

104  
JOINT FIELD HEARING ON DAVIS-BACON FRAUD  
AND ABUSE

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Y 4. SCI 2:104/78

HEARING

Technological Solutions to Improve... RE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

AND THE

SUBCOMMITTEE ON OVERSIGHT AND  
INVESTIGATIONS

OF THE

COMMITTEE ON ECONOMIC AND  
EDUCATIONAL OPPORTUNITIES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED AND FOURTH CONGRESS

SECOND SESSION

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JOINT FIELD HEARING HELD IN OKLAHOMA CITY, OKLAHOMA,  
JANUARY 18, 1996

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**Serial Number 104-78**

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Printed for the use of the Committee on Economic and  
Educational Opportunities



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## FIELD HEARING ON DAVIS-BACON FRAUD AND ABUSE

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THURSDAY, JANUARY 18, 1996

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS WITH THE SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES, OKLAHOMA CITY, OK.

The subcommittee met, pursuant to call, at 10 a.m., in the U.S. Courthouse, 200 N.W. Fourth Street, Oklahoma City, Oklahoma, Hon. Cass Ballenger, Chairman of the Subcommittee on Workforce Protections, presiding.

Members present: Representatives Ballenger and Hoekstra.

Also present: Representative Istook.

Chairman BALLENGER. A quorum being present, I would like to call together this joint hearing of the Subcommittee on Workforce Protections and the Subcommittee on Oversight and Investigations.

The subcommittee is meeting today to hear the testimony on allegations of fraud, abuse and favoritism in the Davis-Bacon Act uncovered by the Oklahoma Department of Labor. I have a brief opening statement.

The Davis-Bacon Act requires contractors on federally funded construction projects valued at over \$2,000 to pay a government-determined prevailing or inflated salary in a specific city or area.

When the Act was passed in 1931, there were no Federal minimum wage laws or other labor laws with protection for workers, and since that time Congress has enacted numerous laws to protect the wages and working conditions for all workers, including construction workers. Some \$48 million annually in Federal construction spending falls under the Davis-Bacon Act requirements.

Also, the Congressional Budget Office says that the Davis-Bacon Act raises the government construction costs on the order of \$1 billion a year; clearly, Davis-Bacon drives up construction costs. Electricians in Philadelphia who are working on a Davis-Bacon project are paid \$37 an hour, compared with an electrician on a private contract, who is paid only \$15.76. Or consider the backhoe operator in Oklahoma whose salary was \$22 an hour on a Federal construction job, compared with the private rate of \$8.40 an hour. Companies cannot stay in business paying \$37 or \$22 an hour to an employee when the market rate is much less.

The total cost of Davis-Bacon extends to State and local government construction programs, thus having the same practical implications as an unfunded mandate. Davis-Bacon is particularly burdensome in the area of school construction. Consider this—a county

in West Virginia built a high school, an elementary and middle school and an academic center at a total cost of \$5.8 million, averaging out at \$78.81 per square foot of construction. Interviews with contractors in the county established that open shop contractors usually charge an average of \$52 per square foot as compared to \$78. Using those figures, one-third of the cost could have been saved had the schools been exempt from the Davis-Bacon Act. The savings could have been realized by the taxpayers or used in other ways to help the educational system.

There are additional costs to Federal agencies which must collect, process and disseminate thousands of wage rates. And as we will hear from our witnesses today, these are potentially serious flaws in a prevailing wage determination project. Likewise, there are direct costs to contractors who must comply with record-keeping and paperwork requirements under the Copeland Act. Compliance costs to the industry total about \$100 million—money which would be better spent creating additional jobs.

In addition to the wasteful and burdensome paperwork requirements of this prevailing wage law, recent investigations suggest that the system of collecting wage information is so flawed as to allow for systemic submission of fraudulent and false data.

The hearing today will focus on the allegations of fraud, waste and abuse in the administration of the Davis-Bacon Act. We first learned of these charges in July of 1995, and at that time the Oklahoma Department of Labor had uncovered three specific cases where the survey data on Federal projects was submitted and ghost employees were identified, presumably with the intent of inflating prevailing wage determinations. Basing the wages on inflated and perhaps fraudulent data would drive up the cost of government construction projects, wasting hundreds of millions of taxpayer dollars.

Because of the serious nature of the allegations uncovered by the Oklahoma Department of Labor, Bill Goodling, Chairman of the House Economic and Educational Opportunities Committee, Pete Hoekstra, Chairman of the Oversight and Investigations Committee and I wrote the Department of Labor to demand some answers. And as a result of this action and the concern about developing scandal, the U.S. Department of Labor withdrew the prevailing wage determinations for Oklahoma City and Tulsa.

Here is what the Department of Labor found after the initial review of the WD-10 forms used in Oklahoma. And by the way, for those of you that are not conversant with the government-speak, a WD-10 form is the survey form used by the Department of Labor to determine the Davis-Bacon wage. Out of 259 forms submitted, only 124, or a little under half of the forms submitted, remained usable. The Department of Labor listed several reasons for excluding forms, including the information that could not be verified. I have a copy of a letter from the Department of Labor, along with a chart detailing this information which will be submitted for the record.

We have also asked the General Accounting Office, the GAO, the U.S. Department of Justice and the Inspector General's Office of the U.S. Department of Labor—or the agency's watchdog—to investigate allegations of fraud, abuse and favoritism in the Oklahoma

Davis-Bacon Act. We anticipate receiving these reports later this year.

Needless to say, the events and information you will hear today are quite disturbing. If all the allegations are true, the only conclusion to be drawn is that the Davis-Bacon Act and its system of wage information collection is fatally flawed. Every year the Department of Labor must collect and monitor thousands of wage submissions on billions of dollars of federally financed contracts. If the dubious interested parties here in America's heartland are so easily able to penetrate and dupe the Department of Labor's best efforts, it certainly raises the possibility that similar activities are taking place in other States. The Department of Labor uses the same collection process across the country that they do in Oklahoma. And while the case here may be particularly egregious, unfortunately I believe that it is unlikely that this system is better elsewhere. Moreover, the Oklahoma investigation certainly reinforces the reports by the GAO, released in 1979, which said that after nearly 50 years, the Department of Labor has not developed an effective program to issue and maintain current and accurate wage determinations. A GAO follow-up report in 1994 noted that the potential for wage determinations to be based on low quality data continues to exist.

We will hear from three panels of witnesses today, including the Honorable Ernest Istook, representing the Fifth District of Oklahoma; Commissioner Brenda Reneau, Oklahoma Department of Labor and Deputy Commissioner Jeff Lester; and a panel of contractors.

Because of concern for their personal safety and possible retaliation by those opposed to exposing this fraud, waste and abuse, four of our witnesses have asked and been granted anonymity. We will hear testimony from these witnesses and we will be able to question them, but due to the concern for their personal safety and that of their families and co-workers, their identity will be closely protected. In that regard, I will clear the hearing room and allow these witnesses to be brought in, seated and then shielded with protective partitions. And I hope you can be patient during this process.

Thank you. That is the end of my statement.

Congressman Hoekstra.

[The prepared statement of Hon. Cass Ballenger follows]:

STATEMENT OF HON. CASS BALENGER, A REPRESENTATIVE IN CONGRESS FROM THE  
STATE OF NORTH CAROLINA

The Davis-Bacon Act requires contractors on federally funded construction projects valued over \$2,000 to pay a government determined "prevailing" or inflated salary in a specific city or area. When the Act was passed in 1931, there were no Federal minimum wage law or other labor laws with protections for workers. Since that time, Congress has enacted numerous laws to protect the wages and working conditions of all workers, including construction workers. Some \$48 billion annually in Federal construction spending falls under the Davis-Bacon Act requirements. Also, the Congressional Budget Office says that the Davis-Bacon Act raises government construction costs on the order of \$1 billion a year.

Clearly, Davis-Bacon drives up construction costs. Electricians in Philadelphia who are working on a Davis-Bacon project are paid about \$37 an hour compared with electricians on a private contract who are paid an average of \$15.76 an hour. Or consider that a backhoe operator in Oklahoma whose salary was \$22 an hour on a Federal construction job compared with a private rate of \$8.40 an hour. Com-

panies can not stay in business paying \$37 or \$22 an hour to an employee when the market rate is less.

The total cost of Davis-Bacon extends to State and local government construction programs, thus having the same practical implications as an unfunded mandate. Davis-Bacon is particularly burdensome in the area of school construction. Consider this example: a county in West Virginia built a high school, an elementary/middle school, and an academic center at a total cost of over \$5.8 million, averaging out to \$78.81 per square foot of construction. Interviews with contractors in the county established that open shop contractors usually charged an average of \$52 per square foot for similar facilities. Using those figures, one-third of the cost could have been saved had the schools been exempt from Davis-Bacon. The savings could have been realized for the taxpayers or used in other ways the educational system.

There are additional costs to Federal agencies which must collect, process, and disseminate thousands of wage rates. And, as we will hear from our witnesses today, there are potentially serious flaws in the prevailing wage determination process. Likewise, there are direct costs to contractors who must comply with record-keeping and paperwork requirements under the Copeland Act. Compliance costs to the industry total nearly \$100 million per year, money which could be better spent creating additional jobs. In addition to the wasteful and burdensome paperwork requirements of this prevailing wage law, recent investigations suggest that system of collecting wage information is so flawed as to allow for systematic submission of fraudulent and false data.

The hearing today will focus on allegations of fraud, waste, and abuse in the administration of the Davis-Bacon Act. We first learned of these charges in July, 1995. At that time, the Oklahoma Department of Labor had uncovered three specific cases where survey data on phantom projects was submitted and ghost employees were identified, presumably with the intent of inflating prevailing wage determinations. Basing the wages on inflated and perhaps fraudulent data would drive up the costs of government construction projects—wasting hundreds of millions of taxpayer dollars.

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Reneau, Oklahoma Department of Labor; Deputy Commissioner of Labor Jeff Lester; and a panel of contractors.

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Thank you.

## Excluded WD-10 Forms

Category	Total	Past Due	Info. outside scope of Survey	Not Verifiable	Duplicate Info.	Total Remaining
Contractors	145	3 (142)	55 (86)	1 (86)	8 (78)	78
Unions	85	0	19 (66)	33 (33)	11 (22)	22
Payroll Records	25	0	4 (24)	0	0	24
Employer	1	0	1 (0)	0	0	0
	259	3	79	34	17	124

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November 28, 1995

VIA FACSIMILE #202/219-4753

Ms. Maria Echaveste  
 Administrator  
 Wage and Hour Division  
 U.S. Department of Labor  
 200 Constitution Ave., NW  
 Washington, D.C. 20210

Dear Ms. Echaveste:

On October 19, 1995 you were invited to brief a number of Members on the findings of the Wage and Hour Division (Division) regarding the allegation that fraudulent information was submitted to the Division in response to a prevailing wage survey conducted in Oklahoma. At that briefing you were also asked to provide follow-up responses to a number of additional questions.

Approximately one month has passed since that briefing and we have yet to receive the information we requested regarding, among other things, the WD-10s filed by interested third parties. Accordingly, please provide to us by December 5, 1995 the following:

1. the total number of WD-10s reviewed by the Division related to the Oklahoma situation divided by party (e.g. interested third party, contractors, unions);
2. the number of WD-10's that the Division "set aside"/excluded, the reason that they were "set aside"/excluded and the party to whom the WD-10 was attributed; and
3. in those instances where the Division did decide to "set aside"/exclude a WD-10, please explain in detail whether the Division advised the Department of Justice of the WD-10s that were "set aside"/excluded from consideration in the prevailing wage determination. In the event that the Department of Justice was not advised of the Division's findings with regard to then WD-10s, please explain.

Thank you in advance for your prompt and timely responses to our inquiries.

Sincerely,

  
 PETE HOEKSTRA  
 Chairman,  
 Subcommittee on Oversight  
 and Investigations

  
 CASS BALLENGER  
 Chairman,  
 Subcommittee on Workforce  
 Protections

U.S. Department of Labor

Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

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The Honorable Pete Hoekstra  
Chairman  
Subcommittee on Oversight and Investigations

The Honorable Cass Ballenger  
Chairman  
Subcommittee on Workforce Protections

Committee on Economic and Educational Opportunities  
U.S. House of Representatives  
Washington, D.C. 20615-6100

Dear Chairmen Hoekstra and Ballenger:

Thank you for your letter of November 28 requesting additional information regarding the Davis-Bacon heavy construction wage survey conducted in Oklahoma City, Oklahoma.

There apparently is a misunderstanding. At the meeting, we thought you had agreed that you would submit any follow-up questions you had in writing. We just received your letter. I hope the following is helpful.

Of the total WD-10's submitted in response to the survey and reviewed by the Department, 145 WD-10's were submitted by various contractors; 85 WD-10's were submitted by unions; and an employer group submitted one WD-10. An additional 28 WD-10's represent information that was transcribed directly from contracting agencies' certified payroll records on projects that were subject to the Davis-Bacon Act.

In response to question 2, 3 WD-10's (all from contractors) were excluded because they were received after the cut-off date for data collection. Fifty-five WD-10's from contractors; 19 WD-10's from unions; one WD-10 from an employer group; and 4 of the agency-transcribed WD-10's were eliminated because the information on the form was outside the scope of the survey.<sup>1</sup>

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<sup>1</sup> Outside of scope means that the project was not in progress during the survey time frame; the project was not constructed in the area being surveyed; the project value was less than \$2000; the project was for a type of construction other than that being surveyed; or the contractor did not perform construction work (e.g., a material supplier).

*Working for America's Workforce*

One WD-10 submitted by a contractor was not used because it could not be verified. Thirty-three WD-10's submitted by unions were not used because they could not be verified. Nineteen WD-10's (eight from contractors and 11 from unions) were excluded because they represented duplicate information.

We have previously provided the Committee with all of the raw data that form the basis for these responses.

With respect to your final question regarding the information we have provided to the Department of Justice (DOJ), we have provided DOJ with all original documents related to the survey. These documents include all WD-10s that were not used and indicates why those WD-10s were not used.

Should you require further information, I would be pleased to respond to your written request.

Sincerely,

  
Maria Echaveste  
Administrator

Mr. HOEKSTRA. Thank you.

Until I was halfway between Memphis and Oklahoma last night the first sentence in my statement was accurate. I wanted to thank Cass for bringing us here to Oklahoma City.

[Laughter.]

Mr. HOEKSTRA. Four hours later, and when I looked out the window this morning, I am not sure that is still true. But we are here, and we are here on a very important issue, one that I have been interested in for a number of years—and that is the Davis-Bacon program. It is a very old program, and as Cass identified, the Labor Department has not effectively found a way to implement provisions of the Davis-Bacon Act.

I would also like to thank the Department of Labor in Oklahoma, Ms. Reneau, for the work that her staff has done on this issue for the last number of months. I really believe that the work that has begun here in Oklahoma, along now with the efforts that have built off of that activity which include additional work by the Department of Labor, the Inspector General, the Department of Justice and activities by many of the governors around the country, will lead to, I hope, getting to the bottom of programs and a law that is costing the taxpayers of this country billions and billions of dollars on an annual basis. Those of you that are watching the other things that are going on in Washington can understand the impact of perhaps finding a seven-year period potential savings in the tens of billions of dollars, and how much easier that would make it for us to reach a solution and a compromise with the budget discussions going on in Washington.

So, we would like to take this opportunity to encourage the Department of Justice and the Inspector General and Department of Labor and the General Accounting Office to move forward as expeditiously as possible to complete their work and move forward with criminal proceedings if they find that those are warranted.

I am also going to take this opportunity at this hearing to release several documents from the U.S. Department of Labor regarding the Davis-Bacon program. And with the Chairman's permission, I would like those documents be made part of today's hearing.

Chairman BALLENGER. Without objection.

Mr. HOEKSTRA. So once again, Cass, thank you for taking us on this wonderful junket.

[Laughter.]

Mr. HOEKSTRA. I will see you by the outdoor pool after the hearing this afternoon.

[Laughter.]

Mr. HOEKSTRA. Thank you.

[The material referred to follows:]

[Due to the size of the document, the document will be on file with the Committee on Economic and Educational Opportunities document's clerk located at B345, Rayburn House Office Building, Washington, DC.]

Chairman BALLENGER. Thank you.

Before we start, I would like to show a brief news clip from NBC News, so if you will, roll the tape, please ma'am.

[Videotaped news excerpt shown as follows:]

Mr. BROKAW. NBC News In Depth tonight—What further? The legal consequences for Simpson.

A major step for the reduced Medicare benefits, the House Ways and Means Committee agrees on the bill.

And the Fleecing of America—how non-existent work projects are costing taxpayers millions.

VOICE. From NBC News, this is NBC Nightly News with Tom Brokaw, reporting tonight from Los Angeles.

Mr. BROKAW. When we come back, the Fleecing of America.

[Pause.]

Mr. BROKAW. Fake construction projects that are costing taxpayers a fortune. Why? We've got the answers next.

Time now for our regular Wednesday feature about your money and how your government wastes it. Tonight, how phantom construction projects are driving up the cost of real buildings.

NBC's Robert Hager has details now in this fleecing of America.

Mr. HAGER. Mustang, Oklahoma, a rural town in the Nation's heartland with a brand new \$2 million storage tank. But where is it?

Mr. MORGAN. No, this is not an underground storage tank.

Mr. HAGER. In fact, the underground tank was never built, needed or even proposed. It only exists in these documents, Federal wage survey forms, fraudulently submitted to the U.S. Labor Department, complete with fake salaries and fake jobs, intended to persuade the government to set higher construction wage scales for that area. Remarkably, it worked.

And since until recently by law, Oklahoma had to pay using the same wage scales, the State Labor Commissioner is furious, saying the fraud is costing taxpayers there millions of dollars.

Ms. RENEAU. The wage rate for this area was based on that non-existent or ghost project.

Mr. HAGER. A Federal law, the Davis-Bacon Act, requires that construction workers on almost all U.S. government projects, be paid the prevailing or going salary for a specific region. Those salaries are set by the wage survey. But critics say many of those surveys are being rubber stamped without any checking.

In Oklahoma, the impact on the State's wage rate is tremendous. A backhoe operator whose salary was \$8.40 an hour started getting \$22 an hour. A truck driver whose salary was \$7.30 got \$15 an hour. Total additional taxpayer cost—\$21 million.

On Capitol Hill, there's concern.

Chairman BALLENGER. If they found out in Oklahoma that you could get away with cheating, it's not a secret they must have kept in Oklahoma. It's got to be elsewhere in the country.

Mr. HAGER. And NBC News has learned the FBI is now investigating. Because of this, the U.S. Labor Department says it's limited in what it can say.

Mr. WILLIAMSON. We take very seriously allegations of fraud that call into question the integrity or accuracy of any wage surveys used by the Davis-Bacon program.

Mr. HAGER. In Oklahoma, more fakery. Someone wanted to double pay for asphalt workers, so a form was sent to the U.S. Labor Department claiming asphalt workers had made big wages to resurface a parking lot. But a look today reveals it was never paved with asphalt. Another survey detailed high wages to put up a building at a water treatment plant. But a look today reveals no

building to be found, only barbed wire. Now, because of continued abuse, the U.S. Labor Department has withdrawn the prevailing wage rate for Oklahoma.

And because she first raised questions of fraud, the State Labor Commissioner's life has been threatened. But that's not stopping her.

Ms. RENEAU. It's fraud. It's fraud at the fullest extent.

Mr. HAGER. No one has been charged yet, but there's growing concern that the system of setting wages on U.S. government construction projects is so flawed that it's fleecing taxpayers of hundreds of millions of dollars.

Robert Hager, NBC News, Washington.

[End of videotaped presentation.]

Chairman BALLENGER. Thank you.

Let me just say that in our statistics, it shows that more than a billion dollars a year, but that is just Federal money we are talking about. When you talk about State money, it would be massive.

We are going to begin our testimony now, hearing testimony from our witnesses. And I would like to remind witnesses if I can that we have a committee rule that you are supposed to limit your oral statement to five minutes, however your full statement will be entered in the record.

Our first panel is Congressman Ernest Istook, Vice Chairman of the Appropriations Committee on Labor and HHS—

Mr. ISTOOK. Labor, Education and Health and Human Services.

Chairman BALLENGER. Yes, sir—the Honorable Ernest Istook from Oklahoma. Fire away.

#### **STATEMENT OF HON. ERNEST ISTOOK, A MEMBER OF CONGRESS FROM THE STATE OF OKLAHOMA**

Mr. ISTOOK. Thank you. And I will abbreviate my oral remarks and have the full text for the record.

Chairman Ballenger and Chairman Hoekstra, I am very grateful to you for coming to Oklahoma to investigate the fraud that the Oklahoma Labor Commission has discovered in the Oklahoma wage surveys, part of the prevailing wage procedures under the Davis-Bacon Federal law.

The origins of the original Davis-Bacon Act are well known. Originally, it was designed to prevent so-called cheap labor crews from the South from winning all the bids on government contracts, thus preventing local labor in different parts of the country from receiving those contracts. It was believed that the Federal Government was such a major player in the market that those jobs could depress labor prices and lower prevailing wages in areas unless they were artificially kept high. So this idea was born. It was born in a time when many believed that government intervention was the answer to the problems faced by the country. But from extensive experience today, we know that in fact too often government is the problem, not the solution.

The concept of having any government set wages needs careful examination. The framers of our Constitution based their understanding of economics on the work of Adam Smith, the Scottish economist who published "The Wealth of Nations." They knew the problems of government attempts to control the economy. In fact,

when the Constitution was adopted in 1789, America was suffering from a severe depression brought about by burdensome Revolutionary War debt, tariffs between the colonies that restricted trade and chaos in currency markets due to millions in unbacked paper currency put out by the government and being circulated. The framers of the Constitution worked to stabilize the government-created economic chaos and replace it with sound economic principles.

Nevertheless, during the Great Depression, when the Davis-Bacon Act was crafted, it was decided that public works programs by themselves were not enough. Wage controls were desired. The Hoover Administration urged passage of the Davis-Bacon Act as part of the Hoover effort to jump-start the economy through a massive Federal construction program. Now we have the hindsight of seeing the effects of 64 years of the Davis-Bacon Act and of all the other attempts that governments have made to control the economy.

And I should hope that we have learned that there already exists a very efficient way to determine what are the prevailing wages in a community, a way that guarantees that they will actually be paid. And that is a real way, not an artificial way, it is simply called the free market system. The market system on a broad scale determines prevailing wage rates instead of trying to take a small sample and saying that somehow it has become the standard against which everything else is measured. If that sample is therefore corrupted or misused, so too the results will not be right.

Just as some people try to sway public opinion by using polls which they manipulate to show whatever they want them to show, so too the process of determining prevailing wages can be and is manipulated to inflate artificially the wages being paid on public works projects, and this costs taxpayers billions of dollars.

In 1979, the U.S. General Accounting Office issued a report to Congress. The title was "The Davis-Bacon Act should be repealed." I quote from the three reasons which they gave.

1. "There have been significant changes in the economy since 1931 which we believe make continuation of the Act unnecessary.
2. "After nearly 50 years, the Department of Labor has yet to develop an effective program to issue and maintain accurate wage determinations, and it may be impractical to ever do so, and
3. "The Act is inflationary and results in unnecessary construction and administrative costs of several hundred million dollars each year."

Based on what we have learned from the Oklahoma Department of Labor's experience, this situation has not changed since that report was prepared in 1979. I believe the evidence gathered and the indications of reluctance to prosecute fraud, indicate the systemic nature of what Oklahoma found upon examining the evidence and may provide a model whereby this committee and others can find similar patterns of abuse other places in the country. The mechanism is so simple to manipulate, so ripe with the potential for fraud, that it is hard to believe that people would try this manipulation only in Oklahoma and not in the rest of the country. I think you can look at the patterns that can be established here and that will give you an idea of what to look for in other States, and I expect and fear that indeed that manipulation will be found.

What do we do? We should not squander precious and scarce resources—public money on public works projects. I do not believe that it is possible to change the Davis-Bacon Act. Say maybe instead of a tiny sample, you will take a big sample, but with all the extra millions of dollars that would cost to try to administer it still with the potential for manipulation, there is still a simple answer that is available. The simple answer is, rather than trying to fix a fatally flawed system, repeal it. Repeal the Davis-Bacon Act, repeal the problems of fraud that go with it, and repeal the waste of billions of dollars each year of taxpayers' money, which I fear will continue so long as the law remains on the books.

I thank you again for coming to Oklahoma and sharing this time together. I thank you also for the courtesy of being able to participate on the panel. In my work on the Appropriations Subcommittee that oversees, among others, the Labor Department, the information gathered should be very helpful in our efforts in appropriating money to the Labor Department that is in charge of this process.

Thank you very much.

[The prepared statement of Mr. Istook follows:]

STATEMENT OF HON. ERNEST J. ISTOOK, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

First, Chairman Ballenger, Chairman Hoekstra, and distinguished members of this panel, thank you for coming to Oklahoma to investigate the fraud the Oklahoma Labor Commission has discovered in the Oklahoma Wage Survey.

#### Origins of Davis-Bacon

The origins of the original Davis-Bacon Act are well known. It was originally designed to prevent "cheap" labor crews from the South from winning all of the bids on government contracts, thus preventing local labor from receiving Federal Government contracts. It was believed that the Federal Government is such a big player in the market that it could depress labor prices and lower prevailing wages in an area unless they were kept artificially high. Thus, this idea was born. It was born in a time when many believed government intervention was the answer to the problems America faced. Today we know from extensive experience that, in fact, government is too often the problem, not the solution.

The concept of any government's setting "wages" should be examined. The framers of our Constitution based their understanding of economics on the work of Adam Smith, the Scottish economist who published "The Wealth of Nations" in 1776. They knew the problems of government attempts to control the economy. In 1789, our Nation was suffering from a severe depression brought about by burdensome revolutionary war debt, tariffs between the colonies that restricted trade, and chaos in currency markets due to millions in unbacked paper currency in circulation. The framers of the Constitution worked to stabilize this government-spawned economic chaos and replace it with sound economic principles.

But during the Great Depression, when the Davis-Bacon Act was crafted, it was decided that public works programs by themselves were not enough. Wage controls were added. The Hoover Administration urged passage of the Davis-Bacon Act as part of Hoover's effort to jump-start the economy through a massive Federal construction program. We now have seen the effects of 64 years of the Davis-Bacon Act, plus all of the other attempts that governments have made to control the economy. It is significant that Professor Robert Lucas, from the Chicago School of Economics, won the Nobel Prize in 1995 for showing that government regulators could not "manage," much less "fine-tune" the economy.

#### GAO Says Davis-Bacon is Broken

In 1979, the U.S. General Accounting Office issued a Report to Congress entitled "The Davis-Bacon Act should be repealed." Their reasons were three-fold:

1. "There have been significant changes in the economy since 1931 which we believe make continuation of the Act unnecessary.
2. After nearly 50 years, the Department of Labor has yet to develop an effective program to issue and maintain accurate wage determinations, and it may be impractical to ever do so, and;

3. The Act is inflationary, and results in unnecessary construction and administrative costs of several hundred million dollars annually."

Based on what we've learned from the Oklahoma Department of Labor's experience, the situation has not changed. I believe the evidence gathered, and the administration's reluctance to prosecute outright fraud, is an indication of the systemic nature of what Oklahoma found upon examining the evidence.

When I asked to whom these surveys had been sent, in the most recent survey of Oklahoma wages, I received an extensive list. I'll simply summarize it here. The administration claimed they sent the survey to 45 union halls, (28 of which were in Oklahoma). Thirty two contractor associations (8 of which were in Oklahoma), and 85 individual contractors. According to data gathered by the Oklahoma Department of Labor, there is a question whether that first survey was actually sent to the list provided to me. I believe the Oklahoma Department of Labor's testimony will expand upon this.

### **The Administration's Mindset**

Robert Reich, President Clinton's Secretary of Labor, has testified before my subcommittee (Labor-Health & Human Services-Education/ Appropriations) on several occasions. It has become apparent that he believes that wages can be legislated. He has testified that one solution to stagnant wages in America is to have the government mandate that wages be raised. This begs the question of why someone who wants a raise shouldn't ask their boss, rather than their Congressman.

### **Sustainable Economic Growth Increases Standard of Living**

Legislation to set wages will not raise the standard of living for Americans. To raise the standard of living we must create a climate for sustained economic growth, which requires less government regulation, not more.

In fact, there is consensus among virtually all economists that wages and prices cannot be regulated without severe distortions in the economy. Wage and price controls have never had the desired effect in any economy. They did not work in the Roman Empire, in the Nixon Administration, or in the former Soviet Union. This principle is taught in introductory economics courses across the Nation. Regulating wages higher than the market rate only causes higher unemployment (because more people want higher wages before they accept a job) and fewer jobs available for workers. One of Secretary Reich's mandates is to lower unemployment, and we are paying billions in training, education, and placement programs to try to do that. Yet, a policy is being maintained that clearly increases unemployment.

### **Scarce Resources Should Not Be Squandered**

In Philadelphia, an electrician makes \$15.76 per hour, yet if that same electrician, with the same skill level, is employed on a Davis-Bacon contract, he or she will be paid \$37.97 per hour or 241 percent more than the market wage. In other words, you could employ 2.4 electricians for the price you are forced to pay one!

I have a letter from one of my constituents in Edmond, Oklahoma. He has informed me that he normally pays between \$6.50 and \$10 per hour to his employees. When he contracts on a Federal job, however, he is required to pay employees up to three times their normal pay to do the same work they usually do for less. Instead of paying \$6.50 to \$10 per hour market wages, he has to pay \$10 to \$22 per hour. Wages are not linked to their individual skills, but their job "classification" under Davis-Bacon's complex rules. It is the taxpayers who ultimately pay for this padding of wages.

There is a great deal of work that needs to be done in America. Artificially-inflated wages make it more costly, and thus more difficult, to do this work. Testimony before the Transportation Committee describes the problems of the infrastructure we built during the 1950s, and the highways and bridges that need to be replaced. Housing projects run by the government have been abandoned because there isn't enough money to maintain or renovate them. The infrastructure of our public schools is deteriorating. The cry from the other side of the aisle is that we need to spend more taxpayer dollars on these problems, and hire more Federal bureaucrats to distribute this "new money." In reality, one key solution to these woes is much simpler.

### **Solution: Repeal the Davis-Bacon Act**

**Repeal the Davis-Bacon Act. How will this help?**

1. First, it will put hundreds of bureaucrats in Washington into new, productive jobs. **It takes the entire personal income tax of 9 families in America to support each bureaucrat in Washington!**

2. According to a conservative estimate from the Congressional Budget Office, repealing Davis-Bacon would save \$2.6 billion. This \$2.6 billion represents the

entire annual personal income tax of 145 thousand families in America. The U.S. Air Force estimated that Davis-Bacon requirements added 33 percent to each construction job.

3. Second, if we can stretch the labor dollars we are currently spending on transportation, we can hire 1.5 to 2.5 times the number of people, to do more work, to repair and replace our national infrastructure faster.

4. Third, housing projects owned by or managed on behalf of the government will no longer have to pay exorbitant costs for repairs and improvements.

5. Fourth, education infrastructure is greatly helped. It has amazed me that we hear the same thing over and over from educators in Oklahoma. First, they say, "we need more money." Then we start asking why. It is often those regulations the Federal Government has imposed. They need the Federal money to pay for the regulations. These include Davis-Bacon, which adds 15 percent to the cost of every school building or renovation project, according to the Oklahoma School Board Association.

The repeal of Davis-Bacon would increase economic growth, which would in turn improve America's standard of living. In addition, our scarce resources would be spent more productively on actual construction instead of on bureaucracy. It would relieve broad sectors of our society from having to pay inflated wages, thus decreasing costs. It is time to end this wasteful program.

The concept of the prevailing wage has been grossly distorted by special interests. It is no longer designed to guarantee that market rates would not be depressed. It is designed to set exorbitant rates. I do not believe the Davis-Bacon prevailing wage system can or should be repaired. I believe the only equitable thing to do for the American people, the taxpayers of America is to repeal the Davis-Bacon Act. This is the way to fix what is broken.

I also believe that the fraud in the system should be systematically investigated and that perpetrators of that fraud should be brought to justice, for stealing from the American people, and from the people of Oklahoma.

I welcome your questions and thank you for your efforts.

Chairman BALLENGER. Peter, any questions?

Mr. HOEKSTRA. Yes. Congressman Istook, you talked in your testimony about repealing Davis-Bacon. That is not the issue of today's hearing.

Mr. ISTOOK. True.

Mr. HOEKSTRA. But you outline some benefits and what might happen if we repealed it. I believe that those also would be true if we did develop a more effective way of applying Davis-Bacon and actually took the waste, fraud and abuse out.

Would you care to explain what some of those benefits might be if we actually were able to take anywhere from two, three, four, five billion dollars of waste, fraud and abuse out of this program on an annual basis?

Mr. ISTOOK. Certainly there is a multiplier effect. If you do not have to spend extra money of the taxpayers, you do not have to take it away from them in the first place. If each public works project does not cost more, frankly you can do more public works projects. There has been a lot of testimony and public comment about the infrastructure, whether you are talking about transportation, education, utilities, sewer projects and so forth. Every time that you have to pay 10 to 30 percent extra for one of these projects, it means it is more difficult to fix the infrastructure of America, or to expand it. So a benefit is not only the cost savings, but if you spend the saved money, you are going to get a lot more for your spending on that. So it is both a savings potentially of cost and a savings because the taxpayers would get more public projects, and better public projects to improve the infrastructure for the same amount of money.

Mr. HOEKSTRA. Why did Oklahoma take such an interest in Davis-Bacon?

Mr. ISTOOK. Well, I would like to think any Labor Department would do what has happened with Commissioner Reneau, and that is if there is an indication of fraud or abuse, you go after it. I do not believe that Oklahoma is isolated in this circumstance. I think the difference is that in Oklahoma, we have had a Labor Commissioner come in that was aggressive and began to look for this evidence, which I think could be found in other States also if similar efforts were made.

Mr. HOEKSTRA. But the one key difference here is Oklahoma was required to use the numbers—the Federal numbers, correct?

Mr. ISTOOK. You are exactly right. The Oklahoma statute that governs this was changed many years ago so that instead of the State of Oklahoma going out and making its own assessment of what would be so-called prevailing wage rates, it simply tried to save administrative costs by adopting the Federal standards under what we called the little Davis-Bacon Act in the State of Oklahoma. So that was done to seek after administrative savings, because it cost a lot of money to try to survey people, which is why they do such a small sample instead of a larger, more representative sample.

As you may be aware, the Oklahoma Supreme Court a few months ago ruled our little Davis-Bacon Act unconstitutional for this very reason, because they said it delegated to the Federal Government a function of State government; namely, making the determination of prevailing wages within the State of Oklahoma, and then applying that to State projects.

I might mention in that connection, I have heard a lot, for example, from educators. We constantly have bond issues in different school districts—they want to air condition the schools, they want to build a new elementary school, provide computer laboratories, whatever it may be. So it is common in education where money is very scarce to administer their programs, as they see it. I hear educators say “Can we not find more money?” And I say, “Where is a way you can save in the system?” They say, “Get rid of a lot of the government regulations.” Great, where would we start? The first one they say is, “Get rid of Davis-Bacon,” because of how much it makes our school districts spend. The Oklahoma School Board Association has given us their estimate that it adds 15 percent to the cost of every school project in the State of Oklahoma because of the Davis-Bacon or little Davis-Bacon requirements.

Mr. HOEKSTRA. I would like to just make a couple more points. I think this is a good example of where it is very clear States and local communities watch their money much closer than Washington does, because for the one State out of 50 States that used the Federal guidelines, they found out they were getting ripped off.

Mr. ISTOOK. Sure.

Mr. HOEKSTRA. And they said wait a minute, we have got to change this. And they also recognized—and maybe Brenda will talk about this a little bit later—but when they found out they were getting ripped off and they came to Washington to look for help, it has been very difficult for us to cut through that bureaucracy and actually change a system that was costing Oklahoma millions, but around the country it is costing the Federal Government billions of dollars.

The other thing that I would like to point out is that this applies to all projects that get any more than \$2,000 of Federal funds in that not only is it impacting things that are a top priority to this country, like education, which means we are spending more on education, doing things that we could be getting done more efficiently, but I think also in your subcommittee you deal with it in public housing. I believe that the elimination or the reform and getting accurate information—at a minimum, getting accurate information on Davis-Bacon, rather than inflating prices, was one of the top priorities of public housing officials around the country, because they are unable to build as many public housing units as they would like to and they are unable to do the amount of renovation and upkeep that they would like to do. I think it really gets back to what you were saying, we cannot get as much—we would get more done—with the dollars that we have if we could get Davis-Bacon to be accurate rather than inflated.

Mr. ISTOOK. Let me give you an example from public housing, as you mentioned. In Washington, DC, they adopted a regulation as part of the public housing that if you are going to renovate a project—I am sorry, if you are going to move someone else in, you have got to repaint the unit. Well, the problem was they applied the Davis-Bacon standards to repainting the units and it about tripled the cost of every time that you wanted to repaint a unit. So they decided it was no longer economically feasible to repaint the units, therefore they could not move people into the public housing, therefore the public housing became dilapidated and had to be boarded up, all because every time you wanted to fix something that was wrong, it was too expensive to do so, even something as minor as repainting a unit.

So that again is an example where Davis-Bacon undercuts the efforts to improve public housing, education, fixing up or expanding the infrastructure in this country. It is an impediment to progress and it gets in the way.

Mr. HOEKSTRA. And inflated Davis-Bacon wages are a license to steal. This I think leads us into a good example of where we could be getting a lot more for our Federal taxpayer dollars or we could be getting a lot more done, not by spending more but by just taking a look at how we are spending the dollars that we have.

Chairman BALLENGER. We had a hearing, Ernest, in Washington, and we had Steve Barber, who at that time was Mayor of Dallas and I asked Steve just off the top of his head how much did he figure it cost the city of Dallas, Texas, as far as Federal funding was concerned, in housing. He said he thought it was about a 30 percent increase in the cost. And at that same hearing, the Mayor of Kansas City was there, a black gentleman, and I asked him, did he in his community—the development block grants that he had for Kansas City—could he have gotten 30 percent more building if he did not have to work with Davis-Bacon wages? Obviously this gentleman did not want to say yes, but he finally did admit the fact that it was true.

Really, if you want to do good work for poor people and get them housing and so forth, you should not waste the money that is going into construction.

Mr. ISTOOK. Sure. We have right here in Oklahoma City what is called the MAPS project, which is \$250 million worth of improvements, principally in the downtown area. In fact, it was the prevailing wage rates that had come out just before the MAPS work was going to begin. That sparked the Supreme Court case that ended up in the little Davis-Bacon Act being overturned. If you take one of these projections of 10 percent extra cost or 30 percent extra cost, and apply it against a \$250 million public improvement project, you greatly diminish the amount of public improvement that the taxpayers are able to get for their money because you have artificially inflated the price of doing so. And, you price a lot of people out of the market.

How do we improve the downtown area? How do we provide more services to the public if every time we try to do so, we are told that it costs too much, because of this law that gets in the way of progress.

Chairman BALLENGER. Let me, Ernest, if I may, invite you to come and sit with us up here.

Mr. ISTOOK. Certainly, I thank you for the courtesy.

Chairman BALLENGER. And we will start with the second panel, if we can. The second panel of witnesses are the Oklahoma Commissioner of Labor, Brenda Reneau; Oklahoma Deputy Commissioner of Labor, Jeff Lester and Chief of Staff, Jim Marshall. If you all will come forth.

And as I said, your complete testimony will go into the record, but if you could kind of hold it down to about five minutes, it would be greatly appreciated.

Mr. HOEKSTRA. It is my understanding you are going to run through a little bit more of an extensive presentation with some overheads and those types of things, which will make it very difficult to stay—

Chairman BALLENGER. I will back off.

Mr. LESTER. Mr. Chairman, approximately 20 minutes for the slide presentation and we will hold our remarks to a minimum in order to give the committee a maximum opportunity to view the facts.

Chairman BALLENGER. That is fine, thank you.

#### **STATEMENT OF BRENDA RENEAU, COMMISSIONER, OKLAHOMA DEPARTMENT OF LABOR**

Ms. RENEAU. Thank you, Mr. Chairman and distinguished Members of this committee for the privilege of being here today.

My name is Brenda Reneau, I am Commissioner of Labor for the Oklahoma Department of Labor. Prior to October 10, 1995, one of my duties as labor commissioner was to enforce Oklahoma's little Davis-Bacon Act. On October 10, the Oklahoma Supreme Court declared the State law unconstitutional because the law constituted an unauthorized delegation of authority to the Federal Government with regards to utilizing the Federal wage determinations.

In January of 1995, I was contacted by a number of citizens in Oklahoma, including the Oklahoma City Mayor's office and the Governor's office, regarding the newly published prevailing wage rates for Oklahoma as determined by the U.S. Department of Labor. A comparison of some of the new rates with the old rates

showed increases as much as 162 percent. This increase, which is passed on to the taxpayer in the form of higher costs on public construction projects such as our schools, prisons and the current renovation of downtown Oklahoma City, was of major concern. The citizens and taxpayers of Oklahoma demanded an answer from me, as Labor Commissioner, as to how these high rates were established.

We initiated contact with the U.S. Department of Labor Regional Office in Dallas, Texas because that office had conducted the most recent wage survey which produced the higher rates. We requested copies of the original wage survey forms that were used to determine the rates. Our requests were denied. We were told that the information was confidential and that making the identities of the parties public might discourage participation in future surveys. We were also told that the information reported on the survey forms was protected under the Privacy Act, and that it was a trade secret. Our only alternative was to investigate the matter at the State level.

