.

ASSEMBLYMAN GEIST: Can you clarify that part, slowly?

MR. ERLAM: Sure.

ASSEMBLYMAN GEIST: We're listening carefully--

MR. ERLAM: Right. I know.

ASSEMBLYMAN GEIST: --and sometimes you're going faster than the brain can appreciate every one of your thoughts.

MR. ERLAM: This is an excitable topic. I apologize, Mr. Chairman.

ASSEMBLYMAN GEIST: No. I really want to do this the right way, and I appreciate you taking the time.

MR. ERLAM: Apparently, as the bill is currently written, there is a prohibition against supplying replacement workers during strikes -- putting temporary employees in during a labor dispute or labor strike. We believe that that may be problematic and goes against the National Labor Relations Act.

ASSEMBLYMAN GEIST: You'll be providing some background to the Committee on that?

MR. ERLAM: I can certainly do that in the future. I'm not prepared to do that today.

ASSEMBLYMAN GEIST: It's one of the topics for debate and discussion, as you can imagine--

MR. ERLAM: Okay.

ASSEMBLYMAN GEIST: --as you'll hear, and I appreciate it.

MR. ERLAM: You're welcome.

In concluding, we oppose parts of the New Jersey Staffing Alliance's position against the passage of the bill. The New Jersey Staffing Alliance, we recognize, is the association of temporary staffing companies in New Jersey. Our company, in fact, is a member of that alliance. We believe that the Alliance does not understand the crux of the problem, a problem that is faced mostly by staffing companies in the southern part of the state. I understand that most of the Alliance membership belongs to the northern part of the state. In its letter to Chairman Geist, the Alliance copresident writes that crew leaders are not temporary staffing firms. And it goes on to say that the Commissioner of Labor regulates, disciplines, and penalizes crew leaders who engage in inappropriate conduct. We believe that that is simply incorrect.

ACCU's sister company, Corporate Plant Staffing, is a legitimate temporary help service licensed in New Jersey, but it was forced to comply with the Crew Leader Act merely because it provides temporary staff to a company that processes farm products or produce. We don't have anyone on a farm. We simply provide temporaries to a company that processes farm products. Hence, Corporate Plant Staffing, a temporary help service, which is licensed under the New Jersey Department of Labor as a temporary staffing firm -- has nothing to do with farm labor -- is now considered a crew leader by the Commissioner of Labor. Clearly, the Crew Leader Act must be revised and/or incorporated within

Bill No. 2889 to clarify the necessity of forcing licensed temporary help services to be licensed in the unrelated farm labor segment of the labor force.

In closing, again we want to thank Chairman Geist and the Committee for drafting and deliberating such an important and necessary bill. We strongly believe that its efforts of enforcement in joint and several liability will help mitigate the endemic problem brought to light in the Commission's report. We disagree that the bill should regulate the temporary help industry in the same manner it regulates the employment agency industry. Nevertheless, we applaud the bill's effort to end the unfair practices that are putting legitimate staffing services out of business in New Jersey.

Thank you.

ASSEMBLYMAN GEIST: Thank you.

Questions? (no response)

If you can stay, let me be clear. Your comments will be the catalyst for a real remarkable discussion that we're about to have on what you emphasized. I think you did it really responsibly. I hope you can share with us your written testimony, if you could prepare it and get copies to the members--

MR. ERLAM: Certainly.

ASSEMBLYMAN GEIST: --so we have it with the transcript.

Any specific language recommendations from anyone here, I'm interested in.

You will probably be surprised, may not, by what you're about to hear from some who do what you do.

MR. ERLAM: Great.

ASSEMBLYMAN GEIST: Because this has been fascinating that some say that this bill was too far-reaching, others say it's not far-reaching enough, others say do the bill today, because we can't wait until tomorrow, others say they do not want any involvement. So I appreciate your involvement. I'm trying to give this to you too so you can help address their comments. And you're welcome to do commentary at the end.

Thank you.

MR. ERLAM: Thank you, Mr. Chairman. Thank you, Committee.

ASSEMBLYMAN GEIST: Thank you very much.

Alyce Rossi, Experience Works! Staffing Service. That's a great name.

Good morning.

ALYCE ROSSI: Good morning, how are you?

ASSEMBLYMAN GEIST: Nice to meet you.

MS. ROSSI: Thank you very much.

ASSEMBLYMAN GEIST: You're very welcome. Can you do self-introduction?

MS. ROSSI: My name is Alyce Rossi. I am the Special Projects Coordinator for Experience Works! Staffing Service.

ASSEMBLYMAN GEIST: And what's that all about?

MS. ROSSI: We are located in Hamilton Square. We are a division of Green Thumb, Inc. Green Thumb was started about-- Just to give you a quick synopsis of what we are--

ASSEMBLYMAN GEIST: Great.

MS. ROSSI: --because we're a little bit different. We're a nonprofit staffing service.

ASSEMBLYMAN GEIST: Please.

MS. ROSSI: We were started-- Green Thumb was started 35 years ago by the Johnson administration. There were displaced farmers who had nowhere to go from off their farms. They took the people, gave them jobs in service organizations -- greening the parks, for example. And to be qualified for it, you had to be over 55, and if you're a single person, making under \$11,000 a year, roughly -- \$11,300. So these are truly people that need help. What was happening was, because it was family funded, if you were to come in and look for a position and you were a dollar over income, they couldn't help you.

So, about five years ago, they decided to start a second organization called Experience Works!, and it was aimed at the mature worker. We have offices in all 50 states. We're in Puerto Rico and the District of Columbia.

ASSEMBLYMAN GEIST: How many offices in the State of New Jersey?

MS. ROSSI: We have two. We have one in Hamilton Square, and we have a satellite office in Hammonton.

ASSEMBLYMAN GEIST: Thank you.

MS. ROSSI: Okay. And we basically-- We do not age discriminate, although we do tend to deal more with mature workers. That's where our marketing is also.

ASSEMBLYMAN GEIST: And your definition of mature is?

MS. ROSSI: Forty plus.

ASSEMBLYMAN GEIST: Thank you.

MS. ROSSI: I was afraid of that. (laughter) I apologize for that, but that's what it is.

ASSEMBLYMAN GEIST: I'm just trying to listen and learn today.

MS. ROSSI: I know. And I'm kind of new to this. This isn't my background. Originally, I was a market researcher for, I guess, 12 years. And when I first got the call, I was like, you know, I don't know if I'm the person you want to talk to, because this isn't-- I'm not an expert. And then I got talking to Barrie, and he said, "No." He had been talking to-- I'm sorry. I had been talking to Greg, and Greg said, "I have been talking to Barrie Peterson, who runs Seton Hall's Initiative on Work." And he said, "No. We want you to talk, because you're considered a best practice agency." So they sent me the report, and I sat down and read it. And I will tell you, I was horrified. To me, I looked back on it, and it just-- To me, it was John Steinbeck's *Grapes of Wrath*.

ASSEMBLYMAN GEIST: What report are you referring to, so everybody understands what you read?

MS. ROSSI: Sure. I read the law. Then I read the Underground Economy Report, which was quite lengthy, and I was really upset. I mean, I looked at this and just thought I'm working in an agency where we are a best practice. We do not take advantage of people. We don't put them into positions where they're uncomfortable. You know, if you tell me this is what you want, I'm not going to say, well, I'm going to stick you in that job anyway. That's just not the way we operate.

We take the person-- A lot of the people we get, because of the nature of our business, are people who have been displaced. They have been

downsized. They feel age discrimination. People will tell you it doesn't exist. Well, I can tell you from personal experience, it's out there. I see it every day. I have people coming in who are 50 years old and saying, "I don't know what to do. I've been a production manager. I have been a computer person. I have been a plant worker. All of a sudden, my company doesn't want me and neither does anybody else."

So our first job is to really build up their self-esteem again and then help them find a job. If we can't help them, we turn to other agencies, or we may turn to the State sometimes. We'll go to our own Green Thumb, if they're eligible. We will call other agencies and say, look, I happen to have a person. I have a physicist -- a Russian physicist I've been trying to place. The man is brilliant, but what do you do with a physicist?

ASSEMBLYMAN GEIST: How does this legislation help you?

MS. ROSSI: Well, actually when I looked at it, we're doing everything we're supposed to be doing. I mean, our people get paid within three days of working. Actually, they work on a Friday, our payroll comes out on Wednesday.

ASSEMBLYMAN GEIST: Assuming--

MS. ROSSI: So we comply with this.

ASSEMBLYMAN GEIST: --that, how does this legislation help you?

MS. ROSSI: I wouldn't say it's really-- It's helping us because other agencies that don't use this are our competition. Having the plant down in South Jersey and having the office in South Jersey, we know what goes on.

ASSEMBLYMAN GEIST: And give us a little bit of what you understand goes on.

MS. ROSSI: People are out there cutting their rates. You've got workers-- Basically, it's almost like the migrant worker thing all over again, where they're being the wages-- These people think they're getting a paycheck, and when they go back to get it, they haven't paid in social security. So here's the agency saying, "Well, you know what, we can get them cheaper. We can put them on there."

ASSEMBLYMAN GEIST: Do you think this is more of a South Jersey phenomena?

MS. ROSSI: Yeah, I really do.

ASSEMBLYMAN GEIST: Why do you say that?

MS. ROSSI: Well, the wages we're paying are higher. You know, I would say the average salary that I'm paying to my office workers, at this point, is \$10 an hour. Factory workers, we're not giving anybody below 8, because it just isn't fair to them. If I have to take the cut on my side of it to get the person the job, I'm going to make the difference. If the employer says I can only go \$12, I'm going to say, okay, fine, but I want my person to get 9, so the dollar is going to come from my side. I think it's good business, because then that person goes back, and at least I've supplied him, and he talks to a friend. He knows he hasn't been taken advantage of.

ASSEMBLYMAN GEIST: Do you have any other comments on the bill right now?

