

SENATE COMMITTEE ON LABOR

February 18, 1991 HeaAng Room 50 03:00 p.m. Tap" 16-17
MEMBERS PRESENT: SEN. GRATTAN KERANS, CHAIR SEN. LARRY HILL,
VICE-CHAIR SEN. PETER BROCKMAN SEN. BOB KINTIGH SEN. BOB
SHOEMAKER

STAFF PRESENT: ANNETTE TALBOTT, COMMITTEE COUNSEL ROBERTA WHITE,
COMMITTEE ASSISTANT MEASURES CONSIDERED: SB 586 - ILLEGAL HIRING
PRACTICES (PUBLIC HEARING) SB 589 - BEREAVEMENT LEAVE (PUBLIC HEARING)

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. . . . TAPE 16, SIDE A

WITNESSES: JIM MCINTOSH, DEPUTY DIRECTOR, STATE EMPLOYEES' BENEFITS
BOARD, EXECUTIVE DEPARTMENT ART JAMES, ANALYST, PERSONNEL DIVISION,
EXECUTIVE DEPARTMENT KAREN HAFNER, O.S.B.A. MARIA KELTNER, AOC/LOC DAVE
BOWER, AFSCME, LOCAL 1246 RALPH GROENER, AFSCME, LOCAL 1246 CHRIS KING,
AFSCME, LOCAL 1246 DAVID RYAN, EMPLOYEE, FAIRVIEW TRAINING CENTER

001 CHAIR KERANS called the meeting to order at 3:08 p.m. > Asks
members to refer to the memorandum introducing LC drafts. (EXHIBIT A.)

007 MOTION: CHAIR KERANS moves the LC drafts en bloc for introduction
as bills.

VOTE: Hearing no objection, the motion carries. Senate Committee on
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SB 586 - HIRING PRACTICES - PUBLIC HEARING

WITNESSES: RALPH GROENER, REPRESENTATIVE, AFSCME, COUNCIL 75 DAVE
BOWER, PRESIDENT, AFSCME, LOCAL 1246 DAVID RYAN, EMPLOYEE, FAIRVIEW
TRAINING CENTER ARTJAMES, ANALYST, PERSONNEL AND LABOR RELATIONS
DIVISION, EXECUTIVE DEPARTMENT

DAVE BOWER, PRESIDENT, AFSCME, LOCAL 1246: > This legislation is the
result of an inequity which the union could not address through
representation. This inequity lies in pre-hire commitments made by an
employer. > The union cannot grieve, and there is no way it can help a
person who has had a misrepresentation made to him/her. > As a result of
the misrepresentations made to Mr. Ryan and his wife, the union feels it
is necessary to help draft legislation to see that it did not happen to
someone else.

056 DAVID RYAN, EMPLOYEE, FAIRVIEW TRAINING CENTER: > He and his wife
were hired over the telephone, and promised that they would have
benefits on date of hire as well as retirement. They were promised a pay
increase at six months after employment. They were promised that moving
expenses would be paid and that they would be permanent full-time
employees when they arrived. > They were paid the wages promised, but
there were no benefits. > They were hired as temporary employees instead
of permanent. > There was no pay increase was given at the end of six
months. > It has cost them almost \$5,000 to make the move.

119 CHAIR KERANS: The benefits which were explained to you were not on
the flyer you saw, is that correct?

RYAN: They told us about things that were on the flyer, but they told us the wrong timelines. I guess the retirement and benefits packages start at six months. They told us we would have that at date of hire. We feel we are caught in the middle.

CHAIR KERANS: Do you know the name of the person with whom you talked on the phone?

RYAN: Very well.

BOWER: I would like to ask the committee to amend Section 2 of this bill so that it will read "it shall be a violation of this chapter for any state office or employee to misrepresent to a prospective employee in the recruitment and interview process the salary and salary range, fringe benefits and working conditions ". That would end the amendment. > One of the commitments made to the Ryans prior to coming here was that they would be able to have flex time.

198 ART JAMES, ANALYST, PERSONNEL AND LABOR RELATIONS DIVISION, EXECUTIVE DEPARTMENT > In the state system, Chapter 240 says that each operating agency will have a delegated appointing authority. Senate Committee on Labor February 18, 1991 - Page 3

> The bill as drafted talks about guidelines that would be developed by the Executive Department and promulgated to managers. We have such guidelines, and we provide training to managers on an ongoing basis. > There are a myriad of regulations for the hiring process already in place. > The executive department conducts periodic audits of agencies' hiring practices to make sure that they are following policies and procedures. > We deal with mistakes in the hiring process on an individual process. > We don't think it's necessary to legislate the way the bill is drafted.

