

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 19, 1991Hearing Room D 8:30 a.m.Tapes 109 - 110

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 2379 - Work Session HB 3040 - Public Hearing HB 3096 - Public Hearing HB 2476 - Public Hearing

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TAPE 109, SIDE A

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

WORK SESSION, HB 2379

006 CHAIR DERFLER: Opens work session on HB 2379.

MOTION: REP. MANNIX: Moves to suspend the committee rules to bring HB 2379

back for further consideration.

009 DOZLER: Explains an error made in the amendments.

-There being no objections the rules are suspended.

019 MOTION: REP. MANNIX: Moves to revise HB 2379 to incorporate the -5 amendments unchanged.

VOTE: The motion carries 7-0.

MOTION: REP. MANNIX: Moves to refer HB 2379, as amended, to the Committee on Ways and Means.

VOTE: The motion carries 7-0.

PUBLIC HEARING, HB 3040 (Exhibit A)

Witnesses: Stanley Fields, Oregon workers' Compensation Attorneys Association
Jeanne Willis, Workers Compensation Division

CHAIR DERFLER: Opens public hearing on HB 3040.

054 VICTORIA DOZLER: Describes the bill.

056 REP. EDMUNSON: Explains the rationale for introducing the bill.

-Describes the background of the Preferred Worker Program.

-This bill would allow the preferred worker benefit whether or not there had been an order awarding permanent disability. This still requires that the worker must have a disability which prevents return to regular employment. This allows a little more flexibility.

092 CHAIR DERFLER: Would this remove their ability to negotiate their release of this?

REP. EDMUNSON: Yes if they chose to. The eligibility for preferred worker status would not be affected by disposition of any claim.

106 STANLEY FIELDS, Oregon Workers' Compensation Attorneys Association: We support HB 3040. It clarifies that an injured worker who has entered a claims disposition agreement, remains eligible for participation for the Preferred Worker Program.

-This bill will serve the purpose of encouraging claim disposition agreements and the policy of getting people who are under disability back to work.

150 REP. JOHNSON: What about an employer who believes that a claim is not legitimate and yet resolves to settle the claim. Does the employer have the ability now to settle the claim so that it is final?

FIELDS: Yes the employer does have that ability. This amendment would not impair that.

REP. JOHNSON: Is it illegal for an employer to negotiate a clause in that settlement which would say that employer does not have to employ that employee ever again.

FIELDS: There are settlements with reference to the worker giving up his/her right to re-employment. I am not sure that the Legislature would want to encourage agreements of that nature.

199 -Rep. Johnson and Mr. Fields discuss the possibility for employers and employees in a disputed claim situation to negotiate out the employees right to terminate the employment relationship as well as terminating the claim.

205 REP. EDMUNSON: This bill would not specifically allow any release of employment rights that are not presently allowed under the law.

240 JEANNE WILLIS, Manager, Rehabilitation Review Section, Workers Compensation Division: The Department is not clear on what is specifically intended with this legislation and, based on our interpretation, we have some concerns (Exhibit A).

281 REP. EDMUNSON: The intent of this bill is that if a disputed claims settlement resolves a particular claim there is no threshold eligibility under the claim for the Preferred Worker Program. By the same token, simply entering a disputed claim settlement on one claim could not be an extinguishment of rights that one might have under another claim.

WILLIS: Maybe this language needs some redefining.

-Discusses difficulties in retrieving information to establish that a worker in fact has permanent disability. Suggests amending ORS 656.236 to exclude re-employment assistance reserve from the disposition agreements as a medical is excluded now.

336 REP. MANNIX: I would like to have some clarification as to losing one's preferred worker status as to another claim having signed off on a CDA.

REP. EDMUNSON: One would never have a preferred worker status if one is DCS on that claim. In the claim disposition agreement I would not want it to affect any other claim. I am concerned that if there is not an expressed reservation of a preferred worker status, should we interpret the disposition agreement to waive it silently? I want to make sure that those benefits are not being waived.

-I have no problem in referencing it to ORS 656.236.

390 REP. MANNIX: An alternative would be to allow the CDA to specify whether or not preferred worker rights are being released.

