

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

Measures Heard HB 2151 HB 2091

HOUSE COMMITTEE ON LABOR

February 6, 1991Hearing Room D 8:30 a.m.Tapes 20 - 21

MEMBERS PRESENT:Rep. Gene Derfler, Chair Rep. Kevin Mannix,  
Vice-Chair Rep. Sam Dominy Rep. Jim Edmunson Rep. Rod Johnson Rep. Bob  
Repine Rep. John Watt

STAFF PRESENT: Victoria Dozler, Committee Administrator Johanna  
Klarin, Committee Assistant

WITNESSES: HB 2151 Michael Ryan, Assistant to the State  
Treasurer Fred McDonald, Public Employees Retirement System HB 2091  
Darlene Livermore, Executive Department Art James, Executive Department  
Mary Bodtkin, American Federation of State, County and Municipal  
Employees Tom Gunn, City of Portland

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TAPE 20, SIDE A

001 CHAIR DERFLER: Calls the meeting to order at 8:30 a.m.

PUBLIC HEARING, HB 2151

CHAIR DERFLER: Opens public hearing on HB 2151.

017 MICHAEL RYAN, Executive Assistant to the State Treasurer: Provides a brief summary of the meetings with various parties who have been involved in the drafting process of this amended legislation.

-He summarizes HB 2151. Transfers the Deferred Compensation Program from the Executive Department to PERS.

Establishes a management program.

Provides for the development of a State operated option within the deferred compensation system.

-He outlines the proposed amendments (Exhibit A).

068 VICTORIA DOZLER: Is it not true that the new amendments hold the State harmless for local government investments?

MR. RYAN: Yes, the State doesn't assume responsibility for errors at the local level.

MS. DOZLER: The permissive part of the amendments is then merely to allow the Investment Council to determine whether or not the local plan is good enough for the State to accept?

MR. RYAN: The Investment Council will review from the standpoint of appropriate risk and rate of return.

085 CHAIR DERFLER: Would the Investment Council have the authority to accept or reject?

MR. RYAN: Yes.

MS. DOZLER: Please explain to the Committee the difference between the new blank in the new amendments and the blank that they filled in during the last work session on this bill?

MR. RYAN: The recommendation of the work group would be to insert 2% in that blank this time as well for consistency.

MS. DOZLER: Points out the place on the engrossed bill.

WORK SESSION, HB 2151

132 CHAIR DERFLER: Opens work session on HB 2151.

MOTION

135 REP. MANNIX: Moves as a single comprehensive amendment all of the changes shown on the written up 2151-A hand engrossed version of HB 2151 and the inclusion on page 2a of that hand engrossed version the figure of 2% in the blank.

144 REP. JOHNSON: Objects to the 2%, 1.5% is adequate, but he doesn't want to hold up the passage of the bill.

The Committee has no objections to the motion.

154 REP. MANNIX: I would like hear from some of the presenters if we actually have a fiscal impact that requires a referral to Ways and Means.

164 FRED MCDONALD, Deputy Director, PERS: This bill should be referred to Ways and Means because of the fiscal impact involved.

MOTION

166 REP. MANNIX: Moves that HB 2151, as amended, be referred to Ways and Means with a "do pass" recommendation.

VOTE

In a roll call vote the motion carries with all those representatives present voting AYE. Representative Dominy is absent.

PUBLIC HEARING, HB 2091

188 CHAIR DERFLER: Opens public hearing on HB 2091.

194 ART JAMES, Executive Department: He summarizes HB 2091.

-The bill requires arbitrators to consider "comparability of the value of work" when setting awards for employees who are prohibited from striking.

-He provides background information regarding this bill (Exhibit B).

231 REP. MANNIX: Is anyone opposed to this bill?

MR. JAMES: I believe there is someone here to testify in opposition to this bill.

REP. MANNIX: The concept of "comparable worth" may work for the advantage as well as disadvantage for non-strike employees depending on their circumstances.

MR. JAMES: That is true.

247 CHAIR DERFLER: Who is involved in this arbitration?

MR. JAMES: The employees who work for the state and are prohibited from striking are generally public safety positions.

