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SUPPORT

House Appropriations Committee

Government Operations Division

Rep. David Monson, Chairman

Rep. Mike Brandenburg, Vice Chairman

Testimony of Zachary Greenberg

Interim Commissioner of Labor

N.D. Department of Labor and Human Rights

January 16, 2023

I. Introductory Summary

Chairman Monson, Vice Chairman Brandenburg, and members of the House Appropriations Committee, Government Operations Division, my name is Zachary Greenberg, and I was appointed as the Interim Commissioner of the North Dakota Department of Labor and Human Rights, just last week. I am a licensed attorney in the State and prior to my appointment, I worked as a Legal & Policy Advisor in the Office of Governor Burgum. While in that capacity, I was fortunate to have the Department as a part of my portfolio. It's crazy for me to think that just two years ago, I would often sit in on this committee during my legislative externship through UND School of Law. I am grateful to Governor Armstrong for his faith in me, and to the committee for the opportunity to appear before you today.

Chapter (Ch.) 34-05 of the North Dakota Century Code (N.D.C.C.) created the North Dakota Department of Labor and Human Rights and prescribes the powers and duties of the Commissioner of Labor (Labor Commissioner). The Department's statutory duties can be most concisely summarized as ensuring citizens can live, work, and prosper in North Dakota. It is my deeply held belief that the mission of the Department is an essential service to the public. To fulfill our mission and adequately serve our state's businesses and individuals, I am requesting a biennial budget of \$3,495,709.

II. Agency Overview

We have three key areas in which we provide services to the public - Human Rights, Wage & Hour, and Public Education:

A. Human Rights

The Human Rights Division administers and enforces the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) and the North Dakota Housing Discrimination Act (N.D.C.C. ch. 14- 02.5).

Under these anti-discrimination laws, the Department receives and investigates complaints alleging discrimination in employment, housing, public services, public accommodations, and credit transactions. As required by law, the Department emphasizes conciliation to resolve complaints, provides administrative hearings on complaints where there is probable cause to believe a discriminatory practice has occurred, and fosters prevention of discrimination through education about the rights and responsibilities provided under North Dakota's human rights and housing laws. Finally, the Human Rights Division handles complaints of retaliation under North Dakota's "whistleblower" law (N.D.C.C. § 34-01-20) and Public Employee Relations Act (N.D.C.C. § 34-11.1-04.1).

In addition to receiving and investigating complaints directly from individuals who believe they have been victims of unlawful discrimination under state anti-discrimination and whistleblower laws, the Department's Human Rights Division also investigates cases for the U.S. Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC).

B. Wage & Hour

The Wage and Hour Division enforces minimum wage and overtime laws and regulations (N.D.C.C. ch. 34-06). In addition, the Division enforces North Dakota's laws and regulations dealing with equal pay for men and women, child labor, unions, employment agencies, and wage collection (N.D.C.C. chs. 34-06.1, 34-07, 34-12, 34-13, and 34-14). The Wage and Hour Division receives and investigates claims of unpaid wages or overtime, failure to pay minimum wage, misclassification of employees, and other general complaints that North Dakota's labor laws are being violated. The Division also reviews requests to issue youth employment certificates for 14 and 15-year-old workers.

