

David G. Tuerck
Executive Director, Beacon Hill Institute
Chairman and Professor of Economics
Suffolk University

Testimony on Section 10 of Chapter 86 of the Acts of 2008

Public Hearing
Massachusetts Executive Office of Transportation & Public Works

May 20, 2008

I would like to thank the Executive Office of Transportation & Public Works for this opportunity to testify. My purpose here is to expand on written comments that I sent in an email on May 3rd. I should like to point out that, in offering those comments and the comments that follow, I speak only for myself and not for Suffolk University.

The U.S. Bureau of Labor Statistics reports wage data for “crossing guards,” defined as workers whose job it is to “guide or control vehicular or pedestrian traffic at such places as streets, railroad crossings, or construction sites.” On its website, the Bureau reports the highest mean hourly wage for crossing guards, so defined, to be \$16.23 in the state of Delaware. If the rate for civilian flaggers at work sites in Massachusetts was twice this level, it would still be less than what it costs to hire uniformed officers to do the same work. It is a forgone conclusion, therefore, that, by using civilian flaggers rather than police details, the Commonwealth could save money on public works projects.

There are two major obstacles to this saving, however. These are (1) the possibility that, as claimed by the unions, the pay of civilian flaggers will be deemed to fall under the aegis of the state prevailing wage law and (2) the language of Section 10, which protects the monopoly power that the unions currently exercise over the staffing of work sites. Under this language, whenever a municipality is the “awarding authority,” traffic control measures recommended for consideration “shall be consistent with the ordinances or bylaws of the municipality wherein the public works project is being undertaken.” Further, the control measures “shall not affect any applicable provisions of a collective bargaining agreement under chapter 150E of the General Laws.”

Let me first address the matter of the prevailing wage law. The operative statute, Chapter 149, Section 26 of the Massachusetts General Laws, applies to “the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works.” The statute further requires the state to determine the prevailing wage according to “collective agreements or understandings in the private construction industry between organized labor and employers” whenever such agreements are in effect.

It is significant that this statute refers to the employment of workers *in the construction of public works* and that it refers to collective agreements in the *private construction industry*. My point is that the job of directing traffic around a work site has nothing to do with the construction going on at that work site. Furthermore, the police and the police departments, through which details are hired, are not part of the private construction industry. They are a public entity, whose purpose has nothing to do with repairing roads or building schools.

The police are not employed in the construction of public works, and they are not part of the private construction industry. Neither, therefore, could the civilian flaggers who would perform identical duties be deemed to be employed in the construction of public works or to be part of the private construction industry. If a police officer or a civilian flagger directs traffic around a site where the construction of a school is underway, he does not perforce become a member of the teaching profession, and neither does he become a member of the construction trades.

Let us suppose, however, and despite this logic, that the prevailing wage law is deemed to apply. Civilian flaggers would still cost less than police details. All that is necessary is that an awarding authority be required to open the job of directing traffic to any qualified private entity that provides flagger services. The workers hired by this entity might well choose to unionize. But if we read the prevailing wage law carefully, we see that it is the wage negotiated with this entity, not the wage negotiated with the police union that would determine the prevailing wage. Because the wage negotiated with this entity would almost certainly be less than the wage negotiated with the police union, cost savings would still be possible.

Next, with regard to local ordinances and collective bargaining contracts, I see nothing in the enabling legislation that prevents the state from hiring civilian flaggers when it is the awarding authority. True, under Section 10, municipalities would be bound in a manner that the state is not. But suppose that civilian flaggers become commonplace on works authorized by the state. It seems unlikely that the municipalities would continue to protect the police union monopoly once the costs savings enjoyed by the state became evident and the need for uniformed police was shown to be mostly nonexistent. In addition, the state could make it a condition for receiving state funding of municipal projects that the municipality repeal any ordinance that limits the staffing of work sites to police details.

Third, in formulating guidelines, you should consider modernizing work and eligibility rules. In general, for example, it seems that one uniformed officer at a single work site is enough. Any other personnel deemed necessary for the job could be civilian flaggers hired to work under the supervision of the police officer on duty. In addition, you should recommend that personnel hired to staff a work site be paid only for the time actually worked, rather than some arbitrary minimum number of hours.

Just one final point: We can predict that, should you succeed in opening up the market to civilian flaggers, many retired police who have experience in this work would be the first to offer their services. So viewed, your efforts would serve two worthy purposes – injecting competition into the market for flagger services and creating opportunities for police to remain active beyond their normal years of service and, in doing so, to provide the very expertise that they provide now. I suspect that, despite the vociferous objections of the police unions to any of this, there is more than one police officer nearing retirement who understands exactly this point.

I submit, in conclusion, that despite the obstacles considered in my foregoing comments, there remain opportunities here to bring about what politicians call “real change.” I wish you well in doing just that.