

Approved AW Douville 3-22-88
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:07 a.m. on February 24, 1988 in room 526-S of the Capitol.

All members were present except:

Representative R.D. Miller - Excused

Committee staff present:

Jerry Ann Donaldson, Kansas Department of Legislative Research
Jim Wilson, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Representative David Heinemann
Marty Snyder, Kansas Trial Lawyers Association
John Rathmel, Director Workers Compensation, Department of Human Resources
Bill Clawson, Chief of Benefits, Department of Human Resources

Representative Heinemann acknowledged a similar bill, presently in conference committee, to H.B. 2832 and stated his reason for introducing this bill. It is recognition of the backlog of cases particularly in western Kansas. The administrative law judge (ALJ) in that area lives in Liberal and must spend a great deal of time in transit to serve the area. Qualifications for the ALJ are the same as those for a district court judge although the salary is considerably lower. Presently the docket in that area is full and a new case has a waiting period of three to four months and two to three months for a motion. The backlog consists of 60-70 cases. The judge is trying to do 20 finalization of awards cases per month which is almost double what other Kansas ALJs are doing. The other six ALJs are distributed as follows: Overland Park - 2, Wichita - 2, Kansas City - 1, and Topeka - 1, giving the one judge in western Kansas a large area to cover.

Marty Snyder, Kansas Trial Lawyers Association, testified in support of H.B. 2832. The chairman asked if special judges were being utilized. Ms. Snyder replied that Judges Briscoe and Small were doing preliminary hearings which were beneficial in some ways but Judge Ward still had to write the awards. Currently he has 43 pending submitted cases. Her testimony is attachment #1.

The bill to which Representative Heinemann referred in his testimony is a bill that originated in the senate and authorized one ALJ, came over to the house where it was amended to three ALJs but did away with the position of Director of Workers Compensation. It was then submitted to conference committee where it remains. The amendment to the bill was a floor amendment.

John Rathmel, Director of Workers Compensation, DHR, testified in support of H.B. 2832. attachment #2. The caseload reported to the department from western Kansas as of January, 1988, showed 49 claims on the docket 30 days or older submitted for decision and still pending with the oldest claim dated July 28, 1987. In the Topeka-Salina district, there were 32 claims 30 days or older submitted for decision that were pending and out of time with the oldest dated September 17, 1987.

According to the department's budget requests at the close of the FY:

Year	Claims submitted & still pending	Number out of time
1986	97	45 (46%)
1987	214	142 (66%)

During 1987 special ALJs were used on 50 claims in the areas having the largest backlogs. There was some negative reaction from attorneys on both sides - claimant's attorneys were leery of special ALJs not familiar with the cases and respondent's attorneys didn't want their clients paying a special ALJ's fee when their clients were ordered to pay. Some private attorneys who donated their time to help did

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
 room 526-S, Statehouse, at 9:07 a.m./~~p.m.~~ on February 24, 1988.

not receive pay. The director acknowledged poor docket management on the part of some of the judges but attempts have been made to correct this. He offered to meet with anyone having questions on this subject at any time and to share what has been done to correct this situation.

The director stated the department is in "dire deep trouble" and hoped it had been clearly demonstrated. He cited statutory limitations to seven ALJs but hoped the law would be amended to three more, being added one by one, as necessary, through budgetary control on a yearly basis. The department is in a "whipsaw" situation - the request for three additional ALJs goes to the governor but is eliminated because of statutory limitations. When the budget goes before the legislature, the request is disallowed because the budget isn't approved by the governor.

Representative Green asked if all areas were full or if some were more so than others. The response was that all are at capacity, some areas being more burdened due to the state of the economy. Approximately one year ago jurisdictions were changed to even out caseloads.

Representative Sifers acknowledged the problem and asked if retired district judges could be assigned to any of the caseloads and if there was anything the committee could do regarding the conference committee.

The chairman responded the committee could do as it saw fit regarding this bill but could do nothing in regard to the conference committee. Retired judges could be used if it were written into the law. The director, noting the difference in the administrative versus the judicial branches, suggested that participation on the part of the judges would have to be voluntary. He felt retired trial judges would not be challenged by these cases, noted they would have to familiarize themselves with a new area of law and suggested they may not find the remuneration commensurate with the time involved.

Representative O'Neal cited the evolution of the hearing process over the last ten years. He stated hearings, by agreement, were now being held by deposition, wondered if the preliminary hearing was not the most important hearing and an appropriate place to assign ALJs. The director responded this could be done but noted the potential difficulty being a special judge is not an employee of the administrative agency and therefore not subject to control by the agency except for defrocking.

Bill Clawson, Chief of Benefits, DHR, gave further information on the work sharing plan. Missouri began its plan late summer, 1987. There are 76 plans in effect with 65 different employers affecting about 1500 employees. It is considered a successful arrangement. There is not a high rate of participation - there are 120,000 employers in the state.

