

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

April 3, 1991Hearing Room D 8:30 a.m.

Tapes 86 - 88

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: Lydia Grimm, Committee Administrator Johanna Klarin, Committee Assistant

MEASURES CONSIDERED: HB 2775 - Public Hearing

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TAPE 86, SIDE A

003 CHAIR DERFLER: Opens the meeting at 8:30 a.m.

PUBLIC HEARING, HB 2775

Witnesses:Larry Kleinman, Northwest Tree Planters and Farm Workers United Howard Herst, Hotel and Restaurant Workers Union, Local 9 Irv Fletcher, Oregon FL-CIO John McCulley, Oregon Fairs Association Marilyn Coffel, Bureau of Labor and Industries Paul Tiffany, Bureau of Labor and Industries Mike McCallum, Oregon Restaurant Association Greg Teeple, International Brotherhood of Electrical Workers and the Oregon

State Building and Construction Trades Council Raven Davis, Polk County Fair Floyd Bauer, Jefferson County Fairgrounds Greg Mindt, Oregon Lodging Association Mark Vegh, Timber Operators Council

CHAIR DERFLER: Opens public hearing on HB 2775.

010 LARRY KLEINMAN, Secretary Treasurer of Northwest Tree Planters and Farm Workers United: Describes the organization he represents. Testifies in opposition of HB 2775.

-Describes the impact this bill would have on farm workers. It places particular hardships on farm workers who don't reside in the area.

-Our concern is that this bill may require the employee to wait at the

discretion of the employer.

-Many employees lack a permanent address where to send the money.

042 REP. WATT: Has there been a problem with the employer paying?

KLEINMAN: We have seen considerable problems already in regard to correct and timely payment of wages. Many employers are not complying with the minimum wage laws.

058 REP. MANNIX: Is there some balancing act we could come up with? Could you think of some kind of exemption to deal with the traveling worker?

KLEINMAN: I don't agree with the premise of this bill at all. This is not a serious problem that employers are facing.

-This is basically a bad idea and creates an undue hardship.

099 HOWARD HERST, Business Representative, Hotel and Restaurant Employees Union Local 9: Testifies in opposition of HB 2775 (Exhibit A).

-This bill would have a detrimental effect on low-wage earners. Not receiving the paycheck upon termination could mean the difference between being able to eat or go hungry.

123 IRV FLETCHER, Oregon AFL-CIO: Testifies in opposition to HB 2775 (Exhibit B). Echoes Mr. Kleinman's testimony stating that this has not been a problem for the employers.

136 JOHN McCULLEY, Oregon Fairs Association: Testifies in support of HB 277 5 (Exhibit C). Explains the unique circumstances that the county fairs face in dealing with this issue.

-Outlines the closing dates and times for each county fair in the state.

-The county payroll system cannot process these checks during weekends.

-Discusses problems which arise when time cards are turned in late.

-We need to add some flexibility to paying these wages.

-Discusses the built-in safeguards to prevent employer abuses.

-Proposes to amend the bill by changing the 48-hour requirement to 72 hours.

240 REP. WATT: We are not talking about the people who actually work for the carnival part of the fair?

McCULLEY: The carnival employees are state employees. It is not possible physically to process the payroll in such a short time.

259 REP. MANNIX: Would it be better to have a special provision that would apply to a narrow special industry instead of changing social policy broadly with unpredictable effects it might have?

McCULLEY: I would support that.

REP. MANNIX: There might be ten different operations in the state that might have good justification. We do this all the time.

McCULLEY: If that is the direction given by the committee I would draft an amendment to do that.

295 REP. DOMINY: Discusses the reasons why the existing law was drafted in the first place; if anything we should find a way to enforce it.

McCULLEY: That has been a problem with transient employers. I can see why it was done. The carnivals operating in this state are headquartered in Portland, Vancouver and northern California and are completely accessible.

325 REP. JOHNSON: What do you really need to get the payroll processed?

McCULLEY: The fairs need about 72 hours during the weekdays to get the payroll processed.

REP. JOHNSON: Could you translate this into working days?

McCULLEY: We have no objection to put this in language relating to working days.

374 REP. REPINE: What is the recourse today with employment termination--if someone is not satisfied on their check?

McCULLEY: The Bureau of Labor and Industries could answer that question.

REP. REPINE: The carnival business does not comply with the law currently?

McCULLEY: Some of them do not.

390 MARILYN COFFEL, Bureau of Labor and Industries: Testifies in opposition to HB 277 5 (Exhibit D). This bill would significantly change the state's policy on how final paychecks are to be handled.