C. Public Education

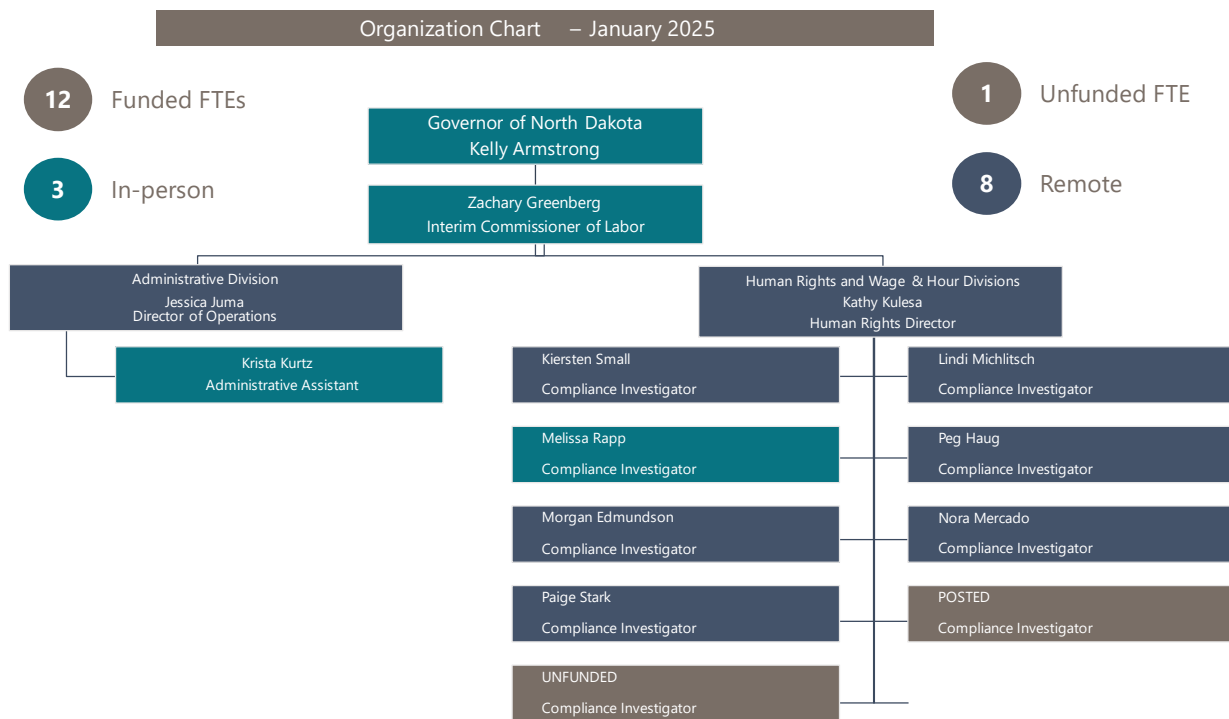
In addition to the Department's enforcement duties, the Commissioner of Labor is required to "improve working conditions and living conditions of employees and advance their opportunities for profitable employment . . . foster, promote, and develop welfare of both wage earners and industries in N.D. . . . and promote friendly and cooperative relations between employers and employees." To do this, the Department continues to broaden awareness of its enforcement areas with the goal of reducing violations and increasing compliance in North Dakota. These areas include working with groups representing human rights, businesses, labor unions, professional, and non-profit organizations. The Department continues to provide speakers and trainers for conferences, workshops, schools, employers, labor organizations, businesses, landlord and tenant organizations, government agencies, and other community groups. The Department has made strides in educating the public and I continue to identify additional ways to provide information, such as newsletters and presentations, to both employers and employees in North Dakota.

III. Organizational Chart

The Department currently has 13 FTEs, one of which remained unfunded in the last biennium. While one FTE is currently vacant, I want to emphasize that all positions were filled until a resignation occurred last week. The Department has already posted the vacancy and received multiple applications. We will move forward with the selection process once the posting period closes.

Our primary focus for the first quarter of 2025 is to fill our remaining compliance investigator position. A key goal of mine is to increase the Department's claim processing volume by reducing the time it takes to complete each claim. I look to continue the great work started by former Commissioner Svihovec to modernize the Department and increase efficiencies at every opportunity. There are certain duties, however, that require employee time and cannot be automated. In

particular, the investigations require interviews of witnesses to ascertain the facts of each case. There is also a significant amount of time required of investigators to review records and draft determinations. Thus, only through adequate staffing can the Department decrease the time it takes to render determinations. The Department’s present organizational structure is outlined in the following graphic:



The current proposal simply requests funding for our 13th unfunded FTE for a compliance investigator. The department’s goal is to further reduce case duration and increase the number of cases process.

