March 27,(P.M. Session) 1975

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MEMBERS PRESENT: Chairman Banner
Vice-Chairman Moody
Assemblyman Hayes
Assemblyman Barengo
Assemblyman Benkovich
Assemblyman Hayes
Assemblyman Getto
Assemblyman Schofield

MEMBERS ABSENT: None

The hearing was convened at 2:35 P.M. by Chairman Banner for the purpose of discussing A.B. 303-304-337 & 329. He stated that, due to the fact that there was a pretty heavy agenda for this hearing, the bills that had been postponed from the morning session (namely, A.B. 368-419 and 425 would be rescheduled, and heard on Tuesday A.M. April 1.

Chairman Banner asked if there was anyone present from the Bar who wished to speak on A.B. 303.

Leonard T. Howard, Attorney-at-Law was the first speaker in favor of A.B. 303, and made the following statement.

1--He understood that A.B. 303 was somewhat of a housekeeping procedure, but he felt that a separation of powers between the Commission itself and the Appeals Officer, was certainly commendable and something that was needed to protect the rights of the worker.

Chairman Banner stated that he would like to speak in favor of A.B. 303, since his name was on the bill, along with that of Assemblyman Barengo. He stated that for some years he had been in and out of the NIC building, and at the present time was in contact with the staff almost weekly. His experience went back to 1959 and particularly 1961; in 1963 and 1967 he had been a Commissioner. That he was now the "risk management officer" for Clark County, handling insurance matters for the 2,200 employees of the County. This job means that he is involved with 1% of the "total premium dollar" in the state. That he has frequent dealings with the NIC. For that reason, he felt that he could speak with some expertise. That he had many times represented both the employee, in front of the NIC, and also represented the employer, and had many times been involved in the hearing process. He noted that the purpose of A.B. 303 was that it would eliminate the NIC staff's "statutory significance", and would put the onus on the Commission itself. That if anyone present had had occasion to deal with the NIC, as he had, in the southern part of the state, they knew that first you start in at the claims level, then the Commission level, and fianlly end up in front of the "appeals officer". That this was a long, time-consuming process process; and A.B. 303 was only an attempt to speed up that process, and put the responsibility where it belongs. That it was his hope that this bill, and other legislation to come, would take care of whatever bits of sand that were still in the NIC machinery.

A.B. 303 (cont) John Reiser, representing the NIC, was the first speaker in opposition to A.B. 303. He noted that he had spoken before the Committee before on the bill, and would like to repeat the statements he had made previously. He noted that the NIC had processed 38,000 claims last year and this bill, the way they read it, would require the Commission itself to accept, deny, and to process, each one of those 38,000 claims. That they believed that this would achieve a result diametrically opposed to what the proponents of the bill thought it would do.

Assemblyman Benkovich asked if that was what they took Section 6 to mean, that the Commissioners must make the decision on each and every claim?

Mr. Reiser agreed that it was ambiguous and unclear as to exactly what authority could be delegated to the staff, but their legal counsel insisted that NIC would be moving in the wrong direction, and that the 3 Commissioners could be required to make the decision on each one of the 38,000 claims, whereas, 90% of the claims are processed at the present without any review at all.

Chairman Banner stated that, for the benefit of the people at the hearing, he would attempt some explanation. That if you had a claim against the NIC in Clark County, first you go to the claims level; if your claim is rejected, you can talk to Dr. George, and then come back before the claims people; then, if you aren't satifsied, you can go to Dr. Laub; then, if you still aren't satisfied, you can go to the Commission level. There are presently 2 Commissioners in Las Vegas, and one in Carson City, so it is possible to have a split vote. After that you might conceivably go before the "hearing officer" and that means a formal hearing. He re-stated that he considered those proceedings a time and money-consuming process, for an ill or injured worker who might be, either suffering or trying to earn a living "between hearings". That A.B. 303 was just a move to speed up that process.

R. W. McCoy of the Gibbens Company was the second apeaker in opposition to A.B. 303. He stated that he had no quarrel with the remarks anyone had made regarding the bill, but would like to make the following observations.

1--It appeared to him in reading the bill, that it woule eliminate the present claims level, period, which is conducted on an informal basis.

2--That it appeared to require the 3 Commissioners to review each of the claims filed and, with 38,000 claims per year, this would appear to be an impossible burden for them.

3--There is a broad base of 38,000 claims per year. Perhaps, 10% of those are contested in some form. With further medical evidence, a percentage of those are eliminated as settled. Moving to the Commission level, even more are eliminated so, at the present time, there are only 220 contested claims before the Appeals Officer". At each level, many hundreds of claims are settled agreeably.

A.B. 303 (Cont.)

4--The only thing he could think of that would compare with NIC was Unemployment Compensation, where they handle matters that can be contested by the employee or the employer. That they have 3 levels similar to NIC. They have the initial determination, followed by an appeal to the "appeals officer" and that is subject to a review by the Board of Review.

Assemblyman Schofield asked Mr. McCoy to repeat the figures on the number of claims, as they moved up through the NIC levels.

Mr. McCoy replied that the ultimate number of claims, at the claims level is presently 38,000 a year, and the number of those that are presently before the "Appeals Officer" is 220. That this has been since 1973, so there was more than a year's experience represented. He noted than an appearance before the "Appeals Officer" was f formal hearing, with all the rules of evidence and the Administrative Act, being fully exercised.

Chairman Banner asked Raymond Bohart, Managing Director of Federated Employers of Nevada, if he wished to speak on A.B. 303. Since he did not, A.B. 304 was next considered.

Warren Goedert, of the law firm of Rice and Goedert, was the first speaker in favor of A.B. 304. He made the following statements:

1--That the particular bill, as it stood without the amendment, was subject to attack, because it did not take into account attorney's fees. or other costs and expenses. That the NIC could recover the entire amount awarded, and not just have a lien on the net proceeds, or what was left after the costs and attorney's fees had been paid.

