Assembly

LABOR AND MANAGEMENT COMMITTEE MINUTES

JANUARY 23, 1973

MEMBERS PRESENT: Mr. Banner, Chairman
Mrs. Brookman
Mr. Bickerstaff
Mr. McNeel
Mr. Ullom

MEMBERS ABSENT: Mr. Barengo
Mr. Capurro

GUESTS: John R. Reiser, NIC
R. S. Haley, NIC
E. R. Tarnowsky
Eric Lane, Legislative Intern
B. Riley, AP

The January 23rd meeting of the Labor and Management Committee was called to order by Chairman Banner at 4:15 in Room 320. The roll was taken and Mr. Barengo and Mr. Capurro were absent. Mr. Barengo had been previously excused as he was in Washington, D.C.

Mrs. Brookman moved that the minutes be approved and Mr. Bickerstaff seconded the motion.

Chairman Banner announced the purpose of the meeting to be the discussion of AB 27. Present at this meeting was Mr. John Reiser, Commissioner of the Nevada Industrial Commission to explain the bill and answer any questions that committee members may have.

Mr. Reiser began by giving a brief background of the bill. He distributed copies of a portion of a report publichsed by the National Commission that is to be submitted to Congress. Nevada is one of only four states that does not have a subsequent injury account. This year NIC hopes to see a dynamic rehabilitation program implemented for injured workmen. The purpose of the bill is to encourage employers to hire injured workmen who have been rehabilitated without having to assume the liability of the previous injury. The original bill was written and submitted several months ago and since that time NIC feels several changes should be made. NIC feels that the federal bill excludes too many injured workmen. It purposes a 50% impairment level whereas this bill has a greater than 12% impairment. Mr. Reiser stated that the employer would have to document the amount of disability before hiring the workmen and would only be charged for any additional job incurred injury. This would also encourage the workman to tell the truth about injuries. Sometimes in order to get a job the workman does not admit the truth about some injury. NIC hopes to get approval to reward

employers for hiring injured workmen. He also stated that something needs to be done before the Federal Government steps in and forces their set of standards on us.

Many of the committee members had questions concerning both this bill and the functions and duties of NIC. Mr. Reiser said he would try to answer any questions and furnish copies of a booklet describing NIC to anyone interested.

Mr. Bickerstaff wanted to know if a physical would be required by the workmen every time they applied for a job in order to prove disability and if so this would be very costly. He also wanted to know where the money to implement this subsequent injury fund would come from. In reply, Mr. Reiser said that the employer would have document the amount of disability but that a physical exam would not necessarily be required; and the money would come from an increase in the rate paid by the employer to NIC. Mr. Bickerstaff then wanted to know how much the rate would be raised. The Commissioner said that they (NIC) had figured that the whole NIC legislative package would cost an overall 16% increase in the rate, but he was unable to give any figure for this particular bill. The amount charged the employer varies by the type of job covered. The more dangerous the position the higher the rate.

Mr. McNeel asked if this would give protection to the workman from being fired because of his disability. Also, would the workman have to appear before a medical board for re-evaluation everytime he was slightly injured and went to a doctor. Mr. Reiser stated that they hoped to be able to reward employers for hiring injured workmen and thus keep the firings down to a minimum but the medical board appearance was something they hoped to have discussed and amended.

The figure of 12% disability was brought up by Mr. Ullom who wanted to know why this particular figure. He also wanted to know where the rest of the legislative package was and if it would be referred to this committee after introduction. In reply, Mr. Reiser stated that the 12% was chosen because this eliminated those with minor injuries that almost anybody could qualify for in one way or another but was low enough to include the more major back injuries that are common on the job injuries. Mr. Reiser also stated that the entire package was still at the bill drafters and he did not know what committees would be receiving their bills. After hearing this Mr. Ullom felt that it would be hard to act on this bill when there may be another one submitted the next day that would also apply.

Mrs. Brookman felt that we should see the whole package so that they can see what is being proposed. She felt that they should take all the information received at this meeting and digest it for awhile. She also suggested that the Chairman may want to appoint himself and two other members to amend the bill and bring it back to the committee as a whole.

Chairman Banner decided not to call for any action on this bill at this time but to hold it until a later meeting.

Mr. Reiser said if the committee wanted he could give them a general rundown on what they were proposing to the Legislature. As there was not further business Mr. Ullom made the motion to adjourn and Mr. Bickerstaff seconded it. The Chairman called the meeting adjourned at 5:15.

ASSEMBLY

AGENDA FOR COMMITTEE ON Labor and Management

Date January 23 Time 4:00 Room 320

Bills or Resolutions to be considered	Subject	Counsel requested*
AB-27	Establishes subsequent accident account of the State Insurance Fund of the NIC and provides for charges thereto.	

