

BWC Board of Directors

Thursday, March 27, 2008, 9:30 AM

**Ohio Center for Occupational Safety and Health
Conference Room B
13430 Yarmouth Drive
Pickerington, OH 43147**

Members Present: William Lhota, Chairman
James Harris, Vice Chairman
Charles Bryan
Alison Falls
Philip Fulton
Jim Matesich
Larry Price
David Caldwell

Members Absent: Robert Smith
Ken Haffey

Call to order

Mr. Lhota called the meeting to order at 9:35 am, Thursday, March 27, 2008. Roll call was taken by the scribe, Tom Woodruff. All members were present except for Ken Haffey and Bob Smith.

Board Training March 27, 2008

House Bill 100 mandated training continued Thursday morning.

Presentation was made by Joy Bush, Executive Director of Employer Management Services on the subject of central safety services, including loss prevention efforts. A power point presentation was included, and is incorporated into the minutes. Mark Garver and Jerry Anderson participated in the presentation. The Safety and Hygiene Department is subsidized by a separate fund, as provided by the Ohio Constitution. The department has approximately 156 employees. Philip Fulton inquired as to a ten year staffing trend for the department. Ms. Bush stated that the department has had the same funding for personnel over the years, therefore, staffing has remained stable, with the maximum being around 175-180 people. Mark Garver, Safety and Hygiene Superintendent, further discussed courses offered by the department. Ms. Falls inquired as to how courses were picked. Mr. Garver indicated they are determined by field feedback, changes in standards and class evaluations. Web based training is now available. Mr. Harris asked for examples of vendors used for classes. Examples are basic construction and confined space. Specific certifications are needed to teach the classes. Discussion was made of the Ohio Safety Congress, which is the largest regional congress. It is being held April 1 through April 3. There has been a growth of safety councils and associated discount programs. Publications are to supplement safety programs. The department has two libraries for external and internal customers. Discussion was made of OSHA onsite consultation versus PERRP.

Mr. Lhota inquired as what happens when a serious hazard is identified. Mr. Garver indicated that they meet with the employer, enter into an agreement to eliminate the hazard, and follow up to see that the elimination has been made.

Discussion was made of Ms. Ryan's objectives, including engaging employers with poor safety records, measuring results, reducing frequency and cost, developing best practices, and preferred customer market matters. Mr. Fulton inquired as to whether or not the Bureau contacts employers who are found to have committed a violation of a specific safety requirement. Mr. Garver stated yes. Mr. Harris inquired as to whether or not the Bureau goes in to meet with these employers post accident. Mr. Garver stated that the Bureau has no right of entry, but tries to work with these employers. Mr. Matesich inquired as to whether there was a penalty for assistance refusal. Mr. Garver stated no.

There is currently an emphasis being placed on fall protection and trenching. Mr. Lhota inquired as to whether or not the department renders services to self insuring employers. Mr Garver responded generally no, but consulting services are available. Discussion was made of the OSHA Alliance for staffing agency issues. Mr. Harris raised the issue to as whether or not there was confusion with regard to record keeping, or if agencies were avoiding record keeping and premium payment. Mr. Garver indicated that employer compliance is working to resolve this issue. Mr. Caldwell made the point that it is not whether or not someone is liable, but who is liable. Ms. Bush indicated that the Bureau investigates employer noncompliance and assesses premiums.

Jerry Anderson, Youngstown service office manager discussed field safety services for the fifteen offices. Discussion was made of consultant specialists, including loss prevention strategy, and the process for hazard assessment. Ergonomists are used by the Bureau to identify and eliminate risk factors. Mr. Lhota inquired as to the relationship between Safety & Hygiene and the auto research facility. Mr. Garver stated that it was unknown. Industrial hygienists prevent occupational diseases, and conduct air and noise sampling surveys. Mr. Harris inquired as to how many BWC personnel have safety and hygiene backgrounds. Ms. Bush stated many do. Mr. Price would like to see data on safety and hygiene successes and look for improvement. Ms. Bush responded that she had case studies of prior success stories that could be made available to the Board. These case studies will show that where investments are made for safety, employers have reduced the rate of injury. Mr. Matesich stated that if an employer can see gains from safety and hygiene investment, and this information is shared, then employers can see reductions in their premiums.

Recess:

The meeting was recessed by Mr Lhota, at 11:10 am.

