

Approved AW Douville 3-28-89  
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:05 a.m./~~p.m.~~ on February 28, 1989 in room 526-S of the Capitol.

All members were present except:

- Representative Gomez - Excused
- Representative Lawrence - Excused
- Representative Patrick - Excused

Committee staff present:

- Jerry Donaldson - Legislative Research Department
- Jim Wilson - Revisor of Statutes' Office
- Kay Johnson - Committee Secretary

Conferees appearing before the committee:

- A.J. Kotich - Director of Administration, Department of Human Resources

Chairman Douville called the meeting to order at 9:05 a.m.

HB 2474 - Employment security law; services performed by free lance pilots does not constitute employment.

A.J. Kotich, Director of Administration, Department of Human Resources, mentioned to the committee that this piece of legislation had not come through the Employment Security Advisory Council. Mr. Kotich said that if the individual is an independent contractor, then there is no need to pay employment security taxes. He stated that he didn't know if the Department of Human Resources was against the bill, but was concerned that excluding individuals by legislation takes away the authority of the agency to make that determination.

Chairman Douville said that under present law if the individual is really an independent contractor then he won't be charged employment taxes. Mr. Kotich responded yes.

Representative Schauf explained that the bill was drafted at the request of one of her constituents who runs a flying service in Wichita, Ballard Air. The problem is that there are a number of airplanes available for charter, but only a few pilots on his staff. Occasionally, because of a commitment to keep a plane staffed for the KU Medical Center, he has planes available for charter but no pilots. He has a list of pilots who have contacted him and are willing to fly a charter. Ballard Air will provide this list to someone who has called to charter a plane. He has a plane available, but leaves it up to the client to contact the pilot. The Department of Human Resources says the pilots are employees of Ballard Air, and not independent contractors, and this is the problem. Jim Wilson added that on occasion Mr. Ballard will provide a pilot to someone who has an airplane.

Representative Lane asked if part of the problem was that it is hard to distinguish the regular employees from the other pilots. Mr. Wilson said yes. There was discussion about who carries the workers' compensation on the pilots. Mr. Wilson said some of the pilots from the list are incorporated as free lance pilots. Some are full-time employees somewhere else who take time off to fly. Ballard Air does carry workers' compensation on three full-time employees. Representative Whiteman asked if the KU Medical Center paid the pilot or Ballard Air. Mr. Wilson said the contract specifies that they pay Ballard Air.

Representative Hensley asked what section of the law was this bill amending. Mr. Wilson responded that it is amending the definition section of the Employment Security Law.

Representative Hensley asked Mr. Kotich if the Department of Human Resources was for or against the bill. Mr. Kotich responded that in 1985 there was a hearing on this particular employer and the pilots were found to be employees.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,  
room 526-S, Statehouse, at 9:05 a.m./~~p.m.~~ on February 28, 1989.

Representative Hensley asked Mr. Kotich to tell the committee about the Employment Security Advisory Council. Mr. Kotich said that most of the major legislation in the last 10-12 years has been initiated by the Employment Security Advisory Council which is represented by members from labor, industry and the private sector. They meet throughout the year and discuss the entire Employment Security Law. It is also used as a vehicle to address problems. Citing the many exemptions listed in the Employment Security Law, Representative Hensley said most of them came about independent of the Employment Security Advisory Council. The exemptions all came about because individuals were determined to be independent contractors. Representative Hensley said he is concerned about whether it can be determined what an independent contractor is for the purpose of unemployment compensation. Mr. Kotich responded that the Supreme Court has defined that, but the court has held that each case should be based upon it's own facts and circumstances. Mr. Kotich stated that the Employment Security Advisory Council is not the only way to introduce changes to the law. There are 22-24 factors used in determining whether or not someone is an independent contractor.

Representative Whiteman asked what was the primary factor in the Ballard case in determining the pilots were employees and not independent contractors. Mr. Kotich responded it was the right to control. Representative Whiteman said if a person contracted only for the plane and contracted with someone separately for a pilot, then that might be a possible solution. Mr. Kotich said yes, possibly.

Representative Schauf asked how to establish being an independent contractor. Mr. Kotich said whether a person is advertising, investing in the business, supplying material, supplying maintenance, etc. In this particular case Ballard Air pays all expenses incurred by the pilots, none of the pilots used by Ballard advertised to the community as free lance pilots, none have any investment or opportunity for investment in Ballard Air nor opportunity for profit or loss in the company, their services are performed in the usual place of business and pilots did not have right of control. Representative Whiteman said she didn't see how advertising could be a determining factor. Mr. Kotich said it is not the only factor. By calling the same pilots over and over they become extensions of the business.

Representative Holmes, citing his 20 years of flying experience, said many free lance pilots are retired and just want to be in the air and keep up their flying hours. In that case they are certainly independent contractors.

Chairman Douville said if this bill is passed, what is to stop the employer from telling current employees that he now considers them to be independent contractors.

Representative Webb pointed out that this bill doesn't affect just Ballard Air, but every situation in the state, and also, the more exemptions there are, the more opportunity there is for people to pay by cash and not pay state and federal taxes.

In closing, Representative Schauf said if an individual wants to be an independent contractor, the state should allow that.

HB 2506 will be taken up tomorrow, stated Chairman Douville.

The minutes of February 8, 20 and 22, 1989 were presented for approval. Unless there are objections by tomorrow morning, they will stand approved.

The meeting adjourned at 9:51 a.m. The next meeting of the committee will be at 9:00 a.m. on Wednesday, March 1, 1989 in room 526-S.