*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date _____ Time _____ Room _____
Subject _____

Date _____ Time _____ Room _____
Subject _____

DATE 1-22-73

STATE OF NEVADA

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LABOR AND MANAGEMENT COMMITTEE

GUEST REGISTER

Name	Respresenting
JOHN R REISER	NIC
R. S. HALEY	NIC
E. R. TARNOWSKY	Bldgs & Gr
Eric Lyon	Leg. Intern (McNeel)
B. Riley	AP

WORKMEN'S COMPENSATION LEGISLATION RECOMMENDED BY THE NIC LABOR-MANAGEMENT ADVISORY BOARD

1. SAFETY - OSHA BILL (approved)
2. MEDICAL-REHABILITATION SERVICES
   - (a) Rehabilitation (approved)
   - (b) Second injury (approved)
3. COVERAGE
   - (a) Eliminates numerical and certain occupational exemptions (approved)
   - (b) Full silicosis benefits (approved)
4. COMPENSATION BENEFITS
   - (a) Permanent total disability (approved)
   - (b) Temporary total disability (approved)
   - (c) Death (approved)
   - (d) Permanent partial (approved)
   - (e) Temporary partial (approved)
5. EFFECTIVE ADMINISTRATION
   - (a) Medical panel (approved)
   - (b) Commission supervision of private workmen's compensation plans (approved)
   - (c) Interstate compacts (approved)
   - (d) Investments (approved)
   - (e) Definition of total disability (approved)
   - (f) Subrogation (approved)
   - (g) Date of determining industrial insurance benefits (approved)
   - (h) Stop order (approved)
   - (i) Volunteers (approved eliminating university athletic teams from NIC coverage)
   - (j) Labor-management advisory board (approved)

FINAL REPORT OF THE SUBCOMMITTEE FOR STUDY OF THE NIC

1. Housekeeping (approved after deleting sections 2 and 3)
2. Investment procedures and requirements (approved)
3. Qualifications of investment counsel (approved)
4. Fiscal notes (approved)
5. Medical board findings (approved with panel)
6. Administrative procedures act (approved)
7. Subsequent accident account (approved with amendments)
8. Rehabilitation (approved with amendments)
9. Physician's duty to advise (approved)
10. Calendar-year accounting (disapprove)
11. Attorneys' fees (disapprove)

hesitate to restore their capabilities because they fear their cash benefits will be reduced as their earning capacity or actual earnings improve. These are rare instances but can be anticipated. One control would be to pay cash benefits on the basis of the worker's actual disability and impairment, or, if the worker refuses rehabilitation services, on the basis of the extent of impairment or disability which the disability evaluation unit of the agency decides would have prevailed if the worker had utilized the proffered services. An even stronger control would be to make a worker entirely ineligible for cash benefits unless he accepts the restoration services offered by the medical-rehabilitation division. Such encouragement to cooperation appears in several workmen's compensation statutes now, and experience indicates that the procedure sometimes is an effective stimulus to rehabilitation.

C. RETURNING THE REHABILITATED WORKER TO A JOB

A workmen's compensation program which provides definitive medical care, effective physical rehabilitation, and appropriate vocational rehabilitation services is not satisfactory unless it also can return the successfully rehabilitated worker to a job. Placement of the formerly or partially disabled worker is a task made more formidable by the reluctance of some employers to hire the handicapped, whether because of the fear of unusual costs associated with handicapped workers or for other reasons. Basically the reluctance of employers to hire the handicapped must be overcome outside of workmen's compensation because cost of the program is but one of several concerns of employers. But workmen's compensation can at least counteract the fear of employers that employment of a worker with an impairment may result in exceptional workmen's compensation costs if that worker subsequently experiences a work-related injury or disease.

Second-Injury Funds

A second-injury or subsequent-injury fund within the workmen's compensation program insures that a handicapped worker who then subsequently suffers a work-related injury or disease will receive full compensation to cover the resulting impairment. At the same time, the employer will be charged only for the benefits that are associated with the second injury. This is an effort to deal equitably with a situation where the second injury would not have occurred but for the prior impairment or where the degree of impairment that results from the combination of the prior and second injuries is more serious than the total effect of the two injuries considered separately. For example, the loss of one eye is considered a 24 percent impairment relative to the whole man by the American Medical Association's *Guides to Evaluation of Permanent Impairment.* Taken separately, the loss of two eyes would add up to 48 percent, but the loss of both eyes is considered 85 percent impairment of the whole man. The second-injury fund charges the employer only for the impairment caused by the second injury when considered by itself, and the fund pays the worker the difference between the amount charged to the employer and the total benefits warranted.

All but four States have some form of second- or subsequent-injury fund. Some of these laws, however, are applicable only when the prior disability is one of a limited number specified in the act. The standard published by the Department of Labor proposes that the subsequent-injury fund be broad enough to protect workers with all types of prior impairments, including arthritis, heart disease, and epilepsy. Table 4.7 indicates the number of States complying with the standard.