246 MARY BODTKIN, AFSCME: Testifies in opposition to HB 2091. She discusses the pay equity issue.

-Refers to section 4(h). This includes the ability to consider the issue of pay equity.

-Making this a separate category gives it too much weight compared to the other factors.

-Pay equity is a manner in which to end sex based wage discrimination.

349 REP. MANNIX: Suggests adding on page 2, line 3 "including, where the arbitration involves the State of Oregon as the employer, the comparability of the work as defined in ORS 292.951." This way you are not setting it out as a separate factor anywhere else but saying that comparable value of work is a factor to be considered.

MS. BODTKIN: This statute is not a State of Oregon statute.

REP. MANNIX: Refers to section 4 (i).

MS. BODTKIN: I would like to have this language examined before saying it is acceptable.

REP. MANNIX: Lets wait until your expert witness can be here.

-He discusses the philosophy behind the bill with regard to giving striking and non-striking employees comparable treatment despite of economic conditions.

404 MS. BODTKIN: You cannot always treat strikables and non-strikables the same. The non-strikable units have been always treated differently due to their nature.

REP. MANNIX: We do give them some leverage now through the binding arbitration process because they cannot strike. He provides an example.

MS. BODTKIN: You are referring to equal pay for equal work not pay equity.

Rep. Mannix and Ms. Bodtkin discuss this issue in light of the example representative Mannix presented from the police department.

Ms. Bodtkin describes the difference between the philosophies of "equal pay for equal work" and "pay equity".

TAPE 21, SIDE A

029 REP. EDMUNSON: I am concerned about the word arbitration. Do you agree that if we were to include the principles of comparable work and arbitration that would undermine the notion of arbitration?

045 MS. BODTKIN: The difference is that you have one classification.

REP. EDMUNSON: The scope of the arbitration is very narrow. Do you believe that this bill will broaden that scope and dilute the effectiveness of arbitration?

MS. BODTKIN: Broadening the scope confuses the issues.

070 REP. MANNIX: If we want to give the arbitrator more discretion we ought to take some of these factors out of the arbitration law. If we want to make sure that the arbitrator has to consider certain specific things, it seems we should give the arbitrator a list.

-If there should be a safety factor in there, why shouldn't we insert safety factors in comparable worth. If there is something wrong with comparable worth, shouldn't we fix that statute?

MS. BODTKIN: The problem is not the statue. The study itself was flawed.

REP. MANNIX: Shouldn't we direct that the study be repaired?

MS. BODTKIN: It would cost a half a million dollars. Points of any significance were not awarded to corrections and police officers who work in dangerous situations.

REP. MANNIX: Was there some point factor allowed for working in a dangerous situation?

MS. BODTKIN: I need to reexamine the study.

094 REP. REPINE: Were these issues debated in the 1987 legislative session.

MS. BODTKIN: I would need to go back to study the Senate Labor Committee tapes.

REP. REPINE: I would like to know more about the history concerning this bill.

MS. BODTKIN: I might have some old testimony concerning this issue.

127 REP. JOHNSON: Refers to section 4 (d). What is the difference between this and the one we are asked to insert here?

MS. BODTKIN: Mr. Gunn will be able to answer this one.

145 REP. MANNIX: Lets wait until Mr. Gunn arrives.

158 DARLENE LIVERMORE, Chief Negotiator, Personnel Labor Relations Division of the Executive Department: Testifies in support of HB 2091.

-Describes the state responsibility concerning pay equity. Both employers and unions are required to hold in high regard the efforts made toward pay equity and hold them as prime considerations.

-Describes the current situation where certain state employees in interest arbitration units have as their final resolution to the negotiation process binding arbitration where a third party imposes an opinion regarding negotiation matters and the final contract.

-Presently there is an extensive list of criteria that an interest arbitrator must consider. Noticeably missing is the "comparable worth" concept.

200 REP. EDMUNSON: How is this concept different from comparable wages and comparable conditions for employment?

MS. LIVERMORE: She explains section 4 (d) referred to by Representative Johnson.

-An arbitrator is required to look to employees who hold similar kinds of jobs. She explains the criteria.