MS. ROSSI: Only that I really feel it's got to be pushed. I mean, there is no reason in this state that we would have any kind of workers facing

these obstacles. It's unfair to them. These people put their life on the line. They go out and work. And the one thing that hit me, too, is, if you're cutting down on this, what are you doing on the insurance side of it? And what is happening if someone gets hurt on the job? Someone who is not being paid a good salary, who is just barely getting by, is not going to go to the trouble of reporting it to an insurance company for fear of losing his job. So how many workers do you have out there in that situation? And I think that needs addressing, too.

ASSEMBLYMAN GEIST: We're going to be talking about that as well. I appreciate your being here. We have some witnesses, and I appreciate your emphasis. If you could stand by and listen and learn a little bit more--

MS. ROSSI: Thank you very much.

ASSEMBLYMAN GEIST: Thank you. Nice meeting you.

MS. ROSSI: Thank you.

ASSEMBLYMAN GEIST: Steve Gotzler, Public Interest Law Center. (no response)

Connie Pascale, Legal Services of New Jersey. (no response)

John Sarno, President, Employers Association.

Good morning.

JOHN SARNO, ESQ.: Good morning. My name is John Sarno. I'm a labor lawyer and President of the Employers Association of New Jersey.

ASSEMBLYMAN GEIST: And what is that?

MR. SARNO: EANJ, established in 1916. We're located in Verona. We're a nonpartisan, nonlobbying employers association that -- its mission is really to help employers throughout the state develop fair and

equitable relationships with their employees. We do a lot of training, publishing, research. I've been invited by the staff to offer some remarks, not to oppose the bill or support the bill, but hopefully to share some information with the Committee and the benefit of our study and research and analysis.

ASSEMBLYMAN GEIST: Great. If you have written testimony and want to incorporate it in the record, you can share that with us at any time.

MR. SARNO: Thank you very much.

Just to quickly try to put the bill into context and to share some data on how many employers actually utilize temporary workers, there's been some national studies by the temp agencies indicating that upwards to about 90 percent of the employer community utilize temporary workers. I'm not quite sure what that data tells us. It sounds like a big figure, but I can be an employer with 500 or 1000 employees. I might have one temp worker doing some part-time secretarial work, and I'm going to be a part of that 90 percent. But our research indicates that among the employers that substantially utilize temp workers -- and we define that as 10 percent or more of the workforce -- it's about 20 percent. So it's still -- and that's among our members, and that's specifically New Jersey companies, New Jersey employers. So it's a pretty big figure, but it's certainly not the 90 percent that has been reported by some of the other national studies.

Why do employers utilize temp workers? Most people anecdotally think it's cost, and I think we've sort of heard some of that testimony. People don't care. People want cheap labor. In fact, we have measured the reasons and studied the reasons why employers use temp workers, and among the first and foremost reason is to achieve flexibility in the workforce to meet the peaks

and valleys of a production cycle. Sixty percent of the employers that we surveyed and interviewed and studied put that at the very top of the list as a very important reason to hire a temp worker.

To be sure, cost is a factor. It's the second most reported reason, but cheap labor is not necessarily the driving issue here. It's employers trying to meet the demands of a global economy, quite frankly, and temporary workers and part-time workers and other alternate forms of employment are now part of the mix and a part of the modern workforce.

Typically, it's a temp agency which will take on the responsibility of paying the payroll taxes. You know that. That's a part of the fee. That's a part of the bargain. The temp agency and the employer enter into a contract, both bargain for certain responsibilities, both bargain for certain risks. So part of the fee that the employer is paying the temp agency is to shift the risk -- allocate the risk onto the temp agency to take the responsibility and the risk of not paying the taxes. So to impose joint and several liability on that market relationship clearly will have an impact on business, how it's conducted, and the ability of the parties to allocate risks under their contract.

With that said, I don't think that is imposing joint and several liability, that is to say, making the employer automatically liable. I think that the Assembly person's earlier question was well stated and quite on target. How do you know? How do you know? If you're going to make somebody liable, the employer liable for the malfeasance of the agency, well, how do you know the employer has knowledge? And to assume that knowledge, I think, is really quite unworkable.

Now, with that said, our research indicates that it's probably not going to suppress business in the industry. That is to say, only 5 percent of our survey reported that shifting the responsibility for compliance issues -- only 5 percent stated that was a very important reason for going with temporary labor and temporary employment. So I don't think that imposing joint and several liability will suppress business; however, it's clear that it's going to impair the parties' ability to allocate risk. The employer is not getting the full value of the fee, because he is going to be no longer-- It's going to be no longer able to shift that risk. So my suggestion, therefore, is that if the Committee and if the -- ultimately the bill is going to impose this type of liability, then I think you also have to create or require full disclosure.

See, if I'm the employer and I'm going to contract with the chair for temporary labor, and I'm going to be automatic-- And that's what we're talking about when we're talking about joint and several liability. We're not talking about the -- I know that you're engaging in a wrongful act. We're talking basically imputed liability and automatic liability. So, if I'm going to be automatically liable for your misfeasance, then I'd better know what you're all about. So my suggestion on the bill is, if you go that route, that you require the temp agencies to engage in full disclosure.

For example, you're requiring in the bill a contract detailing the responsibilities of the party with regard to the payment of the payroll taxes. As a part of that contract, you could also require the temp agencies to disclose their compliance history going back five years, to disclose whether they've ever violated the tax rules, whether they've been ever audited by the Department of Labor. So that the market begins to-- If there's transparency in the transaction

and the employer becomes the educated consumer, then the employer then will be more able to make informed decisions as to whether to go to Greg's temp agency or the Chair's temp agency.

So, if you're going to impose joint liability, you're going to have to impose full disclosure on behalf of the temp agency to the consumers, both the workers, which I think your bill does. It requires the temp agency to disclose important material information to the employee, but I would suggest that you go take the next step, which is to require the temp agencies to disclose all material information, including compliance history, to the other consumer, which is the employer.

Also, you might want to consider having the temp agency report to its customer -- report to its customer, which is the employer, after all -- when it pays its taxes, either through pay stubs or some other convenient form, so that the customer, the employer, knows that it's got a reputable party, knows that it's got a party who is complying with the tax laws. And then when I become aware that there is noncompliance through my own auditing, then I can pull out of the deal, and I won't be having this liability imposed on me. So we would suggest that if you're going to go that route, then you require this real transparency in the transaction so that, in effect, the consumer, the employer, and the worker, for that matter, can be informed during the decision making.

The other point, real fast, is on this worker replacement provision. I tend to agree that that provision is probably preempted by the National Labor Relations Act, but I haven't done the analysis. But nevertheless, if you look at the existing provision in the Employment Agency Law, there the liability clearly is on the temporary agency. So, for example, when you look at the relevant

provision in the existing law, it says that the temporary help service that knowingly engages in strike or replacement activities is going to be liable. And it also imposes this aiding and abetting liability for counseling that kind of conduct. What this bill does, though, and I think probably inadvertently, is expand the scope of liability. Because the bill says, any person will be liable for engaging in this activity, including this aiding and abetting, this counseling activity. So, theoretically, lawyers giving advice to their clients might fall within the scope of the liability, consultants, associations, management, so that I think that might be inadvertent that you're actually expanding the scope of liability that already exists in the employment agency. So I would just be--

And for Greg's benefit and the Chair's benefit and for the Committee's benefit, these are just three issues you might want to look into -- three outstanding unresolved questions. If the employer has to pay taxes, because the agency refuses or does not or makes a mistake, then to whose account does that contribution go into, the employer's or the agency's, and therefore, which account are the benefits drawn from? So that's an outstanding unresolved issue that the bill doesn't deal with. So I think that probably merits some further study in terms of how the unemployment fund actually works, where the moneys are going to be drawn from, whose account is going to be charged.

The second unresolved issue is, if the parties are going to be jointly liable for contributions, does the employer then become the base year employer and therefore have appeal rights during the unemployment proceeding? That's a question that the bill does not address, because you're imposing liability. Does the temp agency then have appeal rights or does the employer or both?

And then finally, an unresolved issue is currently, if an employer files an incorrect WR-30 form, which is the form that indicates the taxable wages, there's a \$5 penalty that can be waived. The unresolved issue is, would that penalty likewise be waived if the employer contracts with the agency to pay the taxes? I don't know the answers to those. The bill doesn't answer those questions, but these are going to be real practical issues for the Department of Labor and the employers to deal with if the bill is passed.

Those are my remarks.

ASSEMBLYMAN GEIST: Thank you. That's exactly proof positive as to why I thought we should listen and learn before we legislate, to incorporate the practical experience that you just so well testified.

Any questions for this very remarkable witness?

Vice-Chairman Thompson.

ASSEMBLYMAN THOMPSON: On the question of joint liability-

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MR. SARNO: Yes.

ASSEMBLYMAN THOMPSON: --and full disclosure, etc.

MR. SARNO: Yes.

ASSEMBLYMAN THOMPSON: I may have scribbled a few notes here earlier on that topic. Suppose that we required the agency to supply the contracting firm a daily list of the individuals that are supplied to work for them. That is, in other words, they are supposed to supply them with attendance and work records for every employee that works every day for them and both -- the employer knows who is there. Secondly, the agency supplying -- the temp agency or whoever -- be required to pay all employees by check, as

opposed to cash. I know that for some people they may say that's a big pain in the neck, but we've found it a big pain in the neck when they said we had to pay Election Day workers by check as opposed -- for a few bucks.

But clearly, this establishes a record, and we could even require that certain pay records, or so on, be supplied to the contracting firm. This way, okay, they have the information that suggests whether or not taxes are being paid, etc., and so on. If this information isn't supplied to them, obviously, they could get rid of the firm or one thing or another of that nature, but now they have a basis for knowing whether or not taxes are being paid and can take appropriate action based upon that.