2--This amendment would make the statute more equitable, and constitutional, and conform with the court's findings in the excert from the case that he had handed the Commission.

Chairman Banner asked him to give an explanation of his statements in the form of an example.

Mr. Goedert said that in a case he had been involved in about a week ago, there had been a $15,000.00 settlement. The NIC had costs in that case of $12,000.00. If they had taken the full amount, the injured workman would have received nothing, because the $3,000.00 balance would have been taken up by expenses and attorney's fee. Under the law, as it now stands, it would not be worth a workman's time to file a law suit, unless there was potential damages, far in excess of what the Commission had spent; as you can see he could wind up with absolutely nothing. As it worked out, in this case, the Commission sort of adopted a "net damages" approach, and after the costs and attorney's fees were paid, the injured workman got the rest.

Leonard T. Howard said that he did not see how this amendment would change the procedure, and would like someone from NIC to explain to him what the changes would be exactly, in terms of dollars and cents.

A.B.304 (Cont.)

Mr. Reiser made the following statements in answer to Mr. Howard's question:

1--The NIC does not see any reason for making the change on Page 1. They do have the authority to take action, on behalf of the employer, if the employee does not wish to take action against a negligent third person; if they do so, the employee is entitled to benefits without incurring any costs himself.

2--On the contrary, the change on Page 2 deletes the improvement that was made in the law by the 1973 Legislature. The provision that states "in no case is the injured employee, or in the case of his death, his dependents, be able to realize double recovery for the same injury", is a provision that was added in 1973 to clarify the "subrogation statute", and changing this would undo the work done by the 1973 Session. Regarding the subrogation statute, he stated that Mr. Noonan and Frank King are working on a bill to eliminate the Witt versus Jackson problem, and there would be no reason for some of the changes proposed in A.B. 304, if these other problems are solved, which would clarify the statute.

Since no one else wished to speak on A.B. 304, Chairman Banner moved on to A.B. 337.

Chairman Banner explained that A.B. 337 is a bill that would require the NIC, upon request, to furnish without charge to a person seeking compensation, or such person's attorney or designated agent, one copy of all records in its possession that pertain to that person's claim.

Warren Goedert was the first speaker in favor of A.B. 337. He stated that, as he understood it, this bill would merely allow an injured workman, who may be indigent to start with, to have one free copy of all medical and other records that the NIC has in it's possession regarding that person's claim. At the present time, there is a small charge for the Xeroxing thereof, and for someone who has no money, it sometimes works a hardship.

Chairman Banner said that, in his particular case, as often as he deals with the NIC staff, he had encountered no problems, but he did understand that there was a small charge.

Leonard T. Howard, Sr., attorney-at-law was the next speaker in favor of A.B. 337, and made the following points:

1--He was there as an individual speaking in behalf of the injured worker.

2-- He noted that there was one important element in this bill, which had not been mentioned at the hearing, and asked if this bill meant that "the NIC would just furnish one free copy of his "medical records" to a claimant, or would they give him, or his designated agent, a copy of the entire file?

A.B. 337 (Cont.) 254

He understood that, at the present time, the NIC will give a claimant, or his designated agent, a copy of his "medical records" but that they will not furnish him with a copy of his entire file.

3--It is very difficult for an attorney or agent to represent even himself, without knowing what the Commission may be considering. He cannot rebut what the Commission might be considering, without knowing what that is.

4--He thought that the most important part of the bill was that the entire file be made available.

John Reiser of the NIC was the first speaker in opposition to A.B. 337, and made the following statements.

1--He thought that a fiscal note should be attached to the bill.

2--With 38,000 claims per year, there is a potential for abuse. Generally, there is no problem. The problem would arise if an attorney or agent would say, "Copy these three entire files for me, and then I will decide which one I want". With 38,000 claims copying entire files could be a full-time job for a number of people, at a considerable expense.

2--He stated that there was a particular situation that was a real problem. Several Doctors have told the NIC that they would have to stop treating NIC patients, if the Commission could not keep a report the Doctors gave them "confidential" if it was so stamped; in particular, a report regarding any psychiatric problems of the patient. There have been cases where an attorney repeated to a claimant what a Doctor reported about his "psychiatric problems", and the claimant has made an attempt to harm the Doctor. Many Doctors now keep guns in their desk drawers because of these incidents. There is a provision in the NIC regulations that says that "confidential reports" are available only on a court order. That there is a valid reason for "all" records in the possession of the NIC not to be available, except on a court order.

Assemblyman Schofield asked Mr. Reiser how many copies of files had been requested over the past years, by court order or otherwise, out of the approximate annual total of 38,000.

Mr. Reiser replied that they had not kept records, and thus had no figures on that, but that there was a potential for 38,000 to be requested, without charge. Also, that A.B. 337 and S.B. 339 should be considered very carefully.

Assemblyman Schofield asked Mr. Reiser if he would estimate how many of these claimants might wish a copy of their records, and Mr. Reiser estimated 7,000 to 8,000.

A.B. 337 (Cont.)

Assemblyman Benkovich asked Mr. Reiser if he would have any objection to deleting the words "without charge"?

Mr. Reiser replied that the same problem would still exist. That the Doctors would not treat NIC patients if they could not be sure that their information, especially regarding the patient's psychiatric condition, could be held confidential, and only made availably on a court order. That the NIC wanted to have as many Doctors as possible willing to treat NIC patients; they did not want to force these Doctors to stop treating them because they were in fear of their lives.

Assemblyman Benkovich asked if there was not a Federal law passed recently that guaranteed access to these files?

Mr. Reiser replied that the access was there, by court order, and the only thing the NIC wanted to do was to protect the Doctors, and ultimately the worker's ability to have as wide a range of medical choice as possible.