This investigation found that grossly inaccurate information had been reported to the Federal Government by what the U.S. Department of Labor calls interested third parties. We found inflated numbers of employees on projects, inflated wage rates reported for these same non-existent workers and we found projects that were never built. We also noticed what appears to be a pattern in the reporting method on many of the wage survey forms, as our visual presentation will show here today.

Our initial findings were documented in a report presented to Congress and to the Labor and Justice Departments in July of 1995. Although the original investigative report identifies only three cases of what appears to be fraudulent activities, to date we have become aware of nearly 100 additional cases of a similar nature.

Of particular concern to the Members of Congress should be that before and during the course of our investigation, we repeatedly informed officials at the U.S. Department of Labor that they had been given false information during the wage survey process. U.S. labor officials told us that although they knew that inaccurate information was submitted during surveys, they did not make a practice of verifying the information received, nor did they have sufficient resources to do so.

However, as a result of the Oklahoma report, a follow-up investigation conducted by the U.S. Department of Labor confirms that not only was a great deal of inaccurate information reported, as we had alleged, but U.S. Department of Labor documents show certain unions in Oklahoma City as the parties who submitted that information. It appears that false information may have been submitted to the U.S. Department of Labor in an attempt, purposefully, to inflate Davis-Bacon wage rates. It is also apparent that the U.S. Department of Labor has not acted in the best interest of the public by requiring accountability for their survey information.

Mr. Chairman, we fear that this problem is not unique to Region Six of the U.S. Department of Labor in Dallas, Texas. A memo from the U.S. Department of Labor dated June, 1995, supports the belief that the Federal agency itself now shares this same concern.

We suspect that this scheme uncovered in Oklahoma may be only the tip of the iceberg and symptomatic of a much larger problem nationwide. The Federal wage survey process may be inviting interested parties to take advantage of taxpayers in every State since the wage surveys are conducted in a similar manner nationwide. In fact, officials in five other States have contacted the Oklahoma Department of Labor with questions in preparation for launching their own investigations.

Mr. Chairman, it is my charge to protect Oklahoma's workers and to be sure they are treated in a fair and safe manner. It is my intention to promote and encourage high wages for all hard-working and deserving Oklahomans. However, we must draw the line at cheating in order to accomplish this goal. I maintain that we should strive instead for a trained and skilled work force. This will lead to higher wages and better job opportunities for all workers.

I appreciate the opportunity to be here today and I welcome your investigation. I will be happy to answer any questions you may have.

Chairman BALLENGER. Thank you, Commissioner Reneau. Commissioner Lester, or Mr. Marshall?

Mr. LESTER. I would actually like to defer to the chief of staff for his statement first.

Chairman BALLENGER. Okay.

[The prepared statement of Commissioner Reneau follows:]

STATEMENT OF BRENDA RENEAU, COMMISSIONER OF LABOR, STATE OF OKLAHOMA

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We initiated contact with the U.S. Department of Labor Regional Office in Dallas, Texas, because that office had conducted the most recent wage survey which produced the higher rates. We requested copies of the original wage survey forms that were used to determine the rates. Our requests were denied. We were told that the information was confidential, and that making the identities of the parties public might discourage participation in future surveys. We were also told that the information reported on the survey forms was protected under the Privacy Act and that it was a "trade secret". Our only alternative was to investigate the matter ourselves at the State level.

This investigation found that grossly inaccurate information had been reported to the Federal Government by what the U.S. Department of Labor calls "interested third parties". We found inflated numbers of employees on projects; inflated wage rates reported for these same non-existent workers; and, we found projects that were *never built*. We also noticed what appears to be a pattern in the reporting method on many of the wage survey forms, as our visual presentation will show here today.

Our initial findings were documented in a report presented to Congress and to the Labor and Justice Departments in July of 1995. Although the original investiga-

tive report identifies only three cases of what appears to be fraudulent activities, to date we have become aware of nearly 100 additional cases of a similar nature.

Of particular concern to the Members of Congress should be that before and during the course of our investigation, we repeatedly informed officials at the U.S. Department of Labor that they had been given false information during the survey process. U.S. labor officials told us that although they knew that inaccurate information was submitted during surveys, they did not make a practice of verifying the information received, nor did they have sufficient resources to do so.

However, as a result of the Oklahoma report, a follow-up investigation conducted by the U.S. Department of Labor confirms that not only was a great deal of inaccurate information reported as we had alleged, but U.S. Department of Labor documents show certain unions in Oklahoma City as the parties who submitted the information. (Exhibit C) It appears that false information may have been submitted to the U.S. Department of Labor in an attempt, purposefully, to inflate Davis-Bacon wage rates. It is also apparent that the U.S. Department of Labor has not acted in the best interest of the public by requiring accountability for their survey information.

Mr. Chairman, we fear that this problem is not unique to Region Six of the U.S. Department of Labor in Dallas, Texas. A memo from the U.S. Department of Labor, dated June 1995, supports the belief that the Federal agency itself now shares this same concern. (Exhibit D)

We suspect that this scheme uncovered in Oklahoma may be only the tip of the iceberg and symptomatic of a much larger problem nationwide. The Federal wage survey process may be inviting interested parties to take advantage of taxpayers in every State since the wage surveys are conducted in a similar manner nationwide. In fact, officials in five other States have contacted the Oklahoma Department of Labor with questions in preparation for launching their own State investigations.

Mr. Chairman, it is my charge to protect Oklahoma's workers and to be sure they are treated in a fair and safe manner. It is my intention to promote and encourage high wages for all hardworking and deserving Oklahomans. However, we must draw the line at cheating in order to accomplish this goal. I maintain that we should strive, instead, for a trained and skilled workforce. This will lead to higher wages and better job opportunities for all workers.

I appreciate the opportunity to be here today and I welcome your investigation. I will be happy to answer any questions you may have at this time.

*Press*

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE CITY OF OKLAHOMA CITY, )  
 a municipal corporation; )  
 OKLAHOMA CITY AIRPORT )  
 TRUST; OKLAHOMA CITY )  
 PUBLIC PROPERTY )  
 AUTHORITY; OKLAHOMA CITY )  
 WATER UTILITIES TRUST; and )  
 CENTRAL OKLAHOMA )  
 TRANSPORTATION AND )  
 PARKING AUTHORITY, )  
 public trusts, )  
 )  
 Appellees, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA ex )  
 rel. OKLAHOMA DEPARTMENT )  
 OF LABOR, )  
 )  
 Appellant. )

FILED  
 SUPREME COURT  
 STATE OF OKLAHOMA  
 OCT 10 1995  
 - JAMES W. PATTERSON  
 CLERK

FOR OFFICIAL PUBLICATION

NO. 85,888

APPEAL FROM THE DISTRICT COURT OF  
 OKLAHOMA COUNTY, OKLAHOMA  
 Honorable James B. Blevins, Judge

City and its public trusts sought declaratory judgment that Prevailing Wage Act violated provisions of Oklahoma Constitution. Trial court granted City's motion for summary judgment.

AFFIRMED

William O. West  
 Municipal Counselor  
 Diene Lewis  
 Deputy Municipal Counselor  
 and  
 Michelle G. Porta  
 Assistant Municipal Counselor  
 Oklahoma City, Oklahoma

For Appellees  
 City of Oklahoma City  
 Oklahoma City Airport Trust  
 Oklahoma City Public  
 Property Authority  
 Oklahoma City Water  
 Utilities Trust  
 Central Oklahoma  
 Transportation and  
 Parking Authority

1 000d

BY ST

EXHIBIT  
 A

W. A. Drew Edmondson  
 Attorney General of Oklahoma  
 Scott D. Boughton  
 Assistant Attorney General  
 Litigation Division  
 Oklahoma City, Oklahoma

For Appellant  
 The State of Oklahoma  
 ex rel. Oklahoma  
 Department of Labor

McCaffrey & Tawwater  
 By: Loren Gibson  
 Oklahoma City, Oklahoma

For Amicus Curiae  
 Oklahoma State Building  
 and Construction Trades  
 Council, Steve Skinner  
 and Jimmy Fish

HODGES, J.

This dispute concerns the constitutionality of Oklahoma's Minimum Wages on Public Works Act, Okla. Stat. tit. 40, §§ 196.1 - 196.14 (1991), also known as the Prevailing Wage Act or the Little Davis-Bacon Act. This Court holds that the Act violates article IV, section 1, and article V, section 1 of the Oklahoma Constitution. It delegates the power to determine prevailing wages to a department of the federal government without setting standards for the exercise of that determination. Other assertions of unconstitutionality need not be addressed.

The City of Oklahoma City (City) became concerned about dramatic increases in the prevailing wage between October 31, 1994, and December 30th of that year. The Oklahoma City Airport Trust filed a "Request for a Hearing, Protest and Objection to the Validity of the Prevailing Wage Rate Act, and Request to Void or Amend the Prevailing Wage Rates" with State Labor Commissioner, Brenda Reneau, asking her to review the wage determinations. In response, Reneau explained that, pursuant to the Act, the determinations were made by the United States

Department of Labor and that she had no statutory authority to investigate errors or inaccuracies in the federal determinations.

The City and four of its public trusts then filed an action in the district court seeking declaratory judgment, a permanent injunction, and a petition for review of the Labor Commissioner's decision that she had no authority to review the federal agency's wage determinations. The City moved for summary judgment raising several theories as to how the Act was void because it violated the Oklahoma Constitution. The trial court granted the motion without articulating the bases upon which the Act was constitutionally infirm.

The appeal, brought by the State of Oklahoma to this Court, is governed by the accelerated procedures found in Rule 1.203 of the Rules of Appellate Procedure in Civil Cases, Okla. Stat. tit. 12, ch. 15, app. 2 (Supp. 1994). The parties were allowed to brief the issues on appeal. In addition, the Oklahoma State Building and Construction Trades Council was allowed to file a brief as amicus curiae.

The challenged Act was promulgated in 1965. It mirrors provisions of the federal Davis-Bacon Act, 40 U.S.C. §§ 276a - 276a-5 (1994), which requires the payment of prevailing wages on federally financed construction projects. The Oklahoma Act declares the policy underlying its passage:

It is hereby declared to be the policy of the State of Oklahoma that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed shall be paid to all workmen employed by or on behalf of any public body engaged in public works exclusive of maintenance work.

Okla. Stat. tit. 40, § 196.1. Thus, the Act prohibits state and local governments from driving down the amount of workers' wages through competitive bidding.

The Act applies to the erection, construction, or improvement of any structure or building constructed for public use costing over \$600,000.00. See *id.* at §§ 196.2(7) & 196.2a. Since the Act's inception, its provisions have not applied to the Department of Transportation or the Turnpike Authority in the construction of roads. *Id.* at § 196.12.

The Act originally gave Oklahoma's Labor Commissioner complete authority to compile wage data and to determine prevailing wages. These determinations were made independently from any determination made by the United States Department of Labor. The Act required Oklahoma's Labor Commissioner to file wage determinations on July 1st of each year. Objections to those determinations were heard by the Labor Commissioner. Appeals from the commissioner's decisions were filed in district court.

In 1981, the Oklahoma Legislature amended the Act to provide that the prevailing wage, already determined by the United States Department of Labor for federally funded projects pursuant to the Davis-Bacon Act, be adopted by Oklahoma's Labor Commissioner. *Id.* at § 196.6. The Labor Commissioner can now determine a prevailing wage only when the United States Department of Labor has not determined the prevailing wage in a particular category of work or in a particular geographic area. No procedure was provided to protest or challenge a federal wage determination before Oklahoma's Labor Commissioner or in Oklahoma

courts. A 1985 amendment to the Act provides for review only of wage rates set by the Labor Commissioner for a locality for which a federal determination has not been made.

The City charges that the Act impermissibly delegates the authority to make wage determinations to a federal agency while leaving Oklahoma's Labor Commissioner with no authority to check the accuracy of these determinations. The State of Oklahoma argues that the delegation is permissible because the United States Department of Labor is merely implementing the legislative policy articulated in the Act when it makes wage determinations.

Section 1 of article IV of the Oklahoma Constitution provides:

The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.

Section 1 of article V requires that "[t]he Legislative authority of the State shall be vested in a Legislature consisting of a Senate and House of Representatives . . . ." From these constitutional provisions comes the prohibition against the delegation of legislative power.

The prohibition "rests on the premise that the legislature must not abdicate its responsibility to resolve fundamental policy making by [1] delegating that function to others or [2] by failing to provide adequate directions for the implementation of its declared policy." Democratic Party v. Estep, 652 P.2d 271, 277 n.23 (1982). The facts of this case concern the second aspect of the prohibition.

The 1965 version of the Act prescribed the manner in which Oklahoma's Labor Commissioner determined prevailing wages. It gave the Labor Commissioner the responsibility to "investigate and determine the prevailing hourly rate of wages in the localities." 1965 Okla. Sess. Laws 580. It specifically instructed the Commissioner to "consider the applicable wage rates established by collective bargaining agreements, if any, and such rates as are paid generally within the locality." *Id.* It instructed the Commissioner how to conduct hearings on objections to wage determinations. It also gave the Commissioner subpoena power and the authority to administer oaths. *Id.* at 581.

Since the 1981 amendments, however, the Act has provided no definite standards or articulated safeguards for the United States Department of Labor to follow in implementing the legislative policy declared in the Act. The current Act leaves an important determination to the unrestricted and standardless discretion of unelected bureaucrats. Worse, it delegates to an administrative arm of the federal government. As a result, the federal agency which actually determines the prevailing wage is less answerable to the will of the people of Oklahoma than is the Labor Commissioner who holds elected office. It leaves public entities with no Oklahoma forum in which to challenge the accuracy of the United States Department of Labor's wage determinations.

When faced with a challenge to Arkansas' prevailing wage law, the Arkansas Supreme Court declared that its Act unconstitutionally delegated legislative authority. See *Crowly v. Thornbrough*, 294 S.W.2d 62 (Ark. 1956). That court noted:

The Act fails to establish a standard or formula by which a wage scale may be formulated; but rather delegates to the

Secretary of Labor of the United States the right to fix the minimum wage scale to be paid in a particular area of this State. The State retains no control over the Secretary of Labor of the United States. Therefore, the Act violates [provisions of] our State Constitution.

*Id.* at 66. After the decision, Arkansas revised its prevailing wage law to provide that the Arkansas Department of Labor would investigate and determine prevailing wages. Ark. Code Ann. § 22-9-313. Specific guidelines are provided to that department. See *Id.*

Of the thirty-one states that currently have a prevailing wage law, only Oklahoma's version delegates authority to the United States Department of Labor as the sole method of determining the prevailing wage. Connecticut gives its Labor Commissioner the option of holding a hearing to determine the prevailing wage or adopting the federal determination. Conn. Gen. Stat. Ann. § 31-53(d). In Oregon, the Commissioner of the Bureau of Labor and Industry may use the federal wage only if local wage data are not available in a particular locality. Or. Rev. Stat. § 279.350. These limited delegations of authority to the federal government have not been challenged in either state.

In the other prevailing wage law states, the wage determination is assigned to a state official, an appointed committee, or the authority awarding the contract. Therefore, challenges to the delegation of wage determinations in those states have involved delegation to entities other than the federal government. See Annotation, *Validity of Statute, Ordinance, or Charter Provision Requiring that Workmen on Public Works be Paid the Prevailing or Current Rate of Wages*, 18 A.L.R.3d 944, 965 (1968).

Oklahoma's Act suffers from the same constitutional infirmity as did the Arkansas Act. It is not enough that the Legislature declared its policy in the Act, because no standard was established to implement the wage determinations. As this Court has noted: "No matter how laudable a piece of legislation may be in the minds of its sponsors, objective guidelines or standards should appear expressly in the Act." Estep, 652 P.2d at 277 n. 25. Otherwise, legislative authority is abdicated.

The current version of Oklahoma's Act fails to articulate the necessary guidelines or standards for determining prevailing wages. Thus, it impermissibly delegates legislative power. The trial court did not err in granting the City's motion for summary judgment.

The State of Oklahoma and amicus urge that if portions of the Act are held unconstitutional, the remaining portions of the Act are severable and should stand. Section 11a(2) of title 75 provides:

For acts enacted prior to July 1, 1989, whether or not such acts were enacted with an express provision for severability, it is the intent of the Oklahoma Legislature that the act or any portion of the act or application of the act shall be severable unless:

- a. the construction of the provisions or application of the act would be inconsistent with the manifest intent of the Legislature;
- b. the court finds the valid provisions of the act are so essentially and inseparably connected with and so dependent upon the void provisions that the court cannot presume the Legislature would have enacted the remaining valid provisions without the void ones; or
- c. the court finds the remaining valid provisions standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

The offending provision of the Prevailing Wage Act is section 196.6 which delegates the determination of prevailing wages to the United States Department of Labor. In the absence of this section, the valid sections of the Act, standing alone, are "incomplete and incapable of being exercised in accordance with the legislative intent." *Id.* at § 11a(2)(c). This is because the federal wage can no longer be used and no Oklahoma entity is authorized to make its own determination where the United States Department of Labor has already done so. That leaves a legislative intent that the prevailing wage be paid but no one authorized to make the wage determination. Therefore, the entire Act must fail. It will be for the Legislature to decide whether the Act will be reenacted in a form that delegates the authority to an agency of this state with proper guidelines to implement the prevailing wage determination.

AFFIRMED.

Concur: HODGES, LAVENDER, HARGRAVE, OPALA, WATT, JJ.

Concur in Result: WILSON, C.J., KAUGER, V.C.J., SUMMERS, J.

Concur in Part, Dissent in Part: SIMMS, J.

## Comparing the "Old" Rates with the Newer "Fraudulent" Rates — A Few Examples Prepared by the Oklahoma Department of Labor

This chart reviews wage rates for heavy water and sewer line construction in the Oklahoma City metropolitan area. It compares the federally issued Davis-Bacon wage rates issued prior to and immediately after the most recent U.S. Department of Labor survey was conducted.

Worker Classification	Old Rate (became effective 7/22/94)	New "Fraudulent" Rate (became effective 11/04/94)	Increased Cost to Taxpayers
Asphalt Paving (Laydown) Machine Operator	Wage: \$8.30 Fringes: \$0.00 = Total: \$8.30/hour Wage: \$9.10 Fringes: \$0.00 = Total: \$9.10/hour	Wage: \$15.80 Fringes: \$4.45 = Total: \$20.25/hour Wage: \$15.80 Fringes: \$4.45 = Total: \$20.25/hour	144 percent 123 percent
Bulldozer Operator	Wage: \$8.40 Fringes: \$0.00 = Total: \$8.40/hour	Wage (small crane): \$16.30 Fringes: \$4.45 = Total: \$20.75/hour Wage (big crane): \$17.55 Fringes: \$4.45 = Total: \$22.00/hour	147 percent 162 percent
Motor Grader Operator	Wage: \$9.05 Fringes: \$0.00 = Total: \$9.05/hour	Wage: \$16.30 Fringes: \$4.45 = Total: \$20.75/hour	129 percent
Scrapper Operator	Wage: \$8.60 Fringes: \$0.00 = Total: \$8.60/hour	Wage: \$15.80 Fringes: \$4.45 = Total: \$20.25/hour	135 percent
Truck Driver (Lowboy)	Wage: \$7.25 Fringes: \$0.00 = Total: \$7.25/hour	Wage: \$12.35 Fringes: \$3.70 = Total: \$16.05/hour	121 percent

EXHIBIT

B

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## CHANGES MADE TO 93-OK-008 - OKLAHOMA CITY TREATMENT PLANT

## PROJECT 001-OKL

- Data submitted by PEO local for \_\_\_\_\_ - per call to firm  
 all data correct with the exception of they did not have  
 cherry pickers, laydown machine or concrete machine
2. Data submitted by plumbers, per call to firm they did not \*  
employ plumbers (VERIFYING WITH UNION AT THIS TIME)

## PROJECT 003-LOG

1. Data submitted by plumber local, per call to firm they were \*  
only a consultant (VERIFYING WITH UNION AT THIS TIME)

## PROJECT 005-OKL

This project has been omitted as it should be in building. The structure being built was not on treatment plant site

## PROJECT 010-OKL

1. Used payroll period 10/30/92 instead of 11/6/92 as more accurate per call to firm. Also fringe benefits broken out
2. Data from \_\_\_\_\_ Data submitted by Mill- \*  
wrights local and plumbers local, per call to firm they do not  
employ millwrights or plumbers (VERIFYING WITH UNION AT THIS  
TIME)

## PROJECT 012-OKL

1. Data submitted by plumber union - per call to firm they did \*  
not employ plumbers (VERIFYING WITH UNION AT THIS TIME)

## PROJECTS 015-OKL &amp; 017-CAN

1. Data submitted by plumber local, per call to firm they did \*  
not work on these projects (VERIFYING WITH UNION AT THIS TIME)

## PROJECT 018-OKL

1. Data submitted by PEO local, per call to firm they did not \*  
work on project (VERIFYING WITH UNION AT THIS TIME)

## PROJECT 019-OKL

This project has been omitted as it should be in water & sewer

## CHANGES MADE TO 93-OK-002 - OKLAHOMA CITY - HEAVY

## PROJECT 006-OK

Project omitted as building construction

## PROJECT 030-OK

Data for \_\_\_\_\_ not used as per call to contractor, they  
 did not work on this project (VERIFYING WITH UNION AT THIS TIME)

## PROJECT 031-OK

Data for \_\_\_\_\_ not used as per call to contractor, they  
 did not work on this project (VERIFYING WITH UNION AT THIS TIME)

## PROJECT 048-P

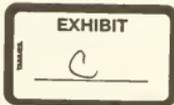
Per clarification this is a building project

## PROJECT 052-OK

1. project has been omitted as per clarification call it is  
 building

## PROJECT 054-OK

Data for \_\_\_\_\_ not used as per call to contractor, they  
 did not work on this project (VERIFYING WITH UNION AT THIS TIME)



U.S. Department of Labor

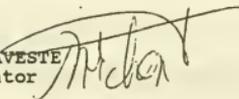
Employment Standards Administration  
Wage and Hour Division  
Washington, D. C. 20210

June 2, 1995

Memorandum No. 95-22

MEMORANDUM FOR WAGE AND HOUR REGIONAL ADMINISTRATORS

FROM:

MARIA ECHAVESTE  
Administrator 

SUBJECT:

Verification of Data in Davis-Bacon Wage Surveys

Incorrect information submitted by third parties has been found in several surveys. Therefore, strategies to deal with the verification of data submitted by other than some one in actual possession of project payrolls are being considered. Suggestions about verification procedures from the Regional Office survey staff will be welcome and we are also consulting with the various interest groups in this regard. In the meantime, however, the importance of at least verifying by telephone some sample of any data presented without the signature of an official of the employing firm is of the utmost importance.

*Working for America's Workforce*

EXHIBIT

D

**STATEMENT OF JIM MARSHALL, CHIEF OF STAFF, OKLAHOMA  
DEPARTMENT OF LABOR**

Mr. MARSHALL. Mr. Chairman, I am going to keep my statement very short.

We are going to present to you in our slide presentation facts, documents that are of a public nature in some cases. And what we would like to do with regard to the slide presentation is to walk you through what we have done here in Oklahoma to expose what we believe to be fraud against the taxpayers in Oklahoma and taxpayers in America.

The Reneau administration stands firmly committed to protecting working men and women from the abuses of fraud perpetrated upon the people of Oklahoma and United States by self-serving special interests.

And with that, I would defer to the Deputy Commissioner.

Chairman BALLENGER. Commissioner Lester.

[The prepared statement of Mr. Marshall follows:]

**STATEMENT OF JIM MARSHALL, CHIEF OF STAFF, STATE OF OKLAHOMA DEPARTMENT  
OF LABOR**

Chairman Ballenger, Chairman Hoekstra, Members of the Committee, members of the Oklahoma delegation and other guests. My name is Jim Marshall and I am Chief of Staff of the Oklahoma Department of Labor. I conducted the field investigation, along with Deputy Commissioner Jeff Lester, of the Federal Davis-Bacon wage survey process at the request of Commissioner Reneau.

Commissioner Reneau, Jeff Lester and I will present documented examples of bogus survey data submitted to the Federal Government during the Federal Davis-Bacon wage survey process—bogus information submitted by individuals who had no direct knowledge of the projects for which they submitted data.

Commissioner Reneau, Jeff Lester and I will present U.S. Department of Labor documents which confirm phantom projects and ghost workers were the basis of actual wage rates issued by the Federal Government. We will show you U.S. Department of Labor findings which confirm that bogus data was submitted by officials from within the hierarchy of organized labor.

We will show you examples from a growing pool of evidence—evidence that illustrates the depth of this serious problem and showcases the U.S. Department of Labor's apparent mismanagement of the wage survey process.

The Reneau administration stands firmly committed to protecting working men and women from the abuses of fraud perpetrated by self-serving special interest.

**STATEMENT OF JEFF LESTER, DEPUTY COMMISSIONER,  
OKLAHOMA DEPARTMENT OF LABOR**

Mr. LESTER. Thank you.

Chairmen Ballenger and Hoekstra, Members of the committee, members of the Oklahoma delegation and other guests, thank you for taking time today to learn about a great injustice forced upon the hard-working citizens and taxpayers of Oklahoma. I am Jeff Lester, Deputy Commissioner of Labor for the State of Oklahoma. I was lead investigator in the Oklahoma Department of Labor investigation into the Federal Davis-Bacon wage survey process.

Today, I will show you documented examples of bogus survey data submitted to the Federal Government during the Federal Davis-Bacon wage survey process—bogus information submitted by individuals who apparently had no direct knowledge of the projects for which they submitted data.

I will show you U.S. Department of Labor documents which confirm that phantom projects and ghost workers were the basis of ac-

tual wage rates issued by the Federal Government. I will show you U.S. Department of Labor findings which confirm that bogus data was submitted by officials from within the hierarchy of organized labor.

I will show you examples from a growing pool of evidence—evidence that illustrates the depth of this serious problem and showcases the U.S. Department of Labor's apparent mismanagement of the survey process.

Sadly, I will show you that the Federal Government knew about the poor quality of data prior to the time that the fraudulently inflated wage rates were forced upon the taxpayers of Oklahoma. And finally, I will show you the actual financial impact on Oklahoma's taxpayers—a documented impact of up to 30 percent of the total cost of construction on a multi-million dollar project.

In the interest of time, I encourage you to ask questions at the conclusion of the presentation. Experience tells me I will answer most of your questions as we move through the display.

Mr. MARSHALL. Mr. Chairman, since the microphones are located at this table, if we could have a few minutes to allow the media to transport the microphones.

Chairman BALLENGER. Yes, go ahead.

[Pause.]

Mr. LESTER. Congressman, the first slide I am going to show you is actually a slide that we borrowed from your committee. This is a representation of the 12-step process used by the U.S. Department of Labor to determine Federal wage rates. To begin, I want to walk you through the first six steps carefully.

The regional office for us is in Dallas, Texas. They conduct the survey. They plan an annual survey activity and the regional administrator told us with these words, "The squeaky wheel gets the grease." So that means that not all regions get surveyed in a timely fashion. In fact, some Federal Government documents indicate that the average wage survey occurs every seven years.

The regional office obtains an active project file. This is construction that has occurred or may occur in an area. They use that as a basis for mailing lists. From that, they determine specific projects to be surveyed. They announce an annual survey by direct mail and through the media, then they conduct that survey using the WD-10 wage determination form, which is the survey instrument.

That survey instrument, as you can see, is one side of one 8½ by 11 page, something similar to the IRS 1040-EZ form. Basic questions such as the name of the contractor who performed the work, a description and address for the project. Among other things, a list of the types of construction workers used, whether or not they were paid according to a union contract. And then at the bottom of the form, the signature of the individual who submitted the data. This has been a particular bone of contention between us and Secretary Reich, who has made public a number of these documents in his own verification process. However, he maintains to us that the statistical information on the forms is apparently a public record, but the signature of those who submitted the information is protected by the Federal Trade Secret Act. We obviously do not buy that argument.

I will turn now to the 12-step process. Once the survey instrument has been distributed and collected, they conduct a follow-up, which in their words to us means if, based on steps 8, 9 and 10, if they feel that there are open spots on the survey, blanks that were not filled in, if they cannot read the handwriting, if they cannot interpret the information, they call the individual who submitted it. Of course, that may or may not, according to our findings, be someone who knew anything about the actual project. Then through these steps they determine the adequacy of the data. Can they read it, can they understand it well enough to type it into their computer data base.

If so, based on those wage summary sheets, they compute the Federal prevailing wage rates and transmit them to the public for use to pay for public construction projects.

Mr. MARSHALL. Mr. Chairman, what is absent is a block 13. Block 13 should be a verification process of the data.

Mr. LESTER. Nowhere in this 12-step process, as Mr. Marshall pointed out—and in fact, in our direct communications with the regional office in Dallas, they told us directly and specifically there has never, historically, been any practice or attempt to verify the accuracy or the authenticity of any of the information submitted.

Now I would like to move into some actual evidence. First, I want to point to the fax indicia at the very top of this page. This was faxed on May 9 of 1995 from a 202 area code, which indicates that it came from the U.S. Department of Labor Wage and Hour Division in Washington, DC. It was faxed to a local contractor, the Concho Company. And in a telephone conversation, they asked the Concho Company to confirm or to verify the accuracy of this information. It indicates that the Concho Company worked on a high lift pump station at Oklahoma City's Lake Hefner Water Treatment Plant. It indicates that 16 specific categories of workers worked on the project, were paid according to a union collective bargaining agreement, and you can see listed out on the right-hand side, the wage rates and the fringe benefits.

This document was date-stamped in at the U.S. Department of Labor March 18 of 1993. That is a critical fact for you to remember, and we will come back to this slide.

The Concho Company, citing two of these forms that they were faxed, Lake Hefner Treatment Plant high lift and Lake Treatment Plant chemical building—they told us in late May, "The above-referenced attached jobs were not projects awarded to the Concho Company." In other words, they did not work on those projects.

We wanted to find out more about the nature of their dialogue with the U.S. Department of Labor. The bottom line is a Concho Company employee told us the U.S. Department of Labor refused to tell that company who signed the information and falsely attributed it to their company.

We wanted to make sure that we were not misunderstanding anything about the nature of the facts, so we went to the City of Oklahoma City and asked whether the Concho Company had done any work at Lake Hefner at the treatment plant. And the city indicated to us that sure, Concho is a contractor who does a lot of work for the city, and although the project in and around that time was not at the high lift, it was actually at some site grading at a loca-

tion adjacent to the Lake Hefner water treatment plant, as it indicates in the upper left-hand portion of this exhibit. The city engineer told us this was not to be confused with the high lift pump station.

We asked the city who actually constructed the high lift pump station. You can see in this letter from the city's engineering manager with regard to that facility that Flintco, another local contractor, constructed it. Further, the city says their records indicate that Concho was not used, even as a subcontractor on the project. They also indicated that they do not know of any other high lift pump stations that were constructed in and around that time.

We asked the city to tell us more about the high lift pump station, the project that was apparently falsely reported on that form. So they gave us a copy of the letter that they sent to Flintco, the real contractor, to initiate the work. Note that the letter is dated May 14 of 1993. Attached was a copy of the contract. The contract, signed by the city on this \$27 million treatment plant, or rather high lift pump station, was signed April 6 of 1993; the contract was signed to initiate that project.

The apparently false wage form indicates that Concho did the work in July of 1992. Here's the peak week of activity for these employees. And you will note that again, it was date-stamped in at the U.S. Department of Labor, March 18 of 1993, nearly a month before the contract was even signed.

We knew at this point that there was something to this alleged problem. I indicated to you that Concho had received another fax. This one is regarding a chemical building at the Lake Hefner water treatment plant. You can see again, it is from the same address in Washington, DC, USDOL Wage and Hour. Chemical building—interestingly, the same exact categories of workers, paid exactly the same wage rates, and as the city indicated to us in this correspondence in June, no chemical building was constructed at the Lake Hefner water treatment plant. And in fact, Congressman, you can drive to the Lake Hefner water treatment plant today where this alleged chemical building might have been built, you will find snow and dirt and grass and barbed wire.

Mr. MARSHALL. Mr. Chairman, also if you will note in these particular slides the handwriting, the similarities, and the fact that the name of the contractor was typed out rather than written out in longhand.

Mr. LESTER. Yet all the other information of course was written in by hand.

Now I want to show you an example of another bogus project. This one actually verifiably resulted in Federal wage rates. This is a U.S. Department of Labor general wage decision. You can see the number up here, General Decision 950033. It is for heavy construction for the six counties in the Oklahoma City metropolitan area. This is for heavy construction that does not include water and sewer lines or treatment plant projects.

On page 2 of that wage decision, you see a category for plumbers and pipefitters, the wage rate being \$17 per hour, the fringe benefits being \$4.05 per hour for a total compensation of \$21.05.

Through the Freedom of Information Act, we received from the U.S. Department of Labor their Federal document. This is a sum-

mary sheet, the top half of one of the summary sheets that lists all of the wages and how they were determined. You can see the two categories here of plumber and pipefitter, the two that were listed on that form; \$17 and \$4.05, which is consistent. And out to the right we find out how did the U.S. Department of Labor arrive at that specific wage rate. As we have been told by the regional administrator, by the folks at USDOL, all it takes from the accumulation of all the forms submitted in a survey is a total accumulated amount of six employees listed under any specific job classification in order to have the minimum threshold to establish a prevailing wage rate. This means, based on the two methods for establishing it, either a weighted average or by majority, that a simple majority of four workers making the same wage rate is the minimum threshold required to establish Federal prevailing wage rates for an entire area.

In this instance, we see that like most of the work categories here, the rates were not an average, but were arrived at through the majority rule, which is the first rule of thumb in the Federal process. In the case of the plumbers, they say that of the 14 total plumbers identified on all the forms, 12 of them were making exactly the same wage and fringe benefit package. In the case of pipefitters, 10 of 12 making exactly the same wage and fringe benefit package, that being the basis.

We looked further to find out where those 10 pipefitters and 12 plumbers were located. And in fact, we found the majority, all 10 pipefitters and 10 of the 12 majority plumbers on one project, an underground storage tank in Mustang, Oklahoma.

Through numerous and exhaustive investigation, we are certain there is no \$2 million underground storage tank in Mustang, Oklahoma. Therefore, these specific employees identified on this project, ghost employees on a phantom project, prevailed. This indicates to us that there is no accountability and no integrity in the U.S. Department of Labor wage survey process.

Further, the U.S. Department of Labor, in one of its own documents in attempting to verify our findings, verified that on that project, data was from the plumbers' union and per their call to the contractor, the contractor said they did not do the work. Folks, that is pretty much in black and white. This is the U.S. Department of Labor's own words, their own finding from their own document. As a result of this and other evidence, they withdrew that entire wage decision at the end of May.

Mr. MARSHALL. Mr. Chairman, had the Oklahoma Department of Labor not stepped in with its investigation, those wage rates that had been established would be in existence today and the citizens of Oklahoma would be paying that inflated amount based upon the submission of false information.

Mr. LESTER. Let me show you now some more documents from the U.S. Department of Labor, a few wage summary sheets with the U.S. Department of Labor's own confirmed findings after they began their own investigation.

Here, we have a Lake Hefner golf course, \$28 million project. USDOL confirmed per call to the contractor, the contractor did not work on this project.

Water wells at Tinker Air Force Base, a Federal military facility. The information came directly from Operating Engineers local union, per call to the contractor, the contractor did not work on this project.

Sanitary sewer project in Oklahoma City, data submitted as union scale, listed contractor is not a union contractor. Data omitted after review.

Wastewater treatment plant, Langston, Oklahoma. Data submitted by plumbers' and pipefitters' union. Per call to the contractor, the contractor was only a consultant and did not use plumbers.

Lake Overholser treatment plant. Data submitted by plumbers' and pipefitters' local union. Per call to the contractor, they did not employ plumbers.

Wastewater treatment plant El Reno. Data submitted by plumbers. Per call to the contractor—did not work on this project.

This goes on and on and on. And if you were to look at all of the U.S. Department of Labor's verifications and not just take their word for it, I think you would probably find many, many, many more examples of this same confirmed finding from the Federal Government.

We of course became interested in who might benefit in this. Obviously the innocent workers working to make a living to put food on their tables, they would obviously be an unknowing beneficiary of this. We also found evidence that there might be others who would benefit.

We looked at several collective bargaining agreements. In this particular instance, which comes from the plumbers' and pipefitters' local union, there is a specific portion of their contract, money to be withheld from employees' gross wages, a working assessment checkoff, which is a percentage of the gross wages—not a dollar amount, not so many cents per hour to go to a benefit, but a percentage. The obvious conclusion is that if you double the wage rate, you double the amount collected, based on a percentage. I want it to be very clear today that because I am using this particular contract as an example, I am not accusing this specific union hall of any wrongdoing, I am simply using this as an illustration of what we have found as other possible beneficiaries, beyond the obvious.

Once we concluded our initial investigation into the heavy construction survey, we became concerned that the building construction survey, a much larger survey instrument, might be even more ripe for this type abuse because it covers a much wider category of employee classifications and amounts to a much more significant appropriation of tax dollars.

With the cooperation of a couple of local contractors, we received copies of many more faxes that were sent from the U.S. Department of Labor in Washington to local contractors in an apparent attempt to confirm the accuracy of that wage data. This form shows Connelly Paving Company worked on the Internal Revenue Service office building in Oklahoma City, ostensibly to pave a parking lot. You will notice on this form it indicates that among other things, there were seven asphalt laydown machine operators, seven roller finishers, seven backend men who would work in conjunction with that equipment. The wage rate here for asphalt laydown ma-

chine is \$14.65 per hour, that is what is listed. Mr. Connelly indicated to us that that seemed awfully high. You will note that it is paid according to a union contract, according to whoever submitted this form, and it was also submitted in December of 1992.

Mr. MARSHALL. Mr. Chairman, if you would note again, number 7; and the importance is that number would establish that classification with regards to an asphalt laydown machine operator, a roller finisher, as well as the backend men. So if only this form itself was submitted and received by the U.S. Department of Labor, those three classifications would be enough to establish a prevailing wage rate.

Mr. LESTER. Because in a prevailing wage project, the workers would be paid the higher of two rates, they would either be paid the higher of the union rate, as indicated here, or the federally mandated rate, whichever is higher. We wanted to know what was the prevailing wage rate required by the government at that time. We found out that in the case of the asphalt laydown machine operator, the rate was \$8 per hour with no fringe benefits, versus \$14.65 per hour plus \$3.73 per hour in fringe benefits—\$8.

So we assumed that the union contract must call for \$14.65 per hour. We received a copy of that collective bargaining agreement. We went to the page with the wage rates, found the asphalt laydown machine operator—lo and behold, \$10.50 per hour. Then we became concerned about the fringe benefits listed. You will note that of that \$3.73 that is listed, \$2.30 was earmarked for health and welfare, \$1.25 per hour to the pension fund. Again, we looked at the union contract and we found \$1.80 per hour for health and welfare, 25 cents per hour for pension. If the union actually collected \$1.25 per hour for pension, we would like to know what they did with that extra dollar.

Now I want to talk to you about another pattern that became very obvious—the handwriting. And I will preface this by saying I am not a handwriting expert. The Federal Government has access to those through the Justice Department and other areas and I think you may be encouraged to look into this. Lake Hefner water treatment plant high lift, Lake Hefner water treatment plant chemical building—again, we know those are not accurate. Internal Revenue Service office building—and by the way, they indicated seven asphalt laydown machine operators, the parking lot had spaces for 30 automobiles and it is a concrete parking lot. There is no asphalt. We continued to compare the handwriting—Oklahoma County, Oklahoma County. Here is one for a Circuit City Superstore at Penn Square. Penn Square is a mall located on Pennsylvania Avenue in Oklahoma City. You will note that it again is a union contract that claims Connelly Paving used, among other things, seven asphalt laydown machines to pave the parking lot. There is no Circuit City store at Penn Square Mall. There is a Circuit City store two miles away on Northwest Expressway at the corner of Northwest Expressway and Portland, for those of you who are local. However, if the person who signed this form had actual knowledge of the job, actual knowledge to the point that they could accurately report who worked, when they worked and what they were paid, it would only seem reasonable that they would know whether or not the thing was built at Penn Square Mall or in fact

was built two miles away on Northwest Expressway. And by the way, you may notice that this one came through the USDOL fax machine with a signature. Assuming that this is an authentic signature, the individual whose name appears here is an official with the Operating Engineers Union, Local 627, in Oklahoma City.

All in all, Mr. Connelly provided us with nearly 40 forms that had bad information, 40 forms falsely attributed to him. He is the victim in this. Altogether on those forms, they indicated he worked on 21 projects just during the month of June, 1992. And during the course of that time used a cumulative 658 union employees. In reality, Mr. Connelly used seven union employees. And to confirm that to us, he provided us with a copy of his employer monthly remittance report which he turned in for the month of June, 1992, turned in to his union, the Operating Engineers, Local 627. You will note here that we have blocked out the name and social security numbers. But of those seven employees, none of them worked more than a 50 or 60 hour week. Hard to imagine that they could have spread themselves out and done the work of nearly 700 people on 21 projects.

To add to that, we will show you another example from the stack provided by Mr. Connelly. University of Oklahoma football stadium. This facility obviously has not moved to a new location two miles from its original point. This claims a \$20 million stadium renovation project. University officials in both their architectural and engineering services office that handled their bids and in the athletic department confirmed to me that during the summer of 1991, the summer of 1992 and the summer of 1993, there was no major construction of any sort at the football stadium.

This one claims the use of seven asphalt laydown machines. All the parking lots around the football stadium are concrete that was poured in the mid-1980s.

This is a U.S. Department of Labor wage summary report on that project, which indicates that the U.S. Department of Labor identified the project, accepted the data and calculated it into the Federal wage rates.