MR. SARNO: That's a very thoughtful approach. It's an approach that, I think, works from a regulatory point of view, but it also allows--

ASSEMBLYMAN THOMPSON: It's a lot more paperwork, I realize, but--

MR. SARNO: But it can be done conveniently. It can be done electronically. It's sound regulation, but it also permits the market to work. Why? Because you have informed consumers.

ASSEMBLYMAN THOMPSON: Certainly, they need to-- We're holding the contracting firm responsible. They have to have some way of knowing what is taking place over there. And if we put in such provisions as this, this would be one way that they would know, if we required the agency supplying the workers to provide this information to the firm that's contracting with them.

MR. SARNO: And I think that-- And also, as a part of the bargain, the information with regard to a compliance history, going back five years, perhaps, would also be a useful thing for the contract firm to know.

ASSEMBLYMAN THOMPSON: Well, that's why we were considering using the firm in the first place.

MR. SARNO: Right.

ASSEMBLYMAN THOMPSON: But regardless of the past history, what they need to know is what did happen with the guy they had working for them yesterday from the temp agency.

MR. SARNO: Sure.

ASSEMBLYMAN GEIST: Good questions, as always.

Any others? (no response)

Can you stick around a little bit?

MR. SARNO: Yes.

ASSEMBLYMAN GEIST: You'll hear some remarkable comments in their comments.

MR. SARNO: Thank you.

ASSEMBLYMAN GEIST: Thank you.

Carl Aquilino, taxpayer. We sure have a lot of those in the room today. Where's Carl?

CARL J. AQUILINO: Right here.

ASSEMBLYMAN GEIST: That's a nice, clear, simple explanation of your introduction. And you like this bill?

MR. AQUILINO: I do.

ASSEMBLYMAN GEIST: And you are, for the record?

MR. AQUILINO: This is Carl J. Aquilino, still a taxpayer.

ASSEMBLYMAN GEIST: I hope you're not too hopeful that that status could change soon. We're working on it, though.

MR. AQUILINO: No. No. I'm fine.

ASSEMBLYMAN GEIST: Good to see you.

MR. AQUILINO: I'm fine. Thank you.

ASSEMBLYMAN GEIST: Thank you. I thought we'd mix your testimony into the mix. Thank you.

MR. AQUILINO: You're welcome.

First of all, thank you and the cosponsors and Committee members for your work and consideration of this bill. And again, I reiterate, I do this on behalf of the New Jersey taxpayer.

The SCI report on contract labor really says it best. And I couldn't do better than that, so I figured I'd read it: "Elements of the -- New Jersey's agricultural and manufacturing industries have been subverted at taxpayer expense by a lucrative underground economy that benefits unscrupulous contractors who trade in cheap and sometimes illegal immigrant labor." And I think that's why we're here.

ASSEMBLYMAN GEIST: You're right on that.

MR. AQUILINO: True, true. This bill will help bring about the lessening of the financial rape of the New Jersey taxpayer. The gentleman who -- representing the ACCU temp used that word also, and I think it's very appropriate. The key word here is help alleviate the problem. We have--

ASSEMBLYMAN GEIST: Stay on the bill.

MR. AQUILINO: I'm not going off the bill.

ASSEMBLYMAN GEIST: Okay.

MR. AQUILINO: That's not why I'm here.

ASSEMBLYMAN GEIST: Because you and I philosophically agree about taxes probably a lot, but we'll talk about that some other time.

MR. AQUILINO: Sure. At my own expense, I sent a copy of this SCI report to every legislator in New Jersey, everyone. Maybe you didn't see it, maybe your staff tossed it, but you did receive a copy. I sent a copy to the Attorney General's Office, State of New Jersey. I sent a copy to the FBI, and I think their responses were interesting. The FBI turned it over to the Department of Justice, and I got back a letter that pretty much said, "We don't give a damn," and let it go at that.

The Attorney General's Office replied with what I call a motherhood, apple pie, and American flag letter -- a lot of words that said absolutely nothing. I couldn't let that sail by, so I wrote back and said, I find it incomprehensible that the Attorney General's Office could find nobody to prosecute. What happened, as happened so many times when faced with logic, they retreated into silence. That was it -- was the last I ever heard from them.

Now, is there an Assemblyman Dwyer here? No.

ASSEMBLYWOMAN FRISCIA: Doesn't exist.

MR. AQUILINO: Okay. He asked a question of the AG's Office. He asked it in '97. He asked it when you took testimony before.

ASSEMBLYMAN GEIST: Here he comes.

MR. AQUILINO: Excellent. He raised a question and said that he couldn't believe that the Attorney General's Office couldn't find somebody to prosecute after reading this report. I've forgotten who testified on behalf of the

AG's Office, but they mumbled something about it was hard, and that was the end of that.

Now, your work and my work are very closely related. There are currently 300,000 illegal aliens in the State of New Jersey costing the taxpayers God knows how many millions of dollars. It's now into the hundreds of millions of dollars. And what has illegal immigration to do with your bill? Every speaker thus far has gone around the outside of it -- what fuels the problems. And a lot of it has to do with illegal immigration.

The report here (indicating) -- they examine 650 social security cards. Two percent -- two percent were legit -- two percent. And I'll wager anybody here that many, many or most were illegal -- two percent. Now, 300,000 illegal aliens in the State of New Jersey fueling this kind of thing you're trying to bring under control, that's the good news. The bad news is that there are 8000 to 9000 illegal immigrants entering the State of New Jersey each and every year -- 8000 to 9000.

I asked Andrea Quarantillo, who heads the INS Division up in Newark for the State of New Jersey, and she acknowledged that this was correct. Mrs. Quarantillo was still using 165,000 illegal immigrants, which -- the number she gave me when I spoke to her back in 1996. The \$64,000 question that I asked her when she appeared before the Committee on undocumented aliens, I said, well, okay, we've got 8000 to 9000 coming in, how many are you deporting? And she said about 1300. I said, well, it appears that we're losing, and that's what's going to fuel this situation. You've got 8000 to 9000 coming in on top of the 300,000 that I believe we have.

Now, if you think 300,000 is a number I made up, I have a letter from Senator Torricelli. It's a copy of a letter to Doris Meissner, who heads the INS in Washington, D.C. In it, he demanded to know what she was going to do about the 500,000 -- not 300,000, but 500,000 -- illegals that were in the state. He also picked up on the fact that New Jersey was being radically shortchanged in the amount of money that we were receiving. Incidentally, we have the sixth largest illegal immigrant population in the country. New Jersey's dirty little secret: We have the sixth largest illegal immigrant population.

I have proposed the following-- I'm a member of a commission that's been formulated by, I believe the law was S-208, to look into the problem of illegal immigration. And I have suggested three things to date, which I will continue to push: one, the fingerprinting of all illegals and establishment of a database so that we know who's illegal, who is not, and who are the repeat offenders; secondly -- and this will help you -- establish a police force other than the INS, which is an abject total failure. They are absolutely pathetic.

Most of the members of the Committee, after Andrea Quarantillo testified, just shook their head. One member is a country prosecutor. He asked her how much money do you need to bring this problem under control. She didn't know. She had no idea. And she really didn't understand what a crew chief was. Beautiful. So that's what we have to work with.

And three, build a fire under some of our Federal judges in order to get this deportation process moving along.

ASSEMBLYMAN GEIST: Well, I want to assure you this Committee is going to be moving things along.

MR. AQUILINO: Okay.

ASSEMBLYMAN GEIST: If we could--

MR. AQUILINO: Yeah. We're getting--

ASSEMBLYMAN GEIST: --because we have numerous more witnesses--

MR. AQUILINO: I'm aware.

ASSEMBLYMAN GEIST: --I want to come back to the bill.

MR. AQUILINO: Well, okay.

ASSEMBLYMAN GEIST: Maybe you should testify before Congress some day.

MR. AQUILINO: I've already done that.

ASSEMBLYMAN GEIST: Okay.

MR. AQUILINO: Now, regarding A-2889, before you cut me off. As far as the crew leaders are concerned, I suggest that you fingerprint and photograph them, because the people you're dealing with one day may not necessarily be the people the following week.

ASSEMBLYMAN GEIST: Agreed.

MR. AQUILINO: I'm in strong support of Mrs. -- How do you pronounce that? -- G-A-A-L-S. How does she pronounce that? But anyway, she testified here. She's counsel, and said that she thought that your fines should be strengthened along with the prison time.

And third, I'll end with a question. Are you sure that you have the horses within the Labor Department to carry out this bill?

ASSEMBLYMAN GEIST: If we don't have the horses, we'll get new horses.

MR. AQUILINO: No, just more. Sometimes more helps.

ASSEMBLYMAN GEIST: That's true, too.

MR. AQUILINO: Okay. Okay. I think that's essential. And I think it's important for the people who are in the Department of Labor who are stretched very thin. So I think that one of the things that this Committee is -- should be looking at is, can we enforce this law. We have many laws on the books now that are simply not being enforced, and I think that's got to be a prime consideration. Do we have the horses to do the job? It's not fair to them, and it's not fair to the taxpayer.

And I thank you for your time.

ASSEMBLYMAN GEIST: And we thank you. The Department of Labor will be testifying soon. So you can listen to the horses. (laughter) And we appreciate your testimony.

MR. AQUILINO: I have had many occasions. Thank you.

ASSEMBLYMAN GEIST: You're welcome to stay--

MR. AQUILINO: Thank you.

ASSEMBLYMAN GEIST: --as we continue to listen and learn.

The Chair purposely delayed some of the witnesses so they could listen and learn and then respond. I assume some of you know that, such as the Department of Labor. And I want to continue with some other witnesses first.

Lydia Valencia, PR Congress, Inc.

LESLIE SOTO: Good morning.

ASSEMBLYMAN GEIST: And we're in the afternoon now.

MS. SOTO: Oh, afternoon. Good afternoon.

ASSEMBLYMAN GEIST: Times flies when you're having fun.
Good afternoon.