Leonard T. Howard, Sr. was the next speaker in favor of A.B. 337. He asked Mr. Reiser if he was talking about a qualified psychiatrist's report on a psychiatric examination, or a report by some General Practicioner who was not getting along with the patient?

Mr. Reiser replied that the problem the NIC was concerned with, was the actual threats made against Doctors by patients who have actual psychiatric problems.

Chairman Banner asked if an employee's complete file was open to him, if he came down to the NIC? Mr. Reiser replied that the file was open, unless a Doctor had informed them that the individual had psychiatric problems, and asked that his report regarding the employee be held confidential. In that case, they would put the report into a "confidential file", and that report would be made available, only on a court order.

Chairman Banner asked if many of the Doctors asked that their reports be held confidential; Mr. Reiser replied that they were beginning to, more and more. They are telling the NIC that they will either treat no more NIC patients, or they will stamp their reports "confidential", if that is indicated, and expect us to respect that confidentiality.

Chairman Banner asked Mr. Reiser if it was then correct that an employee must hire an attorney, and obtain a court order, before his entire file was open to him? Mr. Reiser replied in the affirmative.

Mr. Warren Goedert noted that "if an employee is entitled to a copy of his records, by court order, he was spending unnecessary time and money obtaining a court order, to get what he was already entitled to.

A.B. 337 (Cont.)

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Raymond Bohart, representing the Federated Employers of Nevada, and the Greater Las Vegas Chamber of Commerce was the next to speak on A.B. 337. He stated that they believe that this bill should be passed, in some form, but that the employer, or his designated agent, should have the same right as the employee, or his designated agent. To obtain one free copy of the records the NIC has, to be used in case the employer wishes to file an appeal.

R.W. McCoy, representing the Gibbens Company echoed Mr. Bohart's remarks, and said that the employer or any employer's organiazation should be entitled to any records that were given to the employee, as that was only fair and equitable. He stated that he would have to support Mr. Reiser's comments regarding the inclusion of the word "all" on Line 5. He noted that part of the successful treatment of claims by the NIC does require complete candor on the part of the treating physician. That there might be some portions of a Doctor's report that might inflame a layman, who was not familiar with the medical terms, especially the psychiatric ones, and that this type of report should be kept confidential. That he had no objection to an attorney going into the NIC office and reading these reports, but he would hope that the attorney would not repeat this information to a patient with psychiatric problems. That he had heard of cases where a claimant has walked into a Doctor's office with a gun, and threatened his life. That the highest level of medical treatment could not be achieved if the Doctor is in fear of losing his life. He submitted that the Committee give this careful consideration, as he considered it a very serious matter.

Frank King, attorney for the NIC was the next speaker on A.B. 337. and he made the following statements:

1--In answer to Mr. Goedert's question as to "why go to the trouble of obtaining a court order, the reason is that an attorney would have to "show cause" why he wanted that information; and it would also give the NIC a chance to explain why the information should not be released. It could be possible that the claimant had already threatened the Doctor, and the NIC would be trying to protect him.

2--That the NIC's policy is not to "deny" a claim, based upon any evidence in the medical report, that was not made available to the claimant. They explain to the Doctor's that they will hold their reports confidential if possible, but that if they "deny" a claim, they need reports that can be shown.

Leonard T. Howard, Sr. re-stated his former point as follows: It is very difficult for a party to defend anyone if he does not know what the Commission is considering. The Commission has the file and the "confidential file" and they can decide that the claimant is psychotic, and doesn't know what he is talking about. While the attorney is beating his brains out, with the medical evidence he has access to, trying to justify the claim. That it was obvious from Mr. Reiser's testimony that they were not talking

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A.B. 337 (Cont.)

about reports on psychiatric examinations, made by qualified psychiatrists, but rather aboutreports made by General Practicioners or specialists in other fields, who are simply making an analysis ot the mental condition of their patient. He asked how any attorney could defend that, or present any opposition to it? That if there was any question about a claimant's psycholigical state, the NIC should call in psychiatrists and determine that point, and let the employee present his side of the case to rebut any evidence of that kind.

Chairman Banner noted the following facts about a file that he had obtained from the NIC, on behalf of a claimant.

1--At a hearing two years ago, he had used parts of that file to show that the claimant should be judged to be "totally and permanently disabled" That there had been much delay on this case, but at the end, the "hearing officer" did judge the claim- to be "totally and permanently disabled) which was what he had maintained from the beginning. That this was an example of a case where the file was very useful to the injured worker, as he had not retained an attorney.

Since there was no one else who wished to speak on A.B. 337, the Chairman moved on to A.B. 329.

Mr. Gordon W. Rice, Attorney-at-Law was the first speaker in favor of A.B. 329, making the following statements on the bill.

1--This is a piece of legislation that the Bar has been trying to convince the Legislature is necessary for many years; that this is a phase of the Act that they have been trying to cause to be made law for that length of time, as it is appropriate.

2--The logic behind this bill is that it guarantees that the claimant will have counsel, in the same way that the NIC has counse.

3--The NIC had one attorney on it's staff when they first pressed for this legislation; now they have several attorneys who represent them "win or lose".

4--That most attorney's now take NIC cases on a contingency basis, and the Bar believes that an attorney should be paid, whether or not the action is successful.

5--That the Commission or the court should fix a fee for the attorney, and not require the claimant to pay the attorney out of what the Commission or the court decides that he is entitled to without an attorney.

6--If the Commission is wrong in denying a claimant what he is entitled to, in a court's opinion, then the Commission should pay that attorney's fee.

Warren Goedert, Attorney-at-Law, was the second speaker in favor of A.B. 329.

A.B. 329 (Cont.)

He made the following points:

1--There is a basic inequity in the system, as it now stands. He stated that the injured worker should be allowed to recover "what he is justly entitled to" and not "what he is entitled to, less attorney's fees".