TAPE 87, SIDE A

003 -Discusses the hardships this bill would place on low-income wage earners who must live from paycheck to paycheck.

-This bill would impact the homeless, migrant laborers and the young, unskilled, low-wage workers. This bill would mean the difference between eating on a daily basis and having a roof over their heads.

-Some employers have objected to the inconvenience of the existing law.

-Inconvenience to the employers cannot stand against the needs of the employees to put food on their tables.

-The statutes are loud and clear now, we don't need any complexity added.

041 REP. WATT: Please explain why is "regular payday" often in dispute?

043 PAUL TIFFANY, Administrator, Wage and Hour Division, Bureau of Labor and Industries: Often there are no paydays established at all. Refers

to statistical data in exhibit D.

055 REP. DOMINY: Gives an example from the farming industry relating to the difficulty in determining a regular payday.

TIFFANY: Your example is not very far from what we might run into in the enforcement of these issues. That is what we are trying to point out here that we would probably be involved in legal issues about what and when is the next regular payday.

REP. JOHNSON: Is there a statute requiring that wages be paid every couple of weeks? Rep. Dominy's example could not happen. Could we add 72-hours, or end of the third business day, or something like that?

TIFFANY: Any kind of date would be an improvement over a term such as "regular payday."

081 REP. MANNIX: That term is used with regard to seasonal workers. Have you had much experience with that particular provision?

TIFFANY: That provision generally applies to processing and canneries operations. Those, as far as we know, comply with that section.

REP. MANNIX: Is that the only exemption?

TIFFANY: Yes.

099 COFFEL: Discusses the mobility of this work force. They need that money to get from place to place and to provide themselves the daily shelter.

119 REP. DOMINY: How do the carnival operators get to circumvent the law?

TIFFANY: The current statute provides that a person who is not properly paid does have a private right of action and civil penalty of one day's wages up to thirty days for every day they are improperly paid. We get into a situation if that individual would come to us and file a wage claim. We would enforce that claim.

REP. DOMINY: Have you had any charges from people who work for the carnivals?

TIFFANY: No we have not had for a long time. In the past we had several.

REP. DOMINY: As far as you know there is not a mass group of people who are not complying with the law.

TIFFANY: Not at this time.

147 CHAIR DERFLER: How do you address the difficulty the law creates to employers?

COFFEL: If you are talking about HB 2979, I suggest you limit it to a specific small exemption rather than a whole class of people.

161 REP. JOHNSON: Isn't it true that if they kept working they would not receive their paycheck until their next regular payday?

COFFEL: The creditors usually are willing to extend the deadline when they know that you are employed.

181 REP. MANNIX: There are payroll services out there that can turn out a paychecks in 24 hours. It seems to me that you don't need 72 hours to process a paycheck. Do you know about payroll services that are available during the weekends?

TIFFANY: I don't know.

193 REP. MANNIX: The paperwork doesn't have to be done at the moment of the payment. Have you had problems with people who have tried to do their paperwork later after they paid people?

TIFFANY: We understand that it might be difficult for employers. We just care more that the people get paid in time. That is what the statute says. We suggest to the individuals that they have to live within that policy.

REP. MANNIX: Do you get a lot of complaints from people who are in situations where the complaint was developed as a result of not having a clean break?

TIFFANY: That is exactly what we are running into. The clarity of the law with regard to this issue helps us in the negotiations.

REP. MANNIX: Computerized payroll systems should be able to handle this.

TIFFANY: Yes they are.

251 REP. DOMINY: How long has this law been in effect?

254 COFFEL: Since the late 1920's.

REP. DOMINY: Employers used to be able to comply with the law. Are computers making payroll systems more complicated nowadays?

COFFEL: I agree with your reasoning.

275 Rep. Repine and Mr. Tiffany discuss a possible state employee termination scenario on a Saturday.

307 REP. REPINE: Do you believe that in the industries where the paychecks include vouchers and meal tickets that are deducted are able to comply with the law?

TIFFANY: It may be inconvenient but it can be done.

328 REP. WATT: The majority of the computer systems on the market do not provide all those things needed to process the payroll checks. I see a strong unwillingness on your part to work with the small business person.

TIFFANY: We try very hard to work with the employer, within the statute, so that they can comply.

REP. WATT: Ms. Coffel that is not the vein I see in your testimony. I want to see a willingness to work with everybody concerned.

