

SENATE COMMITTEE ON LABOR

April 26, 1991 Hearing Room 50 03:00 p.m. Tapes 77- 78 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 535 - EMPLOYEE HOLIDAY  
PAY NOT CONSIDERED EARNINGS FOR PURPOSES OF DETERMINING UNEMPLOYMENT  
COMPENSATION BENEFITS - WORK SESSION SB 556 - ALLOWS INDIVIDUALS  
PERMANENTLY REPLACED IN THEIR EMPLOYMENT DUE TO LABOR DISPUTES TO BE  
ELIGIBLE FOR UNEMPLOYMENT BENEFITS -WORK SESSION SB 24 - SUBJECTS STATE  
ACCIDENT INSURANCE FUND CORPORATION TO PROVISIONS OF INSURANCE CODE  
REGARDING CLAIMS SETTLEMENT PRACTICES - WORK SESSION

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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 77, SIDE A

001 CHAIR KERANS calls the meeting to order at 3:07 p.m.

WITNESSES: REPRESENTATIVE SAM DOMINY SHARON KIDDER, ASSISTANT  
ADMINISTRATOR, PROGRAMS, EMPLOYMENT DIVISION RICHARD VAN PELT,  
SUPERVISOR, TECHNICAL SUPPORT, EMPLOYMENT DIVISION KARL FREDERICK, VICE  
PRESIDENT, DIRECTOR OF LEGISLATION, ASSOCIATED OREGON INDUSTRIES TOM  
MATTIS, MANAGER, COMPLIANCE DIVISION, DEPARTMENT OF INSURANCE AND  
FINANCE BILL BROOKS, INSURANCE DIVISION Senate Committee on Labor April  
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SB 535 - EMPLOYEE HOLIDAY PAY NOT CONSIDERED EARNINGS FOR PURPOSES OF  
DETERMINING UNEMPLOYMENT COMPENSATION BENEFITS - WORK SESSION

010 ANNETTE TALBOTT, COMMITTEE COUNSEL: Outlines the bill as it has  
been revised by the "-2" amendments (EXHIBIT A), as well as detailing  
the hand-engrossed copy of the bill (EXHIBIT B).

SENATOR HILL: The effect of this would be to delete from benefits the  
amount of the holiday pay as an offset rather than a bar.

046 TALBOTT: Designated vacation pay, not holiday pay. That's a  
separate part of the bill.

CHAIR KERANS: In answer to your question, yes.

056 SENATOR HILL: This changes the fiscal impact, is that correct? 073  
TALBOTT: The reason the impact goes up is because now the people's  
benefits would be increased correspondingly to offset the workers now  
eligible for benefits. 134 SENATOR SHOEMAKER: This is going to cost  
the trust fund about \$935,000 per year. Is it a big number in relation  
to the trust fund. 139 SHARON KIDDER, ASSISTANT ADMINISTRATOR,  
PROGRAMS, EMPLOYMENT DIVISION > The Fund is almost at \$1 billion right  
now. This is not an amount that is going to impact the schedule that  
we're in, it's not going to impact the amount that employers pay into  
the fund. Not that it couldn't at some point along the line. I don't  
want to minimize that, it could. 171 SENATOR SHOEMAKER: How does this  
thing work? What's it like without this, and what's it like with this?

It's going to get so complicated. 188 REPRESENTATIVE SAM DOMINY: > He tried to close down the abuse of people taking vacation and at the same time drawing unemployment benefits. > The other thing that we try to accomplish with this bill is to not force someone to move a vacation which a union contract says can be taken at any time. > This bill will now allow vacation pay to be counted towards earnings for that week, instead of disqualifying an individual for any benefits for that week. > This bill separates those with union contracts from those without union contracts. Sometimes a union contract says that vacation can be taken whenever desired, which means a person would not be forced to move a vacation. 273 SENATOR SHOEMAKER: When this whole thing is over, can the employee use the vacation time that was offset by unemployment? REPRESENTATIVE DOMINY: You can't take it later, no. The Employment Division is basically paying him for that day.

