

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.

HOUSE COMMITTEE ON LABOR

February 13, 1991Hearing Room D 8:30 a.m.Tapes 29 - 30

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

MEASURES CONSIDERED: HB 2528 WORK SESSION HB 2529 WORK SESSION

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TAPE 29, SIDE A

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

WORKER'S COMPENSATION BOARD--OVERVIEW (EXHIBIT A)

Witnesses: Lynn-Marie Crider, Member, Workers' Compensation Board

010 LYNN-MARIE CRIDER, Member, Workers' Compensation Board: Presents an overview of the Workers' Compensation Board (Exhibit A).

-She describes the composition of the Board.

-She outlines the Board's functions (Exhibit A, page 2).

-She outlines the six basic types of cases.

116 REP. DOMINY: He refers to the Claim Disposition Agreements. Have you disapproved any of these agreements?

MS. CRIDER: Yes, on the basis that 1) the worker attempts to waive something that the statute does not allow, 2) the lump sum is disproportional to the nature of the injury. We also disapprove agreements that are not in compliance with the Director's rule.

153 REP. MANNIX: Isn't one of the major problems the fact that there are two sets of rules, the Board has its own and so does the Department?

MS. CRIDER: Yes that has been a difficulty.

REP. MANNIX: In addition to those, we had have a temporary rule which has confused everybody.

MS. CRIDER: We are all at fault to some degree in that.

REP. MANNIX: Do you expect a reduction in the problems with the Claim Disposition Agreements after the practitioners have become better educated?

MS. CRIDER: I believe so. We are making an effort to clarify the rules and provide assistance.

REP. MANNIX: It would be helpful to point out to practitioners how things have been done right. Has the Board considered taking itself out of this role and maintain the Board's role only when the claimant doesn't have an attorney?

MS. CRIDER: No we haven't. That is a policy issue. The legislature requires that we review all these claims.

196 REP. DOMINY: How many of these people have legal counsel?

MS. CRIDER: It is a very high percentage.

REP. DOMINY: Having an attorney or not hasn't then been a factor whether a case is rejected or not?

MS. CRIDER: We give closer scrutiny to agreements in which the claimant was not represented by a counsel.

210 CHAIR DERFLER: Do you have any numbers related to this issue?

MS. CRIDER: Refers to the chart on page 15 in Exhibit A.

218 Ms. Crider continues with her presentation regarding the Board's administrative functions (Exhibit A, page 3).

-She describes the functions of the Hearings Division.

-She describes the types of cases decided by worker's compensation referees.

284 REP. MANNIX: Would you comment on the traveling referees situation?

MS. CRIDER: The main offices are in Salem. We have permanent hearing facilities in Portland, Salem, Eugene and Medford. In addition, our referees travel to many small towns to conduct hearings in outlying communities. She refers to a map in Exhibit A.

313 Ms. Crider continues with her presentation describing the Board Staff (Exhibit A, page 4).

-She outlines the Board's funding (Exhibit A, page 5).

332 REP. MANNIX: When does the Board propose to conduct the annual survey of attorneys regarding referee performance?

MS. CRIDER: We have established an internal committee which works with an advisory committee of members of the Bar. We have not yet received the report of that committee.

REP. MANNIX: Expresses concern about the reduction in efficiency in terms of the work load of the Board. He provides some statistical background.

MS. CRIDER: Outlines the factors that have influenced the decline in the numbers of hearings conducted monthly. She refers to Workers' Compensation Board Own Motion Activity Chart (Exhibit A):

-Increased pressure on the Board to do a quality job; -Increase in the Board size; new members unfamiliar with the issues; -Increase in the "own motion area"; -Claim Disposition Agreements.

TAPE 30, SIDE A

012 REP. MANNIX: What is the situation concerning appointing temporary board members?

016 MS. CRIDER: The governor has appointed one replacement for one of the board members.

026 CHAIR DERFLER: Are we going to be caught up by July?

MS. CRIDER: We believe we will be. She refers to Exhibit A, page 16.

038 REP. JOHNSON: What action do you plan to take if the survey indicates that a particular referee is not performing up to the standards?

MS. CRIDER: We would initiate further inquiry of our own.

REP. JOHNSON: What do you do to assure that the referees are not biased toward any specific group--employees or employers? How do you monitor them?

MS. CRIDER: The Board reviews a substantial share of all the orders issued by our referees, 20-25% of them. In addition we do annual evaluations.

082 REP MANNIX: Do you keep any statistics of how often the decisions of the referees are reversed or modified?

MS. CRIDER: We have kept that data. The reversal rate though may reflect factors other than referee competence or bias. The Board might also be biased.

106 CHAIR DERFLER: I sense the reluctance to use the survey by the attorneys. Are you uncomfortable with that?

MS. CRIDER: No, but I don't feel that I should be bound to initiate discharge proceedings against someone simply because the survey produced adverse results.

CHAIR DERFLER: So you are not actively pushing what has to be done in

that particular area?

MS. CRIDER: I disagree. It takes some time to put together a tool that is useful and will give us good feedback. We are working on that.

117 REP. MANNIX: Are you aware of the Multnomah County survey that is used for the district and circuit court judges? That survey could serve as a good guide.

MS. CRIDER: I agree.

122 CHAIR DERFLER: I am surprised by some of the decisions that you come up with. He refers to the \$305 given retroactive to special disabilities. Did we make an error in the law, I don't think that was our intent?