-An additional factor, stemming from ORS 240, requires us to look at the comparability in value of work. This is an internal equity issue. Comparable worth sets up some kind of formula--the point factor to be able to match unrelated occupations.

243 REP. EDMUNSON: This proposed language would allow us the comparison of apples to oranges?

MS. LIVERMORE: Yes.

REP. EDMUNSON: How are the needs of the employer included in this comparison regarding how other employee groups are paid who perform similar work as group X?

MS. LIVERMORE: We don't have an ad hoc opinion of how badly, for example, we need a clerical versus an engineer. That fundamental decision and those comparisons have already been made within the point value system that the state has already adopted by statute. The arbitrator does not have the authority to independently make that determination.

287 REP. EDMUNSON: Questions the difference between subsections (d) and (i) in section 4.

297 MS. LIVERMORE: They are two very distinct and separate concepts. Section (d) represents the influences of the market place. Under the current criteria there is no way for an arbitrator to compare apples and oranges.

332 REP. MANNIX: Comparable worth was put into the law because women were in low paying jobs because of sexisMinherent in the society. Those jobs were not given the same value relative to other jobs that were male dominated. We tried to recognize this factor and weigh it. I don't see anything here to solve the sexist factor, is this a fair characterization?

MS. LIVERMORE: You are correct about the original intent of the pay equity issue. The current criteria allows an arbitrator only to look externally at the comparison what the market has driven. The bias from the external is now applied internally and those two are inherently incompatible. We need to require an arbitrator to look at all of the efforts we have made to remove the sex bias from jobs on the comparable worth issue. Internally we now have the external bias superimposed over the efforts we have made.

Representative Dominy enters at 9:35 a.m.

416 REP. MANNIX: The arbitration law was last changed in 1973. What happened in 1987 in terms of tying the comparable worth statute to the arbitration law?

MS. LIVERMORE: I was not around at the time. I have no direct information.

430 CHAIR DERFLER: On a scale from 1 to 10, how much of an effect is this going to have on the outcome?

MS. LIVERMORE: In an interest arbitration where the decision is imposed on you and you have to accept it by law, if you leave anything to chance you have no possibility to go back and deal with it at some later point. This is simply one more criteria at which an arbitrator, in the state system, in reference to the comparable value, would need to look.

TAPE 20, SIDE B

008 REP. WATT: What was the factor for including this cause? I would like to have an example, especially from non-striking workers.

022 MS. LIVERMORE: I don't believe any specific incident perpetuated this. If there is going to be an interest arbitration and there are certain factors that statutorily an arbitrator is required to look at, and this is not one of them. The decision is based on purely external factors which we attempted to clean out of our internal system.

REP. WATT: There has not been a specific problem in the past involving non-striking employees, but you are forecasting one?

MS. LIVERMORE: Yes.

046 REP. REPINE: Do you think that in the past history of this type of

arbitration, the awards that have been granted were not in line with what the policy should have been? Are we leveling the playing field? Are we creating a reduction in arbitrating values and fees?

MS. LIVERMORE: We want to make sure that we don't have arbitration awards coming in that are dramatically out of line.

-She discusses the requirement this bill would create to take into account all factors including the public policy statement which says "we value comparability of the value of work."

081 CHAIR DERFLER: You are not telling us what we are reading here. He refers to the fiscal analysis. These comments indicate that there would have been quite a difference in the amount of pay people would receive.

MS. LIVERMORE: This is not an effort to drop wage schedules, though this will have an effect on how rapidly they will increase.

101 REP. JOHNSON: Isn't it true that the reason for including this factor is to keep the non-striking employees' wages from escalating faster than the striking employees wages.

MS. LIVERMORE: It will have an impact in that regard.

107 REP. MANNIX: It would also have the impact of de-escalating.

MS. LIVERMORE: I don't understand what you are saying.

REP. MANNIX: If things start going bad and we didn't have pay equity, isn't there a possibility without comparable worth that the non-striking employees would end up getting less?

MS. LIVERMORE: I cannot vision how an interest arbitration would ever get less.