-Asks Ms. Willis about the phrase "whether or not an order has been issued awarding permanent disability." Are you presently relying on those orders to give you the basic determination of the worker's status.

WILLIS: Describes the two ways that workers may become preferred workers.

423 REP. MANNIX: The best way would be to say that someone's eligibility for a preferred worker status shall not be affected by a claims disposition agreement and shall not be affected by a disputed claim settlement as to another claim. Would that accomplish your goal?

WILLIS: That would certainly help.

440 REP. EDMUNSON: The existence of a former order awarding permanent disability is not a necessary prerequisite for participation in a preferred worker program. The absence of a determination order does not itself preclude preferred worker program because you make an independent determination. Is that correct?

WILLIS: We have interpreted the statute liberally. The statute says the worker will have permanent disability. We have stretched that a bit. Most injured workers return to work using this program before they ever get their determination order, and we want that to happen.

473 REP. EDMUNSON: The intent of this bill is to make it absolutely clear that your practice is a lawful practice, that is, within the intent of the preferred worker statute.

TAPE 110, SIDE A

016 REP. MANNIX: Don't say that the CDA cannot address the preferred worker status. Discusses the nature of the CDA agreement. I get nervous when we start listing exemptions to what one can do on the claims disposition agreement. That was a hotly contested issue in SB 1197.

027 REP. EDMUNSON: That is why Legislative Counsel put it in the statute.

REP. MANNIX: It is just how they put it in...

REP. EDMUNSON: This might be the correct statute to put it in rather than start loading up the claims disposition agreements.

REP. MANNIX: I agree. Maybe the phraseology could be changed.

034 CHAIR DERFLER: Would you work together with Rep. Mannix with this?

REP. EDMUNSON: Whether or not the order has been issued to award permanent disability is the present status.

042 WILLIS: I think we can work with this, I don't say lets print it right this second. I would like to talk about this more.

-Discusses problems in obtaining information, especially if there are two claims involved.

REP. EDMUNSON: The burden of proof, to seek the benefit, is on the worker.

WILLIS: The Department and I would be happy to look at any language that you suggest and give you our input.

PUBLIC HEARING, HB 3096 (Exhibit B)

Witnesses: Stanley Fields, Oregon Workers' Compensation Attorneys Association
Jeanne Willis, Workers' Compensation Division
Sharon Kidder, Employment Division

CHAIR DERFLER: Opens public hearing on HB 3096.

088 VICTORIA DOZLER: Describes the bill.

097 STANLEY FIELDS, Oregon Workers' Compensation Attorneys Association: As far as we understand it, the funding will remain the same. It would be administered by another agency. We support the measure because the manner in which the Preferred Worker Program seems to be working out under current rules and regulations governing eligibility for vocational assistance. Under the current law there are a lot of individuals who have permanent disabilities, permanent impairments, who are precluded from returning to their preinjury work, who, because, for example, of a low wage at the time of their injury are not eligible for vocational services. Under the present framework they have no mechanism for vocational services or assistance to actualize the benefits that can be realized from the Preferred Worker Program.

-If this is taken out of the vocational assistance frame work and transferred over to the Employment Division, injured workers might get some meaningful assistance in actualizing the benefits that are available under the Preferred Worker Program. It seems appropriate to

have this program administered by that agency which has the expertise of getting people back to work.

-The Department of Finance and Insurance (DIF) has not been really effective in terms of getting the reconsideration process in working order. DIF has a lot of programs now and I am not sure that they are equipped to handle all of the programs that they do have. We have been pleased with the results we have had since July 1, 1990.

164 REP. REPINE: They have had a chance to massage this into place for just a couple of months. Do you think that is a justification to reroute it at this point in time?

FIELDS: That is not the only consideration--that they have all the other programs to administer. The other reason is the relatively strict standards for eligibility for vocational assistance.

REP. REPINE: Could there be a cohesive working effort between the Employment Division and DIF?

FIELDS: That is an alternative proposal.

194 REP. DOMINY: Have you seen a shift towards more access and services within the past year?

FIELDS: I cannot quote any specific figures. I have not seen any change in the modus operandi.

220 REP. REPINE: Has the Mahonia Hall group (Labor Management Advisory Committee) had a chance to look at this language?

FIELDS: I am not aware of that.