MS. CRIDER: I am reluctant to discuss a case that we just decided and remains within our jurisdiction. We do the best we can to interpret the decisions of the legislature.

136 REP. MANNIX: Suggests the Board staff get a copy of the video tape of the floor session on SB 1197. The comments made on the floor specifically stated the legislative intent.

156 REP. EDMUNSON: I respectfully disagree with my colleague in that political grand oratories and self gratification in the House is legislative history. Legislative history is established in the committee meetings.

REP. MANNIX: I have seen the courts rely on what has been said in the House as part of the legislative history.

171 Ms. Crider continues her presentation with regard to the Board's work load (Exhibit A, pages 7-9).

-The Board expects to complete its case back load by the end of 1993 biennium.

206 REP. MANNIX: He commends the Board and its staff in the effort they have made to implement programs and resolve the backlog.

MS. CRIDER: Thank you.

-She discusses the Hearings Division's work load trends.

238 CHAIR DERFLER: Inquires about the make-up of the possible five-member board? Do you recommend adding two more lay people rather than opposite sides again?

MS. CRIDER: We are open to that. We are more concerned with adequate staffing rather than the designation of the members. We feel it is important both for workers and employers to have someone on the board to speak for them.

272 REP. MANNIX: The five members are supposed to represent the public and we shouldn't worry about specific designations.

MS. CRIDER: I don't feel comfortable with what the Governor's perspective would be regarding that kind of change. I am reluctant to take a stand on this issue. We would like to have a temporary board of

five, we would like to put a sunset on that. We cannot tell you what the long-term prospect is going to be.

#### LABOR-MANAGEMENT ADVISORY BOARD OVERVIEW

Witnesses: Ed Redmond, Risk Manager, W.T.D. Industries Cecil Tibbetts, Director, Oregon Association of Federal, State, County and Municipal Employees.

342 ED REDMOND, Risk Manager, W.T.D. Industries: Presents an overview of the Labor- Management Advisory Board's operations. He discusses the following topics:

-Review of the non-scheduled disability standards. -Review of the administrative rules of the Department. -Review of recommended legislative changes.

383 CHAIR DERFLER: Would you be making those recommendations to us?

MR. REDMOND: Yes.

-He describes the constitution of the Board.

415 REP. MANNIX: Since you meet only once a month, could you form a subcommittee process in order for us to receive some guidance regarding the legislative recommendations?

MR. REDMOND: Yes.

REP. MANNIX: We would like to hear from you soon if you have any suggestions that we should consider.

#### TAPE 29, SIDE B

010 CECIL TIBBETTS, Director, Oregon AFSCME and the Labor Co-Chair of the Committee: I agree meeting once a month won't accomplish a proactive committee. My recommendation is to form a subcommittee.

022 CHAIR DERFLER: Could we get a summary of what you are discussing in your meetings?

026 MR. REDMOND: Yes we can do that. We have been short of staff.

031 REP. MANNIX: I would encourage your committee to give us as much direct policy input as possible.

045 MR. TIBBETTS: We have a problem in that the Department has no director. I will see that the minutes of our meetings will be forwarded to the members of this committee.

-We have some concerns about some things that the Department is doing that we believe are not in accordance with the intent of the recent reforms. We will bring those concerns to your attention in detailed form with recommendations.

-Lack of staff is a problem and we will make a recommendation concerning that.

-We have some concerns about the reconsideration process.

083 MR. REDMOND: Discusses MCO's and the need for them in small communities, as well as the costs involved.

104 REP. MANNIX: Do we have the irony then of employer representatives saying to the hospitals out there that maybe they ought to be given a break, that you don't want to see the fee schedule imposed through the MCO? The whole idea was to get them in to the MCO to have the whole medical coverage issue dealt with and not force a fee schedule for the MCO.

MR. REDMOND: That is correct. We felt that the market should drive the fee.

-He discusses extending chiropractic care through a contract with MCO's.

131 CHAIR DERFLER: We are aware of the same problems that you are bringing up and we have discussed that with the Deputy Administrator. We recently received a letter saying that they are not interested in making corrections in their rules at this point.

MR. REDMOND: Our committee officially recommends that the fee schedules not be applied.

146 REP. MANNIX: Doesn't the Department's rules prohibit some of these small communities from creating a MCO? All the services that the MCO has to make available cannot be contracted with someone else to be provided, at least not an insurance company or an employer. So if an insurance company has a loss prevention program, the MCO cannot just say "we make sure that loss prevention program is there." The rules now say that the MCO has to make sure that the process is provided and if the MCO has a contract with an insurer to do it, the MCO is treated as being operated by an insurer which is prohibited by law. Does a doctor in Tillamook have to set up a loss prevention program of his own? Is that part of the prohibitive cost scheme that we are talking about?

MR. REDMOND: Yes it is.

172 MR. TIBBETTS: We will be discussing the MCO problem at the next committee meeting. We feel the MCO's should not have the fee schedules imposed.

194 CHAIR DERFLER: We hope to receive your recommendations.

MR. REDMOND: We are working hard with the Department in trying to change the administrative rules.

-He describes the Preferred Worker Program.

229 CHAIR DERFLER: Do you feel comfortable with that program, the way it is set up?

MR. REDMOND: Yes I do, I believe it will work.

244 REP. MANNIX: Lets give this program a couple of years. After that if it doesn't provide disabled workers with jobs, it will have to be rewritten.

254 MR. TIBBETTS: Discusses the Preferred Worker Program.