2--He repeated a part of the bill that he had mentioned at a previous hearing. That it takes into account an "appeals officer" who is not, presently, constitutionally endowed. He believed that the problem should be considered, and something done about, not necessarily in A.B. 329

3--He had sent to Chairman Banner his own proposal, which would repeal certain sections of the "Appeals Officer's Act", and which would allow him to be constitutionally endowed, and not to allow his decisions to be so binding, as to hamstring the court. If that type of legislation is passed, then A.B. 329 would be a fair bill, and would go a long way toward allowing an injured workman to get what he is entitled to, and not that amount, less attorney's fees.

Leonard T. Howard was the third speaker in favor of A.B. 329; he made the following statements:

1--He was at the hearing as an individual attorney; that he had practiced in Reno for 22 years; that his practice in regard to NIC cases was so minimal as not to worth mentioning; that he was not a member of the Bar's Committee on NIC.

2--His practice in NIC cases was so minimal because years ago he had decided that they provided no money for the attorney, and an attorney had to make a living like anyone else.

He cited the following 2 examples to demonstrate why he had formed that attitude:

1--Two years ago, he represented a janitor, who fell down the stairs in one of the clubs in Reno. That the NIC paid him compensation rating him at 25% disability, with 10% other bodily factors. He had an operation, and after analyzing the facts, neither of them felt that the percentage was sufficient. The claimant had no money saved, working as a janitor, so Mr. Howard agreed to take his case on a contingency basis. They had 4 hearings before the Commision and the end result was that they petitioned for a 75% disability rating, even though their own Doctors told them that the man was 50% disabled. The Commission then made a determination that the claimant was 100% disabled, and the benefits were paid on a monthly basis. He stated that there was no doubt in his mind that the determination was an anti-attorney decision; that they did not want the attorney to get paid. That after that time he would refuse to take similar cases, as with the claimant receiving a certain sum each month, which is not attachable, there was no way for him to get paid for his efforts.

A.B. 329 (Cont.)

2--That he was not thinking about his fees, as such, but rather about the injured workers that he had turned down, and who were probably financially injured because they had not been able to obtain legal representation, because there was a strong possibility that the attorney would not be paid. That no attorney can spend the time necessary to represent these workers.

3--About 6 months ago, he had represented a lady on an NIC matter, solely because he had represented her on another matter previously. She was a divorcee; had no money; went to work as a clerk; slipped and fell, and injured her back. The NIC had her treated medically and put her through their rehabilitation program. She tried to return to work but was unable to do so. At the time her rehabilitation terminated, she stated that she felt no better than she had the first time that she saw the Doctor after her injury. She had just as much pain, and was just as disabled. The NIC told her that she was cancelled out, and would receive no permanent disability benefit at all. She tried to work for several months, and then came to him, stating that she was unable to work, had no money, and did not know what to do. He told her to go back to her Doctor and get a letter regarding her present condition, and what caused it. She did so, and he prepared a letter for her signature, as he did not want to get involved. She submitted the letter and the NIC refused to re-open her claim. He then went to her Doctor, obtained another letter, somewhat stronger, and submitted it over his own signature. They had a hearing before the Commission, and they agreed to "re-open the claim for re-evalutation"

That was, he stated, just one example of perhaps, hundreds of people in this state who do not know where to go, or how to go about appealing an NIC decision, if their claim is denied. These people are not qualified to represent themselves, and are not able to take care of themselves at a hearing in front of the Commission, who has their records and legal counsel readily available. That it was grossly unfair and that he was referring strictly about the rights of the worker. In his mind, he was certain that if he had not represented the lady mentioned previously, she would have gotten nowhere with the NIC, and would now be, perhaps, on the welfare rolls. That he had asked her how she intended to pay him, and she stated that the only way was to give him something on his bill from her income tax refund, which he agreed to, if she could spare it. That this was the type of case that was being brought to the attention of the Committee. That these people need to have representation; their livelihood is at stake; and that since the NIC has attorneys on their staff, they should provide attorneys for these people, and also provide that those attorneys be paid.

Bob Alkire, representing Kennecott Copper and the Nevada Mining Association was the first speaker in opposition to A.B. 329.

A.B. 329 (Cont.)

He said that he did not know why attorneys practicing before the NIC should be entitled to any more preferential pay treatment than they would be in any other adversary proceedings. That he also wondered if the State of Nevada wanted to put itself in the position of rewarding mediocrity and ineptness to the same extent that it would reward professional perfection; that by standardizing the fee, they would be doing just that.The NIC is not a "public defender's situation. The claimants have had income, and in most cases, still have some income, and that attorneys representing NIC claimants were not public defenders in the sense that they represent paupers.

Don Hill, Engineering and Safety Director for Harrah's Club was the second speaker in opposition to A.B. 329. He stated that he had been involved on behalf of Harrahs Club, in many dealings with the NIC for the past 5 years. That the employee accidents at Harrah's Club was now listed as an item of cost, and the reason for the accident was also listed. That they attend every hearing the NIC has on Harrah's employees. That their company understood that the passage of A.B. 329 would cost them in the neighborhood of 20 to 30% in increased premiums. Their experience had been that the NIC was very fair in their hearings. They believed that 80% of the accidents that happened in the State of Nevada, were caused by an "employee's unsafe act". They felt that they were subjected to "double jeopardy" on the part of representation of their employees at any Commission hearing, if their premiums were raised to pay for that representation. That they would actually be subsidizing lawyers to sue them. That in his judgement, most of the injured employees of Harrah's have been fairly treated by the NIC. He noted that, upon occasion, Harrah's had fought the NIC on behalf of their employees; they had lost sometimes, but they had made clear that Harrah's position is to protect their employees. He stated that he was talking about 5 year's experience with Harrah's, with 3 to 5 hundred claims per year, and that with that and his previous industrial experience, he believed that companies tried to see that their employees were fairly compensated, and that their benefits were adequate, in the case of any accident. He noted that most companies were tired of extra costs as they were paying plenty already.