Texas' law was enacted at a time when their trust fund was going broke and the economy was depressed. In Texas there are approximately 330,000 liable employers and all were assessed a surcharge due to the trust fund balance. A provision was written in permitting the charge to be raised another 2%, currently an employer who is marginal, with the surcharge and the work sharing, can have his tax rate raised 9%. This is prohibiting employers from participating in the program. Currently there are 140 employers and 3,000 workers participating. Attachment #3 is an explanation of work sharing, examples of how it would work, advantages and disadvantages. Mr. Clawson asked to amend recommended initiation and termination dates presented before the committee February 11, 1988, as follows: no payments the week beginning prior to April 1, 1989, and sunset it so there would be no payments for any weeks after April 1, 1992. The basis for the initiation date is to train and indoctrinate employees and get publicity to the employers. The basis for the sunset is to keep the law "clean" if participation dwindles to nothing.

Representative Acheson asked if either of the states contacted had had enough experience with this plan to determine if it were cheaper than paying full benefits to an employee who has been laid off. Mr. Clawson responded Missouri and Texas plan to remove the additional tax placed on an employer not eligible for a rate or who is deficit. In the proposed provision, that is eliminated and Mr. Clawson foresees no tax increase or expenditure. This plan spreads the costs but bears monitoring.

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Representative Patrick referred to the term "affected unit" and cited an example of an employer wishing to do job training with skilled workers (as a unit) rather than unskilled workers (as a separate unit). Mr. Clawson affirmed that the design of the plan is that all workers are affected not one unit(s) over another. The representative asked if there was a benefit to the employer or part of the purpose of this bill would allow the employer to retain the skilled employee rather the unskilled employee on the job. Mr. Clawson responded that he was unaware of any such plan or thought, had not seen it done and would not favor such a plan.

The meeting was adjourned at 9:53 a.m. Next meeting of the committee will be February 25, 1988, 9:00 a.m. in Room 526-S.

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date February 24, 1988

Name	City	Representing
Michael Wolf	Topeka	
Marty Snyder	TOPEKA	KTLA
BILL CLAWSON	"	DHR
JOHN RATHMEL	"	DHR/ WC
Ray Siehnel	"	DAR
Jim McHaff	"	Kansas AFL-CIO
Wayne Maichel	"	Kansas AFL-CIO
Henry Helser	"	Kansas AFL-CIO
Richard Watson	"	KTC#

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PRESIDENT

GARY D. McCALLISTER, Topeka
PRESIDENT-ELECT

RUTH BENIEN, Overland Park
VICE PRESIDENT, EDUCATION

DENNIS L. HORNER, Kansas City
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VICE PRESIDENT, PUBLIC AFFAIRS

DWIGHT CORRIN, Wichita
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TREASURER

MARTY SNYDER, Topeka
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JOEL GOLDMAN, Overland Park

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WILLIAM GRIMSHAW, Olathe

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PATRICK MICHAUD, Wichita

KENNETH J. MOORE, Kansas City



KANSAS

TRIAL LAWYERS ASSOCIATION

112 West Sixth, Suite 311, Topeka, Kansas 66603, (913) 232-7756

February 23, 1988

Members of the House Labor and Industry Committee:

Mr. Chairman, Members of the Committee, I want to thank you for allowing me to testify today on House Bill 2832 concerning the addition of an administrative law judge.

My name is Marty Snyder, I am a practicing attorney here in Topeka, working mainly with workmans compensation claims. I am appearing today on behalf of the Kansas Trial Lawyers Association and we ask you to support HB 2832.

As a rule, my cases are heard by Judge Ward, whose district extends from Topeka to Salina and all the towns inbetween. In the last ten years his case load has tripled. The result of this backlog of cases, is clients, in dire straits for their settlement, surviving for months, or even years, without any compenstation. Many have been forced into bankruptcy or onto the public assistance payroll.

House Bill 2832 is certainly necessary to help relieve the backlog of cases that is preventing the system from working the way that is was intended.

Once again, on behalf of the Kansas Trial Lawyers Association, I ask your support of HB 2832.

Thank you, and I am willing to answer any questions that you may have.