REP. MANNIX: How do you respond to the concept that we shouldn't tie the arbitrator's hands because the people who are not allowed to strike have some special factors involved in their jobs that are not considered in comparable worth and therefore the non-strikables deserve special separate consideration and the comparable worth factors don't properly apply to them?

MS. LIVERMORE: I think that is an illusion. I do not subscribe to that. I believe those factors are there, maybe not to the degree that some groups would like to.

REP. MANNIX: Is the Oregon Hay system formally established by regulation?

MS. LIVERMORE: The statute has adopted formally, by reference, the Hay system. She describes the process of adopting the Hay system.

REP. MANNIX: The statute adopts a point factor job evaluation. It doesn't adopt any particular name system.

166 ART JAMES: The statute itself says what factors will be considered, including skill, effort, responsibility and working conditions. The Oregon Hay system uses knowledge, problem solving, accountability and working conditions to determine the value of a job. That was adopted by

administrative rule.

176 REP. DOMINY: If you cannot find an example that this could affect, why are we here to discuss this?

186 MS. LIVERMORE: We have seen interest arbitrations that have gone as high as 14%. Those areas that are influenced by the external forces that caused us to adopt the system aren't taken into account. We will see that again.

199 MR. JAMES: Refers to the fiscal impact statement and the example presented in that statement. In that particular case the amount settled by the arbitrator was \$2.1 million greater than what had been budgeted for that department.

214 REP. MANNIX: Was the amount budgeted based on a figure that was comparable for strikable units? Was the one differential factor comparable worth or were there other differential factors?

MR. JAMES: I don't know what that decision was based on.

REP. MANNIX: I am concerned since arbitrators' decisions can be based on hundreds of factors.

224 MS. LIVERMORE: Describes the primary factors that influenced the referenced decision.

REP. MANNIX: With regard to the membership of the non-strikable bargaining unit, are they set up so that there is vertical membership?

MS. LIVERMORE: In the perfect world they would be set up that way. In several of our units they are set up that way. There is nothing in the law to guarantee it. We do have mixed bargaining units as a result of Employment Relations Board rulings.

REP. MANNIX: Do the clerical people who are in that bargaining unit, in terms of the arbitrational award process, end up not having comparable worth factors applied so that their pay equity is not considered compared to clericals who are in striking units?

MS. LIVERMORE: That is correct. It is not a criteria that the arbitrator needs to look at now.

281 CHAIR DERFLER: Recesses the meeting at 9:50 a.m.

287 MS. BODTKIN: Introduces Tom Gunn.

308 TOM GUNN, Representative of the City of Portland: Provides information concerning his professional background.

-We need to look at what impact this has on fact-finding.

337 REP. MANNIX: Which statutory number are you referring to?

MR. GUNN: ORS 243.672, 700 series.

-This does not deal with sex based wage discrimination. This should be called what it is.

-Why does this apply only to state employees?



370 REP. MANNIX: We only have the comparable worth statutes apply to state employees.

MR. GUNN: The comparable worth statute only applies to state employees but I would argue that sex based wage discrimination applies in any jurisdiction.

REP. MANNIX: But the comparable value applies only to state employees.

MR. GUNN: That is correct.

379 CHAIR DERFLER: That is were it should be left. Why would you want to expand it somewhere it didn't apply?

MR. GUNN: If the purpose of this legislature is to set statutory requirements for arbitrators to look at, then why are you putting this little bubble in? You should address the whole issue of sex based wage discrimination.

391 REP. MANNIX: Why are you afraid of this bill?

414 MR. GUNN: This will create a world of litigation. I don't think it is needed, it is already in the statutory criteria.

TAPE 21, SIDE B

004 REP. REPINE: Refers to the example in the fiscal impact statement. Is this an exception or a rule? Have the arbitrations historically been within equity balance with what has been projected and monies set aside? Regarding this example, had the Executive Department considered all the things that would have been on the table to establish what they estimated the monies to be to set aside for the purpose of this arbitration?

MR. GUNN: In this particular case the arbitrator based his decision on comparison between the state police in Washington and other states.

030 REP. REPINE: Are the results usually not as eschewed as this one?

MR. GUNN: Arbitrators tend to make their awards within a certain range.