MS. SOTO: Good afternoon. First of all--

ASSEMBLYMAN GEIST: Your introduction again, for the record.

MS. SOTO: Yes. First of all, I would like to say I am not Lydia Valencia. She had to step out to another meeting, but she asked that I give a very brief statement on her behalf and on behalf of our organization. My name is Leslie Soto. I'm the contract administrator for the Puerto Rican Congress. We are a nonprofit organization. In the past few years, we have also been running a licensed temporary employment organization in the city of Lakewood.

We are here, basically, to let you know that we are much in agreement with this bill. We support it greatly. We support any efforts currently being made regarding the business of temporary employment, because just like some of the other persons that have spoken before, we have seen also some discrepancies and some exploitive actions regarding this type of employment. We are in support of this bill, and we commend the efforts that are currently being made.

ASSEMBLYMAN GEIST: Well, thank you. That was very nice.

MS. SOTO: Thank you.

ASSEMBLYMAN GEIST: Any questions? (no response)

Thank you.

Traci, from AFL-CIO. Traci, thank you for your patience.

Jeffrey Stoller, you're on deck, as they say in baseball terms, since you two are so often together.

TRACI DiMARTINI: Usually on the same side.

ASSEMBLYMAN GEIST: At least in presence.

MS. DiMARTINI: Thank you Mr.--

ASSEMBLYMAN GEIST: Your introduction, please?

MS. DiMARTINI: Thank you, Mr. Chairman and members of the Committee. I'm Traci DiMartini, Legislative Coordinator for the New Jersey State AFL-CIO, representing over 1 million workers in the State of New Jersey. I'd like to compliment my colleagues from the building trades, from the laborers, and from the operating engineers and to thank them for coming down and let the members of the Committee know that they are just two of the many members of our affiliates from various trades, including carpenters, electricians, plumbers, that are in support of this legislation.

New Jersey has some of the strongest and most progressive labor laws in the country. Unfortunately, as we've heard today in testimony, there are still ways to circumvent these fine laws. And we believe that this bill will help put some teeth into the temporary help industry. I really would like to compliment Irma Shaw for her excellent testimony, and we look forward -- the AFL-CIO -- in working with the Mexican American Chamber of Commerce to correct these grave injustices.

A lot of what was in my testimony has already been said, so I don't want to be repetitive, because of the time constraints, but I would like to add that the AFL-CIO is very supportive of the five initiatives that were outlined in the 1997 SCI report. And we thank the Chairman for taking the initiative to put this in legislative form. And I would also like to underscore that the back taxes and unemployment and workers' comp taxes are very important, but we would like to see a component to let people collect their back wages. The AFL-CIO is respectful of the rights and dignity of all workers, whether or not they're

union members, although we do hope to get them into unions one day in the near future.

So we do support any legislation that will help workers maintain dignity on the job, and we thank you.

ASSEMBLYMAN GEIST: And we thank you. And now you can stay and listen to Jeffrey.

MS. DiMARTINI: Of course.

ASSEMBLYMAN GEIST: Jeffrey Stoller, New Jersey Business and Industry Association. Jeff is one of the season ticket holders, which means he's at every one of our Labor Committee meetings.

J E F F R E Y S T O L L E R: You're always following me.

ASSEMBLYMAN GEIST: Phil, are you joining him today, for the record?

P H I L I P K I R S C H N E R, E S Q.: If I may, Mr. Chairman.

ASSEMBLYMAN GEIST: You've got the boss here, too.

If we could have your names for the record. We welcome you.

MR. STOLLER: Thank you, Mr. Chairman. My name is Jeff Stoller. I'm Vice President for Human Resource Issues at the New Jersey Business and Industry Association. Phil Kirschner is our Senior Vice President. He's an attorney who directs our Government Affairs operation on behalf of our 16,500 member employers here in the State of New Jersey.

I believe staff is sharing with the full Committee a copy of our testimony here today. It essentially outlines some of the concerns we first shared with you directly in early December in terms of this bill when we were

first taking a look at it. We would just like to expand upon those concerns today and share them with the full Committee.

First of all, as you know, our fundamental concern with the bill as proposed is, we see a serious disconnect between the kind of clear-cut abuses, payroll abuses, that were documented in the original report, certainly in sectors such as agriculture, and the bill itself, which seems to go far beyond the kinds of abuses that were first documented in the '97 report. We share the concern voiced by Mr. Sarno and others before about this concept of automatic liability for any employer that is hiring a temp agency or a help provider. It seems very unfair to us to have the employers be held liable for the actions of others that they do not control -- are really not in a position even to monitor under the current laws in terms of what their practices are. And you may have a company that certainly believes that all the appropriate deductions are being made and yet they are automatically liable.

We're concerned about the breadth of the scope, moving far beyond those initial problem sectors that were documented in the report and applying to a wide range of employers using a wide range of temporary help agencies. We also are very concerned, as you've heard by earlier testimony, about the inclusion in the bill of a provision that says that you would not be able to use any kind of temporary assistance in a situation where your regular workers were on strike. We believe, as others have said, that that is fundamentally at odds with Federal law, the National Labor Relations Act. We have consulted with a variety of attorneys, including attorneys for organized labor, who have told us just that, that this would be preempted and that that is simply not an appropriate prohibition.

Secondly, we also on that-- Yes.

ASSEMBLYMAN GEIST: Jeffrey, if I could, on that topic. Gregory Williams of OLS is a pretty capable professional. And I say that with respect for him, because when these bills are drafted, they're drafted with OLS professional support and review. You are at least the third one today to make that declaration. This bill is one just for a hearing today, and we're on the record. I would like each and every one of you that have made this reference to Federal preemption to provide support for that position so that OLS counsel can review this issue carefully. You may know that I rely on Gregory Williams. He's very reliable.

So, in this draft, I take that with the foundation of capability for this legislation to address this issue. You and others say it's preempted. I have much respect for the witnesses that have made that declaration today, but this is one of those where rubber meets the road, there's a real difference of opinion. And I would like, if you could, through the Chair, through OLS, provide us, as I'm saying to all the witnesses today on each side of this issue, your legal foundation. It's like presenting it to a judge or jury. We're going to make a decision one way or the other, probably. So, if you could help us in that, I would appreciate it.

MR. STOLLER: We'd be very glad to, Mr. Chairman.

ASSEMBLYMAN GEIST: Thank you, Jeff, as you always do.

MR. STOLLER: Again, just briefly on our main concerns. We do feel, in Section 1, that this is really going too far in terms of having the employer, even including some of those best practice employers that you heard from today, who would be automatically be liable under the wording of Section

1 and without-- At least under current laws we understand the ability to inspect the agency's payroll records and to police whether the appropriate thing was being done.

We are also concerned about the language in Section 1 that suggests that, certainly, the agency people who would be pursued under this law could be held personally liable, not just as a corporation or as an employer. Our concern is that that might suggest that the employer, too, by way of joint liability, might find themselves individually liable as well as corporately liable.

A second point, again, on the breadth of this. It seems you're talking again in the report -- the work of the State Commission was looking at people, and we've heard testimony today, people who are paying cash out of the back of vans. And yet, this would encompass a wide range of providers who are providing what we regard as rather sophisticated high-tech skills. We have, now, people with professionals who are now providing temporary assistance at very high levels with computer programmers, with accountants. There's even attorneys that you can obtain through these kinds of programs. And again, we just wonder whether we have gotten far afield from the targeted sectors that really are the source of most abuses.

ASSEMBLYMAN GEIST: That's an interesting comment -- most abuses. Should this Committee not look at all abuses? That's a rhetorical question, because I'm hearing a lot out there today about a lot of abuses in almost all segments of society where the responsible are being responsible and the irresponsible need some accountability. And I'm here today -- we're the first one to even look at the SCI report, that the Attorney General has closed his eyes. I mean, you know and I know that this Committee has focused on the

SCI report like nobody else has, and the question is, why shouldn't all be held accountable? Why shouldn't we have a broader brush than even the SCI initially suggested, so that Mr. Taxpayer, who was just here a minute ago, can sleep well at night knowing that everybody is playing by the same rules?

MR. STOLLER: Well, clearly, where an abuse exists, it should be addressed. Our concern is that under the joint liability scheme, all these other groups are being brought in. So clearly, regardless of who is committing the payroll abuse, that's a legitimate target. We've said that from the start. I'm just suggesting that, again, looking at the wording of the bill and looking at this concept of automatic liability and joint liability--

ASSEMBLYMAN GEIST: Okay. Okay.

MR. STOLLER: --we're talking about many, many people who could find themselves held responsible. We don't believe that this is necessarily an accurate reflection of the original report. When we look at Page 28 of the original report that we reviewed in an earlier hearing with you, we see the key phrase saying that one of the recommendations is the New Jersey Department of Labor be "given the authority to look at the -- given the authority to find joint liability," not necessarily automatic mandate. And I think that's an important concept, because the idea of discretion on behalf of the regulators is the key to this whole debate if they can look at these situations and define clear collusion in situations where there clearly is a connection between what the temporary agency is doing wrong and what the employer knows about it.

I think we're talking about two different things. We're just very concerned that by putting in this kind of requirement with the automatic joint liability, you've basically given a kind of a perverse incentive to the regulators

themselves. What incentive do they have to really pursue the guilty party if automatically the employer may have no knowledge, is already jointly liable? What is the incentive? If I am a Department of Labor staffer with limited resources and limited time, am I going to devote the rest of my week to try and find the guy in the van, when this law would hand me, automatically, the employer jointly liable? I know his address, know where they go, probably a straight shooter who if we go to them is going to try to work with us.

It just doesn't seem like a fair police program with this language as it is. We do support--

ASSEMBLYMAN THOMPSON: If I may interrupt you there. Again, I'll ask you the same--

MR. STOLLER: Sure.

ASSEMBLYMAN GEIST: Vice-Chairman Thompson, through the Chair, as always.