BWC Board of Directors

Friday, March 28, 2008, 8 AM

**Ohio Center for Occupational Safety and Health
Conference Room B
13430 Yarmouth Drive
Pickerington, OH 43147**

Members Present: William Lhota, Chairman
James Harris, Vice Chairman
Charles Bryan
Alison Falls
Philip Fulton
James Hummel
Jim Matesich
Robert Smith
Kenneth Haffey
Larry Price
David Caldwell

Members Absent: None

Others Present: Ronald O'Keefe, Fiduciary Counsel
John Williams, Assistant Attorney General

Call to order

Mr. Lhota reconvened the meeting at 8:00 am.

Roll call

Roll call was taken and all members were present.

Minutes of Feb. 29, 2008 Meeting

Upon motion by Mr. Fulton and seconded by Mr. Price, the minutes, were approved 11-0.

Upon motion by Mr. Price, seconded by Mr. Harris, the meeting agenda was modified to reflect that subsequent to the Administrator's briefing, the Board would enter into executive session. Subsequent to coming out of executive session, the Board meeting would be adjourned and the Board members would take a guided tour of the OCOSH facility. Roll call was taken. The motion passed 11-0.

Mr. Matesich stated that based upon a letter of opinion, and advice from fiduciary counsel, Ron O'Keefe, there is no conflict of interest with respect to Mr. Matesich's Board membership, and his Board membership with the Wholesale Beer and Wine Association.

If any issue arises, Mr. Matesich shall recuse himself from voting and deliberating on that particular issue. Mr. Matesich has resigned his Board membership with the Ohio Association of Wholesale Distributors.

COMMITTEE REPORTS

Actuarial Committee:

Mr. Bryan reported on committee matters. The committee held a meeting Wednesday, March 26, 2008, for an educational session. Thursday, a meeting was held to discuss private and public employer rate matters. A 5% decrease for public employer rates was deferred to April. MIRA II July 1, 2008 implementation was discussed. There will be additional reports in April. A motion was made by Mr. Bryan and seconded by Mr. Hummel, as follows: that the Bureau of Workers' Compensation Board of Directors consents to the Administrator fixing private employer rates beginning July 1, 2008, to achieve an overall five percent decrease in the total collectible premium rate from the previous year. This motion also consents to the Administrator preparing private employer rate rules consistent with this policy. Following a roll call vote, the motion passed 11-0.

Audit Committee:

Ken Haffey discussed Audit Committee matters. The committee, along with James Barnes, BWC General Counsel, and Don Berno, Board Liaison, reviewed a form to assist the Board with understanding the five year rule reviews. Tom Sico, BWC Associate General Counsel reviewed the form as well. Two rules were acted upon.

Motion was made by Mr. Haffey, and seconded by Mr. Fulton, as follows: that the Bureau of Workers Compensation Board of Directors approve changes to the public employment risk reduction program rules of Chapter 4167 of the Administrative Code pursuant to the five year rule review. This motion consents to the Administrator retaining twenty rules, amending nineteen rules, and rescinding fourteen rules of Chapter 4167 as presented here today. Following a roll call vote, the motion passed 11-0.

Further action on 4123:1-3 construction rules was tabled for next month's meeting.

Mr. Haffey met with Deloitte-Touche, and Joe Bell, Director of Internal Audit. Mr. Bryan inquired as to the process of internal audit. Mr. Haffey indicated that the Bureau internal audit process remains unchanged, as Mr. Bell has been involved in it from the beginning.

Governance Committee:

The ethics disclosure form was discussed, to ensure compliance with ethics requirements. An opinion, with regard to any potential conflicts of interest with regard to trade associations and fiduciary responsibilities on Boards was discussed. Members were advised to include all Board memberships when completing Question 7 of the Financial Disclosure form.

A motion was made by Ms. Falls and seconded by Mr. Price as follows: that the Bureau of Workers Compensation Board of Directors, approve the Administrator evaluation process as outlined with the February 26, 2008 memorandum, and the form attached to the memorandum. It was agreed that Board members would use the broad interpretation of Question 7 in the Financial Disclosure statement and disclose all board memberships.

Following a roll call vote, the motion passed 10-0. Mr. Fulton abstained from the voting process.

Investment Committee:

Mr. Smith reported that the committee is beginning a six to eight month process of evaluating investment strategy. Mr. Smith thanked Ms. Falls for chairing the Investment Committee meeting, Thursday, in his absence. Mr. Smith stated the Committee had a good review of changes in the portfolio valuation over the past month and the year-to-date. There was also a discussion of the role of investment risk tolerance.