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304 RICHARD VAN PELT, SUPERVISOR, TECHNICAL SUPPORT, EMPLOYMENT DIVISION: > When the contract specifies that this is the designated vacation period, if the person elects not to take the vacation pay, they haven't received it and they are therefore eligible for the full weekly benefit amount. SENATOR SHOEMAKER: Is that true for all employees, or only those who can choose their vacation? VAN PELT: There are union agreements out there that give the employer the right to choose the vacation period. And the employee can elect to take their vacation at that time or they can elect to defer it. It is my understanding that if the person elects to defer taking their vacation, then there will be no impact on UI. 331 CHAIR KERANS: That is my understanding. 372 MOTION: SENATOR HILL moves the adoption of the "-2" amendments.

VOTE: Hearing no objection, the motion carries.

375 MOTION: SENATOR HILL moves the bill as amended to the floor with a "do pass" recommendation. VOTE: Hearing no objection, the motion carries.

TAPE 77, SIDE A

SB 556 - ALLOWS INDIVIDUALS PERMANENTLY REPLACED IN THEIR EMPLOYMENT DUE TO LABOR DISPUTES TO BE ELIGIBLE FOR UNEMPLOYMENT BENEFITS - WORK SESSION

392 TALBOTT: Explains the amendments to 556 (EXHIBIT C).

426 SENATOR SHOEMAKER: How does this relate to the bill of the last session which provided for unemployment compensation during a lockout, provided that the union has offered to continue to work, essentially, on the old terms, while they continue to struggle towards a resolution of the dispute? Does this bill reverse that?

SENATOR HILL: It leaves that compromise intact, and adds an additional qualification opportunity. The way the bill would read for the purpose of this change is, "this section does not apply if the assistant director is satisfied that the individual has been permanently replaced at the factory, establishment or other premises by somebody not employed prior to the labor dispute". So it would be an additional qualification

for UI benefits, so it does not negate or otherwise change the previous one. > If the individual is permanently replaced, it would not, because the employer would not have to hire them back. In most cases, the employer does not hire them back, but if they bring them back at all, they put them on a waiting list in a selective fashion. Union advocates generally don't make the waiting list.

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TAPE 78, SIDE A 006 REPRESENTATIVE DOMINY: There is a difference between a lock-out and a strike. A lockout, the employer locks the employees out and does not run the establishment, period. We're not talking about lock outs at all. We are talking about a strike. We are putting the stipulation on it, with the amendments that have been prepared before us. They say that when you have been sent a letter saying that if you don't return to work on Monday, you will be permanently replaced, when you get that letter, that is when the person can start drawing unemployment benefits.

' 053 SENATOR SHOEMAKER: > § 3, beginning on line 12, it says the "Section does not apply if the assistant director is satisfied that the individual is (a) unemployed due to a lock out, (b) lock out by the employer or bargaining unit", § B, the employees are willing to go back to work pending the resolution of the dispute, § C, during a lock out employed individuals who are not employed prior to the labor dispute to replace the individuals unable to work". > That's the way it was left after the last session, and that is what is in the law. 073 TALBOTT: There are instances when there is a lock-out and people temporarily to replace the people who are locked out. 098 SENATOR HILL: This bill will apply to any labor dispute in which employees have been permanently replaced and the employer unilaterally severs the relationship with the employee, which is what the permanent replacement is under federal labor law. SENATOR SHOEMAKER: And there has to be a declaration of some sort by the employer of permanent replacement. In order for the assistant director to be satisfied, there has to be criteria or laws developed which essentially you have to show the employer was implicit about this.

112 TALBOTT: An employee who has been locked out cannot be permanently replaced because that is a violation of federal labor law. 139 REPRESENTATIVE DOMINY: Where the bill says, "has been permanently replaced by written letter" or some word like that, I have no problem with that amendment. There has to be something for the Employment Division to track when that has actually happened. Word of mouth does not buy it, and a written letter from the employer needs to be required. 199 MOTION: CHAIR KERANS moves the amendments to the "-1" amendments.