ASSEMBLYMAN THOMPSON: I'm sorry, sir.

I'll ask you the same question I asked earlier. Again, if we required the provider of the laborers to give the information to the employer, i.e., a record of who he had working there, their pay, and etc., would this alleviate some of the concerns you're speaking of? Because this way, the employer has a way of knowing whether or not these things are being paid.

MR. KIRSCHNER: Yeah. You would always be at least one payroll behind, and so you would not know. It's after the damage is done. It may mitigate some of the damage, but--

ASSEMBLYMAN THOMPSON: But I would think that would be something Department of Labor would take into consideration. That's if

they've required it, they've been getting, and all along it shows it's being paid, and then suddenly it wasn't for one payroll.

MR. KIRSCHNER: But under joint and several liability, as the previous witness, that's automatic liability. It's no fault. It doesn't matter--

ASSEMBLYMAN THOMPSON: But does it-- Isn't it--

MR. KIRSCHNER: --whether you've done anything wrong or not. You are liable.

ASSEMBLYMAN THOMPSON: Mr. Chairman, is it being put under the basis of knowingly -- their having to know that these things aren't being paid, or is it just regardless of whether they know or not?

ASSEMBLYMAN GEIST: Gregory Williams will focus on the exact language in the bill to address the question. We can continue with the debate and the discussion.

ASSEMBLYWOMAN FRISCIA: Mr. Chairman?

ASSEMBLYMAN GEIST: One at a time.

Vice-Chairman Thompson, are you finished yet?

ASSEMBLYMAN THOMPSON: The question here was, while there's joint and several liability, does it require that the contracting firm know that these things are not being paid in order for them to be held liable, or is it regardless of whether they know or not, they're going to be liable?

MR. WILLIAMS: Okay. It requires a written agreement--

ASSEMBLYMAN GEIST: On the record, you are?

MR. WILLIAMS: Gregory Williams, Committee Aide.

The bill requires a written contract between them that's available for disclosure to the public entities, and in the last resort, it is what you're

describing. This does, just for clarification, and I believe what we're talking about here is payroll taxes and contributions. We're not talking about payroll per se. We're not talking about wages.

ASSEMBLYMAN THOMPSON: I realize that. But I'm saying if we put in here that the temp agency, or whoever, is required to supply a copy of the information to the contracting employer reflecting what has been paid and so on-- Okay, we put that in, and they know whether it has or has not been paid. If they have reason to believe it's been paid because they've received this information, would they still be held responsible even though they were supplied fraudulent documents, let's say? Okay, it's been paying up until-- It's one payroll behind. One payroll at this point they didn't pay, and that's when the Department of Labor inspects. Would they be held responsible? Again, they have been doing everything they can to assure that the temp agency is complying with the law. Would we now-- Could the Department of Labor still hold them responsible?

MR. WILLIAMS: Well, I think the pertinent language is in the new section, Section 6, and I don't think it addresses that specific aspect of it. It's silent on that issue.

ASSEMBLYMAN THOMPSON: Maybe we could consider that as a possibility?

ASSEMBLYMAN GEIST: Absolutely. That's why we're here today. Vice-Chairman Thompson always has great questions and gives Gregory more work to do, and Gregory will get him some answers.

Thank you. And if you could do that in writing. Thank you.

MR. KIRSCHNER: Thank you, Assemblyman Thompson. Our understanding is that it, in fact, is automatic liability, whether you know it or not, whether you did everything in your power to know. If you did not know, too bad, you're still liable. That is what joint liability is. It's no fault. It doesn't matter whether it was your fault or not. You're liable.

ASSEMBLYMAN THOMPSON: Again, I would suggest we consider looking into whether we could factor that in.

ASSEMBLYMAN GEIST: And we will. We will.

MR. STOLLER: If I could make two final points, Mr. Chairman?

ASSEMBLYMAN GEIST: Assemblywoman Friscia, I think, had a question or a comment, if I could.

MR. STOLLER: Oh, sure.

ASSEMBLYMAN GEIST: Assemblywoman.

ASSEMBLYWOMAN FRISCIA: My concern is the employer that the gentleman from ACCU Staffing spoke about, the employer who is just looking for a cheaper way to do it and didn't really care if the temporary firm was doing what they were supposed to according to the law, paying all these different entities that by law should be paid. That's the concern I have. I don't think-- I mean, I understand your concern, but I'm concerned about this other type employer, and I trust that it is not the rule. But they are out there, and they're the ones that are causing the abuses, and that's what I'm concerned about.

MR. STOLLER: I think everyone is agreed that we're trying to target the actual responsible parties. I think our concern is that we haven't solved any of the serious abuses that have been documented if we come out with

a system that just provides an automatic stream of fall guys, that automatically says, "Well, now the Department of Labor is off the hook to pursue the person in the van." They've just moved on. Fine. We found this company that was their latest partner who didn't know what was going on, but fine. Under the law, we found someone we could penalize, case closed. And if we do that over and over and over again, you're not helping the employees who are affected, you're not helping the competing agencies you've heard from today, and so forth. So I think that that's why this is a very important segment.

I would say, Mr. Chairman, that part of the bill that we do support without any hesitation was that part of the SCI recommendations that said that we should eliminate any ambiguity for who is responsible. And you would do that by requiring a written contract between the employers and these agencies in these circumstances. So at least it gives you a starting point in terms of saying who did not live up to their side of the agreement, and at least that's a starting point for the regulators to take hold.

A final word, Mr. Chairman, on the point that we are very seriously concerned about, and that is the striker replacement language. We will continue to reach out, as we've done since you announced the hearing trying to document that, but we've heard, as I said, from several sources, including sources who work on both the labor and the management side and obviously have a concern for the fair treatment of the workers, who have simply said that the language here in terms of saying you wouldn't even be able to bring in a part-time receptionist while you're continuing to talk in the middle of negotiation -- that would be prohibited under this language as it stands and definitely needs some additional attention.

So, again, with that, I'll turn it over to Phil for any final comments, but we thank you.

ASSEMBLYMAN GEIST: Assemblyman Felice has a question and comment.

ASSEMBLYMAN FELICE: Thank you. Through the Chair, in listening to this bill and reading through it, there are really two major parts to this bill. There's concern, naturally. We all have concerns about the lack of the contributions for disability and other payroll taxes. That's a major concern of even the SCI report.

A thing that is a separate part of this bill that is almost a separate bill within this, and it's a concern that I have about the part where we knowingly assign a job seeker to not replace a person to render services where a facility is on strike. And I'll give you a perfect example, which is happening right now in New Jersey this week, where we had a strike with nursing home employees. And of course, imagine if a nursing home or a hospital where all of a sudden we had a strike for whatever legitimate reason, and yet they could not replace to help the elderly or the sick or anyone else because of a clause in here. And I think this has to be identified and discussed separately in a way, because this is a whole separate issue.

I think no one here has any problem with the issue with the SCI report where we're not getting the legal employee taxes and so forth. But when I look at this, yet it has justification, I can understand why they're concerned about using these as strikebreakers. But I'm talking about -- there has to be a separation of where it is necessary to replace people when there is a strike such as health-care facilities, children's facilities, or for the disabled or the

handicapped. So that has to be clarified in my mind, not just the fact that we say all people cannot be -- we cannot render services, so use temporary help.

And as a perfect example going on right now in New Jersey for nursing homes, where if they didn't replace these people, the aged and the handicapped would have no one to take care of them. So this is not just a cut-and-dry issue where we say no one can use temporary help in certain circumstances. I think there has to be defined where they could and where they couldn't use help, because that has a concern with me, especially with New Jersey having the tremendously high population of seniors, only second to Florida in the United States, are developmentally disabled or challenged of resources, and facilities that we more and more are taking people out of institutions and putting them in community settings. We have to be sure that in those settings that they're not forbidden if they need help in an emergency, or whatever, that they couldn't get that help. And I think that would have to be discussed and broken down a little further for my edification.

Thank you.

ASSEMBLYMAN GEIST: Thank you.

ASSEMBLYMAN THOMPSON: Through the Chairman?

ASSEMBLYMAN GEIST: Vice-Chairman Thompson, and then we'll go to Phil.

ASSEMBLYMAN THOMPSON: I would offer an additional comment on that. In fact, it strikes me that this -- inserting this clause in here is discriminatory, discriminatory in that this clause would not prohibit an employer from hiring temporary people to work during a strike. It would just bar him from utilizing a temporary firm to supply the employees, because this

only applies to them. It doesn't say an employer can't hire somebody to work temporarily. So why we would say, well, a temporary firm can't supply the temporaries, but they can go find them anywhere else they want to? I don't follow the logic of that.

ASSEMBLYMAN GEIST: That's why we're having a hearing today.

Phil.

MR. KIRSCHNER: Mr. Chairman--

ASSEMBLYMAN GEIST: Your name again, for the record?

MR. KIRSCHNER: Phil Kirschner, New Jersey Business and Industry Association.

ASSEMBLYMAN GEIST: Thank you, Phil.

MR. KIRSCHNER: I did want to expound on the striker replacement a little bit, that to enact a striker replacement ban under the guise of wage and hour reform we think is just wrong. Whatever one thinks of this issue, it has nothing to do, nothing at all to do with payroll tax abuses. It has nothing to do with the SCI report -- just stuck in there. And this is an issue that has been in various bills in both this State Legislature and then Congress for over 25 years and really has no place in this piece of legislation. And the reason it has been rejected time and time again is, it's a classic tilting the field in unionized negotiations and strikes. If one side can't really utilize temporary personnel to work and stay open, well, then the leverage certainly tilts to those that are striking.

Again, whatever one thinks of that issue, it has nothing to do with the SCI report, was never in there, has nothing to do with payroll taxes being withheld or not being withheld. So it really doesn't belong in there at all.