COFFEL: We are always willing to work with legislators and employers, in terms of the law. I am speaking for the protection of the employees, for their right to receive timely payment for wages earned. We are charged with enforcing that statute.

372 REP. MANNIX: I think we are still talking about inconvenience rather than impossibility.

-Have you thought of some mechanism, some specific exception to allow some leeway to deal with those unusual situations?

COFFEL: My main concern is the broadness of HB 2775.

REP. MANNIX: There are some instances that some special window might be given.

COFFEL: We are glad to work with members of the committee to come up with a solution.

431 REP. JOHNSON: Refers to Rep. Repine's scenario. Can a solution be a suspension without pay?

TIFFANY: The reason I gave the answer I did is that those are the rules under which the State of Oregon works.

TAPE 86, SIDE B

003 REP. JOHNSON: If a private employer would suspend an employee without pay in order to be able to comply with the law, what would you do?

TIFFANY: It is up to the court to decide which the actual termination date was.

017 REP. MANNIX: The court would call it a sham. We are getting too esoteric here.

019 REP. DOMINY: Larger employers usually suspend an employee subject to further investigation. The employer has that ability now, they don't have to terminate you on the spot.

034 REP. MANNIX: We want something to be worked out where people are not using sham arrangements.

040 REP. JOHNSON: The witnesses before us have a less than neutral approach to this problem.

054 FLOYD BAUER, Manager, Fairgrounds Jefferson County: Testifies in support of HB 2775.

-Describes his own problems with regard to the efforts in meeting their payroll.

071 REP. MANNIX: If we told you to do otherwise, people would be after you for fiscal irresponsibility and financial mismanagement of the fair's funds?

BAUER: That is true. Discusses problems with employees to get the time cards and other pertinent information together in a timely manner.

-Gives two examples of employees who were fired.

094 REP. REPINE: You violated the law.

BAUER: We did not want people on the premises who were stealing.

REPINE: Would it be reasonable to ask the county payroll department to work during the weekend?

BAUER: Most likely it could be done if the fairgrounds' budget can be used to pay the over- time for those employees. The 72 hours would help us to do a better job and most of our employees are in the city or in the county.

118 REP. MANNIX: Suggests an exemption for fairs. Could you live with that?

BAUER: Yes.

126 RAVEN DAVIS, Polk County Fair: Discusses this issue as it relates to the restaurant business. We don't have the manpower nor the budget to do this.

-Our problem is to get this through the county system. It takes at least two days.

150 REP. REPINE: Who would you need to bring in line to make this possible during the weekend?

DAVIS: Gives the litany of the people concerned.

-If we could run our own paychecks, we could manage this.

160 REP. MANNIX: Your situation is affected because you are a government fair? Elaborates on this situation.

DAVIS: Yes.

177 MIKE McCALLUM, Director of Government Relations, Oregon Restaurant Association: Testifies in support of the bill (Exhibit E).

-The law is becoming increasingly burdensome to employers and in many cases can be impossible to comply with.

-Our attempt is to exempt any existing contractual arrangements between the employee and the employer.

-Using payroll services outside regular business hours is very costly.

229 REP. MANNIX: How about adopting the notion "suspension without pay." Sometimes a cooling off period is good.

McCALLUM: That might be the way layoff situations are handled now.

-Continues his presentation. This problem is getting bigger.

-Discusses the lack of personnel and facilities to generate the payroll function.

-Discusses the expenses to process payroll checks outside the normal

payroll cycle.

285 CHAIR DERFLER: How do you address the migrant worker situation? What is your response to the problem that sometimes paydays are not set?

McCALLUM: This could be made to apply to employers who have regular paydays set. That would encompass almost everybody. Several industries might have to have some special considerations.

CHAIR DERFLER: A lot of people would be impacted negatively if this bill would pass and some positively.

McCALLUM: The law in Washington is exactly what we are proposing. Provides an example from Idaho and California.

-The existing law creates an unfair burden on the employer.

-We don't believe that this bill would cause hardship to people who live from day to day.

376 REP. MANNIX: We do have a transient society. Aren't those people, who are at the margin financially, the ones in most need to be paid immediately?

-Discusses this issue in light of the social burden--people who are terminated and find themselves in an impossible situation. How do we make sure that those people are somehow taken care of and that at the same time we have a system that works efficiently?

McCALLUM: Our neighboring states seem to have found a solution without imposing an undue burden on those classes of workers. I don't see why we should be different in that regard.

417 REP. REPINE: How does this relate to the construction industry?

McCALLUM: There will be special exemptions for certain industries.

