

ND AFL-CIO 1323 E. Front Ave. Bismarck, ND 701-223-0784

RE: Comments by interested persons regarding Workforce Safety and Insurance issues.

To:
Representative Berg, Chairman,
Industry, Business and Labor Committee;

From:
David L. Kemnitz; President
ND AFL-CIO

February 7, 2008

Most if not all of the Interim I, B & L Committee members have heard hundreds of hours of testimony given by WSI, business, labor representatives and injured workers over the last several sessions. Today that process begins again.

How will this committee, charged with reviewing so many years of change and conflict within North Dakotas Workers Compensation system, sift through all and every WSI claim that had been or is now in dispute? Even if the committee studies a percentage of these claims, the task will be daunting.

In response to the work proposed by this committee, I respectfully request the following consideration:

The Legislative Council should contract with an attorney(s) who represents injured workers in WSI claim disputes.

The attorney(s) should be charged with the duty of expert witness to the I, B & L committee explaining the various NDCC statutes that bring the greatest amount of harm and or obstruction to justice in WSI claim adjudication, with and from the perspective of North Dakota's injured worker complaints.

This request is in the interest of saving time for all parties involved and most importantly to bring expert witness before the committee on the issues concerning claimants involved in North Dakota's Workers' Compensation system.

To insure concise and to the point information the Committee may wish to consider giving additional instructions that provide for prior consultations with injured workers on complaints they wish to have addressed. This approach, coupled with pertinent and appropriate verification of the Laws and WSI Rules and Regulation that appear to bring chronic and repeated challenges to claims adjudication, would bring valuable information to the I,B &L Committee.

A final point is that WSI has its own legal department and they have always been available for briefings and after the hearing consultation. This same opportunity should be given to the injured workers.

Testimony should also be requested from the Administrative Law Judge service, in particular to bring that entities observations of hearings, practices and outcomes experienced from ALJ hearings concerning WSI cases.

Thanks for the opportunity to visit about the proposed WSI claimant testimony to the Interim IBL Committee.

Committee members have observed over the years that claimants can and do express their opinions of how feel they were treated, ignored, misdiagnosed, unfairly denied benefits or inappropriately cut off from benefits. Claimants experience various levels of anger, continued pain and suffering, loss of work and lack of opportunity in providing for themselves and their families.

Most of us that have or had claims, get fixed, recover, and go back to work. However, severely and permanently disabled workers, suffering from on the job injuries go through many stages of slow recovery, setbacks, non-compliance issues with WSI rules and expectations and in general find themselves in a system they neither fully understand nor want to be in. Many of these people start with an injury that has not yet manifested itself to the fullest extent of impact to the injured workers, their families and their future.

Injured workers, it seems, show disbelief that they are truly that injured, when it does hit home they show anger and frustration, then turn to hope that it will be resolved and they can return to normal circumstances. The end result, if recovery is slow, limited or results in devastating loss, is or tends to be despair, bitterness and defiance. The families of these people suffer as well and experience their own grief. This is shown in testimony when the spouse works up the nerve to speak out in legislative hearings.

A system that frustrates or ignores this only complicates matters.

The recurring and building log of claimants with similar complaints is evidence that enough of the right reform has not been accomplished.

Legislative intent can and does have impact far beyond what is often understood at the time of its passage.

WSI has been heard to say at times, that the law limits their options when cookie-cutter mandates are written to statute. I don't for a minute believe that WSI is free of blame when certain bills were drafted, crafted and passed that created some of the problems. Claimants who did spend the hours needed to testify, explain their experiences and express their ideas for reform were often, as not, thanked and WSI then had the last word.

The 2005-06 Interim Worker's Compensation Review Committee solicited publicly for claimants who had exhausted all legal avenues for relief but were left with on going problems from established and accepted but closed, denied or limited claims. Applicants were screened, the Legislative Council and Committee reviewed cases and if accepted by the committee the claimant was assisted in presenting their story. My observation of this assisted presentation is that the claimant was much better prepared and the presentation was succinct as well as factual with records to back up the claimants' testimony.

However a shortcoming in all this was that in the end WSI had final and sole rebuttal through its legal staff. Claimants are generally not law trained, so claimant response was limited to what they understood. At times WSI, in asserting their side of the story, was not adequately challenged nor examined by

like educated participants with opposing views. This is principally true in that claimants did not have or could not afford to have legal counsel present. Cost was only one of the issues limiting this situation. The Worker's Compensation Review Committee, like any committee, would discuss these hearings after comment time was closed and of course on days when no testimony was taken. Again, WSI was always present or available to answer questions but other and differing legal viewpoints were not available nor was public comment solicited.

This committee is charged with determining how well the system is working and whether WSI is achieving what it was intended to achieve. Recurring themes and issues for the committee to be aware of include whether an injured employee and that injured employee's family have recovered and to what extent they have recovered.

The workers' compensation system provides for a tradeoff and the committee should evaluate whether injured employees are receiving their part of the bargain--sure and certain relief. The committee should consider the economic sustainability of the injured employee as well as the economic security of that injured employee and family.

In closing I have copied below my testimony to the Workers Compensation Review Committee on Wednesday June 27, 2007, I ask that your committee consider the same questions:

Mr. Kemnitz stated that NDCC Section 65-01-01 provides that for injured workers and their families and dependents there will be sure and certain relief provided to the exclusion of every other remedy. He said as the committee moves forward, he would request that committee members ask the following two questions:

1. Does North Dakota provide adequate and proper mechanisms to ensure "sure and certain relief" to employees and their families?
2. Does the agent charged with administration and delivery of "sure and certain relief" do so, is this done without prejudice, and it is done within the letter and spirit of NDCC Section 65-01-01?

Provided for I, B&L Committee consideration by:

David L. Kemnitz; President

ND AFL-CIO

A large, stylized handwritten signature in black ink, likely belonging to David L. Kemnitz, is written over the text of the document. The signature is fluid and cursive, with a prominent 'D' and 'K'.