Mr. MARSHALL. Mr. Chairman, there is more than one victim. The taxpayers of Oklahoma, they have been victimized by this process; Mr. Connelly has been victimized by this process, and the good name of Connelly has been victimized by this process.

Mr. LESTER. Now I want to show you the really sad part of all this, sad because we believe it is information that indicates this could have all been prevented. Here is a June 2, 1995 memo from Maria Echaveste, the Administrator of the Federal Wage and Hour Division in Washington, DC. I want to point to the first couple of sentences. "Incorrect information submitted by third parties has been found in several surveys. Therefore, strategies to deal with the verification of data submitted by other than someone in actual possession of project payrolls is being considered." Congressmen, it is about time.

Mr. HOEKSTRA. I have got a question. Is that in reference only to Oklahoma surveys or is that a broad statement on what they found around the country?

Mr. LESTER. We are unclear, I really do not know. And that is a question I would beg you folks to ask Ms. Echaveste.

What is really troubling about this is the General Accounting Office information that was presented to Congress in February of 1994, on page 6 of that report, a discussion of data quality, which says the U.S. Department of Labor does not perform a response bias analysis to determine whether there are a disproportionate number of responses from certain types of employers, such as employers with a unionized work force, or data from much larger employers. The response bias analysis, we are told, would prevent a single local contractor of substantial size or a single local union hall of substantial size from being able to dominate the process. Additionally, they say that without the response bias it could result in survey results that differ significantly from the actual wage prevailing in the area. Again, this is a Federal General Accounting Office document. It goes on to say the U.S. Department of Labor does not verify the accuracy of the data received. We think that has become painfully apparent.

And now I would like to discuss with you on my final couple of slides, how bad is this; specifically, how bad is this for Oklahoma's taxpayers.

I am pointing here to an October 26 article which appeared in the "Tulsa World" in the subhead, it is talking about the construction of a major treatment plant in Tulsa and it says, "The bids are about \$10 million under the city's cost estimate. The death of the State prevailing wage law may be the cause." There is a line in here that says the savings may actually eliminate the need for future utility rate increases in Tulsa. It indicates that the city's engineers had estimated the project prior to the overturning of the State Davis-Bacon law, they had estimated the cost at \$40.2 million. The bids went out shortly after the State's little Davis-Bacon Act was thrown out. Based on free market rates, the bids came in ranging from \$28.8 million to \$31.1 million, which would seem to indicate that based on Davis-Bacon, the original estimates were inflated by approximately 30 percent, or \$10 million on what otherwise would have been a \$30 million project.

You might ask yourself how could wage rates have that much of an effect on a single project. The evidence is clear, in a side-by-side comparison comparing the wage rates for heavy construction not including water, sewer or treatment plants—heavy construction in Oklahoma City, rates in effect in July of 1994 versus the new inflated rates which were issued in November of 1994. An asphalt laydown machine operator went from \$8.30 per hour to \$20.25 per hour, an increase of 144 percent. And as you can see, of the several examples we included, they range up to 162 percent on a particular category of crane operator.

It is very clear that this has negatively impacted the taxpayers of Oklahoma, all of whom contribute to the cost of public construction projects, and most of whom are the work force that makes the wheels of Oklahoma's economy turn every day.

With that, I conclude my slide presentation and of course the three of us would all entertain your questions.

[The prepared statement of Mr. Lester follows:]

## Testimony of: Jeff Lester

Chairmen Ballenger and Hoekstra, members of the Committee, members of the Oklahoma delegation and other guests ... thank you for taking time to learn about a great injustice forced upon the hard-working citizens and taxpayers of Oklahoma. I am Jeff Lester, deputy commissioner of labor for the state of Oklahoma. I was lead investigator in the Oklahoma Department of Labor investigation into the federal Davis-Bacon wage survey process.

Today, I will show you documented examples of bogus survey data submitted to the federal government during the federal Davis-Bacon wage survey process — bogus information submitted by individuals who apparently had no direct knowledge of the projects for which they submitted data.

I will show you U.S. Department of Labor documents which confirm that phantom projects and ghost workers were the basis of actual wage rates issued by the federal government. I will show you U.S. Department of Labor findings which confirm that bogus data was submitted by officials from within the hierarchy of organized labor.

I will show you examples from a growing pool of evidence — evidence that illustrates the depth of this serious problem and showcases the U.S. Department of Labor's apparent mismanagement of the wage survey process.

Sadly, I will show you that the federal government knew about the poor quality of data prior to the time that the fraudulently inflated wage rates were forced upon the taxpayers of Oklahoma. And finally, I will show you the actual financial impact on Oklahoma's taxpayers — a documented impact of up to 30 percent of the total cost of construction on a multi-million dollar project.

In the interest of time, I encourage you to ask questions at the conclusion of this presentation. Experience tells me I will answer most of your questions as I discuss the exhibits.

Outline of the overhead transparency presentation by Jeff Lester

- The survey process — a quick overview of the survey instrument and data collection methodology.
- Bogus information example #1 — contractor didn't work on project.
- Bogus information example #2 — project was never constructed.
- Bogus information example #3 — project was never constructed, yet this single bogus project, by itself, established federally mandated wage rates for two classifications of workers.
- Bogus information, additional examples — multiple examples of "inaccurate" data discovered by the U.S. Department of Labor.
- Who benefits from inflated wage data?
- Bogus information, additional examples — more examples including inflated wage rates, numerous workers who were never employed, equipment that was never used, work that never occurred — all of this falsely attributed to a local contractor.
- Federal documents illustrating that the federal government knew about poor data quality prior to issuing inflated wage rates in Oklahoma.
- What is the cost to Oklahoma's taxpayers?



Report of Construction Contractor's  
Wage Rates

93-OK-008

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

16494



Note: This form is used by the U.S. Department of Labor to determine the hourly prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to assist voluntarily in submission of wage data. Requirements may vary on various forms if the information requested is essential. The identity of the respondent will be held in confidence.

OMB No. 12180048  
Expire: 07/31/90

Please see instructions on complete table:

1. Contractor Name, Address, Telephone  
 Concho, Inc.  
 P.O. Box 12508  
 Oklahoma City, OK 73157

12

2. Project Name, Description, and Location (Include County)  
 LAKE HEFNER WATER TRMT PLANT  
 High LIFT (P) OKIA City, OK. D07-OK

OKLAHOMA COUNTY

3. Contract Type  
 General/Prime  
 Sub

4. Approximate Value of Project  
 Paper \$ 5 million  
 Subcontract \$ \_\_\_\_\_

5. Bidding Date  
 6-1-92

6. Comparison Date  
 (Use Going As of M. 10-1-90)  
 Estimated  Actual

7. Type of Construction  
 Building  Highway  
 Heavy  Marine

8. Project to Subject to:  
 Federal (Davis-Bacon) Wage Determination  
 State Wage Determination  Other

9. Classification of employees (i.e., Carpenters, Electricians, Laborers, etc.)	10. Is Contractor Party to a Collective Bargaining Agreement (Under which employees were paid)?		11. Standard Working Date for Past Year	12. Peak Number of Employees	13. Basic Hourly Rate	14. Wage Benefits (As % of Percentage of Basic Hourly Rate or Other Amount)			
	Yes	No				Health and Welfare	Pension	Vacation and Sickness	App. Training
Side Boom Crane	X		7-20-92	2	15.15	2.50	1.25		18%
Heavy Duty Mechanic	X		7-20-92	2	15.15	2.50	1.25		18%
Dozer	X		7-20-92	2	14.65	2.50	1.25		18%
Cherry Picker	X		7-20-92	2	15.15	2.50	1.25		18%
Motor Patrol (Blade)	X		7-20-92	2	15.15	2.50	1.25		18%
Dozer	X		7-20-92	2	14.65	2.50	1.25		18%
Scraper	X		7-20-92	2	14.65	2.50	1.25		18%
Backhoe over 3/4T	X		7-20-92	2	13.15	2.50	1.25		18%
Loader	X		7-20-92	2	14.65	2.50	1.25		18%
Fork Lift	X		7-20-92	2	14.65	2.50	1.25		18%
Backhoe under 3/4T	X		7-20-92	2	14.65	2.50	1.25		18%
Water Wagon	X		7-20-92	2	14.65	2.50	1.25		18%
Bob Cat	X		7-20-92	1	12.40	2.50	1.25		18%
Operator	X		7-20-92	1	14.00	2.50	1.25		18%
Operator	X		7-20-92	1	14.00	2.50	1.25		18%

15. Remarks

Effective June 1, 1993 an increase of 50¢ to Health and Welfare, increase to Supplemental Dues and 25¢ increase to wages.

EXHIBIT  
2

MAY 18 1993



CONCHO CO.  
EXCAVATION — GRADING  
UTILITIES — DEMOLITION

May 26, 1995

Oklahoma Labor Department  
4001 North Lincoln Boulevard  
Oklahoma City, OK 73105-5212

Attn: Mr. Jim Marshall

RE: Lake Refiner Treatment Plant - High Lift  
Lake Refiner Treatment Plant - Chemical  
Building

Gentlemen:

The above referenced/attached jobs were not projects awarded The Concho Company.

Sincerely,

The Concho Company

*H. Seth Wood*

H. Seth Wood

ESW:mm

Enclosures



CONCHO CO.  
 EXCAVATION — GRADING  
 UTILITIES — DEMOLITION

June 21, 1995

Dear Mr. Lester,

May 9, 1995, Pam Lee from US Department of Labor called asking questions re: Lake Meffner Treatment Plant.

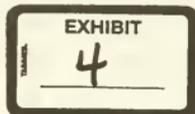
We could not follow her questions regarding the job. She said she would fax us copies that would allow us to see what she was talking about. After receiving the enclosed fax we knew these were not our jobs.

I immediately called Ms. Lee and told her it was important that we know who filled out the bogus forms and signed for our Company. Ms. Lee said because of the privacy act she could not tell us.

The Department of Labor refused to tell us who signed the WD10S

Sincerely,

*Dorothy Hawkins*  
 Dorothy Hawkins  
 The Concho Co.



CLAIM VOUCHER NO. 8 (FINAL)

# City of Oklahoma City

ARCHITECTURAL, ENGINEERING, PLANNING OR CONSTRUCTION

## CLAIM VOUCHER

VENDOR (Name, Address, City and State)  
 The Concho Company  
 P. O. Box 12508  
 Oklahoma City, OK 73157

VENDOR NO

CONTRACT PRICE \$ \_\_\_\_\_

NET CHANGES \_\_\_\_\_

TOTAL PRICE \$ \_\_\_\_\_

PURCHASE ORDER NO. \_\_\_\_\_ DATE 1/6/93

DELIVER TO THE ABOVE

DESCRIPTION	CITY ACCOUNT NUMBER	QUAN.	UNIT COST	TOTAL AMOUNT	VENDOR ADJUSTMENT
Hefner Water Treatment Plant MC-0149 Estimate No. 8 (FINAL)					
Total Work Complete Less Previous Payments				\$2,230,613.51 1,998,803.52	
AMOUNT DUE				\$ 231,809.98	

The undersigned (claimant, architect, contractor, supplier, engineer or supervisory official), of lawful age being first duly sworn, on oath says that this invoice claim, or contract) is true and correct. Admittance further states that the items, services, or materials) as shown by this invoice or claim have been (completed or supplied) in accordance with the plans, specifications, orders or requests furnished to this official. Admittance further states that neither the claimant nor any other person has received any payment from the City of Oklahoma City of money or any other thing of value in connection with the award of this contract.

*James E. Powell*

Subscribed and sworn to before me this 6th day of January 1993  
 My Commission Expires 10-10-95

*Deborah Hawkins*  
 Notary Public

\*An additional check must be completed and attached by contractor, engineer or supervisory official.

FOR PAYMENT: Claim must be signed, notarized and invoice attached.

Send to  
 City Engineers Office  
 5th Floor  
 3300 N. Walker  
 Okla. City, Okla 78102

APPROVED FOR PAYMENT BY CITY MANAGER AND CITY COUNCIL ON \_\_\_\_\_

BUDGET ACCOUNT	AMOUNT	CR

APPROVALS  
 DEPT OR PROJECT ENGINEER \_\_\_\_\_

CITY ENGINEER \_\_\_\_\_

CITY AUDITOR/TRUST REPRESENTATIVE \_\_\_\_\_

EXHIBIT  
5

Claim amount has been completed in accordance with the attached purchase order. If your claim is for a total amount in excess of \$10,000, please complete the claim amount \$) in full in the column labeled Vendor Adjustment and total to a new \$ \_\_\_\_\_

ESTIMATE ESTIMATE  
 PIPE INSTALL & PILING LOCATED  
 SUBJECT TO LINE REVISIONS  
 MAIN WASTEWATER PLANT

ESTIMATE NO. 8

PROJECT NO. WC-4948

RELAYING CITY, MISSOURI

DATE: 11-28-57

DR. 12-31-58

ONE CORNER GARHWAY  
 2015 NORTH WASHINGTON  
 RELAYING CITY, MO 63127

SHEET 1 OF 3

ITEM NO. ITEM QTY UNIT ESTIMATE UNIT PRICE CONTRACT UNIT PRICE

1. SHEET 7 - GENERAL AND INSTALLATION

A. GENERALTYN BRICK, 8"X8" (PERMANENT)	S.F.	1	0.00	1.00	1.00	6,200.00	6,200.00	6000	
B. BRICK CONCRETEWORK	S.F.	21,600	0.00	0.00	0.00	2.00	43,200.00	6000	
C. CONCRETEWORK	S.F.	1,048,200	17.38	00	18,000.00	07,000.00	8,000	187,000.00	6000
D. BRICKWORK WALL	S.F.	3	0.00	1.00	1.00	200,000.00	600,000.00	6000	
<b>TOTAL GENERAL AND INSTALLATION</b>							<b>501,400.00</b>		

2. SHEET 8 - WASTEWATER SEWER LINE 2A

A. 4" CONCRETE SEWER	S.F.	100	0.00	100.00	100.00	60.00	6,000.00	6000
B. BRICK CONCRETEWORK	S.F.	3,300	3.00	9,900.00	500.00	60.00	2,580.00	6000
C. BRICKWORK CONCRETEWORK	S.F.	3	0.00	3.00	3.00	600.00	1,800.00	6000
D. BRICKWORK RISE PIPE AND COVER	S.F.	3	0.00	3.00	3.00	600.00	1,800.00	6000
E. BRICKWORK RISE PIPE	S.F.	30	10.17	305.10	60.00	60.00	1,851.00	6000
F. PIPE BEDDING APPROXIAL	TON	204	54.00	11,016.00	60.00	12.00	2,448.00	6000
<b>TOTAL WASTEWATER SEWER LINE 2A</b>							<b>22,113.40</b>	

3. SHEET 9 - SANITARY SEWER RELOCATION LINE 2B

A. 10" SANITARY SEWER	S.F.	477	0.00	477.00	461.42	41.00	21,178.21	6000
B. BRICK BACKFILL	TON	33	133.00	4,389.00	0.00	5.00	1,650.00	6000
C. BRICKWORK FRAME COVER, 6"X6"	S.F.	3	0.00	3.00	0.00	400.00	1,200.00	6000
D. BRICKWORK RISE PIPE	S.F.	45	18.94	850.30	60.00	60.00	2,730.00	6000
E. 12" BRICK CONNECTION	S.F.	10	0.15	1.50	0.10	160.00	1,700.00	6000
F. BRICKWORK EXISTING WASTEWATER	S.F.	1	0.00	1.00	1.00	100.00	100.00	6000
G. PIPE BEDDING APPROXIAL	TON	165	61.04	10,071.60	100.00	13.00	2,145.00	6000
<b>TOTAL SANITARY SEWER RELOCATION LINE 2B</b>							<b>27,961.61</b>	

4. SHEET 10 - GENERAL AND INSTALLATION LINE 2C

A. 12" CLEARWELL BRICK	S.F.	212	0.00	212.00	211.63	15.00	3,181.00	6000
B. BRICKWORK FRAME COVER, 6"X6"	S.F.	3	0.00	3.00	0.00	400.00	1,200.00	6000
C. BRICKWORK RISE PIPE	S.F.	34	13.95	474.30	60.00	60.00	2,034.00	6000
D. BRICKWORK EXISTING WASTEWATER	S.F.	1	0.00	1.00	0.00	100.00	100.00	6000
E. PIPE BEDDING APPROXIAL	TON	144	17.13	2,466.72	60.00	13.00	1,872.00	6000
<b>TOTAL CLEARWELL BRICK RELOCATION LINE 2C</b>							<b>66,308.34</b>	

7. SHEET 11 - LINE 2D (SILVER BRICK)

A. 12" SILVER BRICK	S.F.	1,200	0.00	1,200.00	1,204.24	2,264.14	30.00	25,283.00	6000
B. 30" BRICK W.C. AND COVER	S.F.	3	0.00	3.00	2.00	600.00	1,800.00	6000	
C. SILVER PLUMBING	S.F.	3	0.00	3.00	0.00	13,000.00	39,000.00	6000	
D. BRICK BACKFILL	TON	80	0.00	80.00	64.00	9.00	720.00	6000	
E. SILVER WELL COMPLETE	S.F.	1	0.00	1.00	0.00	60,000.00	60,000.00	6000	
F. PIPE FITTINGS	TON	60	1,000.00	60,000.00	1,075.00	1.70	1,035.00	6000	
G. BRICK BEDDING APPROXIAL	TON	200	70.00	14,000.00	874.21	12.00	2,400.00	6000	
<b>TOTAL LINE 2D (SILVER BRICK)</b>							<b>101,538.44</b>		

8. SHEET 12 - LINE 2D-1 (SILVER BRICK)

A. 12" SILVER BRICK	S.F.	253	0.00	253.00	253.00	60.00	15,180.00	6000
B. BRICK BACKFILL	TON	20	0.00	20.00	0.00	5.00	100.00	6000
C. BRICKWORK CONCRETEWORK	S.F.	6	0.00	6.00	0.00	20.00	120.00	6000
D. BRICKWORK FRAME COVER AND COVER	S.F.	1	0.00	1.00	1.00	600.00	600.00	6000
E. BRICKWORK RISE PIPE	S.F.	60	0.00	60.00	13,995.00	160.00	777.00	6000
F. 12" BRICK CONNECTION	S.F.	6	0.20	1.20	0.70	180.00	1,260.00	6000
G. PIPE BEDDING APPROXIAL	TON	60	68.00	4,080.00	61.72	12.00	740.40	6000
<b>TOTAL LINE 2D-1 (SILVER BRICK)</b>							<b>19,487.40</b>	

9. SHEET 13 - LINE 2D-2 (SILVER BRICK)

A. 12" SILVER BRICK	S.F.	604	0.00	604.00	607.69	62.00	37,180.00	1041
B. BRICK BACKFILL	TON	60	15.00	900.00	0.00	0.00	0.00	60
C. PIPE FITTINGS	TON	40.0	0.00	40.00	0.00	0.00	0.00	1211
D. 12" DATE VALVE AND BOX	S.F.	3	0.00	3.00	1.00	600.00	1,800.00	1209
E. BRICKWORK BRICK FRAME & COVER	S.F.	0	0.00	0.00	0.00	600.00	6,000.00	1003
F. BRICKWORK RISE PIPE	S.F.	60	21.71	1,302.60	61.35	60.00	3,762.00	1013
G. PIPE BEDDING APPROXIAL	TON	250	100.00	25,000.00	252.06	62.00	1,572.00	611
<b>TOTAL LINE 2D-2 (SILVER BRICK)</b>							<b>47,066.00</b>	

EXHIBIT  
 6



The City of  
**OKLAHOMA CITY**  
 WATER & WASTEWATER UTILITIES DEPARTMENT

**REVISED**

June 29, 1995

Jim Marshall  
 Chief of Staff  
 Department of Labor  
 4001 N. Lincoln Blvd.  
 Oklahoma City, OK 73105-5212

RE: High Lift Station Construction in 1993

Dear Mr. Marshall:

This is to revise our June 21, 1995 letter to you. In 1993, Flinto, Inc. constructed a high lift pump station for the City of Oklahoma City Water & Wastewater Utilities Department. Our records indicate that Concho, Inc. was not used as a sub-contractor on this project.

We do not know of any other high lift pump stations constructed in excess of \$600,000 over the past four to five years.

Please feel free to call me at 297-3811 if you have additional questions.

Sincerely,

*Patrick J. Youikas*

Patrick J. Youikas, P.E.  
 Engineering Manager

**RECEIVED**

JUL 5 1995

DEPT. OF LABOR





The City of  
**OKLAHOMA CITY**  
 WATER & WASTEWATER UTILITIES DEPARTMENT

RECEIVED  
 MAY 24 1993  
 FLINTCO, INC.

May 14, 1993

Flintco, Inc.  
 PO Box 889  
 Oklahoma City, Oklahoma 73143

RE: Contracts and Bonds for Water Project WC-0151; Contract No. 3 and 4 to Hefner Treatment Plant in the vicinity of 4000 NW 108th Street (Hefner Road and Portland Avenue)

Gentlemen:

Attached for your files is a copy of the above mentioned contract and bonds executed by the Trust on April 6, 1993.

Yours very truly,

*J.G. Miller*  
 J.G. Miller, P.E.  
 Water Supply and Distribution Engineer

JGM/DKS/lb

Attachment

cc: American Home Assurance Company



OCWUT

Project No. WC-0151CONTRACT

THIS CONTRACT AND AGREEMENT, made and entered into this 6 day of April, 1998, by and between the OKLAHOMA CITY WATER UTILITIES TRUST, party of the first part, hereinafter termed "Trust" and Flintco, party of the second part, hereinafter termed "Contractor".

## WITNESSETH:

WHEREAS, the OKLAHOMA CITY WATER UTILITIES TRUST has caused to be prepared in accordance with law, certain specifications, and other bidding documents for the work hereinafter described and has approved and adopted all of said bidding documents, and has caused Solicitation for Bids to be given and advertised as required by law, and has received sealed proposals for the furnishing of all labor and materials for:

Water Project WC-0151: Contract No. 1 and 4 adjacent to Lake Hefner Water Treatment Plant, 4000 NW 108th Street, Base Bid and Alternates 1,2,3,4,5,6,10,12,13, and 14.

as outlined and set out in the bidding documents and in accordance with the terms and provisions of said contract; and,

WHEREAS, Contractor, in response to said Solicitation for Bids, published in the Daily Law Journal Record, February 10th and 17th, 1993, has submitted to Trust in the manner and at the time specified, a sealed proposal in accordance with the terms of this contract; and,

WHEREAS, the Trust in the manner provided by law, has publicly opened, examined, and canvassed the proposals submitted and has determined and declared the above named Contractor to be the lowest responsible bidder on the above described project, and has duly awarded this contract to said Contractor for the sum named in the proposal, to wit:

Twenty-seven million, three hundred ninety-nine thousand, nine hundred ~~80~~ DOLLARS  
(\$ 27,399,900.00).

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants herein contained, the parties to this contract have agreed and hereby agree as follows:

1. The Contractor shall, in a good and first-class, workmanlike manner, at his own cost and expense, furnish all labor, materials, tools, and equipment required to perform and complete said work in strict accordance with this contract and the plans adopted and approved by the OKLAHOMA CITY WATER UTILITIES TRUST, all of which documents are on file in the Office of the City Clerk of the City of Oklahoma City and are made a part of this contract as fully as if the same were herein set out at length, with the following additions and/or exceptions: (if none, so state) none

2. The Trust shall make payment to the Contractor in the following manner: On or about the first day of each month, the Contractor, or an appropriate person, will make accurate estimates of the value, based on the quantity of work done and materials

EXHIBIT

9

Report of Construction Contractor's  
Wage Rates **93-OR-009**

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

**164811** 

State: This form is used by the U.S. Department of Labor to determine by locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure conformity in submission of wage data. Respondents may use an alternate form if all the information requested is included. The liability of the respondent will be held in confidence.

OMB No. 12130-04  
Replaces: 07/71/90

Please see instructions on reverse side:

1. Contractor Name, Address, Telephone

**Concho, Inc.**  
P.O. Box 12508  
Oklahoma City, OK 73157

**12/29**

2. Project Name, Description, and Location (Include County)

**LAKE HEFNER WATER TREAT  
PLANT CHEMICAL BL OLA, OK, OK.**  
**104-ORL 007-ORL**  
**OKLAHOMA COUNTY**

3. Contract Type

General/Prime  
 Sub

4. Approximate Value of

Project \$ **6-192**  
Subcontract \$

5. Starting Date

**8-28-92**

6. Completion Date

Estimated  Actual

7. General Trade Subcontractor List

8. Type of Construction  
 Building  Highway  
 Heavy  Utility

9. Residential  
State \_\_\_\_\_  
Units \_\_\_\_\_

10. Project to Subject to:

Davis Wage Determination  Federal (Davis-Bacon) Wage Determination  Other

11. Classification of employees (See, Supervisors, Mechanics, Laborers, etc.)

12. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid?  
Yes No

13. Minimum Starting Date Per Post Hiring Agreement

14. Peak Number Employees

15. Basic Hourly Rate

16. Fringe Benefits List Hourly Rate or Percentage of Basic Hourly Rate or Other Amounts **3.70**

Job Title	12. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid?		13. Minimum Starting Date Per Post Hiring Agreement	14. Peak Number Employees	15. Basic Hourly Rate	16. Fringe Benefits List Hourly Rate or Percentage of Basic Hourly Rate or Other Amounts <b>3.70</b>		
	Yes	No				Health and Welfare	Pension	Medical and Vacation
Side Boom Crane <b>900</b>	X		7.692	1	15.15	2.80	1.25	15%
Heavy Duty Mechanic <b>900</b>	X		7.692	1	15.15	2.80	1.25	15%
Boiler <b>950</b>	X		7.692	1	14.65	2.30	1.25	15%
Cherry Picker <b>1620</b>	X		7.692	1	15.15	2.80	1.25	15%
Motor Driver (Blade) <b>1030</b>	X		7.692	1	15.15	2.80	1.25	15%
Boiler <b>950</b>	X		7.692	1	14.65	2.30	1.25	15%
Scissor <b>1050</b>	X		7.692	1	14.65	2.30	1.25	15%
Excavator over 3/4 Td <b>940</b>	X		7.692	1	15.15	2.80	1.25	15%
Loader <b>1020</b>	X		7.692	1	14.65	2.30	1.25	15%
Over Lift <b>800</b>	X		7.692	1	14.65	2.30	1.25	15%
Excavator under 3/4 Td <b>940</b>	X		7.692	1	14.65	2.30	1.25	15%
Motor Grader <b>1120</b>	X		7.692	1	14.65	2.30	1.25	15%
Back Car <b>1100</b>	X		7.692	1	13.40	2.30	1.25	15%
Tractor <b>850</b>	X		7.692	1	14.60	2.30	1.25	15%
Generator <b>1050</b>	X		7.692	1	14.80	2.80	1.25	15%

Effective June 1, 1993 an increase of 50¢ to Health & Welfare; 5¢ increase to Supplemental Bonus and 25¢ increase to wages.

EXHIBIT  
**10**



The City of  
**OKLAHOMA CITY**  
 WATER & WASTEWATER UTILITIES DEPARTMENT

June 30, 1995

Jim Marshall  
 Chief of Staff  
 Department of Labor  
 4001 N. Lincoln Blvd.  
 Oklahoma City, OK 73105-5212

RE: Chemical Building at Hefner Water Treatment Plant

Dear Mr. Marshall:

No chemical building was constructed at the Lake Hefner water treatment plant as a part of our plant expansion project.

The chemical building was listed as an "add alternate" in the Water & Wastewater Utilities Department's contract with Flintco, Inc. However, we did not select the chemical building option, preferring to construct the chemical building at some date in the future.

Please feel free to call me at 297-3811 if you have additional questions.

Sincerely,

Patrick J. Younkas, P.E.  
 Engineering Manager

RECEIVED

JUL 5 1995

DEPT. OF LABOR



GENERAL DECISION OK940033 02/10/95 OK33  
 (General) Decision Number OK950033

Superseded General Decision No. OK940033

State: Oklahoma

Construction Type:  
 HEAVY

County(ies):  
 CHEROKEE LOGAN OKLAHOMA  
 CLEVELAND MCCLAIN POTTAWATOMIE

HEAVY CONSTRUCTION PROJECTS (does not include Water and Sewer  
 Lines or Treatment Plant Projects)

Modification Number Publication Date  
 0 02/10/1995

COUNTY(ies):  
 CHEROKEE LOGAN OKLAHOMA  
 CLEVELAND MCCLAIN POTTAWATOMIE

MEER0094D 07/06/1993

Asbestos/Insulator Workers	Rates	Fringes
	17.15	4.58

SCOPE OF WORK:

Includes application of all insulation materials, protective coverings and finishings to all types of mechanical systems.

EWGI0627Q 06/01/1994

POWER EQUIPMENT OPERATOR	Rates	Fringes
GROUP 1:	17.85	4.45
GROUP 2:	17.05	4.45
GROUP 3:	16.85	4.45
GROUP 4:	16.20	4.45
GROUP 5:	13.85	4.45
GROUP 6:	12.55	4.45

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

CRANES:

GROUP 1 - All crane type equipment with at least 300' of boom and over (including jib)

GROUP 2 - All crane type equipment with at least 200' and less than 300' of boom (including jib)

GROUP 3 - All crane type equipment with at least 100' and less than 200' of boom (including jib) all tower cranes - crane type equipment (3 cu. yds. and over)

GROUP 4 - All cranes with less than 100' of boom with jib and cranes (as rated by mfg.) less than 3 cu. yd., Overhead (tower) Type crane, Mechanic.

GROUP 5 - Forklift

GROUP 6 - Oiler

EWG0000A 10/26/1984

Rates Fringes



Oklahoma Department of Labor  
 Project No.

CONCRETE FINISHER	10.54		
CARPENTER	11.00	.63	
ELECTRICIAN	13.28		
LABORER, Common	7.51		
<u>PLUMBER &amp; PIPEFITTER</u>	17.00	+	4.05 = 21.05
<u>POWER EQUIPMENT OPERATORS:</u>			
Backhoe	13.94		3.40
Bulldozer	14.40		3.40
Front End Loader	14.40		3.40
TRUCK DRIVER, Dump	12.35		3.70

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Requests for additional classifications and wage rates may be submitted to the contracting officer after award, and may be approved only if: (1) the work to be performed by the classification requested is not performed by a classification in the wage determination; (2) the classification is utilized in the area by the construction industry; and (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination (for the given area and type of construction). (See 29 CFR 5.5(a) (v)).

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.



WAGE COMPILATION  
SURVEY 93-06-002

CRAFTS	UNION MANAGEMENT NEGOTIATED RATES	LAST DECISION NO. 1 DATE	RECOMMENDED RATES	%	CHANGE	TOTAL NO. REPORTED / EMPLOYED AT CONTROLLING BUREAU	BASIC RATE
10 ASBESTOS WORKERS	\$ 0.00	\$ 0.00	\$ 0.00		M/A	M	22/22
70 CONCRETE FINISHER	\$ 0.00	\$ 0.00	\$ 10,542		M/A	A	6
110 CARPENTER	\$ 0.00	\$ 0.00	\$ 11,000		M/A	M	6/4
210 ELECTRICIAN	\$ 0.00	\$ 0.00	\$ 13,279		M/A	A	39
* 211 ELECTRICIAN APPRENTICE	\$ 0.00	\$ 0.00	\$ 6,917		M/A	A	3
* 360 PLUMBER	\$ 0.00	\$ 0.00	\$ 17,000		M/A	M	15/12
* 361 PLUMBER APPRENTICE	\$ 0.00	\$ 0.00	\$ 10,200		M/A	M	1/1
* 370 PIPEFITTER	\$ 0.00	\$ 0.00	\$ 17,000		M/A	M	12/10
* 530 IRONWORKER-REINFORCING	\$ 0.00	\$ 0.00	\$ 9,000		M/A	M	4/6
570 LABORER-COMMON	\$ 0.00	\$ 0.00	\$ 7,908		M/A	A	38
* 650 PAINTER-SPRAY	\$ 0.00	\$ 0.00	\$ 15,000		M/A	M	1/1
* 720 PIPELAYER	\$ 0.00	\$ 0.00	\$ 10,000		M/A	M	1/1
870 TRUCK DRIVER-DUMP	\$ 0.00	\$ 0.00	\$ 12,350		M/A	M	16/12
880 MECHANIC	\$ 0.00	\$ 0.00	\$ 8,000		M/A	M	6/6
890 OILER	\$ 0.00	\$ 0.00	\$ 8,000		M/A	M	16/15
940 BACKHOE	\$ 0.00	\$ 0.00	\$ 13,978		M/A	A	8
950 BULLDOZER	\$ 0.00	\$ 0.00	\$ 14,400		M/A	M	4/3
980 CRANE	\$ 0.00	\$ 0.00	\$ 8,000		M/A	M	17/16
* 1010 FORKLIFT	\$ 0.00	\$ 0.00	\$ 8,000		M/A	M	6/6
* 1020 FRONT END LOADER	\$ 0.00	\$ 0.00	\$ 14,400		M/A	M	5/5
* 1030 GRADER	\$ 0.00	\$ 0.00	\$ 14,900		M/A	M	3/1
* 1040 ROLLER	\$ 0.00	\$ 0.00	\$ 14,500		M/A	M	3/3
* 1070 TRACTOR	\$ 0.00	\$ 0.00	\$ 7,475		M/A	M	5
* 1090 CONCRETE PUMP	\$ 0.00	\$ 0.00	\$ 14,900		M/A	M	4/4
* 1110 WATER	\$ 0.00	\$ 0.00	\$ 12,325		M/A	M	2
* 1120 POWER WAGON	\$ 0.00	\$ 0.00	\$ 8,000		M/A	M	2/2
* 1450 MOLE DIGGER	\$ 0.00	\$ 0.00	\$ 15,014		M/A	M	2

EXHIBIT  
14

32

PROJECT WAGE SUMMARY  
SURVEY 93-OK-002  
DATE: 05/09/94

10-22a

35 PROJECT ID: 097-CA

NAME: UNDERGROUND STORAGE TANK  
LOCATION: MUSTANG, CA  
DATE OR % COMPL.: 08/01/93  
PROJECT VALUE: \$2,000,000

NO. EMPL.

FRINGE

HOURLY

340 PLUMBER  
370 PIPEFITTER

\$17,000  
\$17,000

\$4,050 0.000  
\$4,050 0.000

10  
10



These 10 prevailed  
by majority rule.



PROJECT 074-MC

Project has been omitted as this is building construction

PROJECT 079-OK

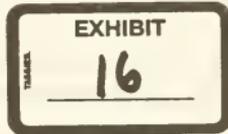
This project has been omitted as per clarification this is building

PROJECT 097-CA

Data from Plumber union, per call to contractor they did not do  
(VERIFYING WITH UNION AT THIS TIME)

PROJECT 099-O

This project has been omitted as per clarification this is building



geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20512.

#### Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. OK950033 dated February 10, 1995.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF-308. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

NY950026 (Feb. 10, 1995)  
NY950076 (Feb. 10, 1995)

#### Volume II

##### District of Columbia

DC950001 (Feb. 10, 1995)

##### Maryland

MD950017 (Feb. 10, 1995)  
MD950025 (Feb. 10, 1995)  
MD950034 (Feb. 10, 1995)  
MD950035 (Feb. 10, 1995)  
MD950036 (Feb. 10, 1995)  
MD950048 (Feb. 10, 1995)  
MD950053 (Feb. 10, 1995)

##### Pennsylvania

PA950014 (Feb. 10, 1995)

##### Virginia

VA950005 (Feb. 10, 1995)  
VA950104 (Feb. 10, 1995)  
VA950105 (Feb. 10, 1995)

#### Volume III

##### South Carolina

SC950023 (Feb. 10, 1995)

#### Volume IV

##### Illinois

IL950018 (Feb. 10, 1995)

##### Indiana

IN950036 (Feb. 10, 1995)  
IN950041 (Feb. 10, 1995)

##### Michigan

MI95002J (Feb. 10, 1995)  
MI950026 (Feb. 10, 1995)  
MI950027 (Feb. 10, 1995)

##### Minnesota

MN950008 (Feb. 10, 1995)

#### Volume V

##### Iowa

IA950005 (Feb. 10, 1995)

##### Oklahoma

OK950027 (Feb. 10, 1995)  
OK950030 (Feb. 10, 1995)  
OK950032 (Feb. 10, 1995)  
OK950035 (Feb. 10, 1995)

#### Volume VI

##### Colorado

CO950001 (Feb. 10, 1995)



PROJECT WAGE SUMMARY  
SURVEY 93-OK-002

MO-22a

DATE: 05/09/94

7 PROJECT ID: 030-OK

NAME: LAKE NEFNER GOLF COURSE  
 LOCATION: OKLA. CITY, OK  
 DATE OR % COMPL.: 08/01/92  
 PROJECT VALUE: \$28,285,006

	HOURLY	FRINGE		NO. ENPL.
870 TRUCK DRIVER-DUMP	\$12.350	\$3.700	0.000	4
880 MECHANIC	\$15.600	\$3.700	0.000	2
890 DILER	\$11.850	\$3.700	0.000	5
980 CRANE	\$16.350	\$3.700	0.000	5
1010 FORKLIFT	\$12.850	\$3.700	0.000	2
1610 CHERRY PICKER	\$15.600	\$3.700	0.000	3
1750 GREASER	\$12.350	\$3.700	0.000	1

**USDOL has confirmed:**

Heavy ("Other" Heavy Survey) Project 030 (Oklahoma County)  
 — Per call to contractor, contractor did not work on this project.

EXHIBIT

18

PROJECT PAGE SUMMARY  
SURVEY 93-OK-007

LD-22a

DATE: 05/09/94

20 PROJECT 10: 050-0

NAME: SANITARY SEWER  
LOCATION: OKLA. CITY, OK  
DATE OR % COMPL.: 08/28/92  
PROJECT VALUE: \$586,563

	HOURLY	FRINGE	NO. EMPL.
570 LABORER-COMMON	\$6,500	\$0,350 0.000	1
720 PIPELATER	\$7,000	\$0,350 0.000	1
	\$7,250	\$0,750 0.000	1
880 MECHANIC	\$15,150	\$3,700 0.000	1
890 DILER	\$12,400	\$3,700 0.000	1
940 BACKHOE	\$9,000	\$1,050 0.000	1
	\$8,500	\$0,850 0.000	1
	\$13,400	\$3,700 0.000	4
950 BULLDOZER	\$13,400	\$3,700 0.000	4
980 CRANE	\$15,150	\$3,700 0.000	2
1010 FORKLIFT	\$13,400	\$3,700 0.000	1
1020 FRONT END LOADER	\$13,400	\$3,700 0.000	2
1030 GRADER	\$13,400	\$3,700 0.000	1
1050 SCRAPER	\$13,400	\$3,700 0.000	2
1110 BOBCAT	\$13,400	\$3,700 0.000	1
1120 WATER WAGON	\$13,400	\$3,700 0.000	1
1610 CHERRY PICKER	\$13,400	\$3,700 0.000	1
1750 GREASER	\$13,400	\$3,700 0.000	1
1890 FLAGGER	\$6,000	\$0,300 0.000	1

**USDOL has confirmed:**

Heavy (Heavy Water and Sewer Line Survey) Project 050 (Oklahoma County) — Data from prime contractor indicates project is neither federal or state sanitary sewer project. **Data submitted is union scale. Listed contractor is not a union contractor.**

**DATA OMITTED AFTER SURVEY REVIEW.**

EXHIBIT

19

WD-22a

PROJECT IMAGE SUMMARY  
SURVEY 93-OK-002

DATE: 05/09/94

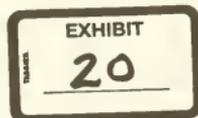
16 PROJECT ID: 054-OK

NAME: WATER WELLS  
 LOCATION: TINKER AFB, OK  
 DATE OR % COMPL.: 08/01/92  
 PROJECT VALUE: \$3,000,000

	HOURLY	FRINGE		NO. EMPL.
870 TRUCK DRIVER-DUMP	\$12.350	\$3.700	0.000	4
880 MECHANIC	\$15.600	\$3.700	0.000	2
890 DILER	\$11.850	\$3.700	0.000	5
980 CRANE	\$16.350	\$3.700	0.000	5
1010 FORKLIFT	\$12.850	\$3.700	0.000	2
1610 CHERRY PICKER	\$15.600	\$3.700	0.000	3
1750 GREASER	\$12.350	\$3.700	0.000	1

**USDOL has confirmed:**

Heavy ("Other" Heavy Survey) Project 054 (Oklahoma County)  
 — No Dodge Report information for this project. Information came directly from operating engineers local union.  
 Per call to contractor, contractor did not work on this project.



MD-22a

PROJECT WAGE SUMMARY  
SURVEY 93-OK-008

DATE: 05/09/94

2 PROJECT ID: 003-LOG

NAME: WASTE WATER TREATMENT PLANT  
 LOCATION: LANGSTON, OK  
 DATE OR % COMPL.: 07/01/93  
 PROJECT VALUE: \$677,900

	HOURLY	FRINGE		NO. EMPL.
360 PLUMBER	\$17,000	\$4,050	0.000	7
370 PIPEFITTER	\$17,000	\$4,050	0.000	1

**USDOL has confirmed:**

Heavy (Treatment Plant Survey) Project 003 (Logan County)  
 — Plumber/pipe fitter data submitted by plumbers and pipe fitters local union. Per call to contractor, contractor was only a consultant and did not use plumbers.