047 CHAIR DERFLER: How would this bill have affected the outcome of the case involving the state police?

MR. GUNN: I am not sure it would have affected it in any way. The comparability factor would not have had any bearing in this particular case.

CHAIR DERFLER: You don't think this law would have changed the outcome?

MR. GUNN: The state is operating under an illusion that this bill would give them a better internal comparability argument.

076 MS. BODTKIN: There are currently pending appeals regarding the points and reclassification within the internal processes of the union and its management counterparts.

MR. GUNN: I am scheduled to do an arbitration of an appeal involving a corrections officer at the Oregon State Penitentiary.

084 REP. MANNIX: Why does the state choose to have a single arbitrator when it has the option to have a panel of three?

MR. GUNN: It is very expensive.

102 REP. DOMINY: Is this a way to get the non-bargaining units up to the bargaining units so that the union loses some of its credibility?

MR. GUNN: Binding non-strikable interest units tend to have more in a way of compensation than strikable units. Some of it is in recognition of the importance of their services. I don't see this legislation having any impact on the non-strikable employees unless similar language is put in the fact finding statutes.

130 REP. DOMINY: The definition of non-striking also includes those units that are not organized?

MR. GUNN: No.

140 MS. BODTKIN: You do not become non-strikable just by the virtue of not being organized.

149 REP. WATT: Inquires about binding arbitration involving Oregon state police and some word processors. Had this law been in effect in 1989-91 there would have been a savings of 12-15%, thus the \$2.1 million.

MR. GUNN: This is not needed in the City of Portland. He gives an example of the 911 dispatchers.

-This bill just creates confusion and an additional source of litigation.

181 MS. LIVERMORE: We need to get some more information to answer representative Watt's question.

186 REP. DOMINY: I believe that is public record. The Committee would appreciate a copy of that ruling.

MS. LIVERMORE: We will make that decision available to you. I need to further research the specific percentages involved.

195 REP. REPINE: I would like to get some information concerning arbitration in this category during the last 5-10 years.

MS. LIVERMORE: We'll be happy to provide that.

-I am not aware that there is a specific set of criteria that a fact finder must use.

222 REP. REPINE: Refers to the model case used during today's hearing. It appears that your organization assumed a criteria to establish dollars that would be set aside for the purpose of binding arbitration for the state police. Was the number that you set aside a factual number of what you believed would be the criteria for fact finding?

MS. LIVERMORE: We are constrained by the available resources within the Governor's recommended budget. Higher awards can be allocated only if the legislature is in a position to find additional moneys and

appropriate more. Generally the decisions or voluntary settlements come in after the legislature has acted.

252 REP. REPINE: How was the criteria established for this particular arbitration unit? Why did we pay the \$2.5 million, because we had the money or because you truly believed that the findings were not accurate?

275 MS. LIVERMORE: She describes a salary survey. We arrive at conclusions from those studies and the interpretation of the data. It is not a matter of missing or overlooking something. It becomes a matter of dispute since all the parties involved might interpret the data differently.

REP. REPINE: Refers to the 14% increase in this arbitration. Was the state of Washington considered when you were making estimates based on this particular piece of arbitration.

MS. LIVERMORE: Yes.

320 CHAIR DERFLER: When we hear this bill again I would like to learn why would it affect a different outcome.

MS. LIVERMORE: I like to point out that this is just a "a factor".

CHAIR DERFLER: I would like to see in an example why this bill would have changed the outcome of that particular negotiation.

MS. LIVERMORE: We will attempt to make that extrapolation.

348 REP. REPINE: Moves that Rep. Dominy be allowed to vote on HB 2151.

WORK SESSION, HB 2151

Representative Dominy votes AYE regarding HB 2151.

CHAIR DERFLER: Adjourns the meeting at 10:30 a.m.

Submitted by:      Reviewed by:

Johanna Klarin      Victoria Dozler Assistant      Administrator

EXHIBIT LOG:

A            -            Testimony on HB 2151 - Michael Ryan - 3 pages  
B            -            Testimony on HB 2091 - Art James - 1 page

Submitted by:      Reviewed by:

Johanna Klarin      Victoria Assistant      Administrator

