Statement by

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On behalf of

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Committee on Education and Labor

"A Culture of Union Favoritism: The Obama Administration's Labor Agenda"

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Ranking Member Kline and members of the committee, my name is Stephen Worth, and I am President and CEO of Worth & Company, Inc. of Pipersville, Pa., a leading merit shop mechanical contractor in the tri-state area, currently employing more than 400 people. I want to thank you for this opportunity to testify today about union favoritism in the construction industry. Congressman Kline, I am testifying today on behalf of Associated Builders and Contractors (ABC), a national association with 77 chapters representing 25,000 merit shop construction and construction-related companies.

I am not here to speak against unions, but rather to give testimony about events that my company, my employees and I have faced since 1976. As an open shop company in business for more than 30 years in a heavily unionized region of the country, my company has been the victim of discrimination by project labor agreements and responsible contractor ordinances. In addition, my company, my employees and I have been the targets of union harassment over the years.

I began my career in construction, like my father, as a card carrying member of the local plumbers union. To be honest, I really didn't think too much about it. That all changed when I was about 19 years old. When I got my union card, I was told to work a picket line at a local jobsite. I remember a man driving his truck through the picket line to get to work. He wasn't much different than me. He probably had a young wife and children at home he needed to provide for, like me. He probably was just trying to make ends meet the only way he knew how. He crossed a picket line. Frozen in place, I watched as a rock was thrown through the man's window and he was dragged out into the street and beaten. My feelings changed that day.

Since then, I have witnessed numerous organizing campaigns against my company. I have watched a giant inflatable rat positioned outside of my office for all to see. I have seen my company's picnics plastered with union organizing signs as my employees and their families looked on, and I have had numerous personal threats of bodily harm. As I mentioned before, I am not here to tarnish unions. I am here to give testimony to what I have witnessed in my 33 years as a merit shop contractor.

It is an unfortunate fact that we have seen a dramatic increase in legislation and executive orders favorable to unions since Democrats took over the majority in Congress and won the presidency. Today, I would like to discuss several of these that impact my company as well as the entire construction industry.

Union-Only Project Labor Agreements

In my industry, one of the most prevalent forms of union favoritism are union-only project labor agreements, also known as PLAs. A union-only PLA is a pre-hire contract that requires projects be awarded only to contractors and subcontractors that agree to:

- recognize unions as the representatives of their employees on that job;
- use the union hiring hall to obtain workers;
- obtain apprentices exclusively from union apprenticeship programs;

- pay into union benefit plans; and
- implement costly and inefficient union work rules.

PLAs drive up the cost of construction by reducing competition and effectively excluding merit shop contractors from working on state and federal projects paid for by their own tax dollars.

Construction projects subject to PLAs stifle competition and take away opportunity from nonunion employees unless they agree to the PLA. While nonunion contractors are permitted to bid on PLA projects, the reality is the contracts subject to PLAs end up being awarded almost exclusively to unionized contractors.

On Feb. 6, 2009, President Barack Obama issued Executive Order 13502, encouraging federal agencies to require PLAs on federal and federally funded construction projects in excess of $25 million. The Obama-issued Executive Order (EO) repealed an EO put forth by former President Bush that prohibited federal agencies and recipients of federal financial assistance from requiring PLAs. Additionally, the Office of Management and Budget (OMB) issued a policy memorandum July 10, 2009, encouraging federal agencies to consider utilizing PLAs on a project-by-project basis and require PLAs in "appropriate circumstances."

Not only do PLAs discriminate, they also cost the American taxpayer money. The Beacon Hill Institute (BHI) at Suffolk University in Boston recently released a new study titled, "Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem," which finds that PLAs will significantly increase construction costs on federal projects without providing benefits to taxpayers.

BHI's analysis found that if President Obama's Executive Order 13502 were in effect in 2008, federal construction costs would have increased an additional $1.6 billion to $2.6 billion. The study also showed that although the purpose of a PLA is to keep labor "peace" during construction projects, an examination of federal projects with a price tag of at least $25 million, initiated between 2001 and 2008, did not reveal any evidence that those built without a PLA suffered significant delays or cost overruns due to labor issues.