EXHIBIT

21

MD-22a

PROJECT NAME SUMMARY  
SURVEY 93-OK-008

DATE: 05/09/94

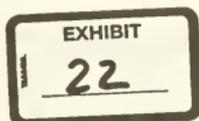
8 PROJECT ID: 012-OKL

NAME: OVERHOLSER TREATMENT PLANT  
 LOCATION: OKLA. CITY, OK  
 DATE OR % COMPL.: 08/31/92  
 PROJECT VALUE: \$700,000

	HOURLY	FRINGE	NO. EMPL.
360 PLUMBER	\$17,000	\$4,050 0.000	4
370 PIPEFITTER	\$17,000	\$4,050 0.000	4
530 IRONWORKER-REINFORCING	\$14,900	\$4,420 0.000	8
890 DILER	\$11,150	\$3,400 0.000	1
1450 HOLE DIGGER	\$14,000	\$3,400 0.000	1
1610 CHERRY PICKER	\$14,900	\$3,400 0.000	1

**USDOL has confirmed:**

Heavy (Treatment Plant Survey) Project 012 (Oklahoma County) — Plumber/pipe fitter data submitted by plumbers and pipe fitters local union. Per call to contractor, contractor did not employ plumbers.



MD-22a

PROJECT WAGE SUMMARY  
SURVEY 93-OK-008

DATE: 05/09/94

10 PROJECT ID: 015-CAN

NAME: WASTEWATER TREATMENT PLANT  
 LOCATION: EL RENO, OK  
 DATE OR % COMPL.: 12/01/93  
 PROJECT VALUE: \$2,500,000

	HOURLY	FRINGE	NO. ENPL.
360 PLUMBER	\$17.000	\$4.050 0.000	6

**USDOL has confirmed:**

Heavy (Treatment Plant Survey) Project 015 (Oklahoma County) — Plumber/pipe fitter data submitted by plumbers and pipe fitters local union. Per call to contractor, contractor did not work on this project.

EXHIBIT

23

MD-22a

PROJECT PAGE SUMMARY  
SURVEY 93-OK-008

DATE: 05/09/94

11 PROJECT ID: 017-CAN

NAME: CALLMENT SEWAGE TREATMENT PLANT  
 LOCATION: CALLMENT, OK  
 DATE OR % COMPL.: 03/01/93  
 PROJECT VALUE: \$600,000

	HOURLY	FRINGE		NO. EMPL.
360 PLUMBER	\$17,000	\$4,050	0.000	3
361 PLUMBER APPRENTICE	\$10,200	\$4,050	0.000	1

**USDOL has confirmed:**

Heavy (Treatment Plant Survey) Project 017 (Oklahoma County) — Plumber/pipe fitter data submitted by plumbers and pipe fitters local union. Per call to contractor, contractor did not work on this project.

EXHIBIT

24

MD-22a

PROJECT WAGE SUMMARY  
SURVEY 93-OK-002

DATE: 05/09/94

38 PROJECT ID: 111-PO

NAME: LAGOON SYSTEM  
 LOCATION: EARLSBORO, OK  
 DATE OR % COMPL.: 07/22/92  
 PROJECT VALUE: \$515,079

	HOURLY	FRINGE	NO. EMPL.
360 PLUMBER	\$17,000	\$4,050 0.000	2

**USDOL has confirmed:**

Heavy ("Other" Heavy Survey) Project 111 (Pottawatomie County) — Plumber/pipe fitter data submitted by plumbers and pipe fitters local union. Per call to contractor, contractor did not work on this project.

EXHIBIT

25

MD-22a

PROJECT WAGE SUMMARY  
SURVEY 93-OK-002

DATE: 05/09/94

35 PROJECT ID: D97-CA

TYPE: UNDERGROUND STORAGE TANK  
 LOCATION: MUSTANG, OK  
 DATE OR % COMPL.: 08/01/93  
 PROJECT VALUE: \$2,000,000

	HOURLY	PRIME	NO. EMPL.
360 PLUMBER	\$17.800	\$4.850 0.000	10
370 PIPEFITTER	\$17.800	\$4.850 0.000	10

**USDOL has confirmed:**

Heavy ("Other" Heavy Survey) Project 097 (Canadian County)  
 — Plumber/pipe fitter **data submitted by plumbers and pipe fitters local union**. Per call to contractor, **contractor did not work on this project**.

EXHIBIT

26

PROJECT WAGE SUMMARY  
SURVEY 93-OK-008

LD-22a

DATE: 05/09/94

1 PROJECT ID: 001-OKL

NAME: WASTEWATER TREATMENT PLT.  
 LOCATION: OKLA. CITY, OK  
 DATE OR % COMPL.: 06/01/93  
 PROJECT VALUE: \$3,684,000

	HOURLY	FRINGE	NO. EMPL.
210 ELECTRICIAN	\$16,300	\$1,900 9,000	5
211 ELECTRICIAN APPRENTICE	\$7,340	\$0,000 0,000	1
360 PLUMBER	\$17,000	\$4,050 0,000	8
370 PIPEFITTER	\$17,000	\$4,050 0,000	4
530 IRONWORKER-REINFORCING	\$14,900	\$4,420 0,000	12
650 PAINTER-SPRAY	\$13,550	\$2,530 0,000	3
880 MECHANIC	\$14,900	\$3,750 0,000	1
	\$15,600	\$3,700 0,000	2
890 OILER	\$11,850	\$3,700 0,000	5
900 HEAVY EQUIPMENT	\$14,400	\$3,750 0,000	7
940 BACKHOE	\$14,400	\$3,400 0,000	4
	\$14,650	\$3,750 0,000	2
980 BULLDOZER	\$14,400	\$3,400 0,000	3
980 CRANE	\$14,900	\$3,400 0,000	3
	\$16,350	\$3,700 0,000	5
1010 FORKLIFT	\$12,850	\$3,700 0,000	2
1020 FRONT END LOADER	\$14,400	\$3,400 0,000	4
	\$14,650	\$3,750 0,000	2
1030 GRADER	\$15,150	\$3,750 0,000	3
4040 ROLLER	\$14,400	\$3,400 0,000	3
	\$14,400	\$3,750 0,000	7
1110 BOBCAT	\$13,400	\$3,750 0,000	2
1120 WATER WAGON	\$14,400	\$3,750 0,000	2
1610 CHERRY PICKER	\$14,900	\$3,400 0,000	4
	\$15,600	\$3,700 0,000	3
1620 ASPHALT LAYDOWN MACHINE	\$14,650	\$3,750 0,000	7
1630 CURB MACHINE	\$14,900	\$3,750 0,000	5
1750 GREASER	\$12,350	\$3,700 0,000	1
1860 TRUCK DRIVER (LOWBOY)	\$12,350	\$3,700 0,000	4

**USDOL has confirmed:**

Heavy (Treatment Plant Survey) Project 001 (Oklahoma County) — **Contractor did not use cherry pickers, laydown machine or concrete machine.**

Plumber/pipe fitter data submitted by plumbers and pipe fitters local union. Per call to contractor, contractor did not employ plumbers.

EXHIBIT

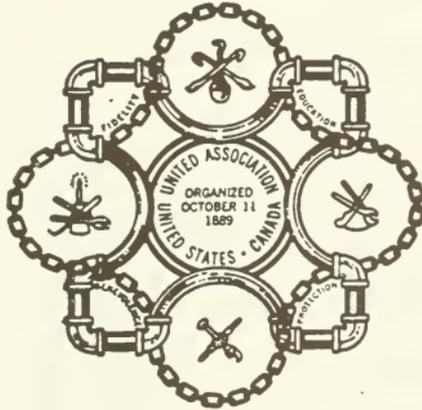
27

# PLUMBERS AND PIPEFITTERS LOCAL UNION NO.



# 344

INTERNATIONAL  
UNITED  
ASSOCIATION



**JULY 1, 1993  
THRU  
JUNE 30, 1996**

**MASTER  
UNION  
AGREEMENT**

OPEIU #361 AFL-CIO

826-11

36-049



ARTICLE 11 - WAGE RATE AND OTHER BENEFITS AND CONDITIONS OF EMPLOYMENT

(B)

Effective Dates	Total Package	Basic Hourly Wage	To be Withheld From Employees Gross Wages		FRINGE BENEFITS		Health and Welfare	Training	Industry Promotion
			Working Assessment Check-Off	2-1/2% of Gross Wages	** Local Annuity Fund	P & R National Pension Fund			
July 1, 1993 through June 30, 1994	\$21.80	\$17.35	• 2-1/2% of Gross Wages	.75	1.30	2.00	.25	.15	
July 1, 1994 through June 30, 1995	\$22.50	\$17.55	• 2-1/2% of Gross Wages	1.00	1.40	2.00	.35	.20	
July 1, 1995 through June 30, 1996	\$23.20	\$18.00	• 2-1/2% of Gross Wages	1.15	1.50	2.00	.35	.20	

Note: ALL FRINGES STATED ABOVE ARE TO BE PAID ON ALL EMPLOYEES, BOTH JOURNEYMEN AND APPRENTICES WITH THE FOLLOWING EXCEPTION: No National Pension required on first and second year Apprentices. 50% National Pension is to be paid on third, fourth and fifth year Apprentices. (.75 cents per hour effective July 1, 1995 through June 30, 1996).

LOCAL ANNUITY IS TO BE PAID ON BOTH JOURNEYMEN AND APPRENTICES.

REMIT TO BANK: REMIT TO PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND OFFICE ..... \$1.50 PER HOUR

WACO (Withheld from employees gross wages) ..... 2-1/2% \$3.70  
 Local Annuity, Health & Welfare, Training and Industry Promotion ..... 2-1/2% plus \$3.70  
 TO BE REMITTED TO BANK

AL CONTRACTOR CONTRIBUTIONS PLUS TOTAL AMOUNT WITHHELD FROM WAGES = \$5.20 PER HOUR PLUS 2-1/2% OF GROSS WAGES.

SISTENCE PAY: The Established Center - Oklahoma City Main Post Office

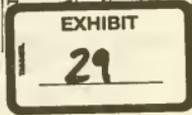
0-50 miles, free zone; 50-100 miles, \$6.00 per day Over 100 miles, \$10.00 per day

\* This Wage includes amounts withheld for Working Assessment Check-off.

\*\* All contribution rates shown above will be on a per hour worked basis.

All contributions are due in the bank no later than the 10th day of each month following the close of the prior month. (See Paragraph C).

WACO TO BE DETERMINED BY APPLYING 2-1/2% TO THE INDIVIDUAL GROSS BASIC WAGE.



08-17-95 14 21 202 219 5771

USDOL WAGE HOUR

2009

Report of Construction Contractor's Wage Rates

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

16484



Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be held in confidence.

OMB No. 12160046  
Expires: 07/31/90

1. Contractor Name, Address, Telephone

Connelly Paving Co., Inc.  
P.O. Box 75450  
Okla. City, OK 73107

199

2. Project Name, Description, and Location (Include County)

INTERNAL REVENUE OFFICE  
BLDG OKLA City OK. 304-0

OKLAHOMA, County

3. Contract Type:  General/Prime  Sub

4. Approximate Value of Project: \$80 million

5. General Attach Subcontractor List: Subcontract #

6. Starting Date: 6-1-92

7. Completion Date: 8-28-92

8. Estimated  Actual

9. Type of Construction:  Building  Highway  Marine

10. Residential:  Single  Multi

11. Project is Subject to:  Federal (Davis-Bacon) Wage Determination  State Wage Determination  Neither

12. Classification of employees (A.A., Carpenters, Electricians, Laborers, Etc.)	13. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid?		14. Estimated Starting Date for First Month Employed	15. Peak Number Employees	16. Basic Hourly Rate	17. Wage Benefits (List Hourly Rate or Percentage of Basic Hourly Rate or Other Amounts)			
	Yes	No				Health and Welfare	Pension	Holiday and Vacation	App. Training
Motor Patrol 1740	✓		6-27-92	2	15.15	2.30	1.25		18¢
Asphalt Laydown Machine 11620	✓		6-27-92	7	14.65	2.30	1.25		18¢
Loader 1030	✓		6-27-92	2	14.95	2.30	1.25		18¢
Backhoe 1100	✓		6-27-92	7	14.40	2.30	1.25		18¢
Bob Cat 1110	✓		6-27-92	1	14.40	2.30	1.25		18¢
Roller/Finish 1040	✓		6-27-92	7	14.40	2.30	1.25		18¢
Backhoe 940	✓		6-27-92	2	14.65	2.30	1.25		18¢
Water Wagon 1120	✓		6-27-92	1	14.40	2.30	1.25		18¢

18. Remarks: Effective June 1, 1993 an increase of 50% to Health & Welfare; 5¢ increase to Supplemental Dues and 2¢ increase to wages.

Union Contract

12 1993

19. Date Report Submitted: 12-8-92

EXHIBIT  
30

48

WAGE DETERMINATION FOR _____
_____
_____
_____
_____
_____
DATE ISSUED _____



State of Oklahoma  
Department of Labor  
4001 North Lincoln Boulevard  
Oklahoma City, Ok. 73105-5212  
(405) 528-1500

Page 1 of 1

POST IN PLAIN VIEW ON APPLICABLE JOB SITE  
**BUILDING CONSTRUCTION**

**ALL CONTRACTORS TAKE NOTICE:**

This is Section 196 (S.A.X.X.) of the Oklahoma Statutes which is mandatory for all public bodies to specify in the call for bids the prevailing hourly rate of wages for all contracts and requires all prime contractors and subcontractors to pay not less than the prevailing hourly rate of wages, including fringe benefits, to all workmen for each hour worked. Any Public Body which violates this provision shall be liable for the difference between wages paid and the prevailing wage or the case of default of a Subcontractor, the General Contractor becomes liable for all wages owed to employees of the subcontractor.

Section 196 (S.A.) The contractor of the public body is required to keep an accurate record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours and occupation of all work men employed by them.

Section 196 (S.B.) The Oklahoma DOL will not recognize any apprenticeship or training program unless federally approved and each apprentice registered.

Section 196 (S.C.) The Labor Commissioner has authority to audit payroll records, if either an audit, a workman or is paid less than the prevailing hourly wage the Commissioner will notify the contracting authority and the contractor of non-compliance. The contractor shall have ten (10) days after receipt of the notice to comply with the audit. If the contractor fails to comply, the contractor will be subject to a fine not to exceed \$100 (100) dollars each day plus 25% interest entered for each violation until compliance is effectuated.

Section 196 (S.D.) The state arising authority is mandated to hold all funds due the contractor for the benefit of workmen.

Section 196 (S.E.) The Commissioner also has cease and desist powers, authority to arrest and detain, and all orders may be enforced in the District Court by an action for injunction or contempt.

OKLAHOMA COUNTY

FILE COPY

	Esc	R/R	Ir		Esc	R/R	Ir
1. <u>Asbestos Abatement Workers</u>				Screeners	16.40	*3.40	
Group I	16.30	3.33		Cherry Picker	16.90	*3.40	
Group II	8.50	1.31		Blade Operator	16.90	*3.40	
Pricers/Cut	15.68	2.73		Backhoe	16.40	*3.40	
Carpenters	12.85	3.30		Other	11.15	*3.40	
Millwright	11.50	2.53		Hole Piler	16.40	*3.40	
General Masons	12.83	.90		Front End Loader	16.40	*3.40	
Electricians	16.10	2.95		Fork Lift	12.15	*3.40	
Elevator Const.	13.95	3.22		Bobcat Operator	12.15	*3.40	
Glaziers	11.48			Tractor Operator	12.15	*3.40	
Ironworkers	16.65	3.67		Crane 200' boom & over	16.15	*3.40	
Laborers	8.21			Crane 100'-200' boom	15.65	*3.40	
Masons	15.55	2.30		Crane 100'-200' boom	15.15	*3.40	
Casing & Plaster Tenders	9.00	1.30		Crane less than 100'			
Metal Building Erectors	9.93			boom less than 3 CT	16.90	*3.40	
Painters	11.01			Roofers	12.60	2.44	
Paper Hanging	16.32	2.53		Sheet Metal Worker	16.90	4.06	
Tapers	15.05	2.53		Soft Floor Laver	16.60	2.03	
Plasterers	16.45	1.10		Sound & Communication Tech	12.30	.49	
Lumber/Fitters, Incl. A/C	16.70	3.15		Sprinkler Fitters	17.70	5.00	
<b>CRANE EQUIPMENT OPERATORS:</b>				Tile Setters	13.91		
Asphalt Machine Oper.	8.90			Tile Setters Finishers	13.42		
Pulverizers	14.40	*3.40		Truck Drivers:			
				Group I	9.70		
				Group II	9.40		

DECISION OKP-16 MOD. 5, EFFECTIVE DATE 10-16-91.

**ASBESTOS ABATEMENT WORKERS:**

Group I - Removal of all insulation material, whether it contains asbestos or not, from the mechanical systems (pipes, boilers, ducts, flues, bracing, etc.).

Group II - Removal of all insulation material, whether it contains asbestos or not, from areas other than mechanical systems.

2. 1st 6 mos., to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate & seven (7) paid holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, & Christmas Day.

**METAL BUILDING ERECTOR DEFINITIONS:**

Metal Building Erectors applies to pre-engineered metal buildings only. It does not apply to metal roofs on buildings or to any portion of a metal building other than the metal "skin". The Metal Building Erector rate does not apply to the frame work of the metal building.

**TRUCK DRIVERS CLASSIFICATION DEFINITIONS:**

Group I - Truck Drivers for heavy equipment such as (embows, heavy winch & flints, heavy earth moving equipment such as dump trucks and euclids.

Group II - Truck drivers & dumpers, such as dump trucks, flat beds, stake bodies & 3/4 and 1/2 ton pick-up trucks.

TO OBTAIN RATES FOR UNL  
DEPARTMENT OF LABOR AT

EXHIBIT

31

TS), YOU MUST CONTACT THE OKLAHOMA  
PHONE NUMBER

AGREEMENT

This Agreement made this first day of June 1, 1991, by and between the undersigned EXCAVATION, ASPHALT & PAVING CONTRACTORS OF WESTERN OKLAHOMA, herein referred to as the COMPANY and INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 627, AFL-CIO, hereinafter referred to as the UNION.

Now, therefore, in consideration of the covenants, premises and the mutual agreement hereinafter contained, it is agreed as follows:

ARTICLE IPurpose

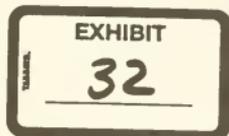
It is the general purpose of this Agreement to promote the mutual interest of the Company and its employees and to provide for the operations of the Company's business under methods which will further, to the fullest extent possible, the elimination of waste, recognition of maximum quantity and quality of output, protection of property, and avoidance of interruption to production, and the parties to this Agreement will cooperate fully to secure the advancement and achievement of the above purpose.

ARTICLE IIRecognition

The Company recognizes the Union as the exclusive representative of all heavy equipment operators who operate such equipment as lowboy, (moving-truck) motor patrol, hi-lift or loader, dozer, crane, gradall, asphalt lay machine, Fordson tractor, motor grader, and roller, mechanics, oilers and greasemen working in employer's construction division at Oklahoma City, Oklahoma for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment, excluded are all other employees, office and clerical employees, professional employees, guards, watchmen, and supervisors as defined in the Act. It is agreed that this Agreement applies to all operating engineers craft work performed by the employer.

ARTICLE IIIEmployment Hiring Hall

- (a) It is agreed that the employer will employ only qualified Operating Engineers and Apprentices on work coming within the jurisdiction of this craft.
- (b) All employees who are members of the Union on the effective date of this Agreement shall be required to remain members of the Union as a condition of employment during the term of this Agreement. New employees shall be required to become and remain members of the Union as a condition of employment from and after the eighth day (8th) following the date of their employment, or the effective date of this Agreement, whichever is later.



## ARTICLE XIV

Wage Rates

The following are the minimum wage rates per hour which shall apply when the employees are working on such work as residential construction (sub-division), City and County water lines, sewer lines, reservoirs and lagoons, Commercial, Industrial or Building Trades construction.

Effective  
6-1-91 to 5-31-93  
Plus Fringes

All Crane Type Equipment with 200' of boom and over (including jib)	
All Crane Type Equipment with 150' to 200' of boom (including jib)	
All Crane Type Equipment with 100' to 150' of boom (including jib)	
All Tower Cranes, Guy Derricks, All Crane Type Equipment of 3 cu.yd or more (as rated by Mfg)	\$ 10.75
Motor Patrol (Blade)	10.75
Heavy Duty Mechanic	10.50
Welder	10.50
Piledriver Engineer	10.50
Dragline	10.50
Shovel	10.50
Clamshell	10.50
Backhoe	10.50
Grapple	10.50
Asphalt Laydown Machine	10.50
Dozer (d-4 or Equivalent or Larger)	10.50
Loader, Hi-Lift	10.50
Scraper Type Equipment	10.50
Power Driven Hole Digger	10.50
Trenching Machine	10.50
Wheel Type Tractor or like equipment with Hoe or Ditcher	10.50
Air Compressor over 500 cu.ft. (1)	10.50
Winch Truck with 'A' Frame	10.10
Roller, All Types	10.10
Concrete Buster to Tamper	10.10
Asphalt Laydown - Backend	10.10
Farm Tractor, Loader, Box Blade with or without attachments	10.10
Greaser and/or Fuelman	10.10
Mechanic & Welder Helpers	10.10
Oil Distributor	10.10
Pulvixer	10.10
Till Top Trailer Operator	10.50
Truck Crane Oiler & Driver or Truck Crane Oiler	9.20

EXHIBIT

33

**Report of Construction Contractor's  
Wage Rates**

93-OK-001

**U.S. Department of Labor**  
 Employment Standards Administration  
 Wage and Hour Division

16494

 OLS No. 12150-04  
 Expires: 07/31/90

Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The privacy of the respondent will be held in confidence.

Please see instructions on reverse side:

1. Contractor Name, Address, Telephone  Connelly Paving Co., Inc. P.O. Box 75450 Okla. City, OK 73107 199	2. Project Name, Description, and Location (Include County)  INTERNAL REVENUE OFFICE BLDG OKLA City OK. 304-0  OKLAHOMA, COUNTY
--	--

3. Contract Type <input type="checkbox"/> General/Prime <input type="checkbox"/> Sub	4. Approximate Value of Project \$2.5 million Subcontract \$	5. Starting Date 6-1-92	6. Completion Date 8-28-92 <input checked="" type="checkbox"/> Estimated <input type="checkbox"/> Actual
7. Type of Construction <input checked="" type="checkbox"/> Building <input type="checkbox"/> Highway <input type="checkbox"/> Heavy <input type="checkbox"/> Mechanical	8. Project to Subject to: <input checked="" type="checkbox"/> Davis Wage Determination <input type="checkbox"/> Federal (Davis-Bacon) Wage Determination <input type="checkbox"/> Master		

9. Classification of employment (S.A., Carpenter, Electrician, Laborer, etc.)	10. Is Contractor Party to a Collective Bargaining Agreement Under Which Employees Were Hired?		11. Workweek Ending Date (For Hourly Worker Employed)	12. HRS. Number Employed	13. Hourly Rate	14. Wage Premiums (List Hourly Rate or Percentage of Prevailing Rate or Other)		
	Yes	No				Health and Welfare	Pension	Seniority and Vacation
Motor Patrol 1740	✓		6-27-92	2	15.15	2.35	1.25	18.75
Asphalt Laidown Machine 1620	✓		6-27-92	7	14.65	2.80	1.25	18.70
Loader 1020	✓		6-27-92	2	14.65	2.20	1.25	18.10
Backhoe 1100	✓		6-27-92	7	14.65	2.20	1.25	18.10
Bob Car 1110	✓		6-27-92	1	14.40	2.30	1.25	18.95
Bolter/Finish 1840	✓		6-27-92	7	14.40	2.20	1.25	18.85
Backhoe 940	✓		6-27-92	2	14.65	2.20	1.25	18.10
Water Wagon 1120	✓		6-27-92	1	14.40	2.20	1.25	18.85

15. Remarks:

Effective June 1, 1993 an increase of 50% to Health &amp; Welfare; 5% increase to Supplemental Pension and 25% increase to wages.

12 1993

Use such information to

17. Date Report Submitted

12-8-92

EXHIBIT

34

TO BE PAID IN ADDITION TO THE ABOVE WAGE SCHEDULE:

Effective Dates:  
6-1-91 to 5-31-93

Health & Welfare	Pension	Apprenticeship	Supplemental Dues
\$1.80	\$.25¢	\$.18¢	\$.40¢

\*\* In addition to the wages set out in the schedule to this agreement, employer agrees to add forty (40¢) cents to the wages of each employee for each payroll hour. During the term of this Agreement and continuing thereafter and in accordance with the terms of an individual and voluntary written authorization for membership dues in form permitted by the provisions of Section 302(c) of the Labor Management Act, as amended, the Employer shall deduct from the wages of all employees covered by this Agreement forty (40¢) cents per hour for each payroll hour as supplemental dues.

Said sums shall be remitted to the Local Union as supplemental dues and reporting of the sums shall be made in the same manner and on the same form provided for the payments of fringe benefit programs required under the agreement.

Engineers for machines not listed under these classifications shall receive the scale comparable to these classifications.

The above rates shall also apply on all hourly rental work.

It is agreed that the parties to this contract will be bound by the State of Oklahoma Highway and Heavy Agreement covering wages, hours and fringe benefits for all work performed on airport runways, aprons, taxiways and county road; Oklahoma State Department, Oklahoma Turnpike Authority and United States Corps of Engineering projects.

## ARTICLE XV

The parties hereto recognizes that from time to time it may be necessary for an employee to complete the workday at a location other than the location where the employee started work, and parked his car. In such event, the Company agrees to transport the employee on Company time back to his car. In the event the Company utilizes the services of another employee to transport employees back to their cars, such employee shall likewise be paid for such time as necessary to take the employees to their cars.

## ARTICLE XVI

Management Prerogative

Nothing in this Agreement shall be deemed to limit or restrict the employer in any way in the exercise of the customary functions of management the terms of this Agreement relating to its operation as it shall deem advisable and the right to hire, to promote to a higher or better position, to discharge, demote, or discipline for just cause, to schedule work, and to make all changes essential to the efficient operation of its operations, to establish and enforce standards of production and standards of quality, and the right to lay off employees because of lack of work or other adequate reason. Such functions are recognized by both the Union and prerogative of management. The above enumerations of management functions shall not

EXHIBIT

35

Report of Construction Contractor's  
Wage Rates

93-OK-008

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

16494



Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be held in confidence.

OMB No. 12180045  
Expires: 07/31/90

Please see instructions on reverse side:

1. Contractor Name, Address, Telephone

12  
Concho, Inc.  
P.O. Box 12508  
Oklahoma City, OK 731572. Project Name, Description, and Location (Include County)  
LAKE HEFNER WATER TRMT PLANT  
High LIFT (P) OKLA City, OK. 007-OK

OKLAHOMA COUNTY

3. Contract Type

 General/Prime  
 Sub

4. Approximate Value of

Project \$ 5 million  
Subcontract \$ \_\_\_\_\_

5. Starting Date

6-1-92

6. Completion Date

on going as of  
12-30-98  
 Estimated  Actual

7. General Agent/Supervisor List

Report of Construction Contractor's  
Wage Rates

93-OK-009

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

16494



Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be held in confidence.

OMB No. 12180045  
Expires: 07/31/90

Please see instructions on reverse side:

1. Contractor Name, Address, Telephone

12/29  
Concho, Inc.  
P.O. Box 12508  
Oklahoma City, OK 731572. Project Name, Description, and Location (Include County)  
LAKE HEFNER WATER TRMT  
PLANT CHEMICAL BL OKLA City OK. 104-OK 007-OK

OKLAHOMA COUNTY

3. Contract Type

 General/Prime  
 Sub

4. Approximate Value of

Project \$ \_\_\_\_\_  
Subcontract \$ \_\_\_\_\_

5. Starting Date

6-1-92

6. Completion Date

8-28-92  
 Estimated  Actual

7. General Agent/Supervisor List

Report of Construction Contractor's  
Wage Rates

93-OK-001

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

16494



Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be held in confidence.

OMB No. 12180045  
Expires: 07/31/90

Please see instructions on reverse side:

1. Contractor Name, Address, Telephone

199  
Gunnally Paving Co., Inc.  
P.O. Box 75450  
Oklahoma City, OK 731072. Project Name, Description, and Location (Include County)  
INTERNAL REVENUE OFFICE  
BLDG OKLA City OK. 304-0

OKLAHOMA County

EXHIBIT

36

 General/Prime  
 Sub

4. Approximate Value of

Project \$ 10 million  
Subcontract \$ \_\_\_\_\_

5. Starting Date

6-1-92

6. Completion Date

 Estimated  Actual

Report of Construction Contractor's  
Wage Rates **93-OK-001**

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

**16490**

OSHA No. 121820-04  
Expires: 07/31/90

Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure conformity in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the respondent will be held in confidence.

Please see instructions on reverse side.

1. Contractor Name, Address, Telephone

**199**  
Connelly Paving Co., Inc.  
P.O. Box 75450  
Okla. City, OK 73167

2. Project Name, Description, and Location (Include County)

**1480**  
CIRCUIT CITY Superstore  
(PENIN SQUARE)  
OKLA, City OK.  
**OKLAHOMA COUNTY**

3. Contract Type:  General/Prime  Sub

4. Approximate Value of Project: **1.3 Million**

5. Contract Date: **6-20-92**

6. Completion Date: **8-28-92**

7. General Assist Subcontractor List:  Estimated  Actual

7. Type of Construction:  Building  Highway  Residential  Other

8. Project is Subject to:  Federal (Davis-Bacon) Wage Determination  State Wage Determination  Other

9. Classification of employees (S.A., Carpenter, Electrician, etc.)

10. Is Contractor Party to a Collective Bargaining Agreement under which workers were paid?  Yes  No

11. Workweek Starting Date Per Piece Worker Employed

12. Peak Number Employees

13. Hours Weekly

14. Hours Before Last Holiday Rate & Percentage of Base Hourly Rate or O.T.

15. Health and Welfare Pension Holiday and Vacation App. Training

**Union contract**

Classification	Yes/No	Starting Date	Peak No.	Hours	Rate	OT %	Pension	Holiday	Vacation	App. Training
Motor Patrol 1740	✓	6-27-92	3	13 90	2 20	1 35				18¢
Asphalt Lathrow Machine 1620	✓	6-27-92	7	13 40	2 20	1 35				18¢
Loader 1020	✓	6-27-92	2	13 40	2 20	1 35				18¢
Backhoe man 1100	✓	6-27-92	7	13 40	2 20	1 35				18¢
Bob Car. 110	✓	6-27-92	1	12 25	2 20	1 35				18¢
Roller/Finish 1840	✓	6-27-92	7	13 50	2 20	1 35				18¢
Backhoe 940	✓	6-27-92	1	13 25	2 20	1 35				18¢
Water Wagon 1120	✓	6-27-92	1	13 25	2 20	1 35				18¢

16. Remarks: Effective June 1, 1993 an increase of 50¢ to Health & Welfare; 5¢ increase to Supplemental Base and 25¢ increase to wages.

**4/18/93**

Wage rates paid cannot be considered in the determination of Davis-Bacon prevailing wage rates unless such information is provided as requested above.

17. Date Report Submitted: **12-9-92**

18. Submitted by: **Arde Whitten** (Signature)  
19. Date: **12/9/92**

EXHIBIT  
**37**

**EMPLOYER MONTHLY REMITTANCE REPORT**  
**OKLAHOMA OPERATING ENGINEERS**

HEALTH & WELFARE      INDUSTRY ADVANCEMENT      PENSION      SUPPLEMENTAL DUES      APPRENTICESHIP

REMITTANCE REPORT MONTH OF June 19 92

JOB LOCATION Oklahoma (COUNTY) \_\_\_\_\_ ZONE \_\_\_\_\_ (SEE REVERSE)

PRESS HARD YOU ARE MAKING 8 COPIES

SOCIAL SECURITY NUMBER	NAME OF EMPLOYEE Last Name	INITIAL 1st Mid.	*Employee Local No.	HOURS WORKED (Not Overtime)
1 443	<b>EMPLOYEE NAMES OMITTED TO PROTECT PRIVACY</b>			156
2 115				143
3 448				233
4 430				160
5 442				227
6 447				130
7 448				172

*7 union employees*

EXHIBIT  
**38**

\*Other than Local 627

	Total Hours this Page	
PENSION HOURS	1221	\$ 0.25 = \$ 305.25
HEALTH AND WELFARE HOURS	1221	\$ 1.80 = \$ 2197.80
APPRENTICESHIP HOURS	1221	\$ 0.15 = \$ 219.78
SUPPLEMENTAL DUES HOURS	1221	\$ 0.40 = \$ 488.40
INDUSTRY ADVANCEMENT HOURS	1221	\$ 0.00 = \$ 0.00
TOTAL HOURS SUBJECT TO CONTRIBUTION	1221	\$ 2.63 = \$ 3211.23

*(56)*

5

Report of Construction Contractor's  
Wage Rates **93-OK-001**

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

116484



Note: This form is used by the U.S. Department of Labor to determine the hourly prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure uniformity in submission of wage data. Respondents may use an alternate form if all the information requested is included. The clarity of the responses will be held in confidence.

OMB No. 12180048  
Expires: 07/31/90

Please see instructions on reverse side.

1. Contractor Name, Address, Telephone

Connelly Paving Co., Inc.  
P.O. Box 75450  
Okla. City, OK 73107

199

2. Project Name, Description, and Location (Include County)

**OU MEMORIAL FOOTBALL  
STADIUM NORMAN OK 727  
CLEVELAND County**

3. Contract Type

General/Prime  
 Sub

4. Approximate Value of Project

\$ **20 Million**  
Subcontract \$

5. Starting Date

**6-1-92**

6. Completion Date

**7-1-92**

7. Type of Construction

Building  
 Highway  
 Heavy

Residential  
 Storage  
 Units

8. Project is Subject to:

State Wage Determination

Federal (Davis-Bacon) Wage Determination  
 Other

9. Classification of employees (i.e., Carpenters, Electricians, Laborers, etc.)

10. Is Contractor Party to a Collective Bargaining Agreement under which employees were hired?

11. Workweek Ending Date For Peak Month Employed

12. Peak Number Employees

13. Basic Hourly Rate

14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rate or Other Amounts)

	10. Is Contractor Party to a Collective Bargaining Agreement under which employees were hired?		11. Workweek Ending Date For Peak Month Employed	12. Peak Number Employees	13. Basic Hourly Rate	14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rate or Other Amounts)			
	Yes	No				Health and Welfare	Pension	Holiday and Vacation	App. Training
Motor Patrol 1740	✓		6-15-92	3	15.15	20%	125		186
→ <sup>47%</sup> Laidown Machine 1620	✓		6-15-92	7	14.50	22%	125		186
→ Loader 1020	✓		6-15-92	2	14.65	22%	125		185
→ Backend man 1100	✓		6-1-92	7	14.90	22%	125		185
→ Bob Car 1110	✓		6-1-92	1	13.25	22%	125		185
→ Roller/Finish 1040	✓		6-1-92	7	14.65	22%	125		185
Backhoe 940	✓		6-1-92	1	14.65	22%	125		185
Water Wagon 1120	✓		6-1-92	1	14.65	22%	125		185

15. Remarks

Effective June 1, 1993 an increase of 50¢ to Health & Welfare; 5¢ increase to Supplemental Dues and 25¢ increase to wages.

JUN 18 1993

EXHIBIT  
**39**

See each determination to

17. Date Report Submitted

12-8-92

Report No. (Use 0000000000)

Division

Reporting Employer

40-22a

PROJECT NAME SUMMARY  
SURVEY 95-8K-812

DATE: 01/13/94

37 PROJECT ID: 727-03

OWNER: OKLAHOMA UNIVERSITY-FOOTBALL STADIUM  
 COUNTY: CLEVELAND CO.  
 DATE OR % COMPL.: 07/01/92  
 PROJECT VALUE: \$29,880,000 ← 7

	QUANTITY	PERMITS	NO. EXPL.
940 BACKHOE	\$14,650	\$5,730 0.000	1
1020 FRONT END LOADER	\$14,650	\$5,730 0.000	2
1030 GRADER	\$15,150	\$5,730 0.000	2
1040 ROLLER	\$14,650	\$5,730 0.000	7
1100 ASPHALT MACHINE	\$14,900	\$5,730 0.000	7
1110 BOBCAT	\$13,250	\$5,730 0.000	1
1120 WATER WAGON	\$14,650	\$5,730 0.000	1
1620 ASPHALT LAYDOWN MACHINE	\$14,900	\$5,730 0.800	7

EXHIBIT

40

GAO

United States  
General Accounting Office  
Washington, D.C. 20548

Human Resources Division

B-256314

February 7, 1994

The Honorable Larry E. Craig  
United States Senate

The Honorable Charles W. Stenholm  
House of Representatives

The Honorable William F. Goodling  
House of Representatives

The Honorable Tim Valentine  
House of Representatives

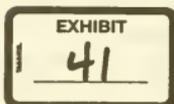
The Honorable Thomas E. Petri  
House of Representatives

The Davis-Bacon Act, passed in 1931, requires that workers on federal construction projects be paid a wage at or above the level determined by the Department of Labor to be prevailing in the area. Since 1937, the prevailing wage provisions have been extended by many statutes to involve construction financed in whole or in part by the federal government. In a 1979 report, we expressed our concern about the accuracy of the wage determinations and its impact on federal construction costs.<sup>1</sup> In addition, we said that the act appeared to be impractical to administer due to the magnitude of the task of producing an estimated 12,400 accurate and timely prevailing wage determinations.

In response to your request that we describe the changes to Davis-Bacon regulations and administration since our 1979 report, we conducted interviews with officials in the Department of Labor's Wage and Hour Division and reviewed the key literature, the pertinent legislation, and Labor's written policies and procedures. After briefing your staff on the results of our work, we agreed to provide the information to you in correspondence.

<sup>1</sup>The Davis-Bacon Act Should Be Repealed (GAO/HRD-79-18, Apr. 27, 1979).

GAO/HEHS-94-95R Davis-Bacon Act



058987/150728

B-256314

prohibition on expenditures, and Labor began implementation of the helper regulations.<sup>3</sup> However, the implementation of the helper regulations was again suspended following the enactment of "The Department of Labor Appropriations Act, 1994" on October 21, 1993, which prohibited expenditure of funds for such use in fiscal year 1994.

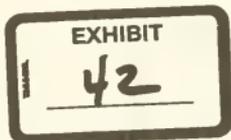
### DATA QUALITY

The quality of the data Labor uses in determining the prevailing wage remains a concern. Wage determinations are completed with response rates as low as 25 percent because Labor must rely on the voluntary cooperation of contractors to respond to requests for wage and benefit data. Labor says that the response rates vary, with surveys for residential construction (an industry group with many small firms that are less likely to complete the questionnaires) having response rates as low as 25 percent. Response rates for other types of construction are typically higher--for example, often 80 percent or more for highway construction--because they have fewer, larger firms that are more likely to respond to the questionnaire. Labor does not perform a response bias analysis to determine whether there are a disproportionate number of responses from certain types of employers--such as employers with a unionized workforce or larger employers--that could result in survey results that differ significantly from the actual wage prevailing in the area. A responsible Labor official told us that he believed that response bias was a potential problem but that there was no data available on such characteristics as the size of contractor or rate of unionization for all contractors in a given area which would be required to perform such an analysis. In addition, Labor does not verify the accuracy of the data received (for example, by comparing survey results to payroll records) even on a sample basis. The Labor official also stated that there were insufficient resources to do such verification. In fact, with current resources they are able to complete surveys for only about 200 areas a year. As a result, the average age of a wage survey is more than 7 years.

### TECHNOLOGICAL CHANGE

Major technological changes have facilitated Labor's administration of the Davis-Bacon wage determination process. Technological changes since our 1979 report have resulted in the automation of many aspects of the wage determination process. For example, the mailing of surveys and the analysis of survey data are now largely

<sup>3</sup>Labor told us that, as of September 1993, the use of helpers was found to be a prevailing practice in 23 of the 73 surveys (32 percent) completed since the surveys were started in April 1992.



U.S. Department of Labor

Employment Standards Administration  
Wage and Hour Division  
Washington, D C 20210

June 2, 1995

Memorandum No. 95-22

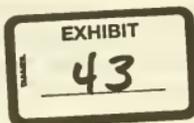
## MEMORANDUM FOR WAGE AND HOUR REGIONAL ADMINISTRATORS

FROM:

  
 MARIA ECHAVESTE  
 Administrator

SUBJECT: Verification of Data in Davis-Bacon Wage Surveys

Incorrect information submitted by third parties has been found in several surveys. Therefore, strategies to deal with the verification of data submitted by other than some one in actual possession of project payrolls are being considered. Suggestions about verification procedures from the Regional Office survey staff will be welcome and we are also consulting with the various interest groups in this regard. In the meantime, however, the importance of at least verifying by telephone some sample of any data presented without the signature of an official of the employing firm is of the utmost importance.



Working for America's Workforce

405) 24-4421  
 Oklahoma Press  
 Clipping Bureau  
 3601 N. Lincoln Blvd  
 OKC OK 73105-51  
 TULSA WORLD

Tulsa City  
 Daily 1995

OCT 26 1995

## Wafer Plant Bids Show Big Savings

■ The bids are about \$10 million under the city's cost estimate. The death of the state prevailing-wage law may be the cause.

By Ziva Bronetsky  
 World Staff Writer

City officials say they are "elated" that bids for construction on the new Mohawk Water Treatment Plant came in \$10 million lower than expected, and the savings may eliminate a need for future utility rate increases.

The savings could be the first major impact of the legal destruction of the so-called "Little Davis-Bacon Act."

