

CAMPAIGN FOR QUALITY CONSTRUCTION



SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

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Leveling the Playing Field: Protecting Workers and Businesses Affected by Misclassification

Testimony of Frank Battaglino
Metro Test & Balance, Inc
Capitol Heights, MD

The Campaign for Quality Construction represents six construction associations allied in an ongoing legislative Campaign for Quality Construction. These groups are: the Mechanical Contractors Association of America (MCAA), the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), the National Electrical Contractors Association (NECA), the International Council of Employers of Bricklayers and Allied Craftworkers (ICE), the Finishing Contractors Association (FCA), and The Association of Union Constructors (TAUC). According to 2002 U.S. Census Bureau Construction Statistics, specialty subcontracting comprises 61% of industry employment.

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Battaglino Statement

Good morning Chairman Harkin and Members of the Committee. Thank you for the opportunity to testify here today.

My name is Frank Battaglino and I am the owner of Metro Test and Balance, Inc. located in Capitol Heights, Maryland. I am here today representing the Sheet Metal and Air Conditioning Contractors' National Association as well as the Campaign for Quality Construction.

The Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) is supported by more than 4,500 construction firms engaged in industrial, commercial, residential, architectural and specialty sheet metal and air conditioning construction in public and private markets throughout the United States. Working on a wide variety of projects across the nation in urban and suburban areas, SMACNA contractors specialize in heating, ventilating and air conditioning; architectural sheet metal; industrial sheet metal; kitchen equipment; specialty stainless steel work; manufacturing; siding and decking; testing and balancing; service; and energy management and maintenance.

I am also representing The Campaign for Quality Construction which represents six construction contractor associations with approximately 27,000 contractor members nationwide. CQC members compete in public and private sector markets and perform both as prime and subcontractors. I would like to emphasize that the vast majority of SMACNA members and CQC members are very small, family owned businesses – the majority of which have 10 or fewer employees.

I am here today because it is time for Congress to act. SMACNA testified in 1996 on the issue of misclassification and stated that worker misclassification in the construction industry was rising rapidly. Nothing has changed. The epidemic continues to grow and the rise has nothing to do with career enhancement or worker opportunity. It has everything to do with unfair, low wage competition. Addressing this problem is important with regard to workers' rights in our country and it is important to legitimate businesses like mine all across the country.

My background

As the owner of Metro Test and Balance, I currently employ 55 people in the Washington metropolitan area. I have been in business since 1991 when I started my own company. I started out with a set of equipment that I mustered together and an old Ford van. I now have a 15,000 square foot facility with over twenty trucks on the road.

A person takes risks when they decide to become a business owner but they also accept certain responsibilities. Workers' rights and working conditions are important to me now, but they were also important to me in my old Ford van in 1991 when I started.

I was still able to grow and make money. I am living proof that when a company chooses the path of legality and responsibility for its workers' rights it can still be very successful. Don't let employers who don't want to do the right thing convince you that it can't be done or that following the law will kill entrepreneurship. It should be noted that movement from skilled production jobs into supervisory, management and even business ownership are unrivaled in the union sector of the construction industry.

What we do and how misclassification is hurting my business

My company performs a number of services ranging from commercial HVAC duct work fabrication and installation, Test and Balance services to indoor air quality testing. Our customers include federal, state and local governments as well as private work -- a host of pharmaceutical, defense-based contractors and numerous medical facilities.

We have found ourselves bidding for work at a disadvantage because of the worker misclassification problem. Increasingly we were being beat out of competitive bids by unusually low bids. We know this is a direct result of companies deliberately misclassifying their workers as independent contractors. There is no other way we could be outbid by such large amounts. In fact, the problem was so pervasive that the state of Maryland recently enacted a law to address the problem in construction.

Misclassification occurs when an employer improperly classifies a worker as an independent contractor. Misclassification is known to be particularly prevalent in the construction industry and is blatantly used as a cost-cutting tool. Employers who misclassify their workers reap substantial savings and gain unfair competitive marketplace advantages by avoiding payment of Social Security and Medicare taxes, payment of federal and state unemployment insurance taxes, and payment of workers' compensation premiums. Employers who misclassify workers as independent contractors gain other competitive advantages such as lower administrative costs and more limited liability.

A company that regularly uses this practice can be at least 20 to 30 percent below our bids. So an honest company gets beat out by a company scamming the system and plain hard working people are just being taken advantage of. Vague, complex and subjective rules regarding independent contractor determinations, legal loopholes and lax enforcement all contribute to the growth of this problem.

I am not the only one with this problem. Let me give you one example of a large SMACNA contractor in Atlanta. The contractor had a new potential worker come to him to ask if he could sign up for a worker training program. The guy had been working for another contractor for several years but in order to work the guy had to agree to be an independent contractor. The Atlanta contractor now understands why he was losing bids and he is a larger contractor with several hundred workers. So misclassification hurts legitimate contractors large and small.

This causes a number of problems not only for companies such as mine but also for taxpayers, federal, state and local governments that lose tax revenue. There are broader social consequences when taxpayers and governments end up paying for social services that are usually covered by employee mandated benefits.

As an employer I pay 50% of my employees' Social Security and Medicare. I pay unemployment insurance and worker's compensation premiums. By the way, I paid my Maryland worker's unemployment insurance premiums in April of this year and the check was for over thirty-two thousand dollars. The highest it has ever been. I am required to pay overtime. There are a lot of expenses associated with being an employer and I don't mind, but it is time for Congress to make sure all businesses are paying their fair share.

Summary

Responsible employers and government alike have to partner for this cause. CQC employers contribute to a healthy economy and provide opportunities for economic advancement for employees. As I have said in my testimony, too often these ethical contractors compete against employers, in both the private and public market, who deliberately classify workers as independent contractors and who otherwise are not fully compliant with the law. Unfortunately, it is an epidemic that contributes to a degradation of the quality of the workforce and to the quality of life for American workers.

With the loss of tax revenue both ethical companies and taxpayers are being asked, or more accurately, being forced to cover these expenses while these companies scamming the system are benefiting with higher profits and less responsibility.

It is not too strong to say unethical business owners are "stealing" work from honest contractors with little fear of getting caught. There is no direct law prohibiting misclassification and too many loopholes for violations of the laws we do have.

The CQC supports, without reservation, efforts to stem the workforce degradation that is the direct result of misclassification. I urge the Committee and Congress to take quick and strong action to stop worker misclassification and to pass S. 3254, The Employee Misclassification Prevention Act as soon as possible.

Thank you.

The CQC is comprised of the Finishing Contractors Association (FCA), the International Council of Employers of Bricklayers and Allied Craftworkers (ICE), the Mechanical Contractors Association of America (MCAA), the National Electrical Contractors Association (NECA), the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), and The Association of Union Constructors (TAUC).

Our organizations represent the high-skill, leading edge sector of the specialty contracting industry, providing the top-tier training, wages, health and welfare and pension benefits necessary for a strong workforce skill base. According to 2002 U.S. Census Bureau Construction Statistics, specialty subcontracting comprises 61% of industry employment. The figure for the specialty segment of the industry, however, is slightly higher in more recent figures published by the U.S. Department of Labor's Bureau of Labor Statistics.