231 CHAIR DERFLER: They have but we have not got their answer back yet.

245 JEANNE WILLIS, Manager, Rehabilitation Review Section, Workers' Compensation Division: Provides background information with regard to the Reemployment Assistance Reserve.

-Describes the Reemployment Assistance Reserve programs (Exhibit B).

309 -Describes Vocational Assistance rules.

335 REP. DOMINY: The bottom line is that SB 1197 made it harder to qualify?

WILLIS: Today we are talking about the Reemployment Assistance Reserve (RAR) which is easier since SB 1197; better access for the employer and worker. Vocational Assistance, which means training and is not covered under the RAR rules, is tighter since SB 119 7.

REP. DOMINY: What was the Preferred Worker Program called before SB 1197?

WILLIS: The money was always there with the same incentives. The Preferred Worker Program has been in the statute since 1989.

REP. DOMINY: Would you clarify what was happening with this program? We have heard conflicting rumors, for example that workers did not get information about this program.

389 WILLIS: The workers who were eligible prior to SB 1197 are still eligible. The problem was that the incentives prior to SB 1197 enhancements were not that great. It was a tough package to sell. The program was not used as much as it is now and will be.

400 CHAIR DERFLER: What programs are you doing now to encourage the use of the reserve?

WILLIS: She refers to Exhibit B. Describes the incentive programs.

TAPE 109, SIDE B

012 -Ms. Willis continues her presentation. This new, enhanced program has been in effect only for four months and we have expended a great deal of time and energy on a state-wide marketing program to get this program rolling.

-Describes the Department's marketing strategy.

-We are in the process of looking into developing other agreements with the Department of Economic Development Vocational Rehabilitation Division to further allow the widest access to this program.

053 -She describes the current status of the program (Exhibit B, page 2).

-We need the time to let these programs work and urge that these programs remain with the department.

060 REP. DOMINY: I am impressed that you are moving along with the program so swiftly. What would be the real disadvantages for moving the program and what would be the real advantages for letting it remain where it is at?

WILLIS: The biggest disadvantage would be that we have a history for working with these "second injury" programs. Legislature has given us a statute that is an incentive and we have fine tuned the program from past experience and past failure. It has a chance to work. All this would be lost if this program were transferred.

-We can achieve the advantages of working with the Employment Division with a cooperative agreement.

122 SHARON KIDDER, Assistant Administrator for Programs, Employment Division: There are several ways in which we can work together with the Preferred Worker Program to achieve what it is that you are looking for in this.

-Describes Employment Division's educational efforts with regard to the Preferred Worker program.

163 CHAIR DERFLER: The committee was frustrated that this program was out there but not being used.

173 REP. MANNIX: I appreciate the progress that you have made in the past few months.

PUBLIC HEARING, HB 2476 (Exhibits C,D,E)

Witnesses: Diane Rosenbaum, Oregon State Industrial Union Council and Oregon AFL-CIO Frank Biehl, Management-Labor Advisory Committee Tom Mattis, Workers' Compensation Division Lynn-Marie Crider, Workers' Compensation Board Stanley Fields, Oregon Workers' Compensation Attorneys Association Mary Botkin

CHAIR DERFLER: Opens public hearing on HB 2476.

179 REP. MANNIX: Describes the bill and the proposed amendments.

-If the amendments were enacted, the changes that are in the bill itself would not be made; instead the -1 amendments would take place.

-The Workers' Compensation Board and the Department of Insurance and Finance have a rule-making authority with regard to claims disposition agreements. Describes them--procedural and substantive.

225 -Describes what the -1 amendments would do: All of the rules with regard to claims disposition agreements would be adopted by the Board.

Allows a worker who is represented by an attorney to waive the 30-day cooling off period.

Clarifies the language as to what kind of separate agreements could be made. Refers to lines 10-14.

Clarifies the language about anything outside ORS chapter 656.

306 DIANE ROSENBAUM, Oregon State Industrial Union Council and Oregon AFL-CIO: Testifies in opposition to HB 2476 (Exhibit C).