Engineers had estimated it would cost \$40.2 million to build the plant's process "train," which will remove silt and filter impurities from city water. Bids opened Wednesday by the Tulsa Metropolitan Utility Authority ranged from \$28.8 million to \$31.1 million.

Public Works Director Charles

Hardt said he was pleasantly surprised. Five companies, including Manhattan Construction Co. of Tulsa, bid for the project. Contracts will be awarded in several weeks.

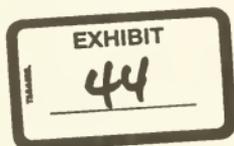
"I think elated is an appropriate description," Hardt said. "You have a complete list of good contractors, and you have excellent bids. It obviously is a desirable position to be in instead of having to figure out ways of coming up with more money."

The contract is the largest of seven contracts for construction on the \$75 million plant. The plant, to be built near Harvard Avenue and Mohawk Boulevard, will replace the existing Mohawk plant built in 1924.

The plant is expected to be operating by 1999 to treat an estimated 100 million gallons of water per day from Spavinaw, Euchla and Oologah lakes.

Sandra Alexander, the authority's chairwoman, said she had no explanation for the low bids on the contract, one of the largest in city history. She said some have speculated that a recent court decision on prevailing wages would

See Bids on News 3

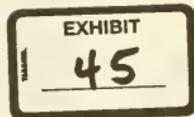


# Comparing the "Old" Rates with the Newer "Fraudulent" Rates — A Few Examples

## Prepared by the Oklahoma Department of Labor

This chart reviews wage rates for heavy water and sewer line construction in the Oklahoma City metropolitan area. It compares the federally issued Davis-Bacon wage rates issued prior to and immediately after the most recent U.S. Department of Labor survey was conducted.

Worker Classification	Old Rate (became effective 7/22/84)	New "Fraudulent" Rate (became effective 11/05/84)	Increased Cost to Taxpayers
Asphalt Paving (Laydown) Machine Operator	Wage: \$8.30 Fringes: \$0.00 = Total: \$8.30/hour	Wage: \$15.80 Fringes: \$4.45 = Total: \$20.25/hour	144 percent
Subdozer Operator	Wage: \$9.10 Fringes: \$0.00 = Total: \$9.10/hour	Wage: \$15.80 Fringes: \$4.45 = Total: \$20.25/hour	122 percent
Crane Operator	Wage: \$8.40 Fringes: \$0.00 = Total: \$8.40/hour	Wage (small crane) \$18.30 Fringes \$4.45 = Total: \$22.75/hour	147 percent
		Wage (big crane) \$17.55 Fringes \$4.45 = Total: \$22.00/hour	182 percent
Motor Grader Operator	Wage: \$9.05 Fringes: \$0.00 = Total: \$9.05/hour	Wage: \$16.30 Fringes \$4.45 = Total: \$20.75/hour	128 percent
Scraper Operator	Wage: \$8.60 Fringes: \$0.00 = Total: \$8.60/hour	Wage: \$15.80 Fringes \$4.45 = Total: \$20.25/hour	136 percent
Truck Driver (Lombay)	Wage: \$7.25 Fringes: \$0.00 = Total: \$7.25/hour	Wage: \$12.35 Fringes: \$3.70 = Total: \$16.05/hour	121 percent



Chairman BALLENGER. While you are moving there, I would like to ask on that job, the last one you showed, the news story from Tulsa, was there no Federal money in that at all?

Mr. LESTER. I am not certain about that detail.

Chairman BALLENGER. In other words, what I am saying, even though you got clear of your Oklahoma Davis-Bacon, if there was Federal money in there, you still would be stuck with the Federal Davis-Bacon, right?

Mr. LESTER. That is a good assumption, yes.

Would the Congressmen like us to stay here for the benefit of the media since we have already got mikes over here, or move back?

Chairman BALLENGER. I think it probably does make sense to stay there. Pete, fire away.

Mr. HOEKSTRA. What kind of support have you gotten from the Labor Department as far as getting documents that you believe are necessary to do a thorough investigation?

Mr. LESTER. In early May of 1995, we submitted our first Freedom of Information request. We got a very timely response within 10 days that said we are working on it, you will hear from us later. We did not get any substantial response or hear any dialogue beyond that until after we presented our initial findings to you folks and the committee on July 11. And in fact, the first substantial evidence we saw, evidence that we had asked for, was provided to your committee the following week after our visit to Washington, DC.

Mr. HOEKSTRA. Do you have any degree of confidence that the Labor Department is perhaps vigorously pursuing the allegations on a broader basis, or not?

Mr. MARSHALL. Mr. Chairman, we are not satisfied with the dialogue or lack of dialogue that the U.S. Department of Labor has had with the Oklahoma Department of Labor with regard to our findings of fraud.

Mr. HOEKSTRA. You had a number of slides there that talked about the Department of Labor had determined that these surveys were incorrect, inappropriate, fraudulent, whatever word you want to use. Is that not an indication that the Department is going out and doing their work, or where did these things come out in the process?

Mr. LESTER. Some of the Freedom of Information documents that we received indicate that they began to look at the heavy construction survey around the beginning of May, at around the same time that we initiated our own investigation. And because of dates on memos and dates on faxes and so forth, it looks like once they withdrew the heavy construction wage rates at the end of May, that they began their own investigation sometime probably in July of last year into the building construction. However, in reviewing many of the FOIA documents we have received, there were some very disturbing things—inter-agency memos for example, between the national office and the Dallas regional office, where the top of the memo would have a date and it would be from and to regarding allegations from Oklahoma or whatever, and then it would say, "Gentlemen" below that and the entire rest of the memo would be blank. And we received numerous documents where there was obvious dialogue at USDOL that was redacted. It concerns us because

we are another government agency, we're a sister agency in this. We are responsible for looking out for the integrity of the way—the government accountability integrity of the way—the government impacts the taxpayers of this State. We do not believe we received satisfactory treatment from the U.S. Department of Labor.

Mr. HOEKSTRA. You tried to outline people that perhaps would benefit. Obviously there are significant dollars involved, not only in Oklahoma but around the country, there could be individuals working on projects, it could be other groups that might benefit financially. Have there been any ramifications to any of you personally for pursuing this type of effort as vigorously as what you have for the last 12 months?

Mr. MARSHALL. Mr. Chairman, that is a very sensitive subject with us in that the Commissioner of Labor for Oklahoma has received death threats. We have been advised by the people counseling us with regards to our internal security not to elaborate beyond certain facts, and the facts are she has been victimized in this process, the facts are we have taken appropriate measures based on consultation with law enforcement authorities, and the fact is this would not have happened had she not exposed what we believe to be fraud in the prevailing wage process.

Mr. HOEKSTRA. Thank you.

Chairman BALLENGER. Ernest.

Mr. ISTOOK. Thank you very much.

When this process began, in one of your documents, you mentioned that for a number of categories, there had been a survey—I think the correct terminology is a determination had been issued in July of 1992, I believe it was, and yet there was a resurvey several months later. With what frequency and with what regularity is there an effort made by the Labor Department to say well, it is time to go back in and resurvey things and change the old rates and see if there ought to be some new rates?

Mr. LESTER. We discussed that extensively with two folks from the U.S. Department of Labor. The Commissioner and I have visited personally with Randy O'Neal, who is in charge of this activity at the Dallas regional office, and also with Joe Viareale, who is the regional administrator in the Dallas office. They tell us, as I indicated earlier, that the squeaky wheel gets the grease. So if any interests in a particular community feel that they have not been surveyed in a timely fashion, they squeak. And when they do, whoever is the squeakiest gets the attention from the U.S. Department of Labor. However, they also indicated to us that wage determinations, wage decisions like this are modified regularly, not because of a pattern of inaccuracy that they have dealt with in the past, but because in many instances the specific Federal wage rates have been established based on a majority which came from a union contract. And where a specific Federal wage rate is linked to a specific union pay scale at a specific union hall, each time that union hall negotiates a new contract, they notify the U.S. Department of Labor regional office and their modifications are immediately implemented for everyone else. That is a part of the way the process works.

The most recent survey had been actually several years, but the most recent modifications had been within only months of the time

that those new wage rates were issued in November. The long and short of it is those rates at \$8 per hour, \$9 per hour roughly speaking, were in effect from July all the way up to November when the new rates were issued.

Mr. ISTOOK. So under this, rather than saying every year we are going to take a look to see if something has changed, they do it basically—in some areas of the country, maybe there is substantial change but nobody requests a resurvey or even if somebody requests it, for whatever reason they do not pay attention to their request, they can arbitrarily determine when we want to go resurvey things. I mean, does this not kind of play into any efforts at orchestration? Of course, it also plays into if you have a regular established pattern, but when you have an irregular pattern, then those who are making the request can be those who are prepared to respond to the request, whereas everyone else does not know it is coming.

Mr. LESTER. Absolutely, you are totally correct, Congressman. And there is another factor here that is very troubling. We are told by the regional administrator that we are part of an 11-State region that extends from Louisiana to Utah north to North Dakota and of course, as you pointed out earlier, they are responsible for surveying every county in every State in the country. So in this region, that would be county-by-county all 77 counties in Oklahoma, which is the smallest of those States, and the other 10 States in the region. And in the Dallas regional office, there are two clerks who are responsible for managing this entire process.

Mr. ISTOOK. It is already expensive to try to have a process of determining prevailing wages on the scope you are talking about, but especially when you are trying to get a representative sampling. Just like a political pollster is supposed to go to households that actually are typical, there is a lot of work that is done supposedly to pick those and of course you can skew the results dramatically if you do not pick a sample. Can you give us a comparison of how many people had their wages determined by this survey compared to how many people were surveyed? In other words, were 100 percent of the workers actually surveyed to establish the rates for everyone, was it half of 1 percent, was it 10 percent? What is the sampling size compared to the number of people affected?

Mr. LESTER. The best terms I can give you, Congressman, are some that were generated by the U.S. Department of Labor. They received back 259 I believe is the number, 259 total survey forms for the heavy construction survey. Those 259 forms are paid for by the roughly 1.2 million taxpayers in the Oklahoma City metropolitan area.

Mr. MARSHALL. Congressman, if I may, if the prevailing wage law is going to provide for an accurate prevailing wage, I would suggest that the committee might entertain the notion that the only governmental entity that exists in America that can provide accurate data if a prevailing wage is going to be administered would be the Internal Revenue Service. They are the only entity that has access to the information on the individual workers. If the advocates of reform would like to broach that subject, I think as far as meaningful reform, I would suggest that the committee might entertain that notion.

Mr. ISTOOK. So do you have any projection of what it would cost to say do it right, if you wanted accurate information that accurately reflected all the taxpayers of the prevailing income and prevailing wages, what level of bureaucracy would that require, and what expense? You know, I'm on the Appropriations Committee, so I would like to know.

[Laughter.]

Mr. MARSHALL. I am not sure of the billions of dollars it might cost to administer, but we do know that it is costing billions in fraud.

Mr. ISTOOK. Thank you.

Chairman BALLENGER. Let me ask a question. I am not a lawyer but I know that we requested the Department of Justice to look into this situation here. Do you know if there is anybody from the Department of Justice investigating this?

Mr. MARSHALL. I think the Commissioner should address that one.

Ms. RENEAU. Congressman, we respectfully wish to defer any questions relative to a Federal investigation to that Federal agency. I feel hesitant to speak on their behalf.

Chairman BALLENGER. Okay, thank you. Any further questions?

Mr. HOEKSTRA. We are not looking at expanding—I can tell you this committee will not look at expanding the responsibilities of the IRS.

[Laughter.]

Mr. HOEKSTRA. I would hate to have that be the story that comes out of here. We are looking for them to do fewer things, not more.

But it does bring up a question, now that the original Oklahoma statute was ruled as being unconstitutional, as a Department of Labor, are you looking at establishing prevailing wages for State contracts in your 77 counties?

Ms. RENEAU. The Oklahoma Department of Labor is not currently participating in any measures to re-enact Davis-Bacon; however, we understand that those activities may be taking place at our State legislature.

Mr. HOEKSTRA. So you have not taken a look at what the most effective process would be. We have got a suggestion—the IRS—but you have not taken a look at other ways or methods that you might have to use to actually determine prevailing wages in the State of Oklahoma?

Ms. RENEAU. No, sir, I am actually on record as being an advocate for the free market, so I have not spent time on developing what I believe to be a better way for the government to mandate wages in the marketplace.

Mr. HOEKSTRA. That is a fairly revolutionary approach, but all right. I have no more questions. Thank you very much and thank you again for all the work that you have done.

Mr. ISTOOK. Might I pose one question to the Commissioner on this? I realize that the Department of Justice has to speak for itself on what it can or cannot determine, but from your work on this and what you have seen that they have or have not done, do you believe that the Department of Justice is vigorously pursuing this?

Ms. RENEAU. Do I have to agree with vigorously?

Mr. ISTOOK. Characterize it however you wish.

Ms. RENEAU. I believe that the Justice Department is looking into the matter. We have not received satisfactory or comforting feedback as to where that investigation is and exactly what is going on.

Mr. ISTOOK. So whatever the term to describe what they are doing might be, it would not be vigorous?

Ms. RENEAU. I would not use the word "vigorous," sir, that is correct.

Mr. ISTOOK. Thank you.

Mr. MARSHALL. Congressman, there are two aspects to that question. One centers around what the FBI might be involved with versus the U.S. Attorney's office. And that is where there is a difference as to what we can tell.

Ms. RENEAU. We do have substantial feedback from industry in Oklahoma that the FBI is indeed active in the community and there is an investigation ongoing. However, we have no feedback from the U.S. Attorney's office. But I will respectfully refer you to the FBI or the U.S. Attorney's office.

Mr. ISTOOK. Do you know whether the same people that you have interviewed, the different contractors, whether it be Concho or Connelly or Flintco and all these others, whether they have actually been interviewed by representatives either of the FBI or the Justice Department or the U.S. Attorney's office.

Ms. RENEAU. I believe many of the same contractors that we have interviewed have also been interviewed by at least the FBI.

Chairman BALLENGER. Let me just ask another question, again not being a lawyer. Has not Oklahoma law been breached here—has somebody broken the law? I mean sending in fake stuff to the government, I do not know, does that send you to jail or what have you done?

Ms. RENEAU. Well, we turned our investigation over to State authorities at the same time we brought the information to Federal authorities, thinking possibly that perhaps State laws had been broken as well. The OSBI is just beginning an investigation per the request of the Governor of the State of Oklahoma, and the Attorney General for the State of Oklahoma has agreed that if wrongdoing is found that it will be prosecuted.

Chairman BALLENGER. Let me again thank you all, and Brenda, I know you are catching all kinds of heat back here, but for those of us in Washington, I would just like to say that the effort that we have put in to educate people about Davis-Bacon would have been completely wasted if you, as a group of people, had not come forward with the information that you have got.

Ms. RENEAU. We thank you, Congressman.

Chairman BALLENGER. Now, let me introduce the third panel of witnesses. First of all, Mr. Gary Matthews of Matthews Trenching Company; second, Mr. Jim Connelly of Connelly Paving Company; third, Mr. Jim Milner, Citizens for a Sound Economy; and fourth, Mr. Bill Estell of Quickway Excavating. Gentlemen, please have a chair. Okay, Mr. Bumpers, I did not have you on the front page here, Mr. Terry Bumpers, National Alliance for Fair Contracting. We will do the anonymous witnesses later and take a break at that time in preparation.

Gentlemen, we would appreciate it if you could be fairly concise in your statements, hold it to five minutes if you can. I do not know if you previously made any arrangements as to who goes first, but we can go from the left to the right. How about that? My left, shall we start with you?

#### STATEMENT OF GARY MATTHEWS, MATTHEWS TRENCHING COMPANY

Mr. MATTHEWS. Gentlemen, my name is Gary Matthews and I appreciate being asked to participate in this hearing. I will just get right to the point of what I have personal knowledge of.

I think you all have a copy of my written testimony and in that I include three exhibits. The first is a letter from the U.S. Department of Labor requesting that we participate in this survey. The second is the WD-10 form which we actually submitted on this project. The third is a project wage summary, Form WD-22, that we obtained from the Department of Labor, which we believe corresponds with this project. You can put the two forms together and see that they accurately reported the information that we provided, but then they also added 12 additional labor categories with inflated wage rates.

That is basically the crux of what I have.

Chairman BALLENGER. Thank you, sir.

Mr. Connelly. I have got a written list now that we are supposed to go by. Would it be easier if we move the witnesses? Mr. Matthews, could you just swap chairs with him? That way we will not be chasing all those microphones around.

[The prepared statement of Mr. Matthews follows:]

#### STATEMENT OF GARY MATTHEWS

My name is Gary Matthews. I appreciate being asked to contribute to the Subcommittee's investigation. I am now and have been since 1971 in the utilities construction business, which includes installing underground electrical lines, sanitary sewers, storm sewers, water mains and similar type work, primarily in central Oklahoma. My father began the family business in 1947.

I am here because, as a citizen and taxpayer, I am concerned that the wage and benefit information provided by my company, Matthews Trenching Company, Inc., to the U.S. Department of Labor has not been properly summarized and accurately used in establishing prevailing wage rates under the Davis-Bacon Act.

I am most interested in the economic welfare of my company's employees, and want them to earn a reasonable wage. I do not know of any employer in this area of the country who does not feel the same. I would prefer, of course, that our employees earn the maximum amount possible, yet retain the desire to continue being diligent, productive and loyal employees. Therefore, I am not here to minimize the value of construction company field employees who are subject to statutory wage rates.

I am here because I became very concerned when the U.S. Department of Labor published its most recent wage determinations. The prescribed Davis-Bacon wage rates were, in most every instance, far greater than what contractors in central Oklahoma had been paying and what most everyone considered to be the actual market rate. Most local contractors, including myself, found it difficult to believe that an accurate wage rate survey had been taken, and were of the opinion that something was seriously wrong. Several of us decided to spend some time and money attempting to determine why the U.S. Department of Labor determined wage rates were so much greater than what the market dictated. I want to re-emphasize that my objective is not to unjustly reduce the incomes of public project construction workers—I, too, was a "field hand" before assuming management of my father's construction business.

When wage rates on public projects become too great the quantity of work correspondingly decreases. It is as simple as that. Unlike the Federal Government,

State and local governments must operate on balanced budgets and have only so much money available for public improvements. For that reason, if no other, I firmly believe that laws designed to establish wage rates commensurate with the marketplace should be properly administered. Many question the need for such laws, including myself. In an open market wage rates, like water, seek their own level according to the supply and demand. That system for establishing wages certainly works in the private sector. Over the years my observation is that Davis-Bacon wage rates have always been higher than those dictated by the marketplace, but not nearly as high as the recent wage rate determinations. That is what got everyone's attention.

Having explained briefly why as a concerned citizen and small businessman I elected to spend the time and exert the effort necessary to contribute in some small manner to the investigation, I will proceed directly to the facts about which I have personal knowledge.

My company received from the U.S. Department of Labor a December 16, 1992 letter requesting that we participate in a survey of wages and fringe benefits for Davis-Bacon Act purposes. The letter is attached as Exhibit 1. The letter advises that the U.S. Department of Labor is conducting a survey on heavy construction projects which were active during the period of September 1, 1991 through August 31, 1992, in several central Oklahoma counties, including Oklahoma County where my company performs most of its work. The letter enclosed one or more forms (Form WD-10) on which my company name and a project description had been typed, together with some Department of Labor reference numbers. We were asked to fill in the blanks and return the Form WD-10, Rev. March 1991 to the Department of Labor's Dallas office. We did so. A copy is attached as Exhibit 2.

One of our initial investigative chores was to secure from the U.S. Department of Labor the wage summary report prepared on the basis of the project information we provided. The matching Department of Labor Form WD-22a, dated May 9, 1994, is attached as Exhibit 3. There is no question but that the form we completed and the one prepared by the U.S. Department of Labor reference the same construction project.

A cursory comparison of the two documents (Exhibits 2 and 3) is most revealing. We reported four classes of employees, operators, pipelayers, laborers and flagmen. The Department of Labor summary has twelve (12) additional classifications. Because the U.S. Department of Labor form was completed by my wife instead of by me, I took the precaution of reviewing the project payroll records to make certain the wage and benefit information was accurate. As is usually the case, she was absolutely correct. We may have erred in designating the true completion date on the form, but that was not the important information which was being requested. My wife does not recall for certain, but her best memory is that she designated August 28, 1992 (a Friday) as the completion date because the wage survey period was only through August 31, 1992. The construction project was actually completed a few weeks later.

I was absolutely appalled to discover that the U.S. Department of Labor summary (WD-22a) lists twelve (12) employee classifications which my company did not report, and which do not appear on our job payroll records. The Form WD-10 completed by us and returned to the U.S. Department of Labor on February 22, 1993 lists only backhoe operators, pipelayers, laborers and flagmen. The U.S. Department of Labor Form WD-22a lists those same classifications, plus twelve (12) others! The Department of Labor report accurately restates the hourly rates and fringe benefits we reported for the four (4) classifications. The highest reported hourly rate was \$9 for an operator, plus fringe benefits totaling \$1.05. The Department of Labor summary lists additional hourly wage rates ranging from \$12.40 to \$15.15, plus fringe benefits of up to \$3.70 per hour. I assure you that my company did not report those figures to the Department of Labor, nor have we actually paid hourly wages approximating those amounts.

I do not, of course, have personal knowledge of how the information provided by my company was translated into such grossly false data. It is no wonder that the most recent Davis-Bacon prevailing wage rates are so much higher than the true or actual market rates. The naggingly persistent question remains: Has the U.S. Department of Labor made a clerical error of gigantic proportions, or has someone intentionally prepared erroneous summaries in order to justify higher Davis-Bacon hourly wage rates? In either event the grossly erroneous summary is a disgrace. It seems highly unlikely that anyone, including the U.S. Department of Labor, could make such a massive transposition error. The information provided by my company is accurately restated in the Department of Labor summary. However, the problem, quite obviously, is that the Department of Labor summary (Form WD-22a) contains additional inaccurate information! The additional information must have been fab-

ricated. Assuming there is no "mole" in the Department of Labor's computer, the problem must be placed at its doorstep. We mailed the form directly to the Department of Labor's Dallas office, thereby eliminating the possibility of some outside person intercepting it and fabricating the additional classifications and wage rates.

In summary, I am appalled that the U.S. Department of Labor would allow such blatant fabrications to occur. ordinary clerical errors are understandable, but not what appears to be intentional fabrication. Someone had to create the additional wage rates and employee classifications.

We confess to making an oversight type clerical error. Initially we advised the Oklahoma Department of Labor that we had not prepared a Form WD-10 for the construction project under consideration. However, during a subsequent record review we discovered that the form had been filed in our 1992 general business records instead of in the job file. Locating the Form WD-10 made possible a comparison of it and the U.S. Department of Labor summary which was supposed to contain the very same information. It would be equally appalling if someone had fabricated wage rates much lower than we paid and subsequently reported. It certainly appears that something or someone is rotten.

Thanks for your time and attention.

U. S. DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division  
525 Griffin Street, Room 800  
Dallas, Texas 75202-5007

December 16, 1992

Dear Sir or Madam:

The Davis-Bacon and related prevailing wage statutes specify that laborers and mechanics on construction projects subject to the Davis-Bacon requirements may not be paid less than the wages prevailing in the area on projects of a similar character. The Secretary of Labor is required to determine what these prevailing wage rates and fringe benefits are. For this purpose we are conducting a survey of wages and fringe benefits paid on heavy construction projects that were active during the period September 1, 1991 through August 31, 1992 in Canadian, Cleveland, Logan, McClain, Oklahoma and Pottawatomie Counties, Oklahoma. This office began collecting wage payment information for this survey on November 20, 1992.

It is our understanding that your firm is or recently has been engaged in the construction of the project(s) described on the enclosed form(s). The wages paid by your firm on the project(s) (regardless of whether it is Federal or non-Federal) affect the prevailing wage scale in the locality. If your company has been employed on any other project(s) meeting the criteria of the survey we would appreciate it if information for that project is also provided. Blank forms are enclosed for this purpose. Wage data from these projects will be considered in determining the prevailing wage rates and fringe benefit payments for future construction in this area. A self-addressed envelope which requires no postage is enclosed. Data must be postmarked by March 31, 1993 to be included in this survey.

For your convenience we have listed on the attached sheet mechanic and labor occupations common to heavy construction. When practical, please utilize these classifications in reporting. However, other classifications may be written in if necessary. If you are a general or prime contractor, it would be appreciated if you include a list of subcontractor names and addresses as requested on the enclosed form by January 20, 1993 so they maybe contacted.



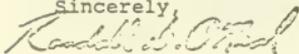
Page 2

In addition, we are asking that you report the number of helpers, trainees and apprentices employed in each craft, if any, and the wage and benefits paid to any helpers. It is important that both union and non-union contractors supply this type of information as it is used in deciding whether helper classes and wage rates will be issued on resulting wage schedules applicable to covered construction projects. Enclosed you will find definitions for helpers, trainees and apprentices. These definitions should be followed when such data are provided.

All information provided by respondents will be kept confidential. If you submit information for this survey, you will receive an acknowledgement from this office that the material you submitted was received. If you do not receive an acknowledgement within 10 days after forwarding your material, you should contact this office. Any questions concerning this survey or relevant information on construction wage rates should be directed to Deborah Hollins, Wage Analyst, at the above address or telephone 214-767-6884.

Thank you for your cooperation.

Sincerely,



RANDALL G. O'NEAL  
Regional Wage Specialist

ENCLOSURES

MECHANIC AND LABOR CLASSIFICATIONS FOR BUILDING, RESIDENTIAL,  
HIGHWAY AND HEAVY CONSTRUCTION

1. Heat and Frost Insulators	<u>Power Equipment Operators</u>
2. Boilermakers	31. Air Compressors
3. Bricklayers	32. Backhoes
4. Carpenters	33. Bulldozers
5. Cement Masons	34. Cranes, Derricks, Draglines
6. Drywall Finishers	35. Concrete Finishing Machines
7. Drywall Hangers	36. Graders
8. Electricians	37. Hoists
9. Glaziers	38. Loaders, Front End
10. Heating, A/C Mechanics	39. Mechanics
11. Insulators, Batt, Blown, Other	40. Mixers
12. Ironworkers, structural	41. Oilers
13. Ironworkers, reinforcing	42. Piledrivers
<u>Laborers:</u>	43. Pumps
14. Laborers, unskilled	44. Rollers
15. Airtool Operators	45. Scrapers
16. Drillers, wagon drill	46. Shovels
17. Landscape Workers	47. Tractors
18. Mason Tenders	48. Trenching Machines
19. Mortar Mixers	49. Roofers
20. Pipelayers	50. Sheetmetal Workers
21. Plasterers' Tenders	51. Softfloor (carpet) Layers
22. Lathers	52. Stonemasons
23. Marble Setters	53. Terrazzo Workers
24. Painters, brush	54. Tilesetters
25. Painters, steel	55. Truck Drivers
26. Paperhangers	56. Waterproofers
27. Piledrivermen	57. Welders
28. Pipefitters	
29. Plasterers	
30. Plumbers	

**Report of Construction Contractor's  
Wage Rates**

 U.S. Department of Labor  
 Employment Standards Administration  
 Wage and Hour Division


Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be kept confidential to the maximum extent possible under existing law.

 CMB No. 1215-0046  
 Expires: 07/31/93

See instructions on reverse side.

Contractor Name, Address, Telephone 93-OK-007 MATTHEWS TRENCHING 919 S. FAIRMONT OKLAHOMA CITY, OK 73129 405-677-4525		2. Project Name, Description, and Location (include County) 23 SANITARY SEWER REHAB VICINITY OF NE 10TH TO NE 23RD OKLA. CITY, OK OKLAHOMA county 050-0	
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3. Contract Type <input checked="" type="checkbox"/> General/Prime <input type="checkbox"/> Sub	4. Approximate Value of Project \$ <u>586,563</u> Subcontract \$ _____	5. Starting Date 12-11-1991	6. Completion Date 8-28-1992 <input type="checkbox"/> Estimated <input checked="" type="checkbox"/> Actual
---	---	--------------------------------	--

If General, Attach Subcontractor List

7. Type of Construction <input type="checkbox"/> Building <input checked="" type="checkbox"/> Heavy <input type="checkbox"/> Highway <input type="checkbox"/> Residential Stories _____ Units _____	8. Project is Subject to: <input type="checkbox"/> Federal (Davis-Bacon) Wage Determination <input type="checkbox"/> State Wage Determination <input checked="" type="checkbox"/> Neither
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9. Classification of Employees (i.e., Carpenters, Electricians, Laborers, Carpenters' Helpers, Apprentice Electricians, Etc.)	10. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid?		11. Workweek Ending Date	12. Peak Number Employed	13. Basic Hourly Rate	14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rates or Other Amounts)				
	Yes	No				Health and Welfare	Pension	Holiday and Vacation	App. Training	
Backhoe Operator		X	06/13/92	1	\$9.00	\$ .60	SEE REMARKS			
Jackhoe Operator		X	06/13/92	1	8.50	.45			.40	
Pipe Layer		X	06/13/92	1	7.25	.45			.35	
Pipe Layer		X	06/13/92	1	7.00				.35	
Laborer		X	06/13/92	1	6.50				.35	
Flag Man		X	06/13/92	1	6.00				.30	

## 15. Remarks

One week paid vacation with 1-3 years service-2 weeks after 3 years and six (6) paid holidays per year.

EXHIBIT

2

Wage rates paid cannot be considered in the determination of Davis-Bacon prevailing wage rates unless provided as requested above.

16. Submitted By M. J. MATTHEWS SECY/TREAS. <i>M. J. Matthews</i> Name and Title (Please Print) Signature Telephone Number 405-677-4525	17. Date Report Submitted 2-22-1993
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 Form WD-10  
 Rev. Mar 1991

PROJECT WAGE SUMMARY  
SURVEY 93-OK-007

-D-22a

DATE: 05/09/94

20 PROJECT 10: 050-0

NAME: SANITARY SEWER  
LOCATION: OKLA. CITY, OK  
DATE OR % COMPL.: 08/28/92  
PROJECT VALUE: \$586,563

SC-0246

Mc+Hewes

	HOURLY	FRINGE		NO. EMPL.
570 LABORER-COMMON	\$6.500	\$0.350	0.000	1
720 PIPELAYER	\$7.250	\$0.750	0.000	1
	\$7.000	\$0.350	0.000	1
880 MECHANIC	\$15.150	\$3.700	0.000	1
890 DILER	\$12.400	\$3.700	0.000	1
940 BACKHDE	\$13.400	\$3.700	0.000	4
	\$8.500	\$0.850	0.000	1
	\$9.000	\$1.050	0.000	1
950 BULLDOZER	\$13.400	\$3.700	0.000	4
980 CRANE	\$15.150	\$3.700	0.000	2
1010 FORKLIFT	\$13.400	\$3.700	0.000	1
1020 FRDNT ENO LOADER	\$13.400	\$3.700	0.000	2
1030 GRADER	\$13.400	\$3.700	0.000	1
1050 SCRAPER	\$13.400	\$3.700	0.000	2
1110 BOBCAT	\$13.400	\$3.700	0.000	1
1120 WATER WAGON	\$13.400	\$3.700	0.000	1
1610 CHERRY PICKER	\$13.400	\$3.700	0.000	1
1750 GREASER	\$13.400	\$3.700	0.000	1
1890 FLAGGER	\$6.000	\$0.300	0.000	1

EXHIBIT

3

## STATEMENT OF JIM CONNELLY, CONNELLY PAVING COMPANY

Mr. CONNELLY. Members of the committee, I would like to introduce myself. I am Jim Connelly, Sr., Vice President of Connelly Paving Company, it is a company started by my great uncles in 1907, the year of statehood. And I have been 45 years in the business.

On August 17, 1995, our company received a fax from the U.S. Department of Labor requesting verification of data for 1993 building construction surveys in the Oklahoma City area. This fax contained WD-10 forms on 21 projects and we were asked the following questions:

Did we work on the project?

Are the classifications listed as used on the project correct?

Are the number of workers correct for each type of equipment?

Are the wage rates and fringe benefits correct?

I would like to clear the fact that none of these WD-10 forms that were sent in in the name of Connelly Paving Company were sent by Connelly Paving Company, owners or employees. And I would like to also state that our company had no previous knowledge of these reports prior to receiving the fax on 8/17/95.

I received the reports and sent a reply to the U.S. Department of Labor answering the questions on each project. All 21 reports were wrong and I so stated. Without going into each, I submit the following examples. Now some you have seen previously so I will skip those:

The Oklahoma University Memorial football stadium. We did no such job.

They listed a First Baptist Church in Moore, showing again the seven motor patrol, the seven asphalt laydown machines, loader operators, et cetera. We did no such job for the church in 1992. We did a job there in 1990, but it was all concrete paving, no asphalt.

You heard the Internal Revenue office right here local, showing the same thing, seven asphalt, et cetera. All concrete paving, no asphalt.

We did a small concrete job at the Greens Country Club located in northwest Oklahoma City, and I say small concrete job. Again, all these equipment operators were listed. It is a small concrete job, no asphalt.

Guaranty Bank, and this would not even be a Davis-Bacon, was listed again, all those seven asphalt, seven rollers, loader operators, backhoe operators, water wagon operators. Concrete paving, not asphalt.

And I should mention that concrete paving projects use a lot less operators than asphalt.

Without going into listing the number of operators, these 21 reports showed Myriad Gardens in downtown Oklahoma City as asphalt, it is all concrete; Deaconess Hospital in Oklahoma City, all concrete, not asphalt.

All the forms on the 21 projects showed a lot more operators, and you have seen that on the screen.

They also listed the Guthrie School job that we did in 1990, again with all the number of operators for asphalt that was shown, we did none.

On August 18, I received from the Department of Labor an additional nine more WD-10 forms, all were wrong and we faxed that information back to the Department of Labor. To mention three—Tinker Business Park, a private project, was concrete, not asphalt; Oklahoma City University Law School, concrete, not asphalt; Epperly Heights School in Dell City, concrete, not asphalt.

In conclusion, all 30 reports were wrong and I do not believe that any other organization but our company should have been able to file these reports, and I resent that our company was named and used in this manner.

I want to thank you for allowing me this time.

Chairman BALLENGER. Thank you, Mr. Connelly. Can you switch with Mr. Milner now?

[The prepared statement of Mr. Connelly follows:]

STATEMENT OF J.A. CONNELLY SR., VICE PRESIDENT, CONNELLY PAVING COMPANY

First, to introduce myself, I am Jim Connelly, Sr., Vice President of Connelly Paving Company, a company started in 1907 in Oklahoma and I have been 45 years in the business.

On August 17, 1995 our company received a fax from the U.S. Department of Labor requesting verification of data for 1993 building construction survey in the Oklahoma City area. This fax contained WD-10 forms on 21 projects and the questions that were asked were:

1. Did we work on the project?
2. Are the classifications listed as used on the project correct?
3. Are the number of workers correct for each type of equipment?
4. Are the wage rates and fringe benefits correct?

Let me first state that none of these WD-10 forms that were sent in the name of Connelly Paving Company were sent by Connelly Paving owners or employees and let me also state that our company had no previous knowledge of these reports prior to receiving the fax on 8/17/95.

I received the reports and sent a reply to the U.S. Department of Labor answering the questions on each project. All 21 reports were wrong and I so stated. Without going into each I submit the following examples:

A. Oklahoma University Memorial Football Stadium, Norman, Oklahoma showed 2 motor patrol operators, 7 asphalt laydown machine operators, 2 loader operators, 7 back end men, 1 bobcat operator, 7 roller operators, 1 backhoe operator, and 1 water wagon operator. Our company did no such job.

B. First Baptist Church, Moore, Oklahoma showed 7 motor patrol operators, 7 asphalt laydown machine operators, 2 loader operators, 7 back end men, 2 bobcat operators, 4 roller operators, 2 backhoe operators, and 2 water wagon operators. We did one job for this church before 1992 but it was all concrete paving, not asphalt paving.

C. Internal Revenue Office, Oklahoma City showed 2 motor patrol operators, 7 asphalt laydown machine operators, 2 loader operators, 7 back end men, 1 bobcat operator, 7 roller operators, 2 backhoe operators, and 1 water wagon operator. Again, this was all concrete paving and there was no asphalt paving on the project.

D. Greens Country Club, Oklahoma City showed 4 motor patrol operators, 7 asphalt laydown machine operators, 4 loader operators, 7 back end men, 2 bobcat operators, 7 roller operators, 2 backhoe operators, and 1 water wagon operator. This was a small concrete job. No asphalt equipment on the job.

E. Guaranty Bank Branch, Oklahoma City showed 3 motor patrol operators, 7 asphalt laydown machine operators, 2 loader operators, 7 back end men, 1 bobcat operator, 7 roller operators, 1 backhoe operator, and 1 water wagon operator. Again, this was concrete paving, not asphalt paving.

I should mention that concrete paving jobs have a lot less operators than asphalt jobs.

Without going into listing the number of operators, the following jobs were also concrete, not asphalt:

Myriad Gardens, Oklahoma City.

Deaconess Hospital, Oklahoma City.

All of the WD-10 forms on the 21 projects showed many more operators than we would have had on a job. Our average number of operators on the payroll at any one time is ten. Most of these reports showed between 30 and 40 operators.

To mention one more project, one report listed the Guthrie School job being done in 1992. This job was done in 1990. The report showed 7 motor patrol operators; we have only 4 motor patrols. 7 asphalt laydown machine operators; we have only 1 asphalt machine. 4 loader operators; we have 3. 7 roller operators; we have 3. 3 backhoe operators; we have 1. This WD-10 report showed 40 operators as the peak number. To repeat, we do not have anything like the number of machines it would take to employ this number of operators.

All of the 21 reports showed the work done between the months of June, 1992 through September, 1992, which would have been impossible.

On 8/18/95, we received another fax from the U.S. Department of Labor with additional WD-10 forms on 9 more projects. Again, all 9 were wrong and we faxed this information back to the Department of Labor. Examples:

Tinker Business Park—Concrete, not asphalt.

Oklahoma City University Law School—Concrete, not asphalt.

Epperly Heights School—Concrete, not asphalt.

In conclusion, all 30 reports were wrong. I do not believe any other organization but our company should have been able to file these reports and I resent that our company name was used in this manner.

Thank you for allowing me this time.

#### STATEMENT OF JAMES MILNER, DIRECTOR, OKLAHOMA CITIZENS FOR A SOUND ECONOMY

Mr. MILNER. Mr. Hoekstra, Mr. Ballenger, Mr. Istook, I appreciate the invitation to appear before you today to talk about an issue that is of great concern to our organization. Many of you may be familiar with our parent organization, Citizens for a Sound Economy, I am the Director for Oklahoma Citizens for a Sound Economy, 7,000 members here in the State, and like our parent organization, our free market philosophies center on less government regulation, less government taxation and less government spending. It is the issue of government spending that brings us here today.

As Mr. Hoekstra stated earlier, we are not here to discuss the issue of Davis-Bacon as a whole, which is unfortunate in a sense, in that this is a debate that needs to happen in times when we are looking at constraints, in times when we are looking at reducing the size of government and the philosophical debate that is going on in Washington, DC. When you look at numbers, and maybe where you come from \$2 billion is not a lot of money, but it is a lot of money to me and it is a lot of money to most people that I know, \$28 million in the State that we are doing here in Oklahoma, is the figure that we could save, to a State that has the highest threshold, \$600,000, in the Nation. And yet, estimates that we have been able to conclude from our study, which we will release sometime in February, shows that at least a savings from \$20 million to \$28 million to the State of Oklahoma.

When this first broke out, the Commissioner had appeared before the committee, the House Labor and Commerce Committee, they were putting the presentation on, and today we saw some more revelations of the fraud that continues to bubble up as the investigation gets deeper. One of the representatives there asked the Deputy Commissioner of Labor what definition of fraud the department was using to evaluate the wage surveys. And just to avoid

that confusion, I will refer to the definition found in "Barron's Law Dictionary, Second Edition." That legal definition of fraud is "Intentional deception resulting in injury to another."

Clearly, we have seen by the evidence presented today that this evidence was intentional. It is more than coincidence that these forms, these contractors are here today, they have not even worked on jobs. It goes beyond the explanation of accident or coincidence.

It also is demonstrated to be intentional because two union members who have told the media that they were instructed by building trade officials to fill out the forms falsely—that the Federal Department of Labor would never discover it. These members stated that they will testify under oath to that fact. The injury of course is unquestionable. These individuals who have violated the law have injured their union members, they have injured the contractors who appear before you today and they have injured the taxpayers of this State.

The definition continues that "Elements of fraud are a false and material misrepresentation made by one who either knows it is a falsity or is ignorant of the truth."

Based on the Department of Labor's investigative report which you saw, 294 facts, 41 exhibits were presented covering three distinct cases—a sanitary sewer project in Oklahoma City that was reported to the U.S. Department of Labor in greatly exaggerated form; a \$2 million underground storage tank in Mustang that was reported to the U.S. Department of Labor but does not exist; and two phases of the Lake Hefner water treatment plant in Oklahoma City that were reported to the U.S. Department of Labor, one in exaggerated form and the other that did not exist—and both falsely attributed to a contractor who was not involved in either project.

The definition continues that one of the elements of fraud is "the maker's intent that the representation be relied on by the person and in a manner reasonably contemplated; the person's ignorance of the falsity of the representation; the person's rightful or justified reliance; and proximate injury to the person."

Those who filled out those forms fraudulently or orchestrated the fraudulent completion of the forms knew that the U.S. Department of Labor would use the fraudulent information on the form in the computation of the prevailing wage for corresponding occupations in the construction industry.

The interesting thing is that no matter what dictionary you use in the definition of fraud, what has been brought before you today is clearly that—fraud.