TABLE 4.7. Jurisdictions providing broad coverage of previous impairments by subsequent-injury funds, 1946-72

Year	States (50)	Other "States" (6)	Federal (2)
1946	5	1	1
1956	11	3	1
1966	16	3	1
1972	20	5	1

See Table 2.3 for explanatory notes.

R4.10

We recommend that each State establish a second-injury fund with broad coverage of pre-existing impairments.

Section 20 of the Model Act provides an example of a statute with broad coverage: 26 specific permanent impairments are listed and, in addition under a general clause, any permanent impairment which is equivalent to 50 percent of total impairment is also eligible to be covered by the fund. In general terms, the Model Act approach is consistent with our recommendation.

As implied by the standard published by the Department of Labor and our recommendation, the coverage offered by a second-injury fund may be too narrow to benefit many handicapped workers. It is possible also to make the list of prior impairments covered so broad that virtually every employee can be found, by intensive medical examination, to have a physical limitation which would be compensable by the fund. Since the second-injury funds are usually financed by general assessments against all employers, such broad coverage subverts the policy of allocating the cost of injuries and diseases to the firms primarily responsible.

Only a few States appear to have a second-injury fund with coverage which may be too broad. Usually, the coverage of prior impairments is too narrow, partly because the financial support for second-injury funds in some States is inadequate. Some States finance their second-injury fund by assessing employers a charge for work-related deaths when the victim leaves no surviving dependent. The amount of these assessments per case and the number of deaths in some States do not support a second-injury fund with a sufficiently broad coverage of prior impairments. The most successful method of financing second-injury funds appears to be assessments against employers or their insurers in proportion to the benefits they pay. However, because employment of the handicapped is a concern which transcends the workmen's compensation program, a more general source of financial support for the funds may be desirable.

R4.11

We recommend that the second-injury fund be financed by charges against all carriers, State funds, and self-insuring employers in proportion to the benefits paid by each, or by appropriations from general revenue, or by both sources.

If the fund is financed from charges in proportion to benefits paid, the total amount of the assessments should vary from year to year in accordance with the needs of the second-injury fund. This method is similar to Section 55 of the Model Act.

Another striking factor brought to our attention during our hearings is the general lack of awareness and utilization of second-injury funds. Clearly, a second-injury fund cannot help a handicapped worker get a job if employers are not aware of its nature or not encouraged to use the fund.

R4.12

We recommend that workmen's compensation agencies publicize second-injury funds to employees and employers and interpret eligibility requirements for the funds liberally in order to encourage employment of the physically handicapped.

A related issue is: Should an employer be eligible to use a second-injury fund if he was not aware of the employee's handicap when he was hired. Presumably under these circumstances the employee's handicap did not hinder his employment. Therefore, it can be argued, since he did not need the assistance of a second-injury fund to get his job, the employer should not be eligible to use the fund if the worker is again disabled.

On the other hand, it can be argued that even if the employer was not specifically aware of a worker's impairment at the time he was hired, the employer might be reluctant to hire him if he was one of a class of workers likely to have health problems, such as older workers. If the employer were eligible to use the second-injury fund as long as he could demonstrate the worker had an impairment prior to the time he was injured, then the fund indirectly aids employment of the handicapped by reducing the employer's concern over hiring certain classes of workers.

Another argument for allowing employers to use the second-injury fund for workers whose

impairment was unknown at the time of hiring has little to do with employment of the handicapped. The argument is that it would be unfair to charge an employer for the total cost of a workmen's compensation claim when part of the reason for the extent of impairment was not work-related. The employer should bear the portion of the award due to the work-related injury or disease, but no more.

The underlying issue here appears to be: What is the basic purpose of the fund? If the main intent is to encourage employment of the handicapped, then prior knowledge of the impairment perhaps should be a factor in determining eligibility for coverage by the second-injury fund. If on the other hand the main intent is to spread the risks associated with pre-existing impairments among employers equitably, then prior knowledge of the handicap would seem irrelevant to eligibility for coverage by the fund. In actuality, second-injury funds are presumed to serve both purposes: it would appear to be up to the States to determine for themselves which purpose should dominate.

Those States concerned primarily with employment of the handicapped could require employers to notify the second-injury fund of the nature of a new employee's impairment at the time of hiring. This procedure would assure employers of some protection from the fund, encourage employment of the handicapped, and also encourage employers to provide pre-employment physical examinations.

REFERENCES FOR CHAPTER 4

Section A, See *Compendium,* Chapters 3, 4, 10, 19, and 20
Section B, See *Compendium,* Chapters 3, 4, 11, 19, and 20
Section C, See *Compendium,* Chapters 3, 4, 11, 19, and 20

The *Compendium on Workmen's Compensation* was prepared for the National Commission on State Workmen's Compensation Laws. References for data cited in this *Report* are included in the *Compendium,* but the Commission does not endorse all ideas expressed in the *Compendium.*