The other thing, in terms of the contract, we mentioned that it is a good idea to know whose responsibility is whose and to have a contract that says who will be responsible for payroll taxes. But there is no point in having that contract if you still have joint and several liability, because no matter what the contract says-- If the contract says it is the agency's responsibility, so what? It is not, really. Because if they don't pay, the employer has to pay whether or not they knew anything, whether or not they had any control, whether they had any knowledge, whether there was any collusion or anything. They may be as much an innocent victim as anybody else. It doesn't matter. They're there, they're available, they can pay, so they will pay regardless of their conduct.

We think that people should be penalized for their conduct. If there is collusion, the people are not doing what they're supposed to do, fine, go get them. Fine them. We need extra penalties. We need extra enforcement. But to go after people who have done nothing wrong, nothing wrong whatsoever, and hold them automatically liable for something that they have no knowledge or control over is simply wrong. And then to put -- heap indignity on that and make personal liability a part of that is not something I've seen in very many statutes of New Jersey or federally.

So I think this is a little bit of overkill in those -- a lot of overkill, I should say -- in those provisions. The bill needs to be more focused, more tailored on the abuses in the SCI report. There are 25 abuses signified in that

report. And certainly, anywhere that they occur, we should go after them. But 24 of those cited in the report were agricultural, none were construction, zero.

So I think all those facts need to be taken into account before this bill goes far afield.

ASSEMBLYMAN GEIST: That's why we're listening today. I appreciate your testimony.

Any questions, comments? (no response)

Thank you very much.

MR. STOLLER: Thank you very much.

MR. KIRSCHNER: Thank you.

ASSEMBLYMAN GEIST: We're going to take a brief recess momentarily before we have the testimony of New Jersey Staffing Alliance and the Department of Labor. If there are any others besides the Department of Labor and New Jersey Staffing Alliance who want to testify, please record your intent to testify with Gregory Williams of OLS.

It is now 12:30. We will resume at 12:45.

(RECESS)

AFTER RECESS:

Welcome back. The Chair appreciates your patience. There was a semi-emergency I had to address. I appreciate your patience.

As we are continuing our public hearing on A-2889 on the record, we have two witness declaration sheets remaining. If there's anyone who wants

to participate, has not yet filled out one of these, please do so now so we can continue with this public hearing.

Wayne Marlin, welcome. Wayne is from the Department of Labor. I wanted Labor to listen and learn before they commented, and I hope you appreciate that opportunity to address the Committee. Thank you for being back here.

WAYNE MARLIN: Thank you, Mr. Chairman. I had written down on my remarks good morning, but I guess it's good afternoon at this point.

ASSEMBLYMAN GEIST: Yes.

MR. MARLIN: The Department appreciates the opportunity to address the Committee and speak to our activities in the enforcement area. Also wanted to thank the Chairman for his interest and support for this legislation. The Department looks forward to working with you and the Committee members on this legislation as it moves forward through the process.

Our enforcement activities in this area include the wage and hour compliance, which includes prevailing wage, as well as the unemployment and temporary disability tax collections. In that regard, I have provided the Committee with the results of a task force that was formed to address noncompliance among temporary help service firms. The Committee has the report, and I have some investigators from the program areas available if you'd like them to either elaborate on some of the findings or have any questions.

Thank you.

ASSEMBLYMAN GEIST: We reserve the right to recall them after we review the written report. I have not firsthand done that yet, so we'd like to have them available for future consideration as well.

MR. MARLIN: Very good.

ASSEMBLYMAN GEIST: Do you have any other testimony today?

MR. MARLIN: Nope. That's it.

ASSEMBLYMAN GEIST: You might win the brevity award yourself. I appreciate your brevity. It caught me by surprise.

Does anyone have any questions for Wayne Marlin from the Department of Labor today? (no response)

I know it's a listen and learn session. Wayne, some of the comments seem to be crying out for more enforcement, support staff from the Department of Labor. Do you sense a need for that? Is there inclusion in the proposed budget for additional support staff? How do we address some of these suggestions that the law just needs to be better enforced?

MR. MARLIN: Well, the Department at this point is doing the most we can with the resources that we do have. We recently did form a task force between our wage and hour and employer accounts tax collection area that has turned up some very good results. Those are detailed in our statement. In terms of the legislation, it seeks to provide the Department with some additional tools in the enforcement area, as well as some legal provisions which would enhance our ability to go forward and hopefully cut down on some of the abuses in this area.

As far as budgetary, I don't have that information available. I'll check with the Controller's Office and see what's in the budget for this year, but I think the staffing that we do have would be able to move forward with some

of these provisions that are being contemplated here and will give us some additional abilities.

ASSEMBLYMAN GEIST: As you heard today in the discussion, the references to the joint and several liability factor and the references to the strikebreaker factor. I don't know whether the Department has formulated opinions on them, but I'd like if you have the capability today or in the future to give this Committee some guidance as someone who literally works with business and labor to address these questions. You've heard suggestions that there's been some Federal preemption issues raised. You heard some on both sides of the joint and several issue as to the right approach. Ultimately, we would welcome more infusion of information from the Department of Labor. I know you're here today listening and learning a lot, but we'd welcome your enhancement of the record as well.

Any other questions for Wayne? (no response)

Thanks.

MR. MARLIN: Thank you.

ASSEMBLYMAN GEIST: Okay. I guess we're calling this a closing argument one way or the other. I appreciate your patience. A moment ago, I mentioned that I wanted you to listen and learn a lot. I appreciate your patience. Yesterday I took the time to be available to meet with you prior to today. I thought that this hearing would be provocative, and I welcome all of you and appreciate all of your patience.

The witness list reveals that Bonnie O'Brien and Tom Greble of New Jersey Staffing Alliance would like to testify. You're very welcome to come forth. And if you can explain to the members of this Committee, as well as

some of your, I guess, professional colleagues in attendance, what the New Jersey Staffing Alliance is? There's been some suggestion that you are geographically based more in one area of our state than another area. If you could help shed some light on all of this, and appreciate your presence.

BONNIE O'BRIEN: Great.

ASSEMBLYMAN GEIST: Are you Bonnie?

MS. O'BRIEN: Yes. Thank you.

ASSEMBLYMAN GEIST: Welcome.

MS. O'BRIEN: Thank you for allowing us to take some more of your time today. My name is Bonnie O'Brien. I am the President of Placement Professionals, and I am very involved with New Jersey Staffing Alliance. I have been in the industry for almost 15 years. I do training for the industry. I have worked in legislative affairs for the industry, and I am currently President of the New Jersey Staffing Alliance. We have several hundred members, and we work very closely with the Mid-Atlantic Association of Personnel Services, which really covers the southern part of the State of New Jersey. We do have members down in this area, but many of our members are in the northern part.

I do appreciate the fact that you did mention that some of the things that would be stated today might shock some of us, and I, in fact, am shocked at one of the things that has been repeated during testimony earlier. One of the things that several of the people who have sat here have talked about is the employer-client relationship. Temporary help service firms are employers. They're not employment agencies, and that's one of the biggest problems we have with this bill and therefore oppose it. Because you're lumping us -- temporary help service firms -- in the same exact business as employment

agencies, and that's not the case. Temporary help service firms have temporary employees who we provide to clients, to companies, to our customers, usually on a transitional basis to fill in whatever needs may occur during the time.

John Sarno talked about flexibility. That's the number one need we find clients in the State of New Jersey utilize temporary workers for. I followed the research, hearings, and testimony which led us to today's session. And one of the things that I feel we really need to distinguish is the fact that temporary help service firms, and those of us that are registered in the state, we do handle all of the fiduciary responsibilities that we are liable for. We handle workers' compensation. We handle payroll taxes. We are not the people that you're going after that skirt the issues of either minimum wage or not paying their taxes.

In fact, many of our members offer holiday pay, vacation pay. We offer training to our employees. We have access to 401(k). We have prescription plans. So I think it's absurd that many of the misconceptions that have been identified about us are that we are just people who go out and put temporary help workers at less than minimum wage or undocumented out into client sites. That's not the case. I really do take exception to the fact that we have been put in with those people who are operating illegally, and as far as I am concerned, highly unethically. And those are the people that were identified in the SCI report.

On May 20th, 1999, Mark Herr, Director of the New Jersey Division of Consumer Affairs, testified before you to the fact that temporary help service firms in New Jersey are registered and are required to be registered with the Division of Consumer Affairs, and that there are penalties in place for

the unscrupulous firms in this business who might engage in deceptive or otherwise unfair practices when dealing with both job seekers and employers.

My experience with the Division of Consumer Affairs happens to be, if you're not registered, they know about it. They find out about it, and they come after you. They are a good regulatory agency, as far as that's concerned. I recently sold one of the businesses that I had for 12 years which dealt with temporary help. I let my license expire. Well, it was not even four weeks after I let my license expire, because I had sold the business, that I received a letter from them saying, "Hey, are you still in business?" So they're out there. They know what's going on.

In fact, according to my calculations, with 1500 temporary service firms and employment consultants registered in New Jersey, this represents over a quarter of a million, \$375,000 per year, in annual fees that we pay just to be registered. Another statistic that I'd like to bring out is to keep in mind that New Jersey employs an average of 76,400 workers on a daily average employment basis. That's a lot of people that temporary services employ. I don't know that we have statistics on the undocumented people who you're talking about who are brought in by crew chiefs. I mean, obviously, if they're not being paid through the -- we're withholding taxes and being counted, then we can't count them in this number. But this is a great number that we employ. In fact, the annual New Jersey payrolling expense that we are responsible for is \$1.5 billion.

We are aware of the investigations, which have uncovered systemic abuses by crew leaders, and their relationships with certain segments of the agricultural and manufacturing sectors of New Jersey. And we are aware that

the U.S. Department of Labor's Office of Labor Racketeering has received complaints. We are aware that members of our industry have felt that this caused them unfair competition, because crew leaders in these areas are doing so without any enforcement to stop their illegal and unethical practices. And enforcement, I think, has been highlighted today in just about everybody that has sat in this chair, because that's what's needed. It's not another law, it's enforcement of the current laws.