Chairman Banner asked him if he had any substantiation for the 20 to 30% increase figure he had used? Mr. Hill replied that they were merely basing it on their past experience, but could not substantiate it.

Assemblyman Schofield asked him to explain his allusion to "providing the money for someone to turn around and sue you". Mr. Hill replied that it they pay the premiums, they would be required, under the NIC Act, to pay for the attorney.

Assemblyman Schofield asked him who he thought should pay this cost, if not the employers? Mr. Hill replied that he felt that when the claimant was not represented by an attorney, the NIC bent over backward to make a fair judgement.

A.B. 329 (Cont.)

Robert McCoy, representing the Gibbens Company, was the third speaker in opposition to A.B. 329. He stated that he was opposed to the bill for the following reasons:

1--They had attended hundreds of NIC hearings; that it was the NIC's open and obvious policy, and was so stated in the Act, that all "benefit of the doubt will be given to the claimant". this had happened time and time again; that the vast majority of claimants receive all the benefits to which they are entitled, as determined by "expert medical opinion". He noted that a "layman" is not qualified to judge what the extent of a medical disability is, and that he does not think an attorney should be able to change that determination by being present.

2--"All" NIC money comes from employer premiums and the employers feel that the NIC is "their" insurance company because they provide all the money for it's operation.

3--The NIC charges back to the appropriate employer, on a monthly "charge back statement" every dollar that is spent on behalf of workers injured while working for that employer. All the medical, dental, hospital bills, and bills for artificial appliances, bills for transportation for the worker to receive medical or psychiatric care, all awards and benefits paid, and considerable rehabilitation services.

He stated the he had seen the NIC pay for towing a workman's house trailer from Elko to Verdi, have it blocked up and skirted and anchored, to conform to Washoe County code. On the same claim, the NIC bought the man gasoline to fill the tanks on his two pick-up trucks, and stocked his trailer with groceries. His employers did not object to those payments, very loudly, but they did object when they learned that the man had stripped the trailer, pawned everything he was able to, and left the state. He asked that the Committee bear in mind that all of these expenses were charged back to the employer.

4--They felt that A.B. 329, if it was passed as written, would mean that employers would find on their monthly "charge back" statements attorney's fees, and in effect, the employers would be subsidizing suits against themselves.

5--He felt that the NIC was very inclined to be swayed when an attorney was present at a hearing, and that his presence adds 10 to 15% to the benefits awarded.

6--In his opinion, A.B. 329 would drive up premiums considerably over the next year or two, as the attorneys became aware that representing NIC claimants was a lucrative field, probably in the neighborhood of 20 to 30%. That this was certainly not the right economic time to drive up the employer's costs.

A.B. 329 (Cont.)

He asked the Committee if this bill was really designed to help the worker, or to enrich the attorneys?

Assemblyman Getto asked Mr. McCoy about the 20 to 30% increase figure he and Mr. Hill had mentioned. If there was any experience in other states or any figures that might clear up the discrepancy between their estimated increase, and the 4% increase estimated by the NIC in the fiscal note on A.B. 329?

Mr. McCoy replied that he had worked 2 years in the State of Washinton and that when he was there the State had a "monopolistic law" similar to that of Nevada; that they did pay attorney's fees via a State agency, and that 9 out of 10 insurance claims did end up in court. That Washington had since repealed that law.

Assemblyman Benkovich read from the fiscal note on A.B. 329, as follows: "In California, $24,000,000.00 is awarded as attorney's fees by the Workman's Compensation Fund". 1 out of 16 claimants in the northern part of the state, and 1 out of 13 claimants in the southern part of the state, retained an attorney. Attorney's fees amount to 11% of the of the cost of "permanent partial disability" compensation. Nevada would have a potential far in excess of 2,500 cases per year which would be litigated if this bill were passed. The direct cost in attorney's fees in fiscal year 1976 could approximate $1,100,00.00. Additional NIC administrative expenses in the form of added legal staff and supporting personnel, and extended "temporary disability" benefits as a result of litigation could increase the cost of the bill to $2,000,000 per annum". Yet the impact on employer premium would approximate only 4%. He asked Mr. McCoy how he could reconcile the above with the 20 to 30% increase he had quoted?

Mr. McCoy replied that he had not seen the fiscal note, but that it was obvious that it did not take into account the additional medical reports that would be used, at considerable cost to the employer, if an attorney was involved. That it also ignored the increased amount of the awards that would be made, if an attorney was present, which he felt amounted to approximately 10%. He felt that the fiscal note was far too conservative, and that as time went on, the premiums would tend to rise. At the present time, there are not many attorneys taking NIC cases, because it is difficult for them to get paid, when the claimant receives an award that is paid to them monthly over their working lifetime; but that if the attorneys could be paid immediately, in addition to any award that the claimant would receive, there would be many more of them taking NIC cases. He stated that he felt A.B. 329 was mostly a matter of economics for the attorneys.

Raymond Bohart was the fourth speaker in opposition to A.B. 329, and stated his objections as follows.

1--He would like to point out one thing, in addition to the comments already made by the opponents of A.B. 329.

A.B. 329 (Cont.)

We are talking about no less than a 4% increase, and the total premium increase for fiscal year could be as high as 20 to 30%; just to establish as an "added benefit" of the Nevada Industrial Insurance Package "free legal services". He did not think that this was a function that should be handled by the State Insurance Fund.

2--We are already looking at a 3 to 6% increase for the existing programs to become effective July 1, 1975, and the cost of this bill, plus the other bills that are being considered by this Committee, will bring the costs to the employer far too high. Too many employers exist in a marginal situation now, and if there are too many of these extra costs, that will be the end of them.

Chairman Banner made the following statement regarding the costs figures that had been discussed.