This fraud costs the taxpayers more money. It costs the taxpayers more money through the inflated wages they paid that were established on fraudulent data. It is costing the taxpayers more money in the investigation of the case by Federal and State agencies. It is costing the taxpayers more money in the prosecution of those found to be the perpetrators of the fraud. It cost the taxpayers more money in the incarceration of the perpetrators once found guilty by a jury of their peers. But do not misinterpret this statement as a plea for leniency for those who perpetrated the fraud because of the costs borne by the Oklahoma taxpayer.

In fact, I and other members of Citizens against Prevailing Waste, a State coalition to repeal Oklahoma's little Davis-Bacon

Act, recommend the converse. The FBI should leave no stone unturned in their investigation for violations of Federal crimes as the Oklahoma State Bureau of Investigation should do in their investigation for violations of State crimes. The U.S. Attorney should prosecute every individual found to have violated Federal law as the Oklahoma State Attorney General should do in his prosecution of every individual found to be in violation of State law. The Federal and State judges assigned to the case should give each perpetrator, upon his conviction, the maximum sentence, showing no leniency. After all, the taxpayers deserve justice. This fraud committed by a few, injuring many, has brought this investigation about.

My statement illustrating the cost taxpayers will bear as a result of this fraud is to call attention to the system in which the fraud was committed. In testimony by the Comptroller General of the General Accounting Office before a Congressional Oversight Committee examining the Davis-Bacon issue, Comptroller General Elmer Staats stated, "After all these years, the Department of Labor has not developed an effective program to issue and maintain current wage determinations." Further into his testimony, he said that "in many instances the wage rates were not accurately determined. About one-half of the area and project determinations reviewed were not based on surveys of wages paid to workers on private projects in the locality. Inaccurate wage rates are still being issued. In our opinion, the Department of Labor's procedure for developing and issuing wage rate determinations provide no assurances that the rates stipulated actually prevail for corresponding classes of workers on similar private construction projects in the locality." He concluded by saying "For many years, we concentrated on trying to get the quality of the administration by the U.S. Department of Labor improved. We finally reached the conclusion, having done a lot more surveys ourselves with the costs involved and the difficulties of collecting the information and making the determination, that to concentrate on improving the administration is not the answer. The Act is just not administrable in any effective or practical way."

Oklahoma Citizens for a Sound Economy, the members of Oklahoma Citizens Against Prevailing Waste and the taxpayers of this State concur. The fraud uncovered in the submission of wage surveys is not contained within the boundaries of this State. It is not contained within the boundaries of this region. Nor, is it contained within the boundaries of this Nation. The fraud is contained in the boundaries of the system.

Investigate the U.S. Department of Labor's wage surveys from across the country and I am sure that you will find fraud. Investigate those submitting the surveys across the country and I am sure that you will find fraud. Prosecute them, incarcerate them. But that will take time and money—taxpayers' money. Would it not be more accountable and more responsible to the taxpayers to simply repeal the Davis-Bacon law allowing for the market to determine the prevailing wage? After all, that is what the GAO recommended. And that was 15 years ago.

Mr. Chairman, Members of the committee, I appreciate your interest in this issue and what we have said regarding the issue, and your consideration of the information presented.

Chairman BALLENGER. Thank you. Now if you will switch with Mr. Estell.

[The prepared statement of Mr. Milner follows:]

STATEMENT OF JAMES MILNER, DIRECTOR, OKLAHOMA CITIZENS FOR A SOUND ECONOMY

Mr. Chairman, members of the Committee,

Thank you for the invitation to appear before you today to present our members views on the issue before this committee today. My name is James Milner, Director of Oklahoma Citizens for a Sound Economy. Many of you may vaguely be with our parent organization in Washington, D.C., Citizens for a Sound Economy. Here in Oklahoma, we have over 7,000 members who support our free market philosophies—less government regulation, less government taxation and less government spending. It is government spending that brings us here today.

Unfortunately it is not in the context that we at Oklahoma Citizens for a Sound Economy would prefer. We, as many others in this state, as well as this nation, would welcome the opportunity to appear before you to address the issue of Davis-Bacon. We would welcome the opportunity to discuss the savings of approximately two billion dollars annually to the federal government and \$28 million annually to Oklahoma state government if Davis-Bacon were repealed. More importantly, we would welcome the opportunity to have any of the proponents provide a sound economic answer to the question: Why does the taxpayer, the developer of public projects, have to pay 15 percent to 20 percent more for labor costs in the construction of a public building than a private developer would pay for the construction of the same building?

But we are not here to talk about those numbers. We are here to talk about other numbers. Numbers that when checked by the Oklahoma Department of Labor turned out to be false. The false numbers ranged from the number of workers on a project to the numbers in the address of projects. We are here to talk about numbers that when added equal FRAUD.

At an interim hearing of the Oklahoma House Commerce, Industry and Labor Committee, a state representative asked the state Deputy Commissioner of Labor what definition of fraud that the department was using in evaluating the wage surveys. To avoid any confusion today, I refer to the definition of fraud found in *Barton's Law Dictionary, Second Edition*.

That legal definition of fraud is *intentional deception resulting in injury to another*.

- We know it to be intentional because two union members have told the media that they were instructed by a building trades official to fill out the forms falsely as the federal "Department of Labor would never discover it." These members stated that they will testify under oath to that fact. The injury to another is unquestionable. These individuals who have violated the law have injured their union members, the contractors who have appeared before this committee today and the taxpayers of Oklahoma.

It continues: *Elements of fraud are: a false and material misrepresentation made by one who either knows it is falsity or is ignorant of the truth;*

- Based on the Oklahoma Department of Labor's Investigative report dated July 11, 1995 294 facts and 41 exhibits were presented covering three distinct cases—a sanitary sewer project in Oklahoma City, OK that was reported to the U.S. Department of Labor in greatly exaggerated form; a \$2 million underground storage tank in Mustang, OK that was reported to the U.S. Department of Labor but doesn't exist; and two phases of the Lake Hefner Water Treatment Plant in Oklahoma City, OK that were reported to the U.S. Department of Labor—one in exaggerated form the other that did not exist, and both falsely attributed to a contractor who was not involved in either project.

Continuing, *the maker's intent that the representation be relied on by the person and in a manner reasonably contemplated, the person's ignorance of the falsity of the representation; the person's rightful or justified reliance; and proximate injury to the person.*

- Those who filled out the forms fraudulently, or orchestrated the fraudulent completion of the forms, knew that the U.S. Department of Labor would use the fraudulent information on the form in the computation of the prevailing wage for corresponding occupations in the construction industry.

Interestingly enough, if you were to use the definition provided by *Webster* or by *Funk and Wagnall* to evaluate the information contained in the Oklahoma Department of Labor's report, the act committed by those that submitted the information is still definable as FRAUD.

This fraud cost the taxpayers more money. It cost the taxpayers more money through the inflated wages they paid that were established on fraudulent data. It is costing the taxpayers more money in the investigation of the case by federal and state agencies. It is costing the taxpayers more money in the prosecution of those found to be the perpetrators of the fraud. It cost the taxpayers more money in the incarceration of the perpetrators once found guilty by a jury of their peers. Do not misinterpret this statement to be plea of leniency for those who perpetrated the fraud because of the costs home by the Oklahoma taxpayer.

In fact, I and the other members of Citizens Against Prevailing Waste—a state coalition to repeal Oklahoma's Little Davis-Bacon Act—recommend the converse. The FBI should leave no stone unturned in their investigation for violations of federal crimes as the Oklahoma State Bureau of Investigation should do in their investigation for violations of state crimes. The U.S. Attorney should prosecute every individual found to have violated federal law as the Oklahoma State Attorney General should do in his prosecution of every individual found to be in violation of state law. The federal and state judge assigned to the case should give each perpetrator, upon his conviction, the maximum sentence showing no leniency. After all, the taxpayers deserve justice. This fraud committed by few, injuring many, has brought this investigation about.

My statement illustrating the cost taxpayers will bear as a result of this fraud is to call attention to the system in which the fraud was committed. In testimony by the Comptroller General of the General Accounting Office (GAO) before a Congressional Oversight Committee examining the Davis-Bacon issue. Comptroller General Elmer Staats stated *"After all these years, the Department of Labor has not developed an effective program to issue and maintain current wage determinations ..."* Further into his testimony he said *"that in many instances the wage rates were not accurately determined About one-half of the area and project determination reviewed were not based on surveys of wages paid to workers on private projects in the locality. Inaccurate wage rates are still being issued In our opinion, the Department of Labor's procedure for developing and issuing wage rate determinations provide no assurances that the rates stipulated actually prevail for corresponding classes of workers on similar private construction projects in the locality."* He concluded by saying *"For many years we concentrated on trying to get the quality of the administration (by the U.S. Department of Labor) improved ... we finally reached the conclusion, having done a lot more surveys ourselves with the costs involved and the difficulties of collecting the information and making the determination, that to concentrate on improving administration is not the answer. The act is just not administrable (sic) in any effective or practical way."*

Oklahoma Citizens for a Sound Economy, the members of Oklahoma Citizens Against Prevailing Waste and the taxpayers of this state who understand the issue concur. The fraud uncovered in the submission of wage surveys is not contained within the boundaries of this state. It is not contained in the boundaries of this region. Nor, is it contained within the boundaries of this nation. It is contained in the boundaries of the system.

Investigate the U.S. Department of Labor's wage surveys from across the country and I am sure that you will find fraud. Investigate those submitting the surveys across the country and I am sure that you will find fraud. Prosecute them. Incarcerate them. But that will take time and money. Taxpayers money. Would it not be more accountable and more responsible to the taxpayers to simply repeal the Davis-Bacon Law allowing for the market to determine the prevailing wage. After all, that is what the GAO recommended. And that was fifteen years ago.

Mr. Chairman, members of the committee, I appreciate your interest in this issue, in what we have said regarding the issue and your consideration of the information presented.

#### STATEMENT OF BILL ESTELL, QUICKWAY EXCAVATING

Mr. ESTELL. Mr. Chairman, distinguished Members of the committee, my name is Bill Estell. I am the Secretary-Treasurer of Quickway Excavating Company, Inc. We are an excavation firm here in Oklahoma City.

Ever since the Oklahoma Department of Labor uncovered the fraud in the Davis-Bacon surveys, some groups have attempted to shift focus away from the findings. This issue is not about wages, this issue is about lies, fraud and the theft of taxpayers' money.

Some selfish interest groups would lead you to believe that the demise of Davis-Bacon means contractors will be sticking money in their pockets at the expense of the working people. Those people are either ignorant or attempting to cover up for the lawbreakers. Under Davis-Bacon, whether the wage is \$20 an hour or \$200 an hour, the cost is borne by the taxpayers. Whenever you hear the argument that this is about wages, you know you are about to hear an outrageous lie.

I am here today as a victim of the fraud surrounding Davis-Bacon. As an honest businessman, my company was the victim of those who would steal from the taxpayers. Last summer, I was contacted by the U.S. Department of Labor. A Ms. Lee asked me to verify information contained in wage surveys regarding jobs my company had worked on. The information turned in on those surveys was false. Our company did not turn these certain wage forms in ourselves, the ones she was asking about.

I was quite frankly shocked by the revelations of the USDOL. I asked Ms. Lee who turned in the false information and her reply was "the union." I was outraged as a business owner and a taxpayer. I wanted to know specifically which individuals had sent in the false data. Sadly and regrettably, I was told that the USDOL would not reveal the names of these culprits.

The forms I hold in my hands today show a pattern of blatant disregard of the law and the taxpayers. My community has been victimized, my children's education has been compromised and my State has been penalized. It is even worse when you consider the fact that Robert Reich's people know who the lawbreakers are and continue to cover it up.

These forms show jobs never worked on, inflated work forces, equipment that was never used, incorrect dates of work periods or they show no dates at all.

For example—and these are included in my testimony—on form number one that was turned in on our company on Midwest City Regional Hospital. The forms show we had three scrapers on this project. In fact, we had none. The date of the work week ending shows the whole month of June of 1992, not just one peak week as called for by the form. The form shows up to 14 people working for the peak week. We had no more than four.

On my form number two that she was asking about, Oklahoma City Zoo's Great Escape. This form also shows three scrapers. We had none. Again, the date of the work week ending incorrectly shows all of July, 1992. The form shows up to 15 people working for the peak week. Only two people actually worked during this time period.

On my form number three, Edmond North High School. This form was not completely filled out, yet it was still used by USDOL. The form shows no starting date, no completion date, no work week ending date. Therefore, we cannot confirm this information. It was still used.

On our form number four, Moore South Elementary School. The form shows three scrapers, we had one. It also shows up to nine people on this job during the week ending 7/1/92. We had no more than two.

Form number five, Roosevelt Elementary in Norman. Again, no work ending date was listed, so I could not verify this information. The forms shows three scrapers on this project, we never had a scraper on this project. One water wagon was listed, we never had a water wagon on this project. It also shows up to 10 employees for the peak week, we never had more than four.

Number six shows that we worked on Mustang School Commons Building High School. We did not do this project.

Form number seven, a metro area vocational technical school, we did not do this project.

Mr. Chairman and Members of the committee, this is not a partisan issue. Any rational individual knows this is not about wages. This is about stealing from taxpayers. These forms show a total lack of respect for the law and the taxpayers. I ask that you ignore those who would attempt to get the focus off the criminals by exploiting the emotions of working people.

From these wage surveys, common sense tells us that the individuals who falsely filled out these forms knew this information was corrupted, yet it was submitted with the purpose of fraudulently increasing the prevailing wage.

Mr. Chairman, I ask your committee to do whatever is possible to prosecute and punish those who have stolen from the taxpayers in Oklahoma. And again, I appreciate being asked to be here today.

Chairman BALLENGER. Mr. Bumpers, I understand that we are going to have our anonymous witnesses and then you get to finish. Is that okay?

Mr. BUMPERS. Obviously.

Chairman BALLENGER. I think we will change our mind and you can slip in there, Mr. Bumpers.

If all the witnesses will stay, we will ask questions when we get a little better organized here.

[The prepared statement of Mr. Estell follows:]

Testimony of Bill Estell,  
Secretary-Treasurer of Quickway Excavating, Oklahoma City, OK

The Subcommittee on Workforce Protections, The Honorable Cass Ballenger, Chairman  
The Subcommittee on Oversight and Investigations, The Honorable Pete Hoekstra, Chairman

Mr. Chairman, Distinguished Members of the Committee,

Ever since the Oklahoma Department of Labor uncovered the fraud in the Davis-Bacon surveys, some groups have attempted to shift focus away from the findings

This issue is not about wages, this issue is about lies, fraud and the theft of taxpayers' money.

Some selfish special interest groups would lead you to believe that the demise of Davis-Bacon means contractors will be sticking money in their pockets at the expense of working people.

Those people are either ignorant or attempting to cover-up for the lawbreakers. Under Davis-Bacon, whether the wage is twenty dollars an hour or two hundred dollars an hour, the cost is borne by the taxpayers. Whenever you hear the argument that this is about wages, you know you are about to hear an outrageous lie.

I'm here today as a victim of the fraud surrounding Davis-Bacon. As an honest businessman, my company was the victim of those who would steal from the taxpayers. Last summer, I was contacted by the U.S. Department of Labor. A Ms. Lee asked me to verify information contained in wage surveys regarding jobs my company had worked on. The information turned in on those survey was false.

I was, quite frankly, shocked by the revelations of the US DOL. I asked Ms. Lee who turned in the false information. Her reply was "the union."

I was outraged as a business owner and a taxpayer. I wanted to know specifically which individuals had sent in false data. Sadly and regrettably, I was told that the US DOL would not reveal the names of these culprits.

The forms I hold in my hands today show a pattern of blatant disregard of the law and the taxpayers. My community has been victimized, my children's education has been compromised, and my state has been penalized. It is even worse when you consider the fact that the Robert Reich's people know who the lawbreakers are and continue to cover it up.

These forms show jobs never worked on, inflated work forces, equipment that was never used, incorrect dates of work periods or they showed no dates at all. For example:

Form #1. Midwest City Regional Hospital. The forms show we had three scrapers. In fact, we had none. The date of the work week ending shows the whole month of June of 1992, not just one peak week as called for by the form. The form shows up to fourteen people working for the peak week. We had no more than four.

Form #2. Oklahoma City Zoo's Great EscApe. This form also shows three scrapers. We had none. Again the date of the work week ending incorrectly shows all of July in 1992. The form shows up to fifteen people working for the peak week. Only two people actually worked during this time period.

Form #3. Edmond North High School. This form was not completely filled, yet was still used by USDOL. The form shows no starting date, no completion date, and no work week ending date. Therefore we cannot confirm the information.

Form #4 Moore South Elementary School The form shows three scrapers. We had one. It also shows up to nine people on this job during the work week ending 7-1-92 We had no more than four

Form #5. Roosevelt Elementary in Norman Again, no work week ending date was listed, so I could not verify this information The form shows three scrapers on this project. We never had a scraper on this project One water wagon was listed, we never had a water wagon on this project. It also shows up to ten employees for the peak week, we never had more than four

Form #6. Mustang School Commons Building HS We did not do this project.

Form #7. Metro-area vocational technical school. We did not do this project

Mr. Chairman and members of the committee, this is not a partisan issue Any rational individual knows this is not about wages This is about stealing from the taxpayers. These forms show a total lack of respect for the law and the taxpayers I ask that you ignore those who would attempt to get the focus off the criminals by exploiting the emotions of working people

From these wage surveys, common sense tells us that the individuals who falsely filled out these forms knew this information was corrupted, yet it was submitted with the purpose of fraudulently increasing the prevailing wage. Mr. Chairman, I ask your committee to do what ever is possible to prosecute and punish those who have stolen from the taxpayers of Oklahoma.

1

Report of Construction Contractor's Wage Rates Q3-OR-001

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

OMB No. 12162046  
Expires: 07/31/90

Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be held in confidence.

Please see Instructions on reverse side:

1. Contractor Name, Address, Telephone  
Quirkway Excavating Co 305  
OKLA, City OK

2. Project Name, Description, and Location (include County)  
Midwest City Regional Hospital,  
1952 Additions and Renovations  
OKLAHOMA

3. Contract Type  
 General/Prime  
 Sub

4. Approximate Value of Project \$ 11 million  
Subcontract \$ \_\_\_\_\_

5. Starting Date  
6-92

6. Completion Date  
01/93/NEW  
 Estimated  Actual

7. Type of Construction  
 Building  Highway  
 Heavy  Residential  
Stones \_\_\_\_\_  
Units \_\_\_\_\_

8. Project is Subject to:  
 Federal (Davis-Bacon) Wage Determination  
 State Wage Determination  Neither

8. Classification of employees (i.e., Carpenters, Electricians, Laborers, Etc.)	10. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid?		11. Workweek Ending Date For Peak Number Employed	12. Peak Number Employees	13. Basic Hourly Rate	14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rates or Other Amounts)			
	Yes	No				Health and Welfare	Pension	Holiday and Vacation	App. Training
<u>Scrap 1050</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>6-92</u>	<u>3</u> ✓	<u>14.40</u>	<u>3.73</u>	<u>2.30</u>	<u>1.25</u>	<u>18¢</u>
<u>Dozer 1950</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>6-92</u>	<u>2</u> ✓	<u>14.40</u>	<u>2.30</u>	<u>1.25</u>	<u>18¢</u>	
<u>Loader 1020</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>6-92</u>	<u>2</u> ✓	<u>14.40</u>	<u>2.30</u>	<u>1.25</u>	<u>18¢</u>	
<u>Blade 1730</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>6-92</u>	<u>2</u> ✓	<u>14.80</u>	<u>2.30</u>	<u>1.25</u>	<u>18¢</u>	
<u>Roller 1040</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>6-92</u>	<u>2</u> ✓	<u>12.15</u>	<u>2.30</u>	<u>1.25</u>	<u>18¢</u>	
<u>Back Ho 940</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>6-92</u>	<u>3</u> ✓	<u>14.00</u>	<u>2.30</u>	<u>1.25</u>	<u>18¢</u>	

15. Remarks  
Effective June 1, 1993 an increase of 50¢ to Health & Welfare; 5¢ increase to Supplemental Dues and 25¢ increase to wages.

MAR 18 1993

U.S. DEPT. OF LABOR

Large rates unless such information is

17. Date Report Submitted

3-15-93 (72)

Name and Title (Please Print)

Signature

Telephone Number

36-049

Report of Construction Contractor's  
Wage Rates 93-OK-001

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the respondent will be held in confidence.

OSHA No. 12150046  
Expires: 07/31/90

Please see Instructions on reverse side.

1. Contractor Name, Address, Telephone <u>Quickway Excavating Co. Inc</u> <u>305</u> <u>P.O. Box 94427</u> <u>OKIA City, OK</u> <u>73143</u>		2. Project Name, Description, and Location (Include County) <u>OKIAHOMA City ZOO</u> <u>105-0</u> <u>Great Escape</u> <u>2101 NE 50th St.</u> <u>OKC, OK</u> <u>OKIAHOMA Co.</u>							
3. Contract Type <input type="checkbox"/> General/Prime <input type="checkbox"/> Sub		4. Approximate Value of Project & Location <u>Subcontract \$</u>	5. Starting Date <u>8-1-91</u>	6. Completion Date <u>8-1-92</u> <input type="checkbox"/> Estimated <input type="checkbox"/> Actual					
7. Type of Construction <input checked="" type="checkbox"/> Building <input type="checkbox"/> Highway <input type="checkbox"/> Heavy		8. Project is Subject to: <input type="checkbox"/> Residential <input type="checkbox"/> State Wage Determination <input type="checkbox"/> Neither		9. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rates or Other Amounts)					
8. Classification of employees (i.e., Carpenter, Electricians, Laborers, Etc.)		10. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid? Yes No	11. Workweek Ending Date For Peak Number Employed	12. Peak Number Employees	13. Basic Hourly Rate	Health and Welfare	Pension	Holiday and Vacation	App. Tfrs.
<u>Dozer 950</u>		<input checked="" type="checkbox"/>	<u>7-5-2</u>	<u>2</u>	<u>14.40</u>	<u>2.30</u>	<u>1.25</u>		<u>18¢</u>
<u>Loader 1020</u>		<input checked="" type="checkbox"/>	<u>7-5-2</u>	<u>3</u>	<u>14.40</u>	<u>2.30</u>	<u>1.25</u>		<u>18¢</u>
<u>Graps 1050</u>		<input checked="" type="checkbox"/>	<u>7-5-2</u>	<u>3</u>	<u>14.40</u>	<u>2.30</u>	<u>1.25</u>		<u>18¢</u>
<u>Blade 1721</u>		<input checked="" type="checkbox"/>	<u>7-5-2</u>	<u>2</u>	<u>14.90</u>	<u>2.30</u>	<u>1.25</u>		<u>18¢</u>
<u>Roller 1040</u>		<input checked="" type="checkbox"/>	<u>7-5-2</u>	<u>2</u>	<u>12.15</u>	<u>2.30</u>	<u>1.25</u>		<u>18¢</u>
<u>Backhoe 940</u>		<input checked="" type="checkbox"/>	<u>7-5-2</u>	<u>2</u>	<u>14.90</u>	<u>2.30</u>	<u>1.25</u>		<u>18¢</u>
<u>Waterwagon 1120</u>		<input checked="" type="checkbox"/>	<u>7-5-2</u>	<u>1</u>	<u>14.40</u>	<u>2.30</u>	<u>1.25</u>		<u>18¢</u>

## 16. Remarks

Effective June 1, 1993 an increase of 50¢ to Health & Welfare; 5¢ increase to Supplemental Dues and 25¢ increase to wages.

less such information is

17. Date Report Submitted

3-15-93

Name and Title (Please Print)

Signature

Telephone Number

5

Report of Construction Contractor's  
Wage Rates **93-OR-001**

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division



Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be held in confidence.

OMB No. 12150046  
Expires: 07/31/90

Please see Instructions on reverse side:

1. Contractor Name, Address, Telephone <b>Quickway Exc. Co. 305</b> <b>O.K.C. 73129</b> <b>4105 S. Eastern 405-677-3001</b> <b>D.C., OR 73129</b>			2. Project Name, Description, and Location (Include County) <b>Edmond N. H. School</b> <b>1810</b> <b>Oklahoma Co.</b>																																				
3. Contract Type <input type="checkbox"/> General/Prime <input checked="" type="checkbox"/> Sub If General Attach Subcontractor List		4. Approximate Value of Project \$ <b>2.2 mil.</b> Subcontract \$ _____	5. Starting Date _____	6. Completion Date <input type="checkbox"/> Estimated <input type="checkbox"/> Actual																																			
7. Type of Construction <input checked="" type="checkbox"/> Building <input type="checkbox"/> Highway <input type="checkbox"/> Heavy		<input type="checkbox"/> Residential Stories _____ Units _____	8. Project is Subject to: <input checked="" type="checkbox"/> Base Wage Determination <input type="checkbox"/> Federal (Davis-Bacon) Wage Determination <input type="checkbox"/> Neither																																				
9. Classification of employees (La., Carpenters, Electricians, Laborers, Etc.)	10. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid? Yes No	11. Workweek Ending Date For Peak Number Employed	12. Peak Number Employees	13. Basic Hourly Rate	14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rates or Other Amounts) <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Health and Welfare</th> <th>Pension</th> <th>Holiday and Vacation</th> <th>App. Training</th> </tr> </thead> <tbody> <tr> <td colspan="4" style="text-align: center;"><b>370</b></td> </tr> <tr> <td><b>1.25</b></td> <td><b>1.25</b></td> <td></td> <td><b>15</b></td> </tr> <tr> <td></td> <td></td> <td></td> <td><b>1</b></td> </tr> </tbody> </table>			Health and Welfare	Pension	Holiday and Vacation	App. Training	<b>370</b>				<b>1.25</b>	<b>1.25</b>		<b>15</b>				<b>1</b>																
Health and Welfare	Pension	Holiday and Vacation	App. Training																																				
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<b>Blade 1730</b> ✓	✓	✓	<b>14.90</b>	<b>2.70</b>	<b>1.25</b>																																		
<b>Dozer 950</b> ✓	✓	✓	<b>14.40</b>	<b>2.30</b>	<b>1.25</b>																																		
<b>Loader 1020</b> ✓	✓	✓	<b>14.40</b>	<b>2.30</b>	<b>1.25</b>																																		
<b>Saw Blade 1730</b> ✓	✓	✓	<b>12.45</b>	<b>2.30</b>	<b>1.25</b>																																		
<b>Mechanic 980</b> ✓	✓	✓	<b>14.80</b> <b>RE</b>	<b>2.70</b>	<b>1.25</b>																																		
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Report of Construction Contractor's  
Wage Rates 93-OK-001U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

NOTE: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the respondent will be held in confidence.

OMB No. 1215-0046  
Expires 07/31/90

Please see instructions on reverse side:

1. Contractor Name, Address, Telephone 305 Quickway EXCAVATING INC 4105 South Eastern OKLA, City OK 73129			2. Project Name, Description, and Location (Include County) MOORE South Elementary School 182-CD Cleveland						
3. Contract Type <input type="checkbox"/> General/Prime <input checked="" type="checkbox"/> Sub		4. Approximate Value of Project \$2.4 million Subcontract \$	5. Starting Date 7-1-92	6. Completion Date On going <input checked="" type="checkbox"/> Estimated <input type="checkbox"/> Actual					
7. Type of Construction <input checked="" type="checkbox"/> Building <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Heavy			8. Project is Subject to: <input checked="" type="checkbox"/> Davis Wage Determination <input type="checkbox"/> Federal (Davis-Bacon) Wage Determination <input type="checkbox"/> Neither						
8. Classification of employees (i.e., Carpenters, Electricians, Laborers, Etc.)		10. Is Contractor Party to a Col- lective Bargain- ing Agree- ment Under Which Workers Were Paid?	11. Workweek Ending Date For Peak Num- ber Employed	12. Peak Number Employees	13. Basic Hourly Rate	14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rates or Other Amounts) 3.4%			
		Yes No				Health and Welfare	Pension	Holiday and Vacation	App Training
Dozer 950		✓	7-1-92	1	14.40	2.20	1.00		18¢
Scraper 1050		✓	7-1-92	3	14.40	2.20	1.00		18¢
Loader 1020		✓	7-1-92	2	14.40	2.20	1.00		18¢
Welder 1120		✓	7-1-92	1	14.40	2.20	1.00		18¢
Blade 1130		✓	7-1-92	1	14.50	2.20	1.00		18¢
Backhoe 940		✓	7-1-92	1	14.40	2.20	1.00		18¢

18. Remarks:

Effective 1/8/93 an increase of 50¢ to Health & Welfare; 5¢ increase to  
Supp. and 25¢ increase to wages.

MAY 18 1993

How much information is

17. Date Report Submitted

3-11-93 C

Name and Title

Signature

Date

Form WD-10

5

Report of Construction Contractor's  
Wage Rates 93-OK-001

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division



Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be held in confidence.

OES No. 12190046  
Expires: 07/21/90

Please see instructions on reverse side:

1. Contractor Name, Address, Telephone  
Quickway Excavation 305  
P.O. Box 94421  
OKLA. City OK  
73143

2. Project Name, Description, and Location (Include County)  
Roosevelt Elementary School  
Norman OK10, 161-CD  
Cleveland

Contract Type  General/Prime  Sub  
4. Approximate Value of Project \$220,000  
Subcontract # 4-1-92  
6. Completion Date ON going as of 2/1/93  
 Estimated  Actual

General Attach Subcontractor List  
Type of Construction  Building  Highway  Residential  Storage  Units  
7. Project is Subject to:  Federal (Davis-Bacon) Wage Determination  Other  State Wage Determination  Neither

Classification of employees (e.g., Carpenters, Electricians, Boilers, Etc.)	10. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid?		11. Workweek Ending Date For Peak Number Employed	12. Peak Number Employees	13. Basic Hourly Rate	14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rate or Other Amounts)			
	Yes	No				Health and Welfare	Pension	Holiday and Vacation	App. Training
<u>Lead 1020</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>1</u>	<u>14.40</u>	<u>23%</u>	<u>10%</u>		<u>18%</u>
<u>Deer 950</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>1</u>	<u>14.40</u>	<u>23%</u>	<u>10%</u>		<u>18%</u>
<u>Scrap 1050</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>3</u>	<u>14.40</u>	<u>23%</u>	<u>10%</u>		<u>18%</u>
<u>Backhoe 940</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>2</u>	<u>14.40</u>	<u>23%</u>	<u>10%</u>		<u>18%</u>
<u>Roller 1040</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>1</u>	<u>14.40</u>	<u>23%</u>	<u>10%</u>		<u>18%</u>
<u>Waterwagon 1120</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>1</u>	<u>14.40</u>	<u>23%</u>	<u>10%</u>		<u>18%</u>
<u>Blade 1730</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>1</u>	<u>14.20</u>	<u>23%</u>	<u>10%</u>		<u>18%</u>

15. Remarks  
Effective June 1, 1993 an increase of 50¢ to Health & Welfare; 5¢ increase to Supplemental Dues and 25¢ increase to wages.

MAR 18 1993

U.S. DEPT. OF LABOR  
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17. Date Report Submitted  
3-11-93 (76)

**Report of Construction Contractor's  
Wage Rates**

93-OK-001

**U.S. Department of Labor**  
 Employment Standards Administration  
 Wage and Hour Division


Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the respondent will be held in confidence.

 OMB No. 12150046  
 Expires: 07/31/90

Please see instructions on reverse side:

1. Contractor Name, Address, Telephone <i>Quick way Etc. 305 PO BOX 6332 MOORE, OK 73160</i>		2. Project Name, Description, and Location (include County) <i>MUSTANG School Commons Bldg HS 156-CA MUSTANG, OK 73064 Canadian County</i>	
---	--	---	--

3. Contract Type <input type="checkbox"/> General/Prime <input checked="" type="checkbox"/> Sub	4. Approximate Value of Project \$ <i>1.5 million</i> Subcontract \$ _____	5. Starting Date <i>6-1-93</i>	6. Completion Date <i>10-15-93</i> <input checked="" type="checkbox"/> Estimated <input type="checkbox"/> Actual
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7. Type of Construction <input checked="" type="checkbox"/> Building <input type="checkbox"/> Highway <input type="checkbox"/> Heavy	<input type="checkbox"/> Residential Stories _____ Units _____	8. Project is Subject to: <input checked="" type="checkbox"/> State Wage Determination <input type="checkbox"/> Federal (Davis-Bacon) Wage Determination <input type="checkbox"/> Neither
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9. Classification of employees (i.e., Carpenters, Electricians, Laborers, Etc.)	10. Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid?		11. Workweek Ending Date For Peak Number Employed	12. Peak Number Employees	13. Basic Hourly Rate	14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rates or Other Amounts)			
	Yes	No				Health and Welfare	Pension	Holiday and Vacation	Acc Training
<i>Blade 1730</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>6-30-92</i>	<i>2</i>	<i>14.90</i>	<i>3.70</i>	<i>2.30</i>	<i>1.25</i>	<i>.15</i>
<i>Digger</i>	<input type="checkbox"/>	<input type="checkbox"/>	<i>6-30-92</i>		<i>14.40</i>		<i>2.30</i>	<i>1.25</i>	<i>.15</i>
<i>Back hoe</i>	<input type="checkbox"/>	<input type="checkbox"/>	<i>6-30-92</i>		<i>14.40</i>		<i>2.30</i>	<i>1.25</i>	<i>.15</i>
<i>Loader</i>	<input type="checkbox"/>	<input type="checkbox"/>	<i>6-30-92</i>		<i>14.40</i>		<i>2.30</i>	<i>1.25</i>	<i>.15</i>
							<i>2.30</i>	<i>1.25</i>	<i>.15</i>
							<i>2.30</i>	<i>1.25</i>	<i>.15</i>
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							<i>2.30</i>	<i>1.25</i>	<i>.15</i>

## 15. Remarks

Effective June 1, 1993 an increase of 50¢ to Health & Welfare; 5¢ increase to Supplemental Dues and 25¢ increase to wages.

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17. Date Report Submitted

Name and Title (Please Print)

Signature

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Report of Construction Contractor's  
Wage Rates 93-OR-001

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division



Note: This form is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be held in confidence.

OMB No. 12162046  
Expires: 07/31/90

Please see instructions on reverse side:

1. Contractor Name, Address, Telephone  
Quickway Excavating Co Inc 305  
4105 South Eastern  
OKIA, City OK 73129

2. Project Name, Description, and Location (include County)  
Metro-Area Vocational 022-0  
Technical School  
Child Care Instructional Ctr  
OKLAHOMA Co

3. Contract Type  
 General/Prime  
 Sub

4. Approximate Value of Project \$2 million  
Subcontract \$

5. Starting Date  
6-92

6. Completion Date  
8-92  
 Estimated  Actual

7. Type of Construction  
 Building  Highway  
 Heavy  Railroad  
Staircases \_\_\_\_\_  
Units \_\_\_\_\_

8. Project is Subject to:  
 Federal (Davis-Bacon) Wage Determination  
 State Wage Determination  Neither

9. Classification of employees (i.e., Carpenters, Electricians, Laborers, Etc.)	10. Is Contractor Party to a Collective Bargaining Agreement Under Which Wages Were Paid?		11. Workweek Ending Date For Peak Number Employed	12. Peak Number Employees	13. Basic Hourly Rate	14. Fringe Benefits (List Hourly Rate or Percentage of Basic Hourly Rate or Other Amounts)			
	Yes	No				Health and Welfare	Pension	Holiday and Vacation	App. Training
Scraper 1050	✓		7-92	3	14.40	2.30	1.25		1.84
Dozer 950	✓		7-92	2	14.40	2.30	1.25		1.84
Loader 1040	✓		7-92	2	12.52	2.30	1.25		1.84
Water Wagon 1120	✓		7-92	1	14.40	2.30	1.25		1.84
Blade 1721	✓		7-92	2	14.90	2.30	1.25		1.84
Back Hoe 940	✓		7-92	2	14.90	2.30	1.25		1.84

15. Remarks  
Effective June 1, 1993 an increase of 50¢ to Health & Welfare; 5¢ increase to Supplemental Dues and 25¢ increase to wages.

U.S. DEPARTMENT OF LABOR  
EFFECTIVE DATE: 6/1/93  
Please add information in  
17. Date Report Submitted 7/8

**STATEMENT OF TERRY BUMPERS, DIRECTOR, NATIONAL ALLIANCE FOR FAIR CONTRACTING**

Mr. BUMPERS. Mr. Chairman, Members of the subcommittee, my name is Terry Bumpers and I am the Director of the National Alliance for Fair Contracting, and I may be the only one in this room or maybe in the State of Oklahoma that appears before you today to testify on behalf of the Davis-Bacon Act.

I come here today to represent 21,000 contractors, not labor unions, that are members of our coalition that we have built since January, since H.R. 500 was introduced to repeal the Davis-Bacon Act. And I would like to take exception, if I could, our organization back then I think numbered about 14,000 contractors and we requested your office, Congressman Ballenger, to testify before that subcommittee in that hearing back in February and we were denied that right. And it appears—and we were denied the right apparently on the basis of the fact that we were not for repealing Davis-Bacon Act, but were in fact for reforming the Davis-Bacon Act. And it appears to me today that this hearing is much like the one that was conducted in February, there has been a long list of witnesses that have talked about the evils of the Davis-Bacon Act and I appear before you today as the Lone Ranger, so to speak, with regard to being for reform of the Act.

The information presented here today, in my opinion, is nothing more than a rehash of the old information for those of us that have read the Oklahoma investigation. More importantly, I do not believe that anyone has substantiated anything different, other than those three cases that are sitting up there as we see them today and that there has not been any additional evidence, to my knowledge, that wrongdoing has been done. And if so, you know, I would suggest that the Justice Department, the U.S. Department of Labor get on with their obligation to make sure that anyone that has committed fraud, perjury, whatever in the course of submitting WD-10 forms, that they should be prosecuted as well.

Finally, I would like to question why you indicated that the hearing today is not about the Davis-Bacon Act. Oh, but it is about the Davis-Bacon Act—it is really about the Davis-Bacon Act. We question why the leadership of the subcommittee and the leadership of the House of Representatives will not allow the full Congress to vote on our efforts to reform the Davis-Bacon Act, especially since it appears obvious to us that the full Economic and Educational Opportunities Committee would pass H.R. 2472, which I am sure you are familiar with, and refer it to the House floor.

I would like to call your attention to the fact that three Republicans on the full Committee have cosponsored H.R. 2472 and assuming we had all the Democrats to support the Act as well, then this Act would be submitted to the floor, and at that time we believe that we would have actual reform of the Davis-Bacon Act.

The fact is that Speaker Gingrich and the Republican leadership killed repeal as part of the current budget reconciliation legislation because a significant number of Republicans, as well as a majority of the House and Senate, support reform of the Davis-Bacon Act. These hearings today, in my opinion again, are nothing more than an effort on your part to jump start a dying campaign to repeal the Davis-Bacon Act.

I realize it is not about Davis-Bacon, but I would like to submit for the record H.R. 2472, as well as a list of the 87 cosponsors in the House of Representatives of H.R. 2472, which includes 35 Republicans. So it is a bipartisan effort to reform the Davis-Bacon Act.

I think we all know the simple answer to these questions that have been raised here today. There is no doubt this is a politically motivated hearing by individual Congressmen such as yourself, who know that the Oklahoma case is not really the tip of the iceberg as they claim. That their repeal efforts, as I indicated, have been stalled because of the fact that our 21,000 union and non-union contractors support reforming the Davis-Bacon Act and not repealing it.

To prove that Davis-Bacon repeal is on your agenda, I quote from the Republican budget. In addition to a modification, there has been a lot said about the Labor Department and I am not here to defend the Labor Department by any stretch of the imagination, but there has been a lot said about the Labor Department's lack of resources in going after people that have committed this alleged fraud in Oklahoma. One of the reasons for that is Members of Congress continually reduce their budget and I want to read to you from the current budget that reduction of 25 percent has been made for enforcement activities under the Davis-Bacon Act and the Service Contract Act. And I quote, "This begins a phase-out of the enforcement staff in anticipation of these Acts being repealed." So there is little doubt in my mind what the objective of these hearings today is, and that is to gain momentum for your repeal campaign.

Needless to say, as a person who does not lobby Congress, at least on a regular basis as an occupation, 1995 certainly has been an educational process. Our 21,000 member Contractors Coalition for Davis-Bacon was created as a result of the introduction of H.R. 500 and we spent the better part of the year trying to refute lies and distortions regarding the Davis-Bacon Act. After 22 separate attempts in Congress during 1995, the 104th Congress, to repeal the Davis-Bacon Act, fewer Members of Congress support repeal today than at the beginning of the 104th Congress. As an American citizen, I am dismayed and saddened by the fact that the majority of Congress and the will of the American people are being thwarted by a few repeal crusaders in Congress who are blocking passage of Davis-Bacon reform. Here are just a few of these distortions.

(1) Davis-Bacon inflates costs. And here today in the hearings, we have heard numerous costs, none of which I believe are defended. Especially in light of the fact of the statements made here today—that it is one billion dollars a year, that it is 30 percent added to the construction cost, that it is billions and billions of dollars. I have been hearing that since we started this campaign to reform the Davis-Bacon Act.

(2) The Davis-Bacon Act is racist. I am sure you have heard these charges leveled against the Act itself. And it seems strange to me that approximately 37 members of the Black Caucus have written a letter to a producer at 20/20 relative to their support of the Davis-Bacon Act. Moreover, the NAACP,

which I do not believe is a racist organization, has passed a resolution in support of the Davis-Bacon Act.