-Expansion of the current provisions for claims disposition agreements or "compromise and release" settlements would be harmful both to the interests of injured workers and to the goals and social policy which underlie the workers' compensation system.

362 REP. MANNIX: Are you aware that as we speak now, I can go out and settle reemployment and reinstatement rights.

ROSENBAUM: I am aware that that is going on.

REP. MANNIX: One can make these deals today. The only point of the bill is to have all the deals in one place.

ROSENBAUM: You and I might have some philosophical differences what the purpose of compromising release settlement is meant to be. Describes her views.

404 REP. Mannix and Ms. Rosenbaum discuss this issue further.

TAPE 110, SIDE B

027 REP. MANNIX: Are you going to be addressing the Board doing all the rules?

ROSENBAUM: I have no problem with the Board having the rule-making authority. I don't agree wholeheartedly with the other matters expressed in the amendments. I don't think waiving the 30-day period is necessary. It is a benefit for a number of injured workers. I think 14

cases in a year is a good enough reason to keep it in there.

054 -Addresses the issue of combining a claims disposition agreement with a disputed claims settlement (Exhibit C, page 2).

074 REP. EDMUNSON: I appreciate your concern and share it. I support this particular provision. Explains why.

ROSENBAUM: You are right. Maybe some of the potential that I am talking about is just potential that exists now.

102 REP. MANNIX: Provides an example from his practice how to work out a package deal with regard this issue. This can be done legally and ethically, but the end result is that the claimant has to wait thirty more days on the second deal. Legally when the Board is looking at the claims disposition agreement, they are not seeing the whole picture. At least this way they see the whole picture and they know that there is a package deal out there and that they may be only looking at a part of it.

ROSENBAUM: I don't support a major expansion at this time.

135 REP. DOMINY: Has this been before the Labor-Management Advisory Committee?

ROSENBAUM: They have looked at these amendments. I believe they rejected section D under the -1 amendments and accepted the first three provisions.

151 DOZLER: They accepted the part about the Board and supported the 30-day cooling off period and incorporating the disputed claims settlement with the claims disposition agreement as long as it was separately presented. They did not support including outside matters.

164 FRANK BIEHL, Management-Labor Advisory Committee: Your administrator correctly described the committee's position.

REP. DOMINY: Did they agree with the subsection C in the amendments.

BIEHL: We chose not to agree with that.

ROSENBAUM: There was no opportunity given to testify.

202 CHAIR DERFLER: It appears that most of these changes are to benefit the injured worker?

ROSENBAUM: No I don't agree with that at all.

232 TOM MATTIS, Manager, Compliance Sector, Workers' Compensation Division: Testifies in opposition to the proposed amendments (Exhibit D).

-Discusses line 2 in the -1 amendments.

258 REP. MANNIX: The Director doesn't have any rule-making authority regarding settlements or disputed claim settlements?

MATTIS: That is correct.

-The relationship we have had with the Board has been working quite

well. We feel that the substantive rule making should remain with the Director as provided for in SB 1197.

282 LYNN-MARIE CRIDER, Chair, Workers' Compensation Board: Comments on the proposed amendments to HB 2476 (Exhibit E).

311 STANLEY FIELDS, Oregon Workers' Compensation Attorneys Association: With regard to the rule-making authority being with the Board; we support that.

-With regard to joining the claim disposition agreements with the disputed claim settlement agreements; we agree and support that.

-With regard to disposition matters not arising under ORS 656, we don't support that. The Board should not be given jurisdiction over those matters. Those should be a subject of separate consideration.

373 MARY BOTKIN: Feels that the complete deletion of the 30-day cooling off period may be a little rash. The injured worker should be allowed to review to what they are agreeing to, slowly and quietly, before there is no going back.

-Expresses concern about the reemployment issue; people need to think about what they are signing off.

462 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 3040 - Jeanne Willis - 2 pages. A.1
- Testimony on HB 3040 - Jeanne Willis - 2 pages. B - Testimony
on HB 3069 - Jeanne Willis - 3 pages. C - Testimony on HB 2476 -
Diane Rosenbaum - 2 pages. D - Testimony on HB 2476 - Tom Mattis -
1 page. E - Testimony on HB 2476 - Lynn-Marie Crider - 3 pages.