1--Since my job as "risk management officer" causes me to be involved with 1% of the premium dollar in the State, I have heard these figures regarding costs before. In the 1973 session, the same kind of cost figures were flying around. 4%, 8%, etc., there was even a statement in a newspaper from the Chairman of the NIC that the increase would be as high as 18%. At the time, I asked him 18% of what?

2--From my own experience, I managed one account and at that time our premium was $1.80 per hundred units of payroll. After the 1973 session it went up to $2.10, and now has gone back down to $1.76, with a 75% modification. I do not think that this decrease is due to any over-exertion on our part in enforcing our safety program.

3--Our percentage is less now than it was in the beginning, and it is a lot less than everyone said it was going to be, so when figures on costs are discussed, I take them with a very large grain of salt.

4--I do work in that area, I am familiar with the claims experience on individual accounts, since I also handle a fund for the police in Clark County.

5--For the past 10 years, Clark County has paid $1,250,000.00 in, and at the end of that time, we have had about $500,000.00 in claims expense, so the County experience ratio is excellent.

6--I would suggest that some of the other employers take a closer look at their own accounts, because it is insurance that they are paying for, and insurance is based on "frequency and severity".

A.B. 329 (Cont.)

Mr. John Reiser added the following comments to Chairman Banner's statement.

1--You gave the information on your account. As you point out, the 18% estimated increase does not apply to most of our accounts. Some of the employers, who worked closely with our rehabilitation program, actually had decreases in their rate. All of these costs are based on some accounts increasing 100% and other accounts going down. There are accounts, who have worked closely with our rehabilitation program who are saving hundreds of thousands of dollars a year.

2--There is absolutely no question that any figure we use is only an "average" figure.

Chairman Banner stated that he was referring to the fiscal note read by Assemblyman Benkovich. He was concerned that people would take that as a "statement of fact", when it is not a fact at all.

Mr. Reiser agreed that:

1--The fiscal note was not an absolute fact; that the NIC was asked to come up with a fiscal note within 5 days for the "attorney fee" bill; that he had contacted some local attorneys asking for help in coming up with some figures, but that no one had replied as yet as to what they charge, etc.

2--That he had been in telephone contact with several other states that have trouble with litigation, and are trying to work out those problems.

3--The figures that I have given are probably on the low side, because they are based on a California statute, that limits attorneys fees to 25% of the "increase" over and above what was originally offered.

4--There has been a recommendation considered by the Labor and Management Board that our benefits should be increased, whether the claimant is represented by an attorney or not. If they are increased, Nevada would be in the top 10% of the states in the country, and possibly even higher than that, as far as our benefits are concerned.

5--I believe that the question before this Committee is whether they want the additional benefits paid to the injured worker, and let him have a choice as to whether he wants to retain an attorney or not, or to provide those benefits directly to the attorney.

Chairman Banner asked what the Federal Government allowed on a compensation account.

Mr. Reiser replied that he could get the answer for the Committee, but did not know it at the moment.

Chairman Banner asked if the Federal Government paid attorney fees.

A.B. 329 (Cont.)

Mr. Reiser replied that the Federal Government was concerned about the attorney fee problem; that they are sending questionnaires around to each of the states trying to get as much information as possible. This matter is being studied now by the Federal Government, as well as why some of the Canadian systems are achieving such good results.

Gordon Rice spoke again in favor of A.B. 329. He stated that he believed that there had been a misconception about industrial insurance by the opponents of A.B. 329, and made the following statements:

1--Workmen's compensation is a two-edged sword; it is not solely a benefit to the injured worker; the employer also has a great benefit.

2--If a workman lost a leg in the course of his employment with Southern Pacific, or whoever, he has a scheduled recovery, which is minimal; that if he could not get at least $100,000.00 for the workman in a legal action for the loss of a leg, he would turn in his license.

3--The injured workman waives his right to sue the employer, and has to take what the statute provides for him. That is the two-edged sword. The employee gets a lesser amount, assured, but the employer also gets "protection against a common-law action", which would probably consist of a lot more money than the injured workman gets under the Act.

4--With regard to "attorneys fees" he stated: If the award is a fair one; if the injured workman gets what he is entitled to from the Commission, or the "Hearing Officer", he does not need an attorney, and will not hire one. All the attorney can get is anything he gets for the workman "above" what the Commission has offered. If he does not get any more, he does not get any fee. He asked if the Committee did not consider that very fair?

5--There is pending now in court a schedule of cases, some 21 of them, if anyone believed that having an attorney did not help injured workmen, which the trial court took judicial notice of. In those cases the Commission had offered a total of about $20,000.00. Through action in court, by their attorneys, those claimants were awarded about $400,000.00. That demonstrates that attorneys do help. They are not needed when the Commission does its job, and awards what is reasonable and proper. They are only needed when more is needed.

6--All that A.B. 329 will assure is that the attorney will get a fee out of what is recovered over and above what the Commission has offered.

A.B. 329 (Cont.)

Bob Alkire spoke again in opposition to A.B. 329. He stated that he had a little trouble bleeding for the legal profession when, as a result of an action in Ely, Nevada, one of the largest total claims ever awarded in the world was paid. It was for $3,600,000.00 for which the legal firm received a fee of $1,200,000.00. Under A.B. 329, they could collect any NIC fee in addition to that.

John Reiser pointed out, in answer to Mr. Rice's remarks, that A.B. 329 had no such provision as the California bill he referred to, in regard to the 25% increase. This bill has no such limit.

John Viano, President of the Carson City Builders Association spoke next in opposition to A.B. 329. He stated that they were already paying premiums to insure the employee; that the attorney fee bill would add an extra cost, and he didn't know where the money was going to come from. He noted that the NIC premiums have already doubled in the past couple of years.

Leonard T. Howard, speaking in favor of A.B. 329, made the following statements:

1--That there had been a lot of points made against this bill by the employer's organizations, but not one mention made of how an injured employee, who had been rejected by the NIC to have recourse, other than retaining an attorney.