(3) Davis-Bacon means union rates. Your good friend, Mr. Faircloth from North Carolina—I think every time he says the word Davis-Bacon, it is followed by “means union rates.” He knows it is not right, you know it is not right. As a matter of fact, 21 percent of the rates issued by the U.S. Department of Labor are based on union collective bargaining agreements.

(4) Davis-Bacon bars non-union employers from working on most government projects. All I have to do is look around me here, you guys are working on Davis-Bacon projects. I do not really think you are union, but I would not know that.

(5) Honest business men are denied Federal contracts. I do not understand that statement at all, but it was made by Congressman Mark Souder, freshman from Indiana.

(6) Davis-Bacon is corrupt. It might appear on the surface that there might be some improprieties here in Oklahoma.

(7) Davis-Bacon is rife with political favoritism. I do not have knowledge of where that came from or what is meant by that.

But again, we have heard the cost. Time after time after time the cost of Davis-Bacon Act, and often times you refer to the CBO study as the reference to the cost of the Davis Bacon Act. The problem with that is you have not read the CBO study. If you did, you would know that the CBO study says that while productivity was not factored into our calculations, the cost of the Davis-Bacon Act is really truly not obtainable, by anyone in the economic community.

Now after these distortions and outright lies that I have just mentioned have failed to persuade a majority of Congress, here we are in Oklahoma with Brenda Reneau, Congressman Ballenger, Congressman Hoekstra, Congressman Istook, with another angle—fraud. It is so rife with fraud that we cannot possibly salvage the Davis-Bacon Act. It cannot be administered—I can hear you now when you get back to Washington. It cannot be administered and therefore must be repealed. If these allegations are proven, something that is yet to occur, we would urge the Federal Government to deal appropriately with all these violations.

Before discussing the specifics of the Oklahoma alleged fraud case, let us not forget, as indicated here today, that the case is still under investigation by the Justice Department, and as such, in my opinion, this hearing should not be held at all until they render a conclusion in that investigation. I believe this hearing has tried and convicted individuals and the Davis-Bacon Act without a proper hearing.

In order to understand the repealers' motivation, we must first look at Oklahoma as it relates to the administration of the Davis-Bacon Act on a nationwide basis. I believe you indicated there is \$48 billion worth of construction work that falls under the purview of the Davis-Bacon Act. I thought it was more like 60, but it is a substantial amount of money at any rate and I certainly would not quibble with the \$48 billion. What we have got to look at here is this case involves less than \$10 million worth of construction work. Now I realize to the people in Oklahoma, this is near and dear to

their hearts and rightfully so. But if you are talking about \$10 million worth of construction and \$60 billion nationwide in a Federal construction market, only three of the projects are involved among the thousands of projects requiring prevailing wage rates. Statements made in the investigative report that Oklahoma is just the tip of the iceberg and I have heard you, Congressman, Ballenger, use that phrase as well, which has been repeated time and time again, as I indicated, are simply not true. If it is true, then where is your evidence? According to the U.S. Department of Labor, this is the first time since 1964 that fraud has been alleged in the survey process. Would one not think that with all the controversy, the negative publicity surrounding the Davis-Bacon Act, that more fraud cases would have surfaced before now? I certainly think they would.

If you desire to hold hearings on Davis-Bacon violations, which I encourage you to do—I am not objecting to that—I suggest that you look into the unscrupulous contractors who fraudulently misclassify their workers to obtain low bids on Federal projects. That is where the real fraud occurs. In fact, the National Alliance for Fair Contracting, the organization I represent, our members spend well over \$15 million annually in private money—not public money—in order to catch these violators. More emphasis on enforcement of the Davis-Bacon Act may help you balance the budget and save millions of dollars instead of repealing, as you have expressed in your opinion.

Anyone familiar with the wage survey process is fully aware that in many instances projects and information are used that should not be included in the survey. And I think that is evidenced by this particular survey. These challenges, however, are generally made through the normal process of dealing with the Labor Department. If you feel that an improper survey has been conducted and projects have been used that do not properly belong in that particular survey, there are legitimate challenges, short of going to court and putting on a hearing such as this nature, that possibly could have changed the outcome of that survey.

In fact, the U.S. Department of Labor, upon review of the allegations in this case, deleted 67 of the 145 WD-10 form submissions that were made by contractors. Did these 67 form submissions contain fraudulent information, or were they honest mistakes made by contractors who voluntarily submitted the data? Giving everyone the benefit of the doubt, we believe most WD-10 submissions are made in good faith, and not to fraudulently inflate wage rates.

Take the case of North Carolina, Chairman Ballenger's home State. For highway construction in numerous counties, the prevailing wage, which is part of your District, Congressman—here are the prevailing rates that have been issued by the U.S. Department of Labor:

Carpenters—\$7.71 an hour, no fringe benefits.

Laborers—\$5.62 an hour, no fringe benefits.

Bulldozer operator—\$6 an hour, no fringe benefits.

Grade checker—\$4.99 an hour, no fringe benefits.

Surely, Chairman Ballenger does not suggest that fraud has been committed to inflate these rates, because if they did they did really a poor job of doing it. If this is part of the tip of the iceberg, then

something is wrong with the process certainly. Maybe your constituents, however, would be better served if an investigation were conducted to find out why these rates are so low and if in fact a construction worker would actually work for \$4.99 an hour with zero fringe benefits.

As I indicated, our purpose in appearing today is not to defend the Labor Department and the entire process. Is there room for improved administration of the Act? Obviously, yes. Is there room for improvement of the survey process? Again, yes. Is there room for better enforcement of the Act? I have indicated to you I would prefer to see better enforcement of the Act.

Improvement in these areas is virtually impossible when Members of this subcommittee continually slash the budget of the U.S. Department of Labor and refuse to allow a bipartisan reform proposal which would eliminate two-thirds of the number of projects covered by the Act, to come to the House floor for a vote.

It appears to me that if Members of this subcommittee were listening to the entire Congress, you would be holding hearings on H.R. 2472, which would include the survey process, instead of holding hearings on the survey process itself.

Our coalition is for improving the administration of the Act, improving the survey process and enhancing enforcement, which is part of our reform proposal.

The irony is many of your objectives expressed here today will not be forthcoming unless you move to enact Davis-Bacon reform, which is awaiting action upon your return to Washington, if you can get back.

That is the end of my statement. Thank you very much for the time.

Chairman BALLENGER. We are going to move the cameras now. Let us take a break so you can move the cameras and get set up—five minute break.

[Recess.]

Chairman BALLENGER. Okay. Witness A, you will be on my left. [The prepared statement of Mr. Bumpers follows:]

#### STATEMENT OF TERRY G. BUMPERS

Mr. Chairman, members of the Subcommittee, my name is Terry Bumpers. I am the Director of the National Alliance for Fair Contracting. Before I begin my testimony on behalf of the Contractors Coalition for Davis-Bacon ("Reform Yes-Repeal No"), the 21,000 members of the Contractors Coalition would like to thank the minority members of this Subcommittee for allowing us to testify on the Davis-Bacon Act. We thank them because one year ago Chairman Ballenger denied us, or any other business witness critical of repeal of the Davis-Bacon Act, the privilege of testifying on H.R. 500. Subcommittee staff screened witnesses to assure a one-sided hearing and our request to testify orally was denied after it was learned that our testimony would be for reforming not for repealing the Act.

Without objection, I would like to submit H.R. 2472 for the record and the list of 87 cosponsor which includes 35 Republicans.

Also, we must question why these hearings are being held here in Oklahoma instead of Washington, D.C., where the jurisdiction for Davis-Bacon fraud examination exists. Further, what is the additional cost of these hearings to a Congress currently trying to find ways to balance the budget, while the issue of the Oklahoma fraud case, while noteworthy, amounts to nothing more than a few cases involving less than \$10 million worth of construction out of more than \$60 billion annually spent on federal construction.

Finally, we must question why the leadership of this Subcommittee and the leadership of the House of Representatives will not allow the full Congress to vote on

our efforts to reform the Davis-Bacon Act, especially since it appears obvious that the full Economic and Educational Opportunities Committee would pass H.R. 2472 and refer it to the House floor. (Note: 3 Republican full Committee members are already cosponsors of H.R. 2472.) The fact is that Speaker Gingrich and the Republican leadership killed repeal as part of the current budget reconciliation legislation because a significant number of Republicans, as well as a majority of the House and Senate, support reform of the Davis-Bacon Act. The argument favoring repeal has already been debated and defeated in the 104th Congress.

The answer to all of these questions is simple. There is no doubt that these hearings are politically motivated by individual Congressmen who know that the Oklahoma case is *not* the "tip of the iceberg" as they claim and that their repeal efforts have been stalled because of the fact that our 21,000 member union and non-union Contractor Coalition for Davis-Bacon has effectively refuted *every* extremist claim made about the so-called evils of Davis-Bacon. These hearings are nothing more than an effort on the part of these Congressmen to "jump-start" an otherwise failed crusade to repeal Davis-Bacon by making false statements that there is wide spread fraud in the wage survey process based upon unique and limited survey allegations in Oklahoma.

Needless to say, for a person who does not lobby Congress as an occupation, 1995 certainly has been an educational process. Our 21,000 member Contractors' Coalition for Davis-Bacon was created as a result of the introduction of H.R. 500 and has spent the better part of a year attempting to refute the lies and distortions that repeal zealots have spread about the Davis-Bacon Act. After 22 separate attempts in Congress during 1995 to repeal the Davis-Bacon Act fewer members of Congress support repeal today than at the beginning of the 104th Congress. As an American citizen, I am dismayed and saddened by the fact that the majority of the Congress and the will of the American people are being thwarted by a few repeal crusaders in Congress who are blocking passage of Davis-Bacon reform. Here are just a few of these distortions: (1) Davis-Bacon inflates costs, (2) Davis-Bacon is racist; (3) Davis-Bacon means union rates; (4) Davis-Bacon bars non-union employers from working on most government projects; (5) honest businessmen are denied federal contracts; (6) Davis-Bacon is corrupt; (7) Davis-Bacon is rife with political favoritism; and on and on and on.

Now, after these distortions and outright lies have failed to persuade a majority of Congress, along come Oklahoma Labor Commissioner Brenda Reneau, Congressman Cass Ballenger, and Congressman Peter Hoekstra with another angle, which is: There is so much "possible" or "potential" fraud in the survey process that Davis-Bacon cannot be administered and therefore, must be repealed. If these allegations are proven—something that has yet to occur—we would urge the federal government to deal appropriately with any and all violations.

Before discussing the specifics of the Oklahoma alleged fraud case, let us not forget that the case is still under investigation by the Justice Department and as such this hearing should not be held until such time as they render a decision on the case.

In order to understand the repealers motivation, we must first look at Oklahoma as it relates to the administration of the Davis-Bacon Act on a nationwide basis. The case involves less than \$10 million worth of construction in a \$60 billion annual federal construction market and involves only three projects of the thousands requiring prevailing wage rates. Statements made in the investigative report that Oklahoma is just the "tip of the iceberg", which have been repeated time and time again by Congressman Ballenger, are simply not true. If it is true, then where is your evidence? According to the U.S. Department of Labor, this is the first time since 1964 that fraud has been alleged in the survey process. Wouldn't one think that with all of the controversy and negative attacks on Davis-Bacon, that more fraud cases would have surfaced before now?

If you desire to hold hearings on Davis-Bacon violations, I suggest you look into unscrupulous contractors who fraudulently misclassify their workers to obtain low bids on federal projects. That is where the real fraud occurs. In fact the National Alliance For Fair Contracting members spend over \$15 million annually in private funds to catch these violators. More emphasis on enforcement on the Davis-Bacon Act may help you balance the budget and save millions of dollars.

Anyone familiar with the wage survey process is fully aware that in many instances projects and information are used that should not be included in the survey. When this occurs any interested party can challenge the use of these projects through the U.S. Department of Labor without going through the court system. These challenges are generally made prior to the issuance of prevailing rates from a survey. Perhaps if this had been done and there were legitimate challenges to the

survey, this expenditure of government funds for these charges could have been avoided.

In fact, the U.S. Department of Labor, upon review of these allegations, deleted 67 of the 145 WD-10 form submissions that were made by contractors. Did these 67 form submissions contain fraudulent information, or were they honest mistakes made by contractors who voluntarily submitted the data? Giving everyone the benefit of the doubt, we believe most WD-10 submissions are made in good faith, and not to fraudulently inflate wage rates.

Take the case of North Carolina, Chairman Ballenger's home state. For highway construction in numerous counties the prevailing rates are:

Carpenters \$7.71 No Fringe Benefits  
 Laborer \$5.62 No Fringe Benefits  
 Bulldozer Operator \$6.00 No Fringe Benefits  
 Grade Checker \$4.99 No Fringe Benefits

Surely Chairman Ballenger does not suggest that fraud has been committed to inflate these rates, because if this is part of the "tip of the iceberg" then it is indeed a poor job. Maybe Chairman Ballenger's constituents would be better served if an investigation were conducted to find out why these rates are so low if, in fact, a construction worker would actually work for \$4.99/hr with zero fringe benefits.

Our purpose in appearing before this subcommittee is not to defend the U.S. Department of Labor. Is there room for improved administration of the Act? Obviously yes. Is there room for improvement in the survey process? Again, yes. Is there room for better enforcement of the Act? Most certainly.

Improvement in these areas is virtually impossible when members of this Subcommittee continually slash the budget of the U.S. Department of Labor, and refuse to allow a bipartisan reform proposal, which would eliminate two-thirds of the number of projects currently covered by the Act, to come to the House floor for a vote.

It appears to me that if the members of this Subcommittee were listening to the entire Congress, you would be holding hearings on H.R. 2472, which could include the survey process, instead of holding hearings on the survey process itself.

Our coalition is for improving the administration of the Act, improving the survey process, and enhancing enforcement which is part of our reform proposal.

The irony is many of your objectives expressed here today will not be forthcoming unless you move to enact Davis-Bacon reform which is awaiting action upon your return to Washington.

### STATEMENT OF WITNESS A

Witness A. Per your request, the following is a statement concerning the above-referenced subject.

Our company has been asked to supply a statement concerning the WD-10s that were requested by the U.S. Department of Labor. As you probably already know, the WD-10 is issued by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and related Acts. The submission of wage data is encouraged but is voluntary and the identity of the responders will be held in confidence.

Our company has been in business since 1963 and has elected not to report on the WD-10s for various reasons. The more reason we were surprised when contacted by Pamela Lee of the U.S. Department of Labor to verify data that had been supplied for us for the 1993 building construction survey. She faxed some 24 pages of data containing copies of the WD-10s for 24 jobs we supposedly did. Of all the data she sent, there was only one job we had worked on, the Federal Transfer Center at Will Rogers Airport. The wage rates did appear to be correct, but the fringe benefits were incorrect.

Ms. Lee also requested and received a copy of our union agreement for that period of time showing rates considerably less than wages being paid on wage rate jobs.

A few months back, we were contacted by the Oklahoma Operating Engineers. They requested that we fill out the WD-10s and kindly offered to do them for us if we would just sign them.

Chairman BALLENGER. Witness B.

Witness B. The contact would be exactly the same.

Chairman BALLENGER. Okay. So we will now open for questions, I guess.

[The prepared statement of Witness A follows:]

STATEMENT OF WITNESS A

Dear Sir;

Per your request, the following is a statement concerning the above referenced subject:

Our company has been asked to supply a statement concerning the WD-10's that were requested by the U.S. Department of Labor. As you probably already know, the WD-10 is used by the U.S. Department of Labor to determine the locally prevailing wage rates under the Davis-Bacon and related Acts. The submission of wage data is encouraged but is voluntary and the identity of the responders will be held in confidence.

Our company has been in business since 1963 and has elected NOT to report on the WD-10's for various reasons. The more reason we were surprised when contacted by Pamela Lee, of the U.S. Department of Labor to verify data that had been supplied for us for the 1993 Building Construction Survey, She faxed some twenty four pages of data containing copies of the WD-10's for twenty four jobs we supposedly did, of all the data she sent there was only one job we had worked on, the Federal Transfer Center at Will Rogers Airport, the wage rates did appear to be correct, but the fringe benefits were incorrect,

Ms. Lee also requested and received a copy of our Union Agreement for that period of time showing rates considerably less than wages being paid on wage rate jobs.

A few months back we were contacted by the Oklahoma Operating Engineers, they requested that we fill out the WD-10's and kindly offered to do them for us, if we would just sign them.

Mr. HOEKSTRA. Why do you think it is necessary to have anonymity?

Witness A. Repeat that?

Mr. HOEKSTRA. Why do you think it is necessary for your testimony to be given anonymously?

Witness A. Just precautionary measures from past dealings with certain unions.

Mr. HOEKSTRA. What have you experienced?

Witness A. Nothing of any proof, but things happen that you know, but you really do not know.

Mr. HOEKSTRA. Can you expand a little bit on your last statement, "A few months back we were contacted by the Oklahoma Operating Engineers," that they would fill out the WD-10s for you as long as you would just sign them. Is that something new or—

Witness A. I will let her answer that.

Witness B. Yes, that is something new that they had never asked us to do before. They said they offered it as a favor.

Mr. HOEKSTRA. And what was your response?

Witness B. I said no, I do not think so.

Mr. HOEKSTRA. Okay. And when did they start asking you to do this?

Witness B. Just this summer.

Mr. HOEKSTRA. Just this summer.

Witness B. This past summer.

Mr. HOEKSTRA. How many—did they ask you to do one or two?

Witness B. Not specific.

Mr. HOEKSTRA. How many projects are you working on at any given time?

Witness B. Fifteen or 20.

Mr. HOEKSTRA. That lasted what, how long?

Witness B. It depends, some are long, some short.

Mr. HOEKSTRA. Do you consistently do WD-10s, or not?

Witness B. Never.

Mr. HOEKSTRA. You do not.

Chairman BALLENGER. Is it basically—if you had to make a judgment as to why you do not do the WD-10s, I mean he has got 21,000 people that must be doing it, is there a basic reason that you just do not want to be involved in government paperwork?

Witness B. It is a lot of paperwork, but basically, I cannot see where it is to our advantage to do it.

Chairman BALLENGER. Ernest.

Mr. ISTOOK. Yes, thank you. You mentioned someone offering to fill out the information for you if you would just sign it. Of course, I am an attorney myself, we have got other attorneys in the room, we have got business people who are usually very hesitant to sign any sort of blank form. I can only imagine your hesitancy again. How did this come up, in what sort of context, that someone offers to fill out a form for you to report to the government how much you happen to be paying people? That seems like an unusual offer. Can you expand upon the circumstances, what was said and how that came about?

Witness B. It was a telephone conversation and they wanted us to do them, and we just told them that we did not do that. And he said well I can help you do it, because we need them done. And I did not want to do it, but he said well, if you will just sign them, I will do it.

Mr. ISTOOK. You say of course you made it known to them that you chose not to do the forms because of the hassle factor.

Witness B. Right.

Mr. ISTOOK. The work involved. And they said we want you to do it, or we want the information, I forget exactly how you phrased that—

Witness B. They needed it.

Mr. ISTOOK. They needed it. Was there elaboration on why it was that they had a need?

Witness B. No.

Mr. ISTOOK. And was that a call that you had initiated or they had initiated?

Witness B. They had initiated.

Mr. ISTOOK. Was it a call just for that purpose?

Witness B. Exactly.

Mr. ISTOOK. Okay. And is there any—what is the time frame? You mentioned also a conversation with the Department of Labor with someone trying to verify information with 24 jobs reported for your company, only one of which you had actually done. Any correlation between those calls, one came before the other?

Witness B. It was all about the same time.

Mr. ISTOOK. About the same time. Do you recall, was it before or after they said they needed you to send in forms and for you to

sign blank forms, before or after that that the Labor Department asked you about these 23 jobs that they had been told you worked on that you did not work on?

Witness B. The Labor Department contacted us first.

Mr. ISTOOK. Okay.

Witness B. And wanted us to verify data.

Mr. ISTOOK. All right. Had you ever been contacted previously by the Labor Department for verification like that?

Witness B. No.

Mr. ISTOOK. Okay. And what did you do, when they faxed you 24 pages of data for 24 jobs, only one of which you had actually done, what did you do when it became known to you that somebody was making false claims about what your company was doing?

Witness B. After I got over the surprise, I just replied back to them that we had never filled any out.

Mr. ISTOOK. Did they indicate what they were going to do about that, the fact that somebody had submitted false information on 23 cases?

Witness B. Well, they were going to do something, I do not know what.

Mr. HOEKSTRA. Excuse me. Were the wage rates for the 23 other jobs—did you even compare the numbers on those jobs to your salary rates, or not?

Witness B. Considerably higher.

Mr. HOEKSTRA. They were considerably higher.

Witness B. Definitely.

Mr. HOEKSTRA. The same work roles that you had and they just inflated them.

Witness B. Exactly.

Mr. HOEKSTRA. Overstating—like some of the other reports we have had today, just significantly overstating the number of workers that might be on a job and those types of things?

Witness B. Yes.

Mr. HOEKSTRA. Have you provided or been asked by law enforcement who was the individual that asked you to sign the blank forms for them? Have you given that to law enforcement?

Witness B. No.

Mr. HOEKSTRA. Have they asked you about it?

Witness B. No.

Mr. HOEKSTRA. So no investigator with the Department of Labor or the FBI or the U.S. Attorney's Office has asked you about that?

Witness B. Not actually who it was, they did not ask that.

Mr. HOEKSTRA. You have talked with them but not on that particular point.

Witness B. Yes.

Mr. ISTOOK. Can you tell me, was there any common denominator for these 23 false forms? Can you recall, was there anything that you recall that showed, whether it is jobs that existed or did not exist, whether the wage rates were actually in line with what you were actually paying? Have you done any analysis of that at this time?

Witness B. The job rates were all the same on all the jobs and they were jobs that were done in town, we just were not the successful bidder.

Mr. ISTOOK. So you do not know if the wage rates matched the accurate wage rates or not.

Witness B. No.

Mr. ISTOOK. And do you have any idea who sent in those 23 false forms, plus the one that was correct, even though you did not send it in?

Witness B. I think so.

Mr. ISTOOK. Who is it that you believe did so, and why do you believe that?

Witness B. Well, one of them actually had a signature on it that came through.

Mr. ISTOOK. Okay.

Witness B. From the union.

Mr. ISTOOK. From which union?

Witness B. From Operating Engineers.

Mr. ISTOOK. And that was a signature on the one that was accurate or on one of the ones that was inaccurate?

Witness B. I do not remember. I just know there was one that had a signature. The rest of them, the signature had been blocked.

Mr. ISTOOK. Had been?

Witness B. Blocked out.

Mr. ISTOOK. Thank you.

Chairman BALLENGER. Thank you very much.

We will go ahead and put on our C witness and then we will ask everybody questions. I have got a couple that I really would love to have you answer. Turn about is fair play.

Mr. BUMPERS. Okay.

Chairman BALLENGER. I do not know how long it will take for him to get here—or her—I do not know which it is.

But Mr. Matthews, could I ask you, have you ever filled out WD-10 forms?

Mr. MATTHEWS. Not previous to this, I believe it was 1992.

Chairman BALLENGER. Was the specific reason that you did not want to get into government red tape or—

Mr. MATTHEWS. To my knowledge, we have never been asked to participate before.

Chairman BALLENGER. Well, Mr. Bumpers, your group obviously would be involved in sending in theirs, would they not?

Mr. BUMPERS. Well, you know, it is catch as catch can with regard to where the information goes out. But I would like to call your attention to the fact that the U.S. Department of Labor accepts other forms of information such as certified payrolls and a WD-10 is not necessarily required to be filled out in every case.

Chairman BALLENGER. No, it is strictly voluntary. But if I were in the contracting business and wanted to make sure that my competitors had the same wage rates that I did, it would make good sense for everybody to send in their WD-10s and then you would have a real honest group of contractors that would know what each other paid their workers.

Mr. BUMPERS. I would think so, but that is the very reason that WD-10s were not released in the first place, because in the non-union construction market, I am sure these gentlemen do not want to release information or have that information released to their competitors so that they know exactly the number of employees

they have and the amount of pay that they are paying them. You know, if I were actually a contractor, which I am not, I would be the first to admit, I would not want that information being out either because that way if they know exactly what you are paying in the non-union market, then they can undercut your bid or whatever with regard to the rates of pay.

Chairman BALLENGER. I think Mr. Estell, who is listening to what you said—

Mr. ESTELL. Well, you know, he keeps looking at me saying non-union, non-union. At the time these were filled out, I was union, Connelly Paving is union.

Mr. BUMPERS. I was not looking at you.

Mr. ESTELL. Okay.

Chairman BALLENGER. Witness C is here. Go ahead, sir.

### STATEMENT OF WITNESS C

Witness C. Gentlemen, it is an honor to appear before this subcommittee investigating fraud and abuse of prevailing wage determinations made under the Davis-Bacon Act.

I have been associated with this company since its inception in 1961, doing business in utilities, excavation, grading and demolition.

Flawed wage determinations were first noticed when the City of Bethany advertised for bids on a sanitary sewer project. They were asked at that time to check on the wage determination to see if it was accurate.

The City of Oklahoma City Engineering Department was also notified regarding these flawed wage determinations because of the unrealistically high wages published by the U.S. Department of Labor.

Copies of wage reports, WD-10s, were obtained pertaining to this wage determination, and upon close inspection, it was determined that they were mostly fraudulent. Seventeen were related to our company.

We filled out new and accurate wage reports on the proper forms and presented them to the Oklahoma Department of Labor, members of the Oklahoma Congressional delegation and to Oklahoma City officials.

During this time, May, 1995, a woman from the U.S. Department of Wage and Hour Division, called about two particular jobs supposedly done by this company. She faxed us copies and we determined that we did not do the work described. She asked for a confirmation or to make necessary changes. We could not do either, or make any changes simply because we did not do the work. At this point, we demanded to know who was signing for our company. She said she could not tell us that because of the Privacy Act. We countered, under the Freedom of Information Act we felt we should be told, but she refused. We also sent her 17 corrected wage reports we had found fraudulent.

We were then visited by the FBI agent and gave him copies of our corrected wage reports. We asked him who signed the reports. He too would not reveal any names. Why is this name so secret?

Fraud and deception has been done in our name, yet we are unable to get the name of the person who signed for our company. We ask why? Can it be that our government is protecting a criminal?

Members of this committee, your efforts to seek legal action against the culprits responsible for this fraudulent wage scandal would be appreciated.

Thank you.

[The prepared statement of Witness C follows:]

It is an honor to appear before this sub-committee investigating fraud and abuse of prevailing wage determinations made under the Davis Bacon Act.

I have been associated with this company since its inception in 1961 doing business in utilities, excavation, grading and demolition.

Flawed wage determinations were first noticed when the City of Bethany advertised for bids on a Sanitary Sewer project. They were asked at that time to check on the wage determination and see if it is accurate.

The City of Oklahoma City Engineering Department was also notified regarding these flawed wage determinations because of the unrealistically high wages published by the US Department of Labor.

Copies of wage reports, WD-10s, were obtained pertaining to this wage determination and upon close inspection, it was determined they were mostly fraudulent. Seventeen (17) were related to our company.

We filled out new and accurate wage reports on the proper forms and presented them to the Oklahoma State Department of Labor and members of Oklahoma Congressional Delegation. and to Oklahoma City officials.

During this time period (May 1995) a woman from the US Department of Labor, Wage and Hour Division, called about two particular jobs supposedly done by this company. She faxed us copies and we determined we did not do the work described. She asked for a confirmation or to make necessary changes. We could not confirm or make changes, simply because we did not do the work. At this point, we demanded to be told who was signing for our company. She said she couldn't because of the Privacy Act. We countered, under the Freedom of Information Act we felt we should be told and she refused. We also sent to her seventeen (17) corrected wage reports we had found fraudulent.

We were then visited by an FBI agent and gave him copies of our corrected wage reports. We asked him who signed the reports. He too, would not reveal the persons name.

Why is this name such a secret?

Fraud and deception has been done in our name, yet we are unable to get the name of the person who signed for our company. We ask why?

Members of the committee, your efforts to seek legal action against the culprits responsible for this fraudulent prevailing wage scandal would be appreciated.

Thank you.

Chairman BALLENGER. Thank you.

Let me just ask—this was asked of the earlier group because you would like to remain anonymous—is there a reason in your mind why you want to be anonymous?

Witness C. Yes. At my age, I only have a few good years left and I want to keep them happy, simple and not complicated. I do not look forward to wearing a bullet-proof vest or anything like that, or having to look over my shoulder all the time.

Chairman BALLENGER. Do you think there is actually that sort of danger?

Witness C. I understand from other people here that that is accurate.

Mr. HOEKSTRA. Thank you very much for testifying today. I do not really have a lot of comments, I just want to respond to a few of the words you said. This is not brain surgery, is it?

Witness C. No.

Mr. HOEKSTRA. I mean, this is just basically some people submitting fraudulent forms with inaccurate data, they signed them, and this is not something that Cass and Ernest and I are a little frustrated at. People with the Justice Department and the Department of Labor, and you are frustrated you cannot get a name, I think we are at this point a little frustrated that we cannot at least—we cannot even get what we are perceiving as much movement out of the Department of Justice. This is about as basic as it gets. These are—and a number of you have talked about this, that it infuriates you that your name, your company's name is being used and submitted on fraudulent forms. The information is there, it is not very hard to go out on a site and find a building that supposedly was built, at least according to the paper, going out there and seeing nothing more than dirt and grass and barbed wire and that there is no building. This is about as basic as it gets in terms of fraud and stealing from the government, stealing from the taxpayer. And I think that is—I am assuming that is why you are here today, you want a name and you would like to see that identified somewhere in the near future, who actually submitted forms using your company's name, perhaps using your personal name, and saying you did these things with these kind of wage rates, and you never did them.

Witness C. That is right, that is what I am looking for—who is signing on our behalf. That is not right, they were not given permission. I want to know who.

Mr. HOEKSTRA. And then beyond that, you recognize that this is costing you and a bunch of other people in Oklahoma—and we will talk with Mr. Bumpers later about how much it is actually costing them, whether it is costing them a lot of money or no money—but my guess is you are not interpreting that this kind of behavior is saving the taxpayers of Oklahoma any money.

Witness C. None whatsoever.

Mr. HOEKSTRA. Thank you.

Mr. ISTOOK. I appreciate you coming forward. Let me ask a couple of things. You mentioned of course when you were contacted by the Wage and Hour Division of the Labor Department and asked about some particular jobs, they faxed you a number of forms and

there were 17 fraudulent submissions related to your company. Were all of those for the same general time frame?

Witness C. Yes.

Mr. ISTOOK. And you said ultimately you sent to the Department of Labor 17 corrected wage reports to replace the fraudulent ones that someone else had sent in your name?

Witness C. That is right.

Mr. ISTOOK. Now you have been in business with that company since sometime in the 1960s. Was this a common practice, that you would commonly send in these WD-10 forms?

Witness C. When we were asked, we tried to respond when we could, yes.

Mr. ISTOOK. So you had done it many other times.

Witness C. Yes.

Mr. ISTOOK. Okay. And had there been any other occasions when the Department of Labor called to verify the accuracy of what had been submitted in your name, all through these 30 some odd years?

Witness C. There has been no contact made by the Labor Department previous to the contact made in May of 1995.

Mr. ISTOOK. Which was during the time, of course, after the State Labor Commissioner in Oklahoma, of course, had gotten people interested in checking into the fraud. During all these prior 30 odd years when you submitted all these other forms, they never called to check the accuracy of them, so for that matter, I mean, forms could have been submitted in your company's name all through these years but you were not aware of it. They could have had somebody signing your name or somebody else's name on behalf of the company, they might have signed Mickey Mouse or Bugs Bunny.

Witness C. That is right.

Mr. ISTOOK. But no matter what, they never bothered to check, all during these 30 years until the Oklahoma Department of Labor began mentioning that there was a problem with the whole system.

Witness C. That is right.

Mr. ISTOOK. So even if they gave you the names, we do not know if whoever filled in these fraudulent forms used their correct name or used some sort of anonymous name themselves, and if they had done it just this one time or if they had been doing it for 30 years, maybe even using your company's name for 30 years—we just do not know because of the flawed system or lack of system in the Department of Labor.

Witness C. That is right.

Mr. ISTOOK. What should we do about that?

Witness C. I would first propose whoever has these particular WD-10s that are signed on behalf of this company, to tell me immediately who it is.

Mr. ISTOOK. Okay. I know when I sign my tax return each year, I am doing that under penalty of law, under penalty of perjury, and if I do not accurately report my financial earnings, there is a major penalty. And there are many people that have gone to prison for violating that. How about someone that gives inaccurate reports here that also can take money away from the taxpayers because it escalates the cost of public works projects—

Witness C. Very much so.

Mr. ISTOOK. I thank you very much, sir, for coming forward.

Chairman BALLENGER. Thank you, sir.

Witness C. Thank you.

Chairman BALLENGER. Now we will get back to our group here. Do you want to go first, Pete?

Mr. HOEKSTRA. Sure.

Chairman BALLENGER. Thank you all for waiting. Flying out of here today is going to be rough anyway, so if you have got to fly back, maybe we will be on the same plane.

Mr. HOEKSTRA. Just a few comments. There is a disagreement on the panel about whether this is the tip of the iceberg or whether this is an isolated event. Just to reiterate some of the points that have been made earlier today, this is not a new issue, Mr. Bumpers. This was first brought up in 1979. I do not know if Cass was in Congress then.

Chairman BALLENGER. No.

Mr. HOEKSTRA. But I can tell you I sure was not. I was working for a company that was struggling to get to be a billion dollar company. A billion dollars is a lot of money, as is \$28 million, and so I think we know what it is. But GAO somewhere in this testimony identified the problems way back there. "After all these years, the Department of Labor has not developed an effective program to issue and maintain current wage determinations." That kind of work by the GAO is the kind of work that had led Cass and myself to take more than a look at reforming Davis-Bacon and consider whether a more complete overhaul or even a repeal, like Ernest talked about this morning, is what is needed.

When you go through this, the wage survey determination is the guts of this process. If it is flawed, if it is full of fraud, not as what these people in Oklahoma have said today, but as what the GAO said, the potential exists, we have to take a look at it. So the GAO has talked about this since 1979.

When we look at the pure statistics of what we are trying to accomplish here, wage rates for 100 plus job categories in 3,100 counties around the country, that is a potential of over 300,000 wage rates—not only job categories, but specific job descriptions—300,000 plus wage rates. The Department of Labor does 200 surveys per year. The average age of the surveys around the country, average age, and this is not Cass and I saying it, this is what we got from Maria Echaveste when we met with her—the average age of a survey is seven years old. Now when we take a look at that, intuitively we are saying tracking that many wage rates around the country appears to be a problem, having the average age being seven years appears to create some concern for us, and this issue has been around since 1979 by the GAO creating some concern for us. So I think it is more than just a few people coming out and saying wow, here is a new avenue to go out and attack Davis-Bacon, let us say it is full of fraud and abuse. This charge was made long before Cass and I got there. We have got to go through this process now and determine that before we talk about any kind of reform.

The other thing I would like to just point out is that I find it interesting that this has been around since 1979 and all of a sudden we start taking a look at this issue and now all of a sudden we have got to do it in 12 months and we have got to do it your way

or no way, or we are not doing our job. There has been a broad consensus of the people that probably are on your side of the issue that have had majority control of that Congress for a long period of time and they have let that fraud and abuse go on, and we are not going to. Do you know why we come out here in the hinterlands, in mainstream America? Because you guys can tell us what is going on a whole lot better than some of the experts in Washington. Bill said it best, the issue is about stealing from the taxpayers. And what we are not going to allow to happen is we are not going to reform Davis-Bacon so that only on large projects people can steal from the taxpayers. We are going to get rid of the small projects, we are not going to let them steal on small projects any more, we are only going to let them steal on big projects. That is not what we are about. So we are going to go through it and end up properly.

The question I have for you, there is disagreement on this panel about whether this is the tip of the iceberg. What are you willing to do to help us go through this process? Are you willing to go, are your 21,000 contractors willing to participate with us in a process and to work with your union and non-union workers to go into specific regions around the country and provide this committee the files of all the WD-10s that they have provided, that your contractors have provided, that your union people have provided, and that other ancillary groups have provided? Are you willing to participate in that process and give us that documentation and have it verified on a nationwide basis? Are you willing to do that with us?

Mr. BUMPERS. Well, first of all, you raised several issues here.

Mr. HOEKSTRA. No, I asked a question. All I need from you is an answer to that question.

Mr. BUMPERS. You asked one question but you made a whole lot of statements.

Mr. HOEKSTRA. You are right. You had an opportunity to make a statement. Are you willing to participate with us through this process and give us WD-10s over the last four or five years that your contractors have supplied, that the unions that you work with have supplied, so that we can go back and actually find out whether this is the tip of the iceberg or not? Or, do we have to struggle through this process, which is what we are doing with the Department of Labor? Or, are you willing to aggressively go through this process with us?

Mr. BUMPERS. I am willing, and our contractors, I said in my statement to you, that we were willing to look at the entire survey process with regard to how it is done today and attempt to work with the Congress of the United States or anyone else in an effort to improve that survey process.

You are asking me to take these 21,000 contractors and all of a sudden wave a magic wand that they have access to WD-10s. In many cases, they may have access to their own WD-10s, but whether they are willing to provide that to the world, I do not know.

The Labor Department, once the WD-10s are submitted, they are in the purview of the Labor Department. I do not have any authority over the Labor Department with regard to doing that.

What I am saying to you is though, sir—

Mr. HOEKSTRA. No, that—

Mr. BUMPERS. Well, let me answer the question. If you are willing to look at the Davis-Bacon Act and try to reform it or are you going to every region of this country to try to uncover fraud. Is that something that your committee has got time to do? I do not know.

Mr. HOEKSTRA. Absolutely. I mean—

Mr. BUMPERS. You have got time to do that?

Mr. HOEKSTRA. If the survey process—

Mr. BUMPERS. Maybe that is what you should do then.

Mr. HOEKSTRA. The survey process is the core of this issue. If we cannot get accurate information from around the country, there is absolutely no value in having Davis-Bacon because then we are going to be working off the wrong assumption. If there is fraud, waste and abuse in the system, it comes out of a survey process and only until we get the survey process right can we do other things.

I am asking you whether your contractors are willing to provide us with WD-10 forms that they have submitted, all of them that they have submitted, in a sample, and whether they would go to their unions and ask their unions that they work with to give us the WD-10s that they have provided, so that we can determine whether the survey process is slightly flawed in certain areas or what the GAO leads us to believe, is rotten to the core. That is the question.

Mr. BUMPERS. I would be very happy to communicate with the 21,000 contractors that I represent on the Davis-Bacon reform issue to ascertain whether or not they are interested and what recommendations they might have about making the survey process more effective and more accurate and more verifiable—yes, I would be happy to do that. But to ask them—

Chairman BALLENGER. I would like to see you do it.

Mr. BUMPERS. But to ask them to provide WD-10 forms, these contractors are not going to go through their files and I do not know how many of them have even submitted WD-10s. The indication here today is that a lot of these people have not even submitted them. The reason is because they do not want to be bothered with it.

Mr. HOEKSTRA. What I am saying is—

Mr. BUMPERS. The 21,000, first of all, they are not all union contractors. You talk about this as if this is some union contractor group here. This is not a union contractor group. It is union and non-union contractors. And I do not understand why you are suggesting that these are all union contractors.

Mr. HOEKSTRA. I am not. I asked you if we could go on a sample basis to a certain select number of counties around the country and ask your contractors for copies of the WD-10s that they have submitted, the ones that unions, non-union and other interested third parties have submitted, and to go through a systematic survey of determining whether there is additional fraud or abuse, or whether Cass and I have to go through this process more extensively with the Department of Labor.

Mr. BUMPERS. Would not the Congress and the construction industry in the United States be better served to sit down as rational people and talk about how the survey process might be improved?

What you are trying to do here is go through a process that apparently has got some problems. GAO admits they have got some problems. The GAO report, however, talked about the deficiency in the survey process.

Chairman BALLENGER. Why do you need the process?

Mr. BUMPERS. Pardon me?

Chairman BALLENGER. Why do you need the process?

Mr. BUMPERS. Why do you need the process?

Chairman BALLENGER. Yes.

Mr. BUMPERS. Oh, we are back to this, to repeal Davis-Bacon.

Mr. HOEKSTRA. Let us ask the question. You are saying let these regional people sit down and figure out the process. Well, I will tell you, one of the things for me that would make a whole lot of sense if we are going to design a new process, an improved process, okay—I really would like to know how badly flawed the old process is. If I read your testimony correctly, there is really not much reason to reform the process because what has gone on with this testimony and these individuals is not the tip of the iceberg.

Mr. BUMPERS. I did not say that.

Mr. HOEKSTRA. That Cass and I and Ernest are on a wild goose chase here because there is one little isolated event where we are having a problem, but overall, we see in North Carolina the survey appears to be working fairly well.

Mr. BUMPERS. Four dollars and ninety nine cents an hour.

Mr. HOEKSTRA. Yeah, \$4.99 an hour, so maybe it is working okay in North Carolina.

Chairman BALLENGER. They fill out their forms there.

Mr. HOEKSTRA. Yeah. And so you know—

Mr. BUMPERS. But if you are going to quote me, Congressman, I wish you would do it correctly. You just said that I said I was against changing the survey process. I never said any such thing. As a matter of fact, I said just the opposite. Does the administration of the Davis-Bacon Act have flaws? Certainly it does. Can the survey process have flaws? Obviously. Are we for improving the Davis-Bacon Act? Yes. Are we for improving the survey process? Yes. And we would be happy to sit down with you or anyone else that is of a like mind, to go through that survey process and get some input from the construction industry for a change—from the construction industry, the people in this coalition that really go out there and bid these jobs day in and day out, and work within this system. We would be happy to do that, certainly we would.