Congress must ensure that public projects are cost-effective and administered without favoritism or discrimination. These interests are not being served under the Obama Administration. Currently, only 15.6 percent of America's private construction workforce belongs to a union. This means PLAs discriminate against more than 8 out of 10 construction workers.

Thankfully, there have not yet been PLA's on a federal project, although there was a close call with a U.S. Department of Labor Job Corps Center scheduled to be built using a PLA in Manchester, N.H. The Department of Labor canceled the project after ABC member North Branch Construction of Concord, N.H., with ABC support and representation, filed a bid protest with the Government Accountability Office. Additionally, the U.S. General Services Administration (GSA) currently is evaluating the use of PLAs on about $1.25 billion worth of American Recovery and Reinvestment Act-funded construction projects in seven states and Washington, D.C.

Although not a federal project, my employees currently are being cut out of jobs in their own backyard. The $400 million Graterford Prison in Montgomery County, Pa., currently is being built with tax dollars and a PLA. Because of Pennsylvania's decision to build this state project using a PLA, more than 75 percent of the local construction workforce is excluded from working on it.

As you can see, PLAs are being used to bar open shop firms and their employees from working on construction projects funded with their own tax dollars. To this end, I encourage all Members of the House to cosponsor the "Government Neutrality in Contracting Act," (H.R. 983) introduced by Congressman John Sullivan, which protects taxpayers and ensures fair and open competition on government construction contracts by prohibiting PLAs. In an industry facing 20 percent unemployment, we can not afford to give some workers jobs simply because they carry a union card while forcing merit shop employees to be without work.

Responsible Contractor Ordinances

In recent years, we have seen the emergence of a new tool used by unions and their supporters to cut out merit shop construction. Responsible Contractor Ordinances (RCOs), also known as Responsible Employer Ordinances or Responsible Bidder Ordinances, claim to promote the best interests of taxpayers and construction users and maintain a level playing field among contractors bidding on construction contracts. Protecting public and private construction owners from inferior contractors by requesting and obtaining relevant information about a contractor's qualifications is a worthy objective. However, poorly defined or discriminatory provisions within RCOs often arbitrarily exclude qualified contractors, resulting in limited competition and increased construction costs.

Construction unions and related interest groups are driving the recent increase in proposed RCO laws. While portions of some RCOs are reasonable, typical provisions within RCO laws pertaining to workforce training preclude virtually all merit shop contractors from working on construction projects subject to RCOs. These types of RCOs, like PLAs, are discriminatory and drive up the cost of public construction by limiting competition and exclude almost 85 percent of the private construction workforce that chooses not to be affiliated with a labor union.

While RCOs have not reached the federal stage, they are an ever-present and growing state problem. My home state of Pennsylvania has seen a frightening increase in RCOs in townships, and many merit shop construction firms and their employees are loosing out on projects due to them.

Employee Free Choice Act

I feel that no true discussion on union favoritism would be complete without covering the so-called Employee Free Choice Act (EFCA). Under EFCA, workers essentially would be stripped of their right to vote in a federally supervised secret ballot election when deciding whether to join a union. Instead of a private election, workers would be forced to use a biased and inferior system known as "card check." This system would make a worker's decision public to his/her employer, the union and fellow employees.

There is more to the EFCA than just the elimination of private ballots. The legislation also would permit a government arbitrator to impose a two-year contract on employers and employees –

even if neither party consents to the contract terms. In doing so, EFCA would unwisely place the fate of a company and its employees in the hands of a federal bureaucrat, who may lack business experience and know little to nothing about the company, its business operations and the industry in which it operates.

Why, when the United States spends enormous resources abroad to foster free and private elections around the world, would some in Congress believe it a good idea to strip that right away from American workers? Because labor unions view this legislation as their main means to increase membership and, thus, add union dues into the diminishing union coffers.