VOTE: Hearing no objection, the motion carries. 231 MOTION:  
SENATOR HILL moves the "-1" amendments as amended into the bill.

VOTE: Hearing no objection, the motion carries.

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25 1 KARL FREDERICK, VICEPRESIDENT, DIRECTOR OF LEGISLATION, ASSOCIATED OREGON INDUSTRIES: > This destroys the vital neutrality of government during a labor dispute. SENATOR SHOEMAKER: As it affects the individual in the labor dispute, once they've been permanently replaced, then for them, it's no longer a labor dispute. FREDERICK: We're talking about a strike. A strike may still be going on, even if they have been permanently replaced. And they are supporting that particular union. SHOEMAKER: Not as it affects that particular individual. The strike is no longer relevant, is it? 283 FREDERICK: It certainly is. This has been a unilateral determination by the employer in this particular labor dispute, namely a strike. So, there is still a dispute. 297 SENATOR HILL: This is a neutrality which really does not exist. We know that what the law currently requires is people to disassociate themselves from the strike in order to qualify for unemployment benefits, even though they have no re-employment rights at the employer. Now when the employer unilaterally terminates their job rights in the shop, they are no longer employed, not carried on the books, they accrue no seniority, they accrue no benefits, they have no right to come back. If they are rehired, it is considered a new hire. FREDERICK: But the point is there is still a labor dispute in existence. SENATOR HILL: As far as the employer is concerned, the dispute is over. > The fact the people are picketing doesn't mean the employer is participating in a labor dispute. Rather he is receiving the brunt of picketing, which I think is created by the "free association" clause of the Constitution. What the law currently requires is that workers disassociate themselves from association, which should be protected under the Constitution in order to acquire their social benefits - UI benefits. > There is a question about the equity of the system when you are forcing people who have already been fired by the employer to quit membership in a third party organization, a private organization, that's expressing an opinion about that employer with pickets at the gate, in order to get a social benefit. That is not neutrality. The law is not neutral. The law gives the employer a vast benefit. 409 MOTION: SENATOR HILL moves SB 556 as amended to the floor with a "do pass" recommendation VOTE: In a roll call vote, the motion carries with Senators Brockman and Kintigh voting NAY.

TAPE 77, SIDE B

SB 24 - SUBJECTS STATE ACCIDENT INSURANCE FUND CORPORATION TO PROVISIONS OF INSURANCE CODE REGARDING CLAIMS SETTLEMENT PRACTICES - WORK SESSION

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010 TALBOTT: > Introduces memo to Larry Young, Workers' Compensation Division from Dennis Bagger (EXHIBIT E), concerning penalties that have been issued to date. ~ Explains the unfair claims settlement practices and how the Division handles the suits. SENATOR SHOEMAKER: Would this bill then place SAIF in the same position as the private carriers respecting unfair claims practices? Both on the private right of action side and on the oversight of DIF? TALBOTT: No. This doesn't deal with the private right of action, it only deals with the Insurance Director's