2--The person who is important in the discussion is the worker. He is the one who has been denied his rights. He is the one who is not getting what he is entitled to, under the law.

3--The only way he can obtain what he justly deserves is by retaining an attorney. If he cannot afford to do that, he has absolutely no chance of being properly represented. That the two statements made repeatedly by the opponents of the bill were:

a. It is only a way for the attorneys to make more money.
b. It is going to cost us more money.

4--Nevada is one of only 2 states (Maine being the other one) that does not have statutes that provide remuneration for an attorney or agent who represents a worker. In all the other 48 states, the employers are paying the way. Many states have their own insurance carriers, they do not have an NIC program. Their insurance premiums fluctuate according to the number and size of the claims they have. However, the employers do pay that cost, and it is a legitimate cost.

5--It is the right of the employee to have representation. The gentleman from Harrah's Club said that he thought "most claimants had gotten a fair shake" from the NIC. How about the ones that didn't get a fair shake? The ones that didn't do anything about it because they had no means of doing so?

A.B. 329 (Cont.)

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These are people who have been injured; cannot work; and are living on 2/3 of their former income. Their same bills come in every month, all 3/3 of them, not just 2/3. How can you expect these people to take money out of that 2/3 to hire an attorney to protect their rights?

6--Every time a bill is proposed, on any subject, every opponent predicts that it will open up a "Pandora's box", and every one is going to run to an attorney. One person said that 9 out of 10 cases would end up in court; what happened is that 1 out of 10 cases ends up in court.

7--If the NIC is doing their job, the worker is going to be satisfied. Basically, we are not talking about attorney's fees. We are talking about the right of the worker to be represented, and not have to take the cost of that representation out of what he is supposed to be getting for his own support.

Assemblyman Getto asked Mr. Howard the following question, "In speaking about Nevada being one of only two states that do not provide attorney's fee benefits, are you speaking of the states that have the exact same insurance program, or are you speaking about some states that allow private insurance carriers?"

Mr. Howard replied that some of these states have combination programs, but in all of those other 48 states, there is some provision for an attorney, C.P.A., or any other designated agent who may represent the workman to be paid. As to the matter of costs in the matter of attorney's fees. If the attorney or agent has done a good job and proved to the Commission that its assessment was wrong, that has been a benefit to the Commission. To have a proper determination should be the Commission's objective to see that the worker gets whatever he is entitled to under the law. The Commission should seek the help given them by any attorney or agent representing a worker, to determine what is fair and equitable to the worker. The agent is only a conduit through which the worker can ascertain and obtain what he is entitled to under the Act, when the Commission fails to give it to him.

Assemblyman Schofield asked Mr. Howard after what point in the claims proceedings he thought a workman was forced to obtain counsel. What reasons are there that bring him to a point where he can go no further, and is forced to hire legal counsel?

Mr. Howard replied that, from his personal experience, the point was reached when the initial claim is denied, as not being covered by NIC. At that point the worker has been denied coverage, and we successfully argued that it was an accident that should be covered by NIC; at that point, they reopened his case and allowed his claim.

Most attorneys feel that the workman should go through the first Commission hearing, and see what the NIC offers in the way of an amount or a percentage. If they are not happy with that, and don't think they have had fair treatment, then hire an attorney. That would be the normal, standard time for an agent or an attorney to appear on behalf of the injured workman; from the first time that he is turned down, or is not awarded what he thinks is fair, that would be the time to obtain counsel, so that he could get the facts and prepare an appeal.

Chairman Banner stated the following regarding a recent case he was familiar with.

1--A lady who worked as a switchboard operator fell off a stool and injured herself.

2--9 months, and 4 NIC hearings later, it was finally determined that her injury had occurred in the course of employment.

3--She needed an attorney immediately after the first hearing.

Gordon Rice, speaking in favor of A.B. 329, made the following statement: There is a serious controversy in the courts now about when the attorney has to enter the case. If the lower court's judgment is sustained in the Supreme Court, where it is now pending; after the Commission acts on a claim, the next step is a suit against the Commission in District Court, and that requires an attorney, and can only be filed by one. The worker has no alternative, he has to hire an attorney and file suit against the Commission.

Since there was no one else who wished to speak on A.B. 329, Chairman Banner stated that the morning's agenda, which had not been completed, would be heard on Tuesday, April 1, at 9:30 A.M.

The hearing was adjourned at 4:25 P. M.

Respectfully submitted,

Betty Clugston
Acting Secretary

ASSEMBLY

AGENDA FOR COMMITTEE ON Labor and Management

Date March 27, 1975 Time 2:30 P.M. Room 131

Bills or Resolutions to be considered	Subject	Counsel requested*
A.B. 303	Deletes provision which permits Nevada Industrial Commission to delegate certain authority to its staff.	
A.B. 304	Provides that injured employee's industrial insurance compensation is reduced only by net damages recovered in action against third person.	
A.B. 337	Requires Nevada Industrial Commission to supply to person seeking compensation, one copy of all records in its possession which pertain to such person's claim.	
A.B. 329	Provides for payment of attorney fees for services rendered claimant before Nevada Industrial Commission, appeals officer, or district court.	

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*Please do not ask for counsel unless necessary.

Trial Ct.'s Reversal of Ind. Comm'n Award of Benefits, Held, Rev'd, Evidence on the Triggering Role of Emotional Stress Is Sufficient to Sustain the Award. WIRTH v. INDUSTRIAL COMM'N, 312 N.E.2d 593 (Ill. 1974) [ATL Member Jack Ring, Chicago, was counsel for claimant.][For a discussion of causal connection between emotional strain & heart attacks, see 1A Larson, Workmen's Compensation, §38.65 (Matthew Bender & Co. 1973); 28 NACCA L.J. 296 (1961-62).][For a discussion of heart attacks in workmen's compensation law, see annot. at 17 ATL News L. 79 (March 1974); see also 32 ATLA L.J. 227-46 (1968); Larson, "The 'Heart' Cases and Suggested Solution," 65 Mich. L. Rev. 441 (1967); Marcus, "Compensability of Heart Disease — Legal Aspects," 1962 Ins. L.J. 341.]