Your introduction of Assembly Bill No. 2889 in an attempt to stop such practices is to be lauded, and we from the New Jersey Staffing Alliance are as opposed to the abuses as you are. We will support you in going after the abuses. The bill, however, paints too broad a brush. It should really go after the crew leaders who take advantage of the poor immigrant or migrant workers who are the subjects of the bill that you are trying to establish here. The violations and the violators need to be addressed.

I think Jeff Stoller put it very, very succinctly earlier when he said there's a serious disconnect between this bill and what your actual attempt is. I urge you to take a look at prior dialogue where your investigators talked about the underground economy, detailing the contract labor provider as trading "primarily in unskilled, minimum-waged workers who perform a variety of menial jobs in the poultry, seafood, and agricultural processing or manufacturing centers." This was a documented-- I believe it was James Morley who came before you in March of '99, who was responsible for portions of this report and his investigators. I think that we should look to that instead of encompassing all legitimate temporary services within this bill.

In summary, I'd like you to consider these facts. Your targets for proposed legislation are the makers of the underground economy and not the legitimate temporary help businesses in New Jersey. The legislation as proposed will not solve the problem of the underground economy. The solution is not to make New Jersey businesses liable for taxes that unregistered and illegally operating contract labor providers should be responsible for. The solution, however, is to find a way to strictly enforce the existing laws and regulations and cut down on the ability of illegal contract labor providers to operate.

I do extend an invitation to you, Assemblyman Geist, as well as any other member of this Committee, to visit any of our member offices so that you can see the mechanisms that are in place to document all of the payroll taxes that we need to be responsible for, to take a look at the workers' compensation mechanisms that are in place in case one of our workers gets injured, to take a look at the training that we provide, and to take a look at the fact that most temporary help service firms in the State of New Jersey provide bridges to permanent employment. I extend that for you or as a group or individually to come and visit us and to attend any of our meetings to understand that we are not the fly-by-night operators that apparently are the targets of your legislation.

I would like to turn the rest over to Tom Greble, our legal counsel for the New Jersey Staffing Alliance. Thank you.

ASSEMBLYMAN GEIST: If I could take a moment of your time. First of all, I certainly respect what you do, and I compliment you for your advocacy on behalf of the Alliance.

Earlier today, this Committee heard some really compelling testimony from two of the earliest witnesses. And I know you've been here all the time, so you've heard them, but I'd like if you and/or counsel could try to address what seems to be divergent viewpoints from very responsible entrepreneurs who have been very successful.

The testimony of Gary Finger and the testimony of Alex Erlam was pretty solid. They're both very responsible entrepreneurs in our South Jersey area. There seems to be night and day, on all appearances, people that do the same thing. I'd be interested to see if you have any particular comments on either Alex's or Gary's. I'll welcome them back if they want to come back after you're done to make further comments on your comments. I'm not going away today. I'm going to try to get as much of a hearing as possible. Any of the members are welcome to stay. If you have any comments on their comments, I'd be interested.

MS. O'BRIEN: I'd just like to comment on, and I'm sure Tom is just itching to say something over here.

ASSEMBLYMAN GEIST: Good.

MS. O'BRIEN: I understand their frustration. I understand the fact that they're dealing in an area where there are competitors who are providing things illegally that these two good businesspeople can't do, because they are legal businesses. I feel their frustration, because there has been no enforcement to stop these illegal businesses from taking away their business.

ASSEMBLYMAN GEIST: Labor is listening, by the way. I'm glad they're here.

MS. O'BRIEN: I don't know that Labor -- the Department of Labor is to blame for not enforcing.

ASSEMBLYMAN GEIST: I agree.

MS. O'BRIEN: I don't think we can pinpoint the blame on any one agency. If you take a look at the INS, well-- I mean, most -- all of the firms-- All of our temporary help services are required to complete I-9 forms. You have three days to document a worker.

ASSEMBLYMAN GEIST: What's an I-9 form?

MS. O'BRIEN: An I-9 form is a form that anyone, any employee, in fact, you, yourself, if you have a real job, hopefully (laughter), have filled one out in some point in time, is a form--

ASSEMBLYMAN GEIST: Some would say that's in question for all of us, by the way. (laughter)

MS. O'BRIEN: It's a form showing your eligibility to work in the United States, and it is a form that everybody who comes through our doors to work as a temporary employee is required to fill out. The INS, the immigration service, allows us three days to fulfill completion of that form, and we must document that the person has provided us with proper documentation they can work. Granted, there are those out there that come in with fraudulent green cards. We're not liable to tell whether it's fraudulent or not. What we're required, like any other employer in this state, is to document that the person has certain authorization. I think what you're facing down in the area that you're facing with the immigrant and nondocumented workers are that these agencies don't even check to see if they have proper I-9 documentation.

So, in respect to the documentation, both Gary and Alex, I know their firms hold very strictly to the law. It is those firms that don't do it. It is the people that set up shop overnight or change their names every couple of weeks and move on that aren't complying with the law. It's not something the Department of Labor would necessarily go after. It's something that they would bring the INS into. So there's various facets here that really should work together to complete greater enforcement. And we definitely support greater enforcement. We think there's a need, because of everything that has been documented in your report.

ASSEMBLYMAN GEIST: Thank you.

Counsel.

THOMAS GREBLE, ESQ.: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: She's very good.

MR. GREBLE: She's an outstanding president of the Alliance. As a matter of fact, she was the moving force in the merger of two associations representing this industry in the last year in the form of the New Jersey Association of Temporary Services and the New Jersey Staffing Association, and those two associations merged last year under Ms. O'Brien's leadership. And I think that there's no question that the professionalism and the competence of the association in representing its members has increased because of that and will continue to increase.

ASSEMBLYMAN GEIST: Your colleague counsel is here. He's listening. Both of you, I'm sure, are very good at what you do. But Alex and Gary's testimony to the extent you can focus on--

MR. GREBLE: Okay.

ASSEMBLYMAN GEIST: --this will be helpful.

MR. GREBLE: Sure. What I'd like to do, Mr. Chairman, is address the first question you asked at the beginning of this hearing about the upstate, downstate issue, and then I'll be happy-- I think that segues nicely in response to that.

ASSEMBLYMAN GEIST: Thank you.

MR. GREBLE: The New Jersey Staffing Alliance has several hundred members. They have many, many members in South Jersey. Sometimes the headquarters are in Newark or in Philadelphia, but they have members that are active in South Jersey, as well as in central and northern Jersey, up and down the state. We also work closely with another trade association called MAPS, which is the Middle Atlantic Personnel Services, and they really represent -- because the Philadelphia, downstate New Jersey, and even northern Delaware marketplaces have something in common, they share -- they represent all the staffing companies in that area. I believe actually that the representatives of MAPS have been in contact with your office, Mr. Chairman, expressing their strenuous opposition to this bill.

We've had a series of meetings within our association with upstate and downstate members, hundreds of members of companies meeting. We've had large numbers of people who frankly place people in every district in this state. Our members are in every district in the state placing people, and we are truly the voice of the industry. I think that there might always be some individual companies that might have a problem or a difficult area, and frankly, we'd like to help them. We sometimes go with our members' companies to meet with regulators or legislators and to try to raise issues on a policy level that

would help them solve these problems, and frankly, maybe we could do more for that -- for our brethren down here in South Jersey.

We were just talking to them before, and I think that's something that we certainly would like to try to do. But this bill itself -- and I know this has been said before, but I want to give a little more detail on this -- this bill itself does not solve the problems that those gentlemen raised. This lumps temporary employers, which are the employers, as Bonnie mentioned before. We're not an agency. Temporary help companies that you've heard sometimes as the agency -- we are the employer of the individuals who come to work for us. They get assigned to different work sites in response to customer requests. This is a legitimate, serious industry. The payroll is about a billion five.

The client companies now come to us not because they want to work some kind of a scam, but because they want to have the flexibility of not having everybody because we are specialized. Because frankly, the employment process has become so complicated and legalistic that, as you asked, Mr. Chairman, a lot of employers don't know what an I-9 form is. But Ms. Bonnie O'Brien knows all about that stuff, because we're professional employers. So we can help them solve their staffing needs.

If there are temporary help companies that are not following their legal obligations, go after them. No question about it. We've had this problem in the past, for example, where temporary help companies were competing against firms that misclassified workers as independent contractors and tried to 1099 them and not withhold payroll taxes. We supported the Division of Taxation's efforts to curtail that abuse, and we would support efforts by other

agencies to enforce other abuses, because it creates an unfair playing field for our members. But the problem identified-- They did--

What the bill does is, it lumps us with crew leaders -- the crew leaders as specifically identified and regulated by the State of New Jersey. Now, we would not have any opposition -- might even support, depending on the bill -- and an expansion or an enlargement of the regulations and controls designed to that type of employer. Because that's where, in the SCI report, 24 of the 25 abuses were in the area of crew leaders. It was not in the general temporary help business. And we would certainly think that is something that we would urge the Committee to look at closely, is that maybe we need to change some of the rules regarding crew leaders. We need to upgrade the -- to be certified and licensed as a crew leader, and we would certainly support that kind of legislation, because we think that or the entity that -- those are the entities that are really causing the problems, which, frankly, are giving the rest of the industry a bad name which is not warranted.

So that's something we certainly would like to look at with the Committee as we go forward, and maybe that's a way to make sure that the legislative response to a problem is a little more nuanced and focused than simply saying, okay, everybody in this industry now has to do the following things.

Licensing of temporary help firms -- we're already registered with Consumer Affairs. Up until about 1985 or '86, New Jersey was the only state in the nation -- and it would be now if this bill was passed -- to require the licensing of every temporary help company. Aside from the fact that that might be something of an incentive to temporary help companies to move their

business elsewhere, which we would not want to see happen, the fact of the matter is that those other states had reasons not to do it. And the reason is, is because the industry has evolved. Employment agencies have traditionally been licensed. Staffing firms, we're the employers, have not been licensed.