option. This merely puts them in the same stead as other workers' compensation carriers would be. > What we found is that workers' compensation carriers really aren't treated like other insurance policies and companies under this particular unfair claims settlement practices act, because the Division has interpreted portions of Chapter 656 as recovering those things. 060 SENATOR SHOEMAKER: Does this mean that if we pass this bill which is specific to SAIF that we will be in a different position from Liberty as regards these matters? TALBOTT: I don't believe so. I believe that they will continue to do what they are doing. I think the concern that I raised to the Chair was that there was no reason why the Insurance Division should not be looking at some employer complaints under Chapter 747 , the Unfair Claims Practices Act. , ` > The bill in front of you has added SAIF to that provision, but what has become clear is that provision is not in any way activated in the workers' compensation arena because we are just treating it as a workers' compensation issue, not an unfair claims practices settlement. SENATOR SHOEMAKER: So we have a bill that is flawed? TALBOTT: The bill itself is not flawed, the issue is that the Committee could address in asking persons from the Insurance Division whether or not they feel the Unfair Claims Settlement Practices should cover workers' compensation, and whether or not the Division or the Department is following the existing law concerning Unfair Claims Settlement Practices. 106 TOM MATTIS, MANAGER, COMPLIANCE DIVISION, DEPARTMENT OF INSURANCE AND FINANCE > Explains the Division's procedures in dealing with Unfair Claims Settlement Practices complaints. > The Division has many rules concerning filing claims, rules for discovery, etc. ~ There is a triennial audit cycle in which the Division goes out and audits the insurance companies to assess performance. There is a mini audit, which, if clean, will let the company off the hook for another 3 years. If there are problems however, there will be a full-blown audit, and there will be an assessment of whatever civil penalties are appropriate, which they do now on a quarterly basis in a number of other areas. > There are quarterly reviews, triennial reviews, action based on complaints received, a sort of multi-layered network of oversight and imposition of penalties, both payable to the worker and civil penalties to the department, depending on our findings.

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188 SENATOR SHOEMAKER: If this bill passes, so that SAIF is made subject to the Unfair Claims Practices Act, what does that do? Does that change anything significantly?

MATTIS: That wouldn't change anything in terms of the Workers' Compensation Division. We would continue to do exactly as we're doing on our oversight. SENATOR SHOEMAKER: Are you covering all the bases that the Unfair Claims Settlement Act tries to protect against? Is there anything that you're not doing that they do that is unfair?

MATTIS: Part of the problem is there are a number of places where there simply isn't a parallel in the workers' compensation law.

SENATOR SHOEMAKER: Is there anything going on out there with SAIF that isn't right in terms of the way they are handling claims settlements, which you're not able to deal with under the existing law?

209 Recess due to a fire drill at 4:20 P.M.

Return from recess 4:32 P.M. 213SENATOR SHOEMAKER: Repeats question asked before the fire drill.

MATTIS: The area that we don't have any scope of action in Workers' Compensation Division, and this does not apply only to SAIF but to all insurers, is where an employer has a complaint about the way in which a claim is being processed.

SENATOR SHOEMAKER: But you have a pretty good handle on when the employee has got a beef. But if you have something that isn't going quite right, you don't have a way to get at that.

233 MATTIS: That is correct. That is where we would probably make a referral to the Insurance Division, and in talking with Mr. Brooks, there are not a whole lot of things in many instances that they can do with an insurer when there is a complaint in this area.

237 BILL BROOKS, INSURANCE DIVISION: > Unfair Claims Settlement Practices Act causes the situation described by Mattis. All the sub paragraphs in the Act are couched in language which do not allow them Division to proceed under that Act in that situation. That does not mean that they don't try to aid the employer. SENATOR SHOEMAKER: In terms of a real hammer, you don't have one. 255 SENATOR BROCKMAN: What would be an example of an employer having problems? BROOKS: The most common is that the carrier has paid too quickly or too easily. 324SENATOR SHOEMAKER: Does the employer know to go to you?

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BROOKS: That's the old telephone game that the State of Oregon always has in dealing with people who want to deal with us.

TAPE 78, SIDE B

020 MOTION: SENATOR HILL moves the bill to the floor with a "do pass" recommendation. VOTE: In a roll call vote, the measure carries with Senators Brockman and Kintigh voting NAY. 040 The meeting is adjourned at 4:46 p.m.

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

EXHIBIT LOG:

A - Amendments to SB 535 - Staff- 2 pages B - Hand-engrossed version of SB 535 - Staff - 2 pages C - Amendments to SB 556 - Staff- 1 page D - Hand-engrossed version of SB 556 - Staff - 2 pages E - Interoffice Memorandum to Larry Young from Dennis Bagger - Larry Young - 5 pages

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