Sincerely,

Marty Snyder
Marty Snyder
Kansas Trial Lawyers Association

HOUSE LABOR & INDUSTRY
Attachment #1
02/24/88

KEVIN P. MORIARTY, Overland Park

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KAREN L. SHELOR, Overland Park

ALLEN SHELTON, Hill City

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TIMOTHY SHORT, Pittsburg

CRAIG SHULTZ, Wichita

DONALD E. SHULTZ, Dodge City

JACK W. SHULTZ, Dodge City

RALPH E. SKOOG, Topeka

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BROCK R. SNYDER, Topeka

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ARTIE E. VAUGHN, Wichita

MICHAEL WALLACE, Overland Park

H. REED WALKER, Kansas City

WES WEATHERS, Topeka

RANDALL WELLER, Hill City

ROBERT V. WELLS, Kansas City

SAMUEL WELLS, Kansas City

D. W. WHEELER, Marion

JOHN L. WHITE, Leavenworth

BRADFORD WILLIAMS, Kingman

STEVEN R. WILSON, Wichita

T. MICHAEL WILSON, Wichita

J. FREDRICK ZIMMERMAN, Kansas City

JAMES B. ZONGKER, Wichita

The information gathered during the last fiscal year once again indicates an increase in the level of activity of all services provided by the Division of Workers Compensation. The number of accidents reported in FY 87 increased slightly from 66,767 in FY 86 to 67,386 in FY 87. This is the fourth consecutive year in which the number of accidents reported increased from the previous year.

Litigation activity continues to increase adding further to the already unmanageable workload. In FY 87, 4,282 Applications for Hearing were filed, a 3% increase from the previous record-breaking year. Pending claims at the close of the fiscal year increased 8% in FY 87 to 5,669 claims. The Administrative Law Judges produced 874 awards in FY 87 compared to 738 in FY 86, an increase of 18%. In my judgment, the statistics indicate the Administrative Law Judges are working harder producing more awards than they ever have and are still losing ground in their efforts to provide quality, timely services. For their efforts in producing more awards than ever before, they now face a significantly greater workload at the beginning of FY 88 than they did at the beginning of FY 87.

The following chart compares the workload and production of the average Administrative Law Judge in FY 75 and FY 87. An observer could call the increase dramatic; an Administrative Law Judge would call it oppressive.

WORKLOAD AND PRODUCTION OF THE AVERAGE
ADMINISTRATIVE LAW JUDGE

	<u>FY</u> <u>1975</u>	<u>FY</u> <u>1987</u>	<u>Percentage</u> <u>Increase</u>
Pending Cases	233	810	(263%)
Applications for Hearing	287	612	(113%)
Applications for Preliminary Hearing	45	176	(291%)
Preliminary Orders	22	126	(573%)
Awards	75	123	(64%)
Motions to Implead	26	151	(481%)

Legislation introduced by the Senate in 1987 calling for an additional Administrative Law Judge was amended in the House of Representatives to an increase of three Administrative Law Judges. The legislation is currently in conference committee and, hopefully, agreement can be reached and the legislation passed in some form.

What is Work Sharing?

Work sharing is an alternative to laying off employees, whereby a larger group of workers simply work shorter hours and are compensated for their lost work time with partial unemployment insurance benefits. Thus work sharing offers an alternative to laying off workers and enables affected workers to receive unemployment insurance payments under a broader set of conditions than those that apply to regular unemployment insurance. The program has been implemented in 13 states. This program may be viewed as a workforce stabilization program to be used during temporary periods of economic downturn that are expected to have only short-term effects on the labor needs of employers.

How Does It Work?

To illustrate how work sharing can be used, consider an employer which must temporarily make a 20% reduction in its workforce. It may, of course, opt for laying off a selected 20% of its employees. As an alternative, it may elect to reduce all workers' hours by 20% (e.g. one day per week) in lieu of layoffs. All affected workers would then be eligible for 20% of their weekly unemployment insurance benefits to compensate for the 20% reduction in hours. All workers would work 80% of their previous work hours and would, through the unemployment insurance supplement, receive more than 80% of their previous take-home pay. No worker would lose a job.

Case #1: Average weekly hours: 40

Work hours loss: 8 (20%)

Weekly UI benefit: \$200.00

20% X \$200.00: \$40.00 (work share supplement)

Case #2: Average weekly hours: 40

Work hours loss: 16

Weekly UI benefit: \$150.00

40% X \$150.00: \$60.00 (work share supplement)

HOUSE LABOR & INDUSTRY
Attachment #3
02/24/88

Case #3: Average weekly hours: 38

Work hours loss: 12

Weekly UI benefit: \$79.00

$31.5789\% \times \$79.00: \24.94 \$24.00 (work share supplement)

What Advantages does the Program Offer Employers?

The program aids employers in that the production process runs more smoothly, costs of hiring and training new employees during economic recovery are reduced and the employer is in a position to respond more quickly to either adverse economic conditions or to economic recovery. All of these factors lend themselves to increasing productivity for the employer.

What Advantages does the Program Offer Employees?

The program allows employees to be protected from the financial burden of job loss in addition to allowing the claimant to maintain job-specific skills. In most cases, employees also are allowed to receive full benefits when participating in work sharing. Total job loss may lead to a wide variety of broader social benefits such as reduction in payments made under other transfer programs (food stamps or AFDC). The program also allows for greater government tax collections on wages. A final benefit is that the plan reduces the psychological costs of job loss.