TAPE 87, SIDE B

003 REP. REPINE: Would a suspension be a good alternative to this?

McCALLUM: That may exist now under the rules regarding layoffs.

REP. REPINE: Refers to Rep. Mannix's testimony about a cooling off period. I don't have any problem with that.

McCALLUM: That probably occurs in many employment situations right now.

REP. REPINE: That is a stretching interpretation of a layoff.

McCALLUM: There are situations where the end of the employment agreement does need to occur at the time of termination.

033 Rep. Repine and Mr. McCallum discuss this point further.

042 GREG MINDT, Oregon Lodging Association: Testifies in support of the bill.

-The bill would solve many problems for a management company with multiple properties.

-Our industry is a 24-hour business. The weekend managers usually don't have the authority to process payroll or write a check.

056 REP. MANNIX: Suggests a company policy to grant the managers the authority to suspend without pay.

MINDT: That is possible but the operations manager might be out of town.

REP. MANNIX: That is just a practical problem.

076 McCALLUM: What about if somebody doesn't want to be suspended without pay?

REP. MANNIX: You can ask the person to leave the premises. A cooling off period could be a good company policy.

085 REP. DOMINY: Why not have the paycheck ready when the shift is supposed to end when you know about that early on the week?

McCALLUM: It is possible to get the paycheck out but it creates an additional cost to the employer due to a choice by the employee.

REP. MANNIX: Can this be taken care of by an aggressive employer seminar program? Do we really need a social policy change?

-Rep. Mannix and Mr. McCallum discuss further the issue of a cooling off period.

145 REP. EDMUNSON: I am not so wild about the cooling off period nor suspending without pay. It sounds awful lot like a discharge. I am concerned about the situations where the employer has a good reason to immediately discharge an employee or when somebody quits. In those cases it is unfair to burden the employer. Suggests that if an employer can demonstrate that there was a good cause to terminate the employment, they can wait until the next regular payday? If they cannot articulate a good reason then they would have to pay immediately.

McCALLUM: We would be comfortable with that kind of language.

169 MINDT: Addresses the problems of turning out paychecks during night-time and weekends.

183 CHAIR DERFLER: How do you address Rep. Edmunson's suggestion?

MINDT: That would make sense.

195 -The committee discusses the definition of a good cause.

232 REP. JOHNSON: Would failing to continue work be good cause?

REP. EDMUNSON: Yes.

REP. JOHNSON: Discusses paydays in the timber industry.

255 GREG TEEPLE, International Brotherhood of Electrical Workers and the Oregon State Building and Construction Trades Council: Testifies in opposition to HB 277 5.

-Discusses the mobility of the work force and the mobility of the work sites. These people that leave need their money right away.

-The ability is there to pay whatever amount is owed at any given moment.

-Rep. Mannix's suggestion of changing the 48 hours to 72 hours comes close to a solution though I am not advocating for that change.

-I am concerned about those people who cannot afford to send a lobbyist here, the ones that BOLI hears about if they have the nerve to call. We have to think about them too.

360 REP. REPINE: Thank you for drawing the parallel of how this indirectly affects the organized labor.

368 REP. EDMUNSON: What about adopting the good cause standard we discussed earlier?

TEEPLE: That lends itself to the employer having the ability to apply some subjectivity to this termination. I am concerned about allowing the employer to have that subjectivity.

REP. EDMUNSON: I believe the height of subjectivity is that you are fired just because...

TEEPLE: Explains how this issue is handled under collective bargaining.

REP. EDMUNSON: You think that under my proposal the employer would gain the benefit of delay whether they had valid reasons or not; simply by giving a reason?

TEEPLE: That is the way I feel about it.

460 MARK VEGH, Governmental Action Coordinator, Timber Operators Council: Testifies in support of the bill (Exhibit F).

-The requirements of the current law can disrupt the employer's business.

TAPE 88, SIDE A

-Requiring earned wages to be paid by the regular payday would not disadvantage a terminated employee, since payment is consistent with his or her expectations of payday.

CHAIR DERFLER: In the field of work that you are involved in this probably would not be a problem but in some other areas it could well be.

047 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 2775 - Howard Herst - 1 page.
B - Testimony on HB 2775 - Irv Fletcher - 1 page.
C - Testimony on HB 2775 - John McCulley - 2 pages.
D - Testimony on HB 2775 - Marilyn Coffel - 5 pages.
E - Testimony on HB 2775 - Mike McCallum - 5 pages.
F - Testimony on HB 2775 - Mark Vegh - 1 page.