SENATOR HILL: Do you believe the hiring practices used in the case before us are contrary to current state statute. JAMES: The specific wording in the bill is not contained in current statute, but ORS 240 has thorough procedures whereby the Executive Department describes how those processes were. We through Administrative Rule then have something like 17 rules and procedures promulgated on hiring practices, how to get a list, how many people on that list to interview, etc., and basically prescribe to agencies how they do that. Within the resources that we have we try to provide training to personnel on an ongoing basis. Applicants can always appeal to our department regarding exam scores, and we often respond to inquiries directly to the Governor's office.

323 CHAIR KERANS: Do you think that the current Chapter 240 prohibitions and guidelines tell managers and give them proper notice if they read it and it's understood by them to prevent them from doing this kind of thing.

JAMES: Chapter 240 and beyond that, the rule making authority in 240 to the Executive Department does provide adequate guidelines in the hiring process. If I see a failure it would be as I mentioned, the fact that we oftentimes don't get that disseminated frequently enough to all state managers.

CHAIR KERANS: What we need to do is find out how to make that happen.

JAMES: We have a budgeted proposal to provide a core training to all state managers in the next biennium.

344 CHAIR KERANS: This provides for a \$500 fine or a year in jail.
Would that be you or someone else?

JAMES: I believe it would be the person who did the hiring.

355 SENATOR HILL: If we are going to have a penalty provision that really was useful, we need to have something other than a misdemeanor. Everybody knows that is non-functional. So we might consider something in the penalty section that would be more useful

TALBOTT: If the committee is so inclined, it could be appropriately inserted in unlawful employment practices and provided with some of those remedies under Chapt 659. Plus I do think that in terms of the structure of the statutes, you will note in your file you have a section which talks about prohibited conduct that's existing in ORS Chapter 240 and it might be that the Senate C on Labor February 18, 1991 - P - e 4

issue of misrepresentation regarding salary, fringe benefits, working conditions and your position duties could be added to that existing subsection (1) of ORS 247.10.

396 JAMES: The penalties in ORS 240 are designed to cut both ways. Any violation of the chapter is punishable up to that amount. Perhaps one of the most frequent that we see in the Personnel/Labor Relations Division would be erroneous information submitted on an application. That is punishable up to that same amount. Generally that type of thing is never punished. If someone has submitted erroneous information, that person is dismissed from state service and that's the end of it.

SENATOR HILL: Is there a similar provision for state personnel directors and other hiring officers of the state who may lie or misrepresent? Can we get at inequity by treating this as an unfair employment practice?

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001 JAMES: We're dealing with what I perceive to be a very small problem here. We work hard to make sure that people are given accurate information and sometimes it's just a mistake, and those things are going to happen with the types of numbers we're talking about. But we would be prepared to deal with those on an individual basis and certainly, if this committee is inclined to make an unlawful employment practice of that, we wouldn't have a problem other than we don't think that it's something that's going to happen very often.

TALBOTT: The other issue I think the committee would need to be aware of is the class of employees which would be referred to as class)ified, unclassified, or exempt, etc. You need to reference what else you want it to apply to.

CHAIR KERANS: Let's review the standard procedure, and then look at the question of whether 240 or elsewhere and whether the language is too particular or do we want some more general language.

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SB 589 - BEREAVEMENT LEAVE - PUBLIC HEARING

WITNESSES: RALPH GROENER, AFSCME, COUNCIL 75 DAVE BOWER, PRESIDENT, AFSCME, LOCAL 1246 CHRIS KING, EMPLOYEE, FAIRVIEW JIM McIntOSH, DEPUTY

ADMINISTRATOR, PERSONNEL AND LABOR RELATIONS DIVISION, EXECUTIVE
DEPARTMENT

037 DAVE BOWER, PRESIDENT, AFSCME, LOCAL 1246 > Employees at Fairview can take sick leave for bereavement leave, but many employees do not have the same ability because of lack of accrued sick leave. > Employees are forced to choose between unauthorized absence from work or doing their grieving on duty. > One employee was forced to quit his job in order to attend his father's funeral. He was rehired, but lost seniority, pay, benefits, etc. Senate Committee on Labor February 18, 1991- Page 5

058 CHAIR KERANS: Someone was unable to take leave without pay in order to attend a family member's funeral.

BOWER: That's correct.

RALPH GROENER, AFSCME, COUNCIL 75: > Fairview employees sustain injuries due to the nature of the workplace. > Given the level of injuries and illness at the facility, Fairview is unique in its inability to grant bereavement leave as required.