LUMP SUM PAYMENT — DUE PROCESS — Employer's Challenge to Statute Empowering Courts to Award Lump Sum Payments Rejected — Plaintiff, widow of deceased workman, settled with workmen's compensation carrier for amount of compensation benefits & thereupon filed motion to receive payments in lump sum pursuant to statute making such awards discretionary with ct. On appeal from lump sum awarded to plaintiff, employer challenged (1) constitutionality of the statute as a violation of due process because lump sum payment does not give employer benefit of termination by death or remarriage, & (2) insufficiency of guidelines providing only for "the best interests of the parties entitled to compensation" — Held, Where Defendant's Obligation Was Established Upon Decedent's Death, Future Contingencies of Possible Benefit to the Employer, Which May or May Not Happen, Do Not Constitute a Deprivation of Due Process, Nor Are They to Be Taken into Consideration in Formulating Guidelines Because "the Issue Is What is Best for the Employee or His Survivor Now." LIVINGSTON v. LOFFLAND BROS. CO., 524 P.2d 991 (N.M. App. 1974) [For additional material on lump sum awards, see 3 Larson, Workmen's Compensation §82.70, "Lump-Summing" (Matthew Bender & Co., 1973)(1974 Supp. p. 68); Nebraska Workmen's Compensation Symposium, 4 Creighton L. Rev. 235 (1970-71).]

THIRD-PARTY ACTIONS — COMP. CARRIER'S LIEN — ATTY'S FEES — Claimant, who received $20,870 in workmen's comp. benefits for the death of her husband, proceeded to sue for wrongful death & recovered a $150,000 settlement from 3d-party tortfeasor. Compensation statute stated that comp. carrier has a lien on wrongful death award "to the extent of total amount of compensation awarded" — Held, Statutory Provision Is a Violation of Due Process & Equal Protection and Att'ys Fees Equitably Charged to the Collection of the Lien Must Be Subtracted from the Amount to Be Recovered by the Carrier. KOUTRAKOS v. LONG ISLAND COLLEGE HOSPITAL, 355 N.Y.S.2d 718 (Sup. Ct. 1974) [Cf. Sheris v. Travelers Ins. Co., 491 F.2d 603 (4th Cir. 1974), 17 ATL News L. 130 (April 1974); Gillotte v. Omaha Public Power Dist., ___N.W.2d___ (Neb., No. 38497, Jan. 5, 1973), 16 ATL News L. 135 (April 1973); 2 Larson, Workmen's Compensation §74.32 (Matthew Bender & Co., 1974).]

THIRD-PARTY ACTIONS — Prior Rulings of Ind. Comm'n — COLLATERAL ESTOPPEL — Prior Determination by Ind. Comm'n of Defendant's Co-Employee Status, Held No Bar to Third-Party Action Where Plaintiffs' Allege That Different Party Was Defendant's Employer — In airplane crash where one passenger was killed & the other injured, both were employees of movie production co. & were awarded workmen's comp. benefits. In their third-party wrongful death & personal injury action against defendant-decedent-pilot's estate & defendant-owner of airplane, plaintiffs alleged that defendant-owner was also decedent-pilot's employer. Defendant argued that in a prior separate action by pilot's widow for workmen's comp. benefits from movie production co., Ct. of App. had previously aff'd Ind. Comm'n's ruling that pilot was a "special temporary employee" of movie production co. & awarded widow benefits. Arguing that prior Ind. Comm'n. ruling makes plaintiffs & defendant's co-employees, barring the third-party action, defendant was granted summary judgment which was rev'd by instant ct. — Held, Neither Res Judicata Nor Collateral Estoppel Applicable as a Defense — The agency issue may be relitigated where different plaintiffs are suing different defendants & where standards for determining the question of employer-employee relationship vary greatly between ordinary tort law & the more liberal workmen's comp. law. Therefore Ind. Comm'n. determination of pilot's "special temporary" status was not determinative of his "permanent" employee status. Additionally in instant case the two different determinations would not be mutually exclusive. FINNERMAN v. McCORMICK, 499 F.2d 212 (10th Cir. 1974) [ATL Member Robert A. Dufty, Denver, Colo., was counsel for plaintiffs.][For material on the issue of the binding effect of a decision in a workmen's comp. proceeding,

DATE: March 27, 1975 LABOR & MANAGEMENT COMMITTEE P.M. Session

LEGISLATION TO BE CONSIDERED: 303-304-337-339

continued from AM session - additional speakers who did not sign in are listed below.

PLEASE PRINT LEGIBLY

Only those persons who have registered below will be permitted to speak. All persons wishing to present testimony will please sign in below, stating their name, who they represent, and whether they wish to speak for or against the matter to be considered by the committee. Witnesses with long testimony on matters before the committee are encouraged to present their information in writing and make oral summary limiting it to five minutes or less. If you wish to speak more than five minutes please contact the committee chairman or the committee secretary. Questions from other than committee members are not in order and are not allowed. No applause will be permitted.

FOR

NAME	REPRESENTING
Leonard T. Howard, Sr.	Attorney-at-Law
Frank King	Attorney-at-Law (For NIC)
Gordon W. Rice	Goedert & Rice--Attorneys-at-Law
Robert McCoy	Gibbens Company
Raymond Bohart	Federated Employers of Nevada
Bob Alkire	Kennecott Copper
Warren Goedert	Goedert & Rice--Attorneys-at-Law
Don Hill	Harrah's Club

AGAINST