IV. Agency Accomplishments

Claims – From January 1, 2023, through December 31, 2024, the Department received and closed the following cases: As shown, the Department closed 36 more cases than it opened, further reducing the backlog. Additionally, the Department closed over 200 more cases during the 2023

biennium compared to the 2021 biennium.

Claim Type	Opened	Closed	Damages Recovered
Wage Claims	653	679	\$571,059.90
Employment	394	322	\$528,600.42
Retaliation	83	87	\$119,812.00
Housing	52	62	\$41,327.63
PS/PA/Credit	19	15	\$8,350.00
TOTAL	1,201	1,165	\$1,269,149.95

Public Education – The Department provided education through at least 40 training seminars and by having information publicly available on our website, including: (1) Required Employer Posters; (2) Printable Brochures; (3) Public Speaking Events; and (4) Educational Booths. Furthermore, the Department also launched “Workplace Wise” an outreach program that provides small business owners and employees the opportunity to engage with the department to promote employer & employee relationships and improve working conditions. The first round of presentations was held in October in Bowman, Watford City, Kenmare & Garrison. The next presentations are scheduled for February 26-27 in Napoleon, Lisbon, Mayville & Harvey.

V. Financial Audit Findings

The Department’s most recent financial audit, conducted and concluded in July 2024, resulted in a clean audit with no outstanding financial findings.

VI. Agency Challenges

In the past, the Department faced difficulty in finding adequate applicants for the Compliance Investigator positions. At this time two years ago, the Department had not one, but five vacant compliance investigator positions. Our most recent posting just last week has already resulted in multiple applications. With this said, it has still been a struggle to find qualified applicants. It is my understanding that, in many other states, Compliance Investigators are either licensed attorneys or

paralegals. This isn't true for North Dakota but given the highly technical nature and requirement of complex legal analyses, a competent Compliance Investigator applicant will need to have a bachelor's degree and experience conducting investigations. The importance of finding qualified applicants in our one vacant, and one unfunded compliance investigator roles is paramount to eliminating our backlog of cases.

VII. Budget History

2019-2021 Biennium

The Legislature appropriated the Department \$2,875,850, which was comprised of \$2,395,169 in general funds + \$480,681 in federal funding authority. Included in these figures is \$118,659 in one-time funding for Phase 1 of a paperless project. The Department was authorized for 14 FTEs (1 unfunded, 1 partially funded).

2021-2023 Biennium

The Legislature appropriated the Department \$2,911,054 which was comprised of \$2,394,186 in general funds + \$516,868 in federal funding authority. Included in these figures is \$147,717 in one-time funding for Phase 2 of a paperless project. The Department was authorized for 13 FTEs (-1 FTE from the prior biennium; 1 FTE unfunded to grant equity adjustments).

2023-2025 Biennium

We are grateful that the 68th Legislature appropriated the Department \$3,107,546, just under 94% of our total request for the biennium. This was comprised of \$2,604,148 in general funds + \$503,398 in federal funding authority. The Department was authorized for 13 FTES, with one unfunded.

VIII. Budget Request

The Department requests \$3,495,709, comprised of \$2,965,443 in general funds + \$530,266 in federal funding authority. The Department is also requesting to retain its 13 FTEs, and fully fund

our 13th to fully staff the agency and increase claim processing and further reduce backlog.

This request will adequately allow the Department to become competitive with applicants and decrease the time it takes to process claims and issue determinations. This request also allows the Department to ensure Compliance Investigators attend necessary training to increase their competencies and provide the highest quality services to North Dakota.

IX. Conclusion

The Department's duties impact every citizen in North Dakota through employment, housing, and other key areas administered by the agency. I humbly request the Committee demonstrate its support for the statutory duties granted to the Department by the Legislature and recommend a Do Pass for the requested \$3,495,709 budget and 13 funded FTEs. Thank you for your time and service to North Dakota.