099 CHRIS KING, EMPLOYEE, FAIRVIEW TRAINING CENTER (EXHIBIT B): > Details Exhibit B. 144 CHAIR KERANS: This can be taken to the bargaining table as a benefit, can it not? Has it ever been taken up before as a benefit? BOWER: Outside of 1246 I can't answer, but for 1246, no. KERANS: But you could take this up if you choose. BOWER: It will be there. KING: I want this for all Oregonians, not just those covered by union. 170 JIM MCINTOSH, DEPUTY ADMINISTRATOR, PERSONNEL AND LABOR RELATIONS DIVISION, EXECUTIVE DEPARTMENT: > Currently most of the collective bargaining agreements allow use of sick leave to be used for bereavement. Some of the agreements also allow for other kinds of paid leave to be used. Our personnel rules also provide for unrepresented and management service. > We estimate that there is a fiscal impact, at least in terms of our review. We've estimated that it would cost about \$660,000 for the next biennium. At least a portion of this would be true for several different considerations. We currently have people who use more than 3 days for bereavement, while others can use less than 3 days, so there would be some additional cost there. There are other considerations for individuals who do not have accrued time off. > From their perspective, the current system works. CHAIR KERANS: Could it be that a manager could tell an employee that if you want to go to a parent's funeral in another state that the employee would have to quit his/her job? That if the employee does go and quits the job, there is no guarantee of employment upon return. MCINTOSH: I would hope that we don't have a manager who would do that. On the other hand, a manager may consider the request for the amount of time to be inappropriate. We encourage managers that if a person does not have accrued paid time that they be granted a leave without pay to attend the various duties connected with bereavement. The personnel rules specifically state that you can use leave without pay as well as sick leave. Senate Committee on Labor February 18, 1991 Page 6

258 KAREN HAFNER, OREGON SCHOOL BOARDS ASSOCIATION: > We feel that bereavement leave is a bargaining issue. > In many districts, there would be school district policy to cover bereavement leave and how that's handled. > There is another issue, which is the fact that if the employee does use sick leave and they are not prostrate with grief, that there might be an issue. Schools have a definition of sick leave which is "absence from duty because of an employee's illness or injury

290 MARIA KELTNER, ASSOCIATION OF OREGON COUNTIES AND LEAGUE OF
OREGON CITIES: > This is a matter for collective bargaining, not for
legislation. > Fiscal impact on cities and counties could be greater
than indicated due to the amount of leave which could be granted. CHAIR
KERANS: Was the leave intended to be a maximum of 8 days or 5 days.
BOWER: My understanding when I read it was 3 days or 5 days, not a
combined total. KING: It was suggested that you can take leave without
pay. Certainly you can and be gone for those days, but the consequences
and discipline for leave without pay can be pretty horrendous. It's not
approved leave without pay, it could be contractual, but you are then
AWOL. 350 CHAIR KERANS: So this would subject you to more
disciplinary action. SENATOR HILL: Art mentioned earlier a policy which
lets people take unpaid leave. I would like for him to clarify that for
the record. 365 JAMES: We do have policies and rules in the
department which cover unrepresented and management service employees
allowing for a variety of paid leaves, plus a variety of unpaid leaves,
which allows people to go on unpaid leave and still get their jobs back.
Bargaining agreements for represented employees also contain provision
for various types of paid leave plus, subject to the operational
constraints of the agency, unpaid leave. If someone is just absent from
the work site and doesn't have prior approved paid or unpaid leave, they
are considered to be AWOL. Many of our provisions allow for five days of
that and then you are presumed to have resigned. SENATOR HILL: That's
not unreasonable. My question focuses on under what conditions is unpaid
bereavement leave granted or refused. What guides such a decision.
397 JAMES: A place such as Fairview, which works on a 24 hour basis,
would often face a hardship if somebody were to request sick leave or
leave without pay for bereavement leave. If the manager were to refuse
the leave it would be because the operation of the agency made the
refusal necessary. In most cases, leave without pay would be approved if
they can find somebody else to cover that. TAPE 16, SIDE B Senate
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005 CHAIR KERANS: Some leave can be planned in advance. Bereavement
leave comes upon you suddenly. Could employees be subject to
disciplinary action if they cannot arrange for leave and decide to leave
anyway?

JAMES: Any employer policy or any collective agreement that I know does
require that the employer approve in advance a leave to be taken.
Otherwise they don't know who's going to be showing up to work the next
day. Given the scenario which you have described, certainly there are
personal choices to be made, and if somebody does not have approval and
is absent from the work place without leave for a protracted period of
time, that is subject to disciplinary action under both contracts and
rules and policies.

047 The meeting was adjourned at 4:05 P.M.

Submitted by: Reviewed by: Roberta White Annette Talbott
Assistant Committee Counsel

EXHIBIT LOG:

A - Introduction of Committee Bills - Staff - 2 pages B - Testimony on
SB 589 - Chris King - 2 pages C - Staff Measure Summaries to SB 586 and
SB 589 - Staff - 2 pages D - Fiscal Analysis on SB 589 - Legislative
Fiscal Office - 1 page