Mr. HOEKSTRA. But what I want to do before we improve the process—

Mr. BUMPERS. You want to build a case to repeal the Davis-Bacon Act, is that not true? Is that not what this is about? Is that not what this regional thing is about? Rather than improve the process, you want to prove how wrong it is? Is that not what it is about?

Mr. HOEKSTRA. It may or may not be, we may or may not end up there—we may or may not end up there, but the real question here is do you want us to take the reform process and get to that after this thing has been there for a whole bunch of years and we have not taken a look at it. We are not going to rush through a

reform process that does not identify what the core problem in this system is.

Mr. BUMPERS. I will bet not.

Mr. HOEKSTRA. We are not going to fix this system by just saying we are going to have it apply to different projects.

Mr. BUMPERS. You know what I believe? I believe you are not going to rush through anything, I believe you are going to go around the country and you are going to hold these hearings and you are going to try to prove that the Davis-Bacon Act is the evil of all government, and that you are never going to allow the American people to have their will on this issue. And you know damned well that there are 220 Congressmen in the United States Congress that are for reforming the Davis-Bacon Act, which could include the survey process. Now why will you not let that happen?

Chairman BALLENGER. Let me step in the debate with you two guys. I would like to ask Mr. Matthews or Mr. Milner or Mr. Estell, any one of the three of you, if you have ever read the Davis-Bacon reform, 2472, H.R. 2472 bill that he has got, that he says he has got all these cosponsors for.

Let me give you just a little teeny background. What it does—

Mr. BUMPERS. I have got it here if you want it.

Chairman BALLENGER. What it does, it increases—instead of \$2,000 being your starting point, I think it goes up to what, \$600,000-\$700,000.

Mr. BUMPERS. It goes to \$100,000 for new construction.

Chairman BALLENGER. Okay. But what it does, if you are a contractor, road contractor and so forth, right now if you bid on it, the only person that is involved in Davis-Bacon wages is you, you are the contractor. This bill, this reform effort, would then go back and say well what about the people supplying the gravel that they use, and tar that they use, and all the truckers that haul the stuff around. Then everybody that you can touch involved in that job would then have to pay Davis-Bacon wages. That is the reform he is talking about.

Mr. BUMPERS. That is not true, Mr. Ballenger, you know that is not true.

Chairman BALLENGER. Sure it is.

Mr. BUMPERS. It is not true. Are we going to argue the Davis-Bacon Act? I thought you were down here about the survey problems.

Chairman BALLENGER. Let us let them answer a question. Would you be for something like that?

Mr. BUMPERS. You misquoted the Act.

Chairman BALLENGER. It expands the coverage, is what it does.

Mr. MILNER. Mr. Chairman, I am somewhat confused. I thought he said earlier in his testimony that he had 89 sponsors on the bill, now he is saying 220?

Mr. BUMPERS. I said 87.

Mr. MILNER. Eighty seven, okay.

Mr. BUMPERS. Where did the 220 come from?

Mr. MILNER. You just said 220 people were in favor of reform.

Mr. BUMPERS. Two hundred and twenty Congressmen.

Mr. MILNER. Well, you only have 89 sponsors.

Mr. BUMPERS. Well, so what. I mean, do you think everybody co-sponsors every bill that goes through the United States Congress?

Mr. ISTOOK. Let us have the Labor Department take a survey. [Laughter.]

Chairman BALLENGER. I will tell you, folks, I have got to go catch a plane, let us stop this debate.

Mr. MILNER. To that point, Mr. Chairman—

Mr. BUMPERS. He is not a contractor, by the way. Do you represent the construction industry here?

Chairman BALLENGER. Well, you are not a contractor either, so he—

Mr. BUMPERS. No, but I am representing 21,000 contractors. Who is he representing?

Mr. MILNER. I represent about 7,000 taxpayers in the State, sir.

Chairman BALLENGER. Let get on with the questions.

Mr. MILNER. Taxpayers are not important, obviously to you.

Mr. BUMPERS. They are very important.

Mr. MILNER. No, they are not, because you have failed to acknowledge the point, you have sat here and denied and denied and then made counter-allegations, Mr. Bumpers.

Chairman BALLENGER. You are dealing with a professional here who knows how to do this stuff.

So let us hit the gavel and ask the other guys some questions.

Mr. MILNER. Anyway, to your point, Mr. Chairman, I do not think—if you look at the GAO report, that was done in a Democratic Administration with a Democratic President, and the bottom line from that GAO report back in 1979 was it is not administrable the way the Act is and the Act should be repealed. If you are going to look at prevailing wage rates, let the free market set the rate. That is what it is about.

I represent 7,000 taxpayers, our organization has 250,000 to 300,000 people in this State. Davis-Bacon is not, by any means, the most evil of the government. But in these times, the taxpayers have said, have spoken through the change in the way the makeup is, they are tired of paying for government waste. No one, Mr. Bumpers or anybody in this State, has answered the question, why does the taxpayer have to pay more money in the construction of a public building than a private developer does. I do not even care if it is 1 percent, why do I have to pay more? I should not have to.

And second of all, what sense does it make to spend more taxpayer dollars in giving the Department of Labor more money to administrate a program that is systemically flawed? No matter how many people you put in place, no matter how much money you put in place, they can continue to put in fraudulent information because the fact of the process is, as Mr. Marshall and Mr. Lester stated, there is no step in there for verifying the accuracy of the reports.

So the cheapest way, for me it would seem, would be to repeal it and let us get on with it. If the contractors want to go out and bid head-on, union contractors, let them bid in the free market. That is what this country was founded on, this is a protectionist program, it subsidizes union, as Milton Freeman, the economist, said, pure and simple. There is no other reason for it.

Chairman BALLENGER. Mr. Matthews, let me ask you a question, is your basic business doing government work?

Mr. MATTHEWS. No, sir, mostly in the private sector.

Chairman BALLENGER. Mostly private.

Mr. MATTHEWS. Well, we do a lot of municipality work for the City of Oklahoma City.

Chairman BALLENGER. How do you work the situation—I am a manufacturer myself, I was wondering how you work the situation where you have got workers that work for you on government contracts with this prevailing wage situation, I am sure those wages are higher than you pay the same person who is working on a private job. How do you work around that situation?

Mr. MATTHEWS. Well basically we tend not to bid federally funded projects. It tends to destroy a crew. I can advise them to take this as a bonus, take this extra money as a bonus, put it back, but when we go back to the real world and I have to compete, we cannot pay these wages. Subsequently, usually when the job is over, the employees leave, trying to find another federally funded job.

Chairman BALLENGER. Mr. Estell, is that about the way you work it, or how does it go?

Mr. ESTELL. It is about the same, we do about 50/50 government work, paying prevailing wage. I pay my operators pretty good on the private market.

Chairman BALLENGER. How do you do it? If I had—of course, I am stable because I have got a plant and I have got people running it, and so I do not have to worry about going out to different places with different people, but I do not see how you could possibly manage your workers with the idea that you are going to have two separate wage scales.

Mr. ESTELL. It is very hard. We try to minimize it to a 40-hour work week to keep the overtime down. On private work, we would not have to worry about that as much.

Chairman BALLENGER. Right.

Mr. ESTELL. And if you do get operators making \$20 an hour versus somebody making \$15 an hour, they work that job for a year or two. Once you get off that job, they are discouraged because they have set their wage for that last year, they are living off of that. It is like getting a cut in pay. But myself, I do not have a choice either, but to pay what the market is in that private sector.

Chairman BALLENGER. Right.

Mr. ESTELL. If we want to stay in business and those workers want to keep, you know, food on the table.

Chairman BALLENGER. Have you been contacted by the Department of Labor?

Mr. ESTELL. Yes, I have.

Chairman BALLENGER. I mean before Oklahoma found out what was going on?

Mr. ESTELL. No.

Chairman BALLENGER. And now you have been contacted by them.

Mr. ESTELL. Yes, this past summer.

Chairman BALLENGER. Do you have friends in neighboring States, since the main office for Davis-Bacon that regulates you all comes out of Texas, do you do any business in Texas?

Mr. ESTELL. No.

Chairman BALLENGER. Do you?

Mr. MATTHEWS. No.

Chairman BALLENGER. I just wondered if you had friends somewhere that run into stuff like you are hearing here now, as far as construction costs are concerned. Do you know?

Mr. ESTELL. No.

Mr. MATTHEWS. No.

Mr. HOEKSTRA. When you take a look at—do you both typically pay more or you are required to pay more under prevailing wage than contracts in the private jobs that you do?

Mr. ISTOOK. Yes.

Mr. MATTHEWS. Prior to this last survey, it was fairly close, a little bit higher on the non-building scale, it was fairly close to the actual prevailing wage. This last survey that came out was just so astronomically high, it was brought to everyone's attention that there had got to be a problem here.

Mr. HOEKSTRA. I mean, when you saw the new prevailing wage come out—I am assuming when you hear the term prevailing wage, that is what is generally paid in the marketplace and this time it came out—you kind of wondered how these numbers are generated?

Mr. MATTHEWS. Right, and how we went from \$10-\$11 an hour to \$20 an hour and no one in our marketplace is paying that kind of wage—where did we get the numbers to support this.

Mr. HOEKSTRA. Mr. Matthews and Mr. Estell, you have been in business for how long, respectively, how many years?

Mr. MATTHEWS. My father started our business in 1947, I have been active in it since 1971.

Mr. HOEKSTRA. Mr. Estell.

Mr. ESTELL. My father started in 1963.

Mr. HOEKSTRA. And until this recent survey in the last couple of years, had you ever seen a major discrepancy between what you felt was actually basically your prevailing wage on the job and what was being certified by the Department of Labor as the prevailing wage?

Mr. ESTELL. Not that I have personally seen until this survey came out.

Mr. HOEKSTRA. Mr. Matthews.

Mr. MATTHEWS. We deal with two different rates, we have a non-building rate which generally governs our type of work which is utility construction, and then they have a building rate and the building rate has always been quite a bit higher than the—

Mr. HOEKSTRA. Oh, so it always has been, in your experience, on the building rate.

Mr. MATTHEWS. Correct.

Mr. HOEKSTRA. A significant difference there. Have you ever, until this time, had you ever thought to check whether the rates being reported, I guess it is on the form WD-22, corresponded with what you had been sending in on your WD-10s?

Mr. MATTHEWS. No.

Mr. HOEKSTRA. To your knowledge, has that ever been a common practice among any contractors, to need to check whether the information that is being reported in your name, in the name of your

company, is actually accurate when it comes back from the Department of Labor? Do you know of anyone that ever went to the trouble of checking that before, even during the times when, as you say, Mr. Matthews, the building rate was not commensurate with the actual prevailing wage?

Mr. MATTHEWS. No. Before this, before we got into this investigation trying to find out the particulars of this, I did not even know what a WD-22 was.

Mr. HOEKSTRA. Sure.

Mr. MATTHEWS. We have never been contacted by the Department of Labor to verify any rate.

Mr. HOEKSTRA. The knowledge that there have been submissions in your company's name, as you both experienced, as other people have experienced, we have seen testimony, copies of documents, the knowledge that there is a problem, whether it be with information you send in or maybe that some other company may send in and it has major repercussions upon your payroll and upon the public purse—does that mean that now you are changing the way you are handling things, are you having to do extra work or now you have got to go back and check the accuracy of the government reports? Is it generating any difference in the way that you do business or in the way that you handle the information that is reported back from the Department of Labor?

Mr. MATTHEWS. Well, not really, we have not been asked before or since to participate in any surveys.

Mr. HOEKSTRA. I am asking though, you know, for example, in the future when new surveys are taken and they issue the new prevailing wage rates, do you feel the need to go back and check the accuracy of everything that has been sent in your name to see if maybe there is a problem in the future too? Is that extra work for you?

Mr. MATTHEWS. From here on out if any more surveys are done, I would certainly personally want to see those forms, all the forms that are turned in on our company, either by us or other sectors. Where before, it was never brought to my knowledge. So for me, it would create more work.

Mr. HOEKSTRA. Just something else you have got to check on.

Mr. MATTHEWS. Yes.

Mr. HOEKSTRA. On top of everything else you have got to do.

Mr. MATTHEWS. Right.

Mr. HOEKSTRA. I thank you.

Chairman BALLENGER. It is a constructive thing that we are trying to do. I must tell you he has got 89 members on his bill and my bill that died, I had 180 something.

Mr. BUMPERS. Last count you had 116, some of those are now on ours.

Chairman BALLENGER. That is better than nothing.

Thank everybody for being here. We thank the news media and without further ado, we are adjourned.

[Whereupon, at 1:19 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE  
STATE OF CALIFORNIA

Mr. Chairman, as you know I was unable to attend the January 18th hearing of the Subcommittee on Workforce Protections in Oklahoma City. I appreciate the opportunity to enter a statement into the record.

Certainly, our Subcommittee must take seriously the charge by Brenda Reneau, Commissioner of the Oklahoma Department of Labor, that fraudulent responses may have been made in as many as three cases in connection with a U.S. Department of Labor ("DOL") wage data survey for Oklahoma City. But I am disturbed by what seems to be the political nature of those charges and of the response by some in Congress.

Commissioner Reneau claims, in her investigative report, that one of the its aims is to prove that prevailing wage rates required under the Davis-Bacon Act are grossly inflated across this nation because of wide-spread fraud. But Reneau cannot truly expect that an investigation of isolated cases in one city could fulfill that purpose. By its very nature, the investigation of the Oklahoma City wage rate survey can only address the question of fraud in *that* survey, which may or may not indicate a more widespread problem.

Similarly, arguments by Members of Congress that the case of Oklahoma City represents only the "tip of the iceberg" are very premature and grossly misleading. Not only does Reneau's report provide incomplete evidence of fraud in Oklahoma City, but it does not, and could not, address the existence of fraud in wage surveys conducted for any other region of the country. Moreover, when DOL conducted a second wage survey of Oklahoma City after Reneau's charges were made, the result was not a dramatic reduction in the wage rate that Reneau has implicitly argued would occur when the questionable information was excluded from the survey. Instead, some of the wages were increased, others were lowered, and still other wage rates remained the same.

Although the wage survey process may not be perfect, to date there is no hard evidence that it is subject to fraud. Since the Davis-Bacon Act became law in 1931, there have been only nine cases of fraud related to the Act and this is the first time since 1964 that fraud has even been alleged. This record hardly supports a conclusion that wage rates nationwide are grossly inflated.

The prevailing wage requirements of the Davis-Bacon Act are too important to the lives of over 500,000 workers and their families to be the subject of a misinformation campaign. Construction workers, who rely on the benefits and security that Davis-Bacon provides, are some of the most economically stressed workers in this country. On average, they earn only \$28,000 a year and work only a few months at a time. While their work and pay checks may be seasonal, their bills and living expenses come due every day. These workers are endlessly struggling to make ends meet. Congress has the responsibility, therefore, to consider carefully only the most solid evidence before taking precipitous action undermining our fiduciary duty not to depress wages.

DOL, with the assistance of the Department of Justice, has begun an investigation of Reneau's charges. We should allow that investigation to proceed without politicizing the process with unsubstantiated declarations by politicians whose ultimate goal is the repeal of the Davis-Bacon Act. We should pay close attention to the investigations of the Departments of Labor and Justice, review their conclusions once made, and decide on our course of action at that time.

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STATEMENT OF LONNIE P. TAYLOR, VICE PRESIDENT, CONGRESSIONAL AFFAIRS,  
UNITED STATES CHAMBER OF COMMERCE, WASHINGTON DC.

On behalf of our full membership, including the Oklahoma State Chamber and over 3,000 chambers of commerce throughout the country, the U.S. Chamber of Commerce commends Chairman Cass Ballenger and Peter Hoekstra, members of both the Worker Protections and the Oversight and Investigations Subcommittees, as well as you and your colleagues in the Oklahoma congressional delegation on the hearing being held to address reported fraud and abuse of Federal prevailing wage rates in Oklahoma.

As you know, the issue of prevailing wage has been of critical importance to our members who have been burdened by artificially inflated wage rates with which they must comply in fulfilling Federal Government contracts. The results have been increased costs to taxpayers, additional regulations and lost jobs. The matter of reported fraudulent prevailing wage surveys in Oklahoma further exacerbates this costly and discriminatory policy.

The hearing today reflects a major effort in putting an end to this practice. As a result of joint efforts with the Oklahoma State Chamber, we are concerned as to how widespread the abuse might be, both within the State of Oklahoma and nationally. In this time of shrinking Federal dollars and the public's call for streamlining the Federal Government, further oversight and investigation of this potentially national problem is more than warranted.

We urge you and your colleagues to remain vigilant in your efforts to determine the extent of such abusive practices and look forward to working with the Congress in this regard.

Due to the size of the document, the Davis-Bacon Act, and Fraudulent Wage Data Investigative Report document will be on file with the Committee on Economic and Educational Opportunities document's clerk located at B345 Rayburn House Office Building, Washington, DC. *An Executive summary follows:*

Brenda Reneau  
COMMISSIONER



Frank Keating  
GOVERNOR

## Oklahoma Department of Labor

### Investigative Report: The Davis Bacon Act and Fraudulent Wage Data Submitted to the U.S. Department of Labor

#### Executive Summary

##### **Background:**

On November 4, 1994, the U.S. Department of Labor issued new general wage decisions for heavy construction in Oklahoma County and other counties comprising the Oklahoma City metropolitan area. Many of the wages prescribed by these new decisions were significantly increased from the most recent modified versions of the heavy construction wage decisions. It had been several years since the previous survey, so a reasonable increase in rates was expected. In some cases, however, the increase was outrageous, which prompted a public outcry from the building industry and from a wide variety of government subdivisions that pay for the construction work with taxpayer dollars.

Some of these affected parties approached the Oklahoma Department of Labor with allegations that fraudulent data had been submitted to the U.S. Department of Labor during the survey process. Because Oklahoma's Little-Davis Bacon Act forces Oklahomans to adhere strictly to the federal wage decisions generated by the U.S. Department of Labor and, due to the fact that the Oklahoma Department of Labor is responsible for strictly enforcing that law, Oklahoma Labor Commissioner Brenda Reneau commenced a preliminary investigation to determine whether Oklahoma's workers and taxpayers had been the victims of fraud and abuse.

This investigation focused on three specific cases of possible fraud. In each case, the Oklahoma Department of Labor obtained initial documentation from affected parties. Appropriate government subdivisions were contacted to help establish the credibility of the initial documentation. Other potentially affected or involved parties were contacted, including contractors and others from the private sector, and all licensing, financial and anecdotal evidence was pursued. It should be

(Executive Summary Page 1 of 3)

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noted that this exhaustive investigation attempted to eliminate all plausible explanations, with fraud being the absolute last resort.

### **Findings:**

#### **Case 1: Oklahoma City Sanitary Sewer**

Matthews Trenching Company, an open shop contractor, completed a \$587,000 sewer project in Oklahoma City in the fall of 1992. Matthews' certified payroll indicates that during "peak" activity, six common laborers, four pipe layers and three operators — 13 total employees in three work categories — were employed on the project. A U.S. Department of Labor wage survey for the same project was submitted by an as yet unidentified "interested party" which lists 28 "peak" employees, with the "extra" 15 being classified as various categories of "operating engineers." None of these employees — who are listed as receiving substantially higher wages and benefits — were actually employed on the project. Thus, the wage survey for an actual project submitted to the USDOL by an "interested party" lists 15 fictitious employees.

#### **Case 2: Underground Storage Tank**

Unlike the first case, the underground storage tank was never constructed. Case 2 involves fictitious workers on a fictitious project. A wage survey submitted to the U.S. Department of Labor claimed work for 20 plumbers and pipefitters on a \$2 million underground storage tank in Mustang, Oklahoma. This survey indicated that each worker received compensation of \$21.05 per hour — a wage of \$17.00 per hour and fringe benefits of \$4.05 per hour worked. The investigation found that the Mustang underground storage tank was never built — no project was found that matched the description provided by the U.S. Department of Labor. As a result, the wage survey on which the USDOL wage decision was based contains false, and we believe, fraudulent data.

#### **Case 3: Oklahoma City Treatment Plant**

The third case involves two wage surveys: one for a project constructed by a different contractor than claimed, and another that was never constructed at all. The USDOL received two wage surveys identifying the Concho Company as a subcontractor on projects at the Lake Hefner Treatment Plant. Each survey identified 16 operating engineer categories for 33 total "peak" employees. While Concho had performed some excavation and related work at a project adjacent to the treatment plant, another unrelated contractor, Flintco, Inc., actually performed the "high lift" job identified in one of the surveys. Interestingly, however, Flintco didn't even sign the contract to initiate the project until several weeks after the federal wage form had been date stamped in at the U.S. Department of Labor.

The project identified in the other survey — and falsely attributed to Concho — has never been built. Further, the surveys claimed that each job was performed pursuant to a collective bargaining agreement. Concho, to whom the projects were falsely attributed has a collective bargaining agreement with an operating engineer local union hall. Flintco, the company that actually performed the work, does not have a collective bargaining agreement with any of the operating engineer local union halls.

**Conclusion:**

It should be noted that the Oklahoma Department of Labor was provided with leads on several dozen possible cases of fraud. The three cases we investigated were selected at random. Since all three of these cases contain elements of fraud, we have no choice but to question the breadth and depth of what may be a significantly larger systemic problem.

In each of these three instances, the Oklahoma Department of Labor believes that the false information was submitted to the U.S. Department of Labor with the intent to influence the outcome of the related U.S. Department of Labor wage decisions. Because Oklahoma law mandates that the U.S. Department of Labor decisions must apply to state construction, Oklahoma taxpayers are footing the bill for this fraud.

It is our intent to present our findings to the appropriate investigative and prosecutorial authorities to help bring to justice those who knowingly have attempted to defraud the taxpayers of Oklahoma and the United States. In cases where Oklahoma law may have been broken, this report will be presented to the district attorney in each county where a fraudulent act may have occurred.

The response of the U.S. Department of Labor to date has been disappointing. Repeated requests for information solely in the possession of the Department have been delayed or denied. Absent prompt and full cooperation in our effort to expose and prevent criminal activity, the USDOL will be engaging in conduct bordering on complicity in the illegal conduct.

In all likelihood, the perpetrators of this fraud are unscrupulous "interested parties" who reap the benefits of an inaccurate survey. The evidence contained in this report provides a compelling case that the Davis-Bacon Act and its wage survey invites the submission of fraudulent information and protects those unscrupulous "interested parties" who participate in the process.

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**TRANSCRIPT**

<b>FOR</b>	ASSOCIATED BUILDERS & CONTRACTORS	<b>STATION</b>	WRC-TV NBC Network
<b>PROGRAM</b>	NBC Nightly News	<b>CITY</b>	Washington, D.C.
<b>DATE</b>	October 11, 1995 7:00 PM	<b>AUDIENCE</b>	
<b>SUBJECT</b>	The Fleecing of America, The Davis-Bacon Act		

**BROADCAST EXCERPT**

**TOM BROKAW:** Time now for our regular Wednesday feature about your money and how your government wastes it. Tonight, how phantom construction projects are driving up the cost of real buildings.

NBC's Robert Hager has details now in this Fleecing of America.

**ROBERT HAGER:** Mustang, Oklahoma, a rural town in the nation's heartland with a brand new \$2 million underground storage tank. But where is it?

**JIM MORGAN [City Manger]:** No, this is not an underground storage tank.

**HAGER:** In fact, the underground tank was never built, needed or even proposed. It only exists in these documents, federal wage survey forms, fraudulently submitted to the U.S. Labor Department, complete with fake salaries and fake jobs, intended to persuade the government to set higher construction wage scales for that area. Remarkably, it worked.

And since until recently by law, Oklahoma had to pay using the same wage scales, the state labor commissioner is furious, saying the fraud is costing taxpayers there millions of dollars.

**BRENDA RENEAU [Oklahoma Labor Commissioner]:** The wage rate for this area was based on that non-existent or ghost project.

**HAGER:** A federal law, the Davis-Bacon Act, requires that construction workers on almost all U.S. government projects, be paid the prevailing or going salary for a specific region. Those salaries are set by the wage survey. But critics say many of those surveys are being rubber stamped without any checking.

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In Oklahoma, the impact on the state's wage rate is tremendous. A backhoe operator whose salary was 8.40 an hour started getting \$22 an hour. A truck driver whose salary was 7.30 got \$15 an hour. Total additional taxpayer cost, \$21 million.

On Capitol Hill there's concern.

REP. CASS BALLENGER [R-North Carolina]: If they found out in Oklahoma that you could get away with cheating, it's not a secret they must have kept in Oklahoma. It's got to elsewhere in the country.

HAGER: And NBC News has learned the FBI is now investigating. Because of this, the U.S. Labor Department says it's limited in what it can say.

THOMAS WILLIAMSON [Labor Department Attorney]: We take very seriously allegations of fraud that call into question the integrity or accuracy of any wage surveys used by the David-Bacon program.

HAGER: In Oklahoma, more fakery. Someone wanted to double pay for asphalt workers, so a form was sent to the U.S. Labor Department claiming asphalt workers had made big wages to resurface a parking lot. But a look today reveals it was never paved with asphalt. Another survey detailed high wages to put up a building at a water treatment plant. But a look today reveals no building to be found, only barbed wire. Now, because of continued abuse, the U.S. Labor Department has withdrawn the prevailing wage rate for Oklahoma.

And because she first raised questions of fraud, the state labor commissioner's life has been threatened. But that's not stopping her.

RENEAU: It's fraud. It's fraud at the fullest extent.

HAGER: No one has been charged yet, but there's growing concern that the system of setting wages on U.S. government construction projects is so flawed that it's fleecing taxpayers of hundreds of millions of dollars.

Robert Hager, NBC News, Washington.

## Opening Statement

Representative Major R. Owens

January 18, 1996

Oklahoma Field Hearing: Davis-Bacon

Thank you, Mr. Chairman for the opportunity to submit this statement for the hearing record. Unfortunately, the record blizzard sustained by the eastern part of our country made it impossible for me to attend the Oklahoma hearing on Davis-Bacon.

It is my impression that the Republican party has misinterpreted and, therefore, misunderstands the Davis-Bacon Act and it's intent. During the depression **unscrupulous fly-by-night contractors** were hauling gangs of "itinerant", cheap, bootleg labor, around the country to **undercut local firms on federal public works project**, at a time when other new construction was limited.

The **Davis-Bacon Act of 1931 requires that the minimum wage rates** paid to each separate classification of workers on federally-financed construction, repair, and alteration contracts **be those determined to be locally "prevailing"** by the Department of Labor. Therefore, **carpenters** ( representing various counties) working on highway construction projects in your state of **North**

Carolina earn \$ 7.71 and no fringe benefits; while unskilled laborers working on federally-funded sewer and water construction projects and heavy construction projects earn \$4.41 and no fringe benefits. These wages are not Michigan wages nor Texas wages; because the prevailing wage for Michigan is determined by what Michigan pays it's workers in the same category, and in Texas by what Texas pays. So, when the statement is made that: **"The Davis-Bacon Act requires contractors on federally funded construction projects valued at over \$2000 to pay a government-determined prevailing or inflated salary in a specific city or area."** It is an untrue statement. It is the locality that establishes the prevailing wage, and the U.S. Department of Labor.

Mr. Chairman , I have to trust that men such as ourselves--earning over \$133,000 yearly and in some instances blessed with additional income and privileges--are not acting capriciously because we disdain poor and working people. I hope we have not become indifferent to their concerns when they organize to confront the tyrants who over-work and underpay or refuse to pay them. However, I can not ignore the unreasonable, mean-spirited attacks launched every day against American workers and their families by the Republican majority. Through unproved accusations, generalization and sensationalism the majority is attempting to create the false impression that a nationwide union

controlled Davis-Bacon Act is at the core of the misery of taxpayers. Davis-Bacon does not cheat the American taxpayer –it ensures that construction workers working on federal projects are paid a fair wage. Mr. Chairman, you bemoan the fact that \$48 million are annually spent on federal construction under the Davis-Bacon Act, but you have no problem supporting a \$240 billion tax cut for the rich.

Since the earliest days of the 104th Congress the Committee leadership has made it clear that the policy implications of Davis-Bacon, such as its value in promoting quality construction and encouraging employer provided employee training, health care and pension benefits would not be debated. Nor would the Committee review the real Davis-Bacon scandal of contractors cheating workers by underpaying the reported wage on federal contracts.

I am not willing to sit quietly by while the zealots conspire to destroy minimum wage protections for construction workers —Davis-Bacon.

Eighty seven Democrats and Republicans are co-sponsors of H.R.2472 (introduced by Mr. Curt Weldon, R-PA) a bill to reform Davis-Bacon; however, the leadership of this committee has not allowed the bill to come up for committee consideration. Why? A letter written and widely disseminated by Mr. Souder of Indiana may hold the answer.

On October 12, 1995 and on February 9, 1996 Congressman Mark Souder,

Indiana-4th District, sent the following letter to contractors and others: (excerpts from the October 12, 1995 letter follow. Full text of February 9, 1996 is attached.)

October 12, 1995

Mr. Rick Cowley  
Mechanical Services & Systems, Inc.  
7021 South 400 West  
Midvale, Ut 84047-1032

Dear Mr. Cowley:

With your help, you and I can save American taxpayers billions of dollars and end a form of economic discrimination that costs Americans some 200,00 jobs annually.  
How?

By repealing the five decade old Davis-Bacon Act, a law that effectively bars non-union employees from working on most government construction projects.

For more than 60 years, all Americans have suffered under this law.

Honest Businessmen and women who refuse to force their employees into unions have been denied federal contracts they've rightfully earned.

Their employees have been deprived work of they're fully qualified to do, and the American taxpayer has paid literally billions in inflated costs over the years

Now, you and I have chance to end this unjust, corrupt and costly system by repealing the Davis-Bacon Act.

....

But to have a chance of repealing Davis-Bacon, I will need to rally the American people to our cause.

....

And your pledge of \$500, \$100, \$75 or \$50 to the Free Enterprise Institute will help pay for the Committee's campaign. ....

**. These are vicious distortions of the truth. How can the Republican majority defend this ? The original authors of this law, both Davis and**

Bacon were Republicans fighting to maintain decent standards of living for middle-class Americans.

THIS IS ONLY THE "TIP OF THE ICEBERG"; THERE IS FRAUD, DECEPTION AND COLLUSION ORCHESTRATED BY ZEALOTS WILLING TO DO ANYTHING TO DESTROY WORKER PROTECTIONS AND RIGHTS.

Mark Souder  
Indiana - 4th District

*United States Congressman*  
Washington, D.C.

February 9, 1996

Mr. David E. Norris  
Den Management Co. Inc.  
4053 Navajo Ln.  
Wichita, KS 67210-1542

Dear Mr. Norris:

With your help, you and I can save American taxpayers billions of dollars and end a form of economic discrimination that costs Americans some 200,000 jobs annually.

How?

By repealing the five decade old Davis-Bacon Act, a law that effectively bars non-union employees from working on most government construction projects.

For more than 60 years, all Americans have suffered under this law.

Honest businessmen and women who refuse to force their employees into unions have been denied federal contracts they've rightfully earned.

Their employees have been deprived work they're fully qualified to do, and the American taxpayer has paid literally billions in inflated construction costs over the years.

Now, you and I have a chance to end this unjust, corrupt and costly system by repealing the Davis-Bacon Act.

I am totally behind the effort to pass the Davis-Bacon Repeal Bill (H.R. 500/S.141) in this Congress, but I need your help -- today.

I urgently need you to sign -- and return to me right away -- special petitions prepared for you by the Committee to Repeal Davis-Bacon, a project of the Free Enterprise Institute. The Committee is a new coalition of employers and employees, dedicated to returning fairness and fiscal sanity to federal contracting.

Our goal is to deliver a minimum of 1,000,000 petitions to

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Congress.

That means you must act immediately.

Will you join with me in this great coalition of Americans united in their desire to rid this nation of one of the most discriminatory, destructive and costly laws ever enacted by Congress?

Congress must know that Americans want to restore free and fair competitive bidding on government construction projects.

For too long, union officials have treated the federal construction budget as if it was their own private slush fund.

By repealing Davis Bacon, you and I will:

- \*\*\* Protect consumers and taxpayers, who ultimately pay the price when union officials shut down vital federal construction projects with strikes or jack up the cost of construction with their "hate-the-boss" propaganda, senseless work rules and work slowdowns.
- \*\*\* Return common sense and sound budgeting to federal contracting, which is now rife with political favoritism and cronyism costing taxpayers billions of dollars.
- \*\*\* End widescale discrimination against independent contractors and their employees, which shuts hundreds of thousands of workers out of jobs and denies contracts to the 8 out of 10 contractors that don't force their employees to pay union dues.

But to have any chance of repealing Davis-Bacon, I will need to rally the American people to our cause.

That means you and I need to build massive nationwide support among America's independent contractors, their employees and their customers.

And that's where you can help.

By signing the petitions prepared for you by the Committee to Repeal Davis Bacon, you will give me the backing I need to force a Davis-Bacon Repeal Bill to the floor of Congress for a public vote.

And your pledge of \$500, \$100, \$75 or \$50 to the Free Enterprise Institute will help pay for the Committee's campaign

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to rally employees, employers, taxpayers and consumers behind the drive to repeal this misguided and discriminatory law.

The Free Enterprise Institute is behind me 100 percent. But I need the help of patriotic Americans like you -- today.

The Big Labor political machine will be kicked into high gear in an effort to preserve one of the juiciest perks ever handed to union bosses by Washington politicians.

But we can overcome this obstruction -- if we deliver a clear message to Congress that Americans want an end to Davis-Bacon discrimination and waste.

Most Washington politicians know this law is indefensible -- even President Clinton.

The president has tried to slow down the drive for repeal by talking about a phony "compromise" Davis-Bacon Repeal measure that would leave all the old discriminatory practices in place.

The fact is, every day the Davis-Bacon Act stays on the books, Americans pay -- in lost jobs, lost opportunities and tax-boosting cost overruns on federal construction projects.

And for what? So Washington politicians can feather the nests of the powerful union officials they depend on for election and re-election.

Davis-Bacon was crafted as a political payoff for union officials who had only one goal -- to keep certain Americans from working.

Over the years, union bosses have used the law to shut out anyone who could out compete them -- that includes contractors who don't force their workers to pay union dues, upstart businesses with low overhead and operating costs and, frequently, companies owned by minorities.

Davis-Bacon is federally-mandated discrimination against independent workers, pure and simple.

Now, after 65 years on the books, the massive federal construction budget is the private domain of powerful union officials and a few fat cat contractors willing to sell out the rights of their employees.

That's left the small, independent contractor out in the

Page 4

cold.

It has also destroyed countless opportunities for new businesses.

Under Davis-Bacon, many fledgling enterprises, looking to land even a small government contract and establish their businesses, can't get a foot in the door.

They simply don't have a staff of lawyers and accountants to fill out the mountain of Davis-Bacon paperwork required to bid on a contract.

In fact, experts estimate that simply complying with Davis-Bacon regulations alone costs contractors nearly \$200 million a year.

Clearly, the time has come to rid this country of the dead weight of Davis-Bacon.

In this highly competitive global economy, we cannot afford a system that penalizes the most efficient companies and crushes the dreams of the most willing workers.

You and I can and must repeal Davis-Bacon. But we must act today.

Please, sign and return to me as soon as possible the enclosed petitions urging your congressman and senators to vote for the Davis-Bacon Repeal Bill (H.R. 500/S. 141).

And please send along your most generous contribution possible.

Some Americans are so fed up with years of Davis-Bacon waste and abuse that they've sent \$500, \$1000 and more to help the Free Enterprise Institute.

Others have sent \$50 and \$75.

Your contribution -- whether it's \$1000, \$500, \$200, \$100 or \$75 -- will help pay for the mailings, phone banks, advertising and other efforts needed to generate grassroots support for the Davis-Bacon Repeal Bill.

Through every means possible -- mass mailings, briefings for local and national media and, if possible, nationwide television, radio and newspaper advertising -- the Committee to Repeal Davis Bacon will need to organize and sustain intense public pressure

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on Congress to repeal the Davis-Bacon Act.

As I said, our goal is to deliver a minimum of one million petitions to Congress.

This won't be easy.

But by contributing \$75, \$100, \$200 or more, you will give the Free Enterprise Institute the wherewithal to meet this ambitious goal. I hope you will send at least \$50.

Only with your help can we build enough popular support to end a system that is patently unfair, wildly inefficient and grossly discriminatory.

To do that we will have to rally thousands of America's employers, employees, consumers and taxpayers to our cause -- by phone, by mail, by any means necessary.

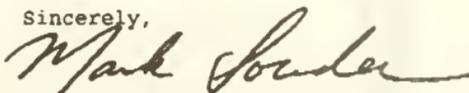
And we must act right away.

The union bosses won't hesitate to spend whatever it takes to retain their Davis-Bacon privileges.

Your contribution of \$1000, \$500, \$200 or \$100 is essential if we are going to overcome Big Labor obstruction and end 60 years of discrimination against America's independent contractors and their employees.

So, please, return your petitions today, and send along your most generous contribution possible.

Sincerely,



Mark Souder  
U.S. Congressman

P.S. The 1931 Davis Bacon Act costs taxpayers BILLIONS OF DOLLARS and locks hundreds of thousands Americans out of good jobs.

I need your help to end one of the most costly Big Labor perks on the books.

Please, return the enclosed petitions urging your congressmen and senators to repeal Davis-Bacon, and send along your contribution of \$1000, \$500, \$200 or \$100 right away.



## *Petition to Senator Robert Dole*

- Whereas:** for more than 60 years the American taxpayers have been burdened by billions in bloated construction costs as a result of the Davis-Bacon Act, and
- Whereas:** the Davis-Bacon Act costs small businesses working on Davis-Bacon projects almost \$200 million a year in unnecessary and excessive paperwork, and
- Whereas:** the Davis-Bacon Act has blacklisted thousands of non-union companies by preventing them from bidding on most government construction projects thereby guaranteeing that 9 out of 10 construction workers will be kept off the job, and
- Whereas:** the only ones who benefit from the continued existence of the Davis-Bacon Act are union officials who reap a huge annual financial windfall as millions of taxpayer dollars get funneled into their political war chests and coffers;
- Therefore:** as a constituent of yours, I urge you, in the name of a prosperous and vital economy, to co-sponsor and support repeal of the Davis-Bacon Act.

Signed: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_  
 Mr. David E. Norris                      Wichita                      KS

## *Petition to Senator Nancy L. Kassebaum*

- Whereas:** for more than 60 years the American taxpayers have been burdened by billions in bloated construction costs as a result of the Davis-Bacon Act, and
- Whereas:** the Davis-Bacon Act costs small businesses working on Davis-Bacon projects almost \$200 million a year in unnecessary and excessive paperwork, and
- Whereas:** the Davis-Bacon Act has blacklisted thousands of non-union companies by preventing them from bidding on most government construction projects thereby guaranteeing that 9 out of 10 construction workers will be kept off the job, and
- Whereas:** the only ones who benefit from the continued existence of the Davis-Bacon Act are union officials who reap a huge annual financial windfall as millions of taxpayer dollars get funneled into their political war chests and coffers;
- Therefore:** as a constituent of yours, I urge you, in the name of a prosperous and vital

## *Petition to United States House of Representatives*

- Whereas:** for more than 60 years the American taxpayers have been burdened by billions in bloated construction costs as a result of the Davis-Bacon Act, and
- Whereas:** the Davis-Bacon Act costs small businesses working on Davis-Bacon projects almost \$200 million a year in unnecessary and excessive paperwork, and
- Whereas:** the Davis-Bacon Act has blacklisted thousands of non-union companies by preventing them from bidding on most government construction projects thereby guaranteeing that 9 out of 10 construction workers will be kept off the job, and
- Whereas:** the only ones who benefit from the continued existence of the Davis-Bacon Act are union officials who reap a huge annual financial windfall as millions of taxpayer dollars get funneled into their political war chests and coffers:
- Therefore:** as a constituent of yours, I urge you, in the name of a prosperous and vital economy, to co-sponsor and support repeal of the Davis-Bacon Act.

Signed: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_  
 Mr. David E. Norris Wichita KS

**RETURN TO:**

**Congressman Mark Souder**  
 The Committee to Repeal Davis-Bacon  
 The Free Enterprise Institute  
 3238 Wynford Drive  
 Fairfax, VA 22031

**FROM:**

Mr. David E. Norris  
 Den Management Co. Inc.  
 4053 Navajo Ln.  
 Wichita, KS 67210-1542

**YES, Congressman.**

I understand that because of the Davis-Bacon Act American taxpayers have been forced to pay billions in additional taxes and that the American worker has paid an even greater price in lost jobs and job opportunities.

It's time to repeal the Davis-Bacon Act and its giveaways to the union bosses. To help the Free Enterprise Institute accomplish this mission, I have:

- Signed and returned the Petitions for you to present to my Congressman and Senators.
- Enclosed my contribution to support the nationwide mobilization effort by The Free Enterprise Institute's Committee to Repeal the Davis-Bacon Act:
- 100+ employees \$1000       75-99 employees \$500       50-74 employees \$350

30-49 employees \$250 15-29 employees \$150 5-14 employees \$100 0-4 employees \$75 \_\_\_\_\_ Other**Please Make Checks Payable to: FEI**

The Free Enterprise Institute's Washington, D.C., Headquarters is located at our nation's capital at 3228 Wynford Drive • Fairfax, VA 22031 • Telephone (703) 280-4226. Because FEI is an exempt status under IRC Sec. 501(c)(4) and its state and federal legislative activities, contributions are not tax deductible as charitable contributions (IRC §170) or business deductions (IRC §162(e)(1)).

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