Green Jobs

"Green jobs" is a phrase being used to describe work that is environmentally friendly, both inside and outside the construction industry. However, there is no clear and agreed upon definition. Currently, organized labor is attempting to define "green jobs" as positions held by workers that receive special green training through union-only apprenticeship programs.

Organized labor and certain special interest groups claim that only union apprenticeship programs can properly train workers to build green projects. However, these claims are nothing more than an effort to monopolize the construction workforce on green building and other construction projects. Most green building techniques involve simple architectural changes or the use of environmentally friendly building materials, which requires workers to learn skills that can be taught through both union and nonunion training programs.

In December 2007, President Bush signed into law the Energy Independence and Security Act of 2007. Title X of this legislation made funding available—currently more than $500 million—to invest in a renewable energy worker training program housed within the Workforce Investment Act at the U.S. Department of Labor. However, the statutory language only allows organizations associated with labor unions to apply for these grants. It is vital that mandatory, union-only apprenticeship guidelines are not made a condition for eligibility to receive federal grant money. Merit shop contractors should not be excluded from projects that are made possible by this federal funding.

Title X will significantly reduce the role of America's business community in the training of workers. This provision greatly expands government bureaucracy and needlessly benefits labor unions at the expense of full and open competition by allowing unions to assume a major role through legislated training partnerships and in mandated consultation of potential grant proposals.

ABC fears that these union-only training funds will be used by organized labor to attach union apprenticeship requirements to green projects in order to limit the ability of merit shop contractors to compete for these projects. These exclusionary limitations subject green projects to the inefficiency and waste that comes with union-only construction. Merit shop contractors have been successfully completing green projects for more than 15 years. With more and more projects going green, union-only apprenticeship requirements exclude 85 percent of the private construction industry—the workforce of merit shop contractors—from working on a growing segment of future construction.

Ranking Member Kline, I wish to thank you for immediately recognizing the discriminatory nature of these green training grants and for introducing the Green Jobs Improvement Act, which

would amend the Workforce Investment Act to make nonunion training programs eligible for federal funding under the "Green Jobs" program.

Health Care

Members of the committee, if you are looking for examples of union favoritism, you need not go farther than the recent announcement that union health insurance plans, or "Cadillac" plans, will be excluded from the new excise tax proposed in the health care bill. Why are these union plans being excluded while other Americans are forced to pay? The American public and Congress should be outraged at this.

I would like to take a moment to draw your attention to another part of the health care bill being pushed by organized labor to the detriment of small construction companies. The Senate version of H.R. 3590 includes language which singles out the construction industry by requiring that construction firms with at least 5 full-time employees provide their employees with health coverage or pay stiff fines. Other industries enjoy an exemption of 50 employees or less, but the construction industry is singled out. Why? Because organized labor demanded it, using the faulty argument that requiring health insurance will somehow "level the playing field" between open shop and union contractors.

What they fail to mention is that merit shop firms are forbidden to enter into the same multiemployer plans in which union firms participate. These plans exempt union contractors from the cumbersome web of state mandates that directly contribute to the skyrocketing costs of health insurance. Thus, the playing field already is slanted in favor of union firms. ABC has long advocated for the creation of association health plans (AHPs) and small business health plans (SBHPs) in order to form multiemployer plans that offer the same benefits as the plans currently enjoyed only by labor unions and large corporations. Unfortunately, AHPs and SBHPs have failed to clear congressional hurdles. In order to truly level the playing field, Congress should pass AHPs/SBHPs so that open shop firms have the ability to offer the same multiemployer plans as unions.

Ranking Member Kline and members of the Committee, as you can see the merit shop philosophy is currently under attack. I strongly believe that if union and non-union compete fairly and without favoritism, it will only make America stronger. I hope that my testimony has shed some light on just a few of the important issues. I want to thank you and your staff for your hard work in defending the free enterprise system and for allowing me the opportunity to speak with you today.