The reason that employment agencies had to be licensed, sometimes they charged fees to the applicants. Sometimes they engage in other practices which the employers can't find out about. But we're just like any other employer. We are already regulated by all the employment laws that exist. All the temporary employees are entitled to workers' compensation protection by the staffing company. They're governed by the overtime, minimum wage, child labor laws applied fully to temporaries. All the family leave acts, all the equal employment opportunity laws, all the wage and hour -- every employment law there is applies with full force, in effect, to temporary employees. So to say that we are not already subject to lots of government scrutiny in terms of our practices is just not accurate, because we are like any other employer.

Some of the concerns today, like the idea that we should pay appropriate compensation to employees, I'm not sure what appropriate compensation means, but one of the speakers mentioned that. But if they're paying below minimum wage, go get them. Our suggestion is, if we know them-- I've told members of the association. I stand up at industry meetings and tell them, if you know one of your competitors is not paying minimum wage, if you know one of your competitors is cheating people out of overtime, call the Department of Labor, because it's unfair to you to compete unfairly. If you know somebody is misclassifying them as an independent contractor, call the IRS.

So we train our members. We have regular programs, regular meetings--

Yes, sir, Mr. Chairman. I see you have a question?

ASSEMBLYMAN GEIST: You read me well.

When you do the referral to the Department of Labor, what is your experience with their response?

MR. GREBLE: It varies. The experience varies. But more often than not, at some point, a letter-- Our experience has been you get a letter -- and this is kind of true from any agency, frankly -- you get a letter from the agency to the offending employer. And our experience has been the deterrent effect of having a Department of Labor investigation come in is often a sufficient incentive to get them to change practices.

ASSEMBLYMAN GEIST: Okay.

MR. GREBLE: And I think it would also be important to point out that some companies that do some of these things, they don't do it with knowledge that this is the law and we're going to violate it. They do it out of lack of information or ignorance. And when they get a contact or they get a request or something from the Department of Labor, they are educated and they change, because now they know. That's one of the things that this association is really focusing our efforts on, and it may well be that we would like to have somebody from the Committee talk about this at one of our membership meetings. We train them, and we educate them on what the laws require. We teach them all the time. We go through this with them. We give out certificates. We train them on how they're supposed to comply with the law.

We understand that there are occasionally going to be staffing firms that do not comply with all the legal obligations, but that's true about printing companies and tax advisor companies and management consultants and everybody there is, except law firms, who are always completely compliant with the law. (laughter) But I think that the fact remains that--

ASSEMBLYMAN GEIST: The Bar Association will appreciate your saying that, counselor. Go ahead.

MR. GREBLE: But I think that the fact remains that to make all the temporary help companies licensed is not going to fix the problem. Frankly, those guys who ride the vans, are they going to be licensed? They're not going to be licensed. They're not going to be caught. They're not going to be advertised. Nobody is ever going to see about them.

To mandate certain business practices like written contracts is not going to change those practices, because they're not going to do that. The way to enforce the laws is to -- and we would support the Committee with this and we would work with the Department of Labor with this -- identify wrongdoers, to identify lawbreakers, if we can, and to enforce the laws against them and to make a large public relations and communications effort to let people know that this is happening.

I think the problem is happening a little more in South Jersey than in North Jersey, because of the difference in the economy. South Jersey is a little more agricultural and a little more processing and a little more canneries than upstate, which is a little more IT and administrative in terms of the nature of the business. But this bill, of course, would not be limited to solving the problems in South Jersey, it would work in a disadvantage in North Jersey as well.

Of course, I have about 18,000 other things I'd like to say to respond to everybody who sat here, but I suspect we wouldn't have time to do that, and you may have other people you'd like to hear from. But I'd be happy to answer any questions. I'm sure Bonnie would be happy to answer any questions you have.

ASSEMBLYMAN GEIST: Thank you.

Are there any other questions? (no response)

Can you stay in the event that there is a response?

MR. GREBLE: Sure.

MS. O'BRIEN: Sure. Can I make one comment before we're dismissed?

ASSEMBLYMAN GEIST: Absolutely.

MS. O'BRIEN: Thank you.

ASSEMBLYMAN GEIST: After all this time, take your time.

MS. O'BRIEN: Thank you.

Vice-Chair Thompson had raised a question earlier regarding why couldn't a client receive a list of the temporary workers that were assigned to that client's site on a daily basis. There's no reason why a client couldn't receive that list. I know that some others had spoken earlier for us. The client does not need to wait a week or even a day to receive the list. The client should be given a list, if requested, of anyone who is assigned to their site that day, and it's not an unreasonable request. I would think any client who made that request of a temporary help service firm should receive that information. So I hope that answers your question.

ASSEMBLYMAN THOMPSON: Well, actually, I didn't -- through the Chair -- ask why couldn't they or something. I was suggesting that we might consider inserting a requirement that it be supplied at one step and assisting to know that the client is going to be able to follow whether or not the laws are being followed, etc. That was one portion of it. The other portion was some information about pay records to assure they are paying workers' comp and etc.

MR. GREBLE: One other comment that was made today which I think the Alliance would actively support, if there was a legislation passed requiring all assigned workers to be paid by check--

ASSEMBLYMAN THOMPSON: I mentioned that, too.

MR. GREBLE: That came from you, sir? That would be perfectly acceptable to this association, and that might be a way to address some of these issues, because then you do have the enforcement. It enhances the enforcement ability if somebody is not doing that. And if we could require them to pay by check, I think that might be something that the industry could support and would, frankly, be a useful way to address some of the problems that have surfaced today.

ASSEMBLYMAN GEIST: Before you both go, out of curiosity, is it such that today is the first time that you two are seeing and meeting Alex and Gary?

MS. O'BRIEN: Yes.

ASSEMBLYMAN GEIST: Okay. Well, perhaps it's time to get together again with the Chair and with the co-prime. I have an open-door policy, as probably many of you know, maybe it's sometimes too open, but it's

open. I'm glad you're all here today. I'm glad Gary and Alex are here today, and they're still smiling even after your testimony. Because I do think that there is a lot of potential here to bring everyone together. Of course, I would bring my great staff with me to meet with you, with the Assemblyman, to try to focus on this, because there are some clear consensus ideas that you lack.

Do you have anything else you'd like to say while you're here?

MS. O'BRIEN: I just would hope that you don't think that we are in conflict with either Mr. Finger or Alex at ACCU Staffing. We agree that there is some phenomenal abuse of temporary workers and that they are extremely frustrated over not having any enforcement or not being able to compete fairly. We support them inasmuch as that we understand their pain, but we just feel that there may be other methods to try and create greater enforcement to abolish the illegal practices.

ASSEMBLYMAN GEIST: All of you are very successful, and I'm happy to see that. And I'm not sure it's pain necessarily, because they are successful. I mean, the testimony of the revenues is remarkable. Nevertheless, if you think it might be ideal, if we could with staff, try to utilize the April opportunity to focus some of our energies, and of course, that's a pretty open process. We do not have a subcommittee of this Committee, but we do have two of the sponsors as members of the Committee, and we could open it up to the other members and maybe even reconvene, but nevertheless to focus on these ideas to see whether it could be consensus.

Thank you.

MS. O'BRIEN: Thank you.

MR. GREBLE: We'd be happy to do that, Mr. Chairman. Thank you.

ASSEMBLYMAN GEIST: Great.

Any others interested in testifying for the first time? Any others interested in testifying for the second time? Any others interested in rebuttal, support, amplification, clarification, commentary? (no response)

Do Alex or Gary or any of the others that I referenced a moment ago want to comment on the comments?

MR. ERLAM: (speaking from audience) If I may, Mr. Chairman?

ASSEMBLYMAN GEIST: Come on up. This is a transcribed hearing, so I'm trying to be real open in the process on this, and we will complete this on the record.

MR. ERLAM: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: You're welcome.

MR. ERLAM: Just briefly-- Again, I'm Alex Erlam from ACCU Staffing Services.

ASSEMBLYMAN GEIST: Yes.

MR. ERLAM: I am not diametrically opposed to the stance of the New Jersey Alliance. I think that they are a supportive organization. I think we're all on the same wavelength. Perhaps it's partly my mistake at not reaching out to the Alliance earlier to clarify some of these issues, because I really do believe that it's mostly prevalent in the South Jersey area and the way that it's happening with crew leaders, and they have maybe no way of really knowing that. I want to work together with the Alliance, and also with Mr. Finger and

members of this Committee, to perhaps make the necessary revisions to the bill so it's a better bill that everybody agrees upon.

I think we struck a chord today with respect to the joint and several liability, and I think that we can probably work that out somehow, somehow. I'd like to see that in the bill, because I think it's what is going to cause -- it's going to put the onus on the employer and the users, finally. But I think, perhaps, language like knowingly using these services or with wanton disregard or that type of language that adds negligence to the issue might be the way to go.

Just to be brief, I do want to work together with all the parties involved to perhaps structure a better bill.

ASSEMBLYMAN GEIST: Thank you.

Any further comments on those comments? (no response)

Before we conclude this public hearing, is there anyone else who desires to participate? (no response)

Thank you.

MR. ERLAM: Thank you.

ASSEMBLYMAN GEIST: Is there a motion to adjourn the hearing on this bill right now?

ASSEMBLYMAN THOMPSON: So moved.

ASSEMBLYMAN GEIST: Motion on the adjournment of this hearing on this bill. Second?

ASSEMBLYMAN GUEAR: Second.

ASSEMBLYMAN GEIST: Second by the co-prime.

Discussion? (no response)

All in favor, signify by saying aye? (affirmative response)

Opposed? (no response)

The hearing has concluded.

(MEETING CONCLUDED)