Joint Investment and Actuarial Committee:

There was discussion on the joint meeting the committee held with the Actuary Committee. Ms. Ryan discussed the discount rate presentation, noting that it was a robust discussion. Everyone has a solid understanding of the role the discount rate plays in formulating strategy. With a 5% discount rate there will be minimum fluctuation in the rate from year to year, prudent consideration of investment returns, and a focus on organizational goals. Ms. Falls stated that the 5% discount rate is a prudent decision. Motion was made by Ms. Falls, and seconded by Mr. Bryan as follows: that the Bureau of Workers Compensation Board of Directors approve and adopt the Administrator's recommendation that a 5% discount rate be selected for the rate year beginning July 1, 2008. Following a roll call vote, the motion passed 11-0.

MONTHLY FINANCIAL REPORT

Tracy Valentino, Chief of Fiscal and Planning, presented to the Board. A power point presentation was included, and is incorporated by reference, into the minutes. Cash collections are substantial in January, February, July and August, as premium billing is twice per year. Mr. Bryan inquired as to the liability associated with the hospital case (provider reimbursement schedule). Mr. Barnes spoke briefly on the issue. The Bureau must pay the difference between the pre October 2005 rate and the post October 2005 rate. The difference represents a liability recorded by the Bureau. Mr. Bryan expressed concern over operating loss. Ms. Valentino indicated that liability and assets have been discounted, and BWC counts on investment income to balance the operation. Ms. Valentino explained that part of the operating loss as of February 29, 2008 occurred from the reduction in premiums collected from state agencies. Operating loss is not as important as the operating ratio. Other financial statements were discussed by Ms. Valentino.

ADMINISTRATOR BRIEFING

Information with regard to the April 2008 public forum is available on the web. This shall be a robust forum on provider issues. With respect to legislation, the Coal Workers' Pneumoconiosis Fund allocation to the mine safety program is supported by the governor. This legislation will allocate interest on the Coal Workers' Pneumoconiosis Fund to the Ohio Department of Natural Resources for mine safety. Legislation has not yet been introduced. The Bureau may need to develop rules to implement any possible legislation. There should be a comment period for the Board. According to the Chief Actuarial Officer, John Pedrick, the fund is well-funded. There may be a one to two week timeframe for getting materials to directors. Ms. Falls wants information on the undiscounted asset value of the fund. Mr. Price is interested in who the sponsor may be. Further, Mr. Price wants the bill and analyses of bills when they become available. Mr. Harris supports the intent of the legislation; however, he emphasizes the importance of safety to prevent

serious accidents, as the American coal industry increases production to meet world demand. Mr. Fulton emphasized the importance of paying close attention to uncodified sections of legislation to avoid using the fund as a rainy day fund.

Upon motion by Mr. Lhota, seconded by Mr. Harris, the Board entered into executive session, to discuss pending litigation with representatives of the Attorney General's office, and to discuss Bureau personnel matters. Roll call was taken, and the motion passed 11-0.

There was a motion by Director Lhota to come out of executive session. This motion was seconded by Director Harris.

Roll call: 11-0 in favor of going back into regular session.

Mr. Lhota asked that the record reflect that Mr. Fulton was not present for the executive session.

Mr. Fulton asked the Board of Directors to motion to request a formal opinion from the Attorney General asking whether the Administrator has discretion to make charges to the state insurance fund. Mr. Fulton stated the reason for this request was to seek legal advice from the Attorney General to protect the Board of Directors and the Administrator from potential problems which might occur with employers whose risk accounts are charged due to the Ohio Hospitals Association settlement with BWC. Mr. Fulton indicated that he strongly believes that the Administrator has the authority to make decisions regarding charges to employers' accounts. Mr. Fulton made reference to former BWC Administrator Young's treatise on workers' compensation and Young's belief that the Administrator has this legal authority. BWC Chief Legal Counsel Barnes cautioned the Board of Directors to be careful to not speak of pending litigation unless the Board of Directors is in executive session.

Ms. Falls asked Administrator Ryan if she thought a formal Attorney General opinion would be beneficial to the Board of Directors. Administrator Ryan stated that in many instances a formal opinion from the Attorney General would be helpful, but she could not predict whether it would be helpful in this specific case. Administrator Ryan emphasized that she wanted to make sure that she followed the law in making these types of decisions. Mr. Barnes indicated that a formal legal opinion may take two to four months for the Opinions Section of the Attorney General's office to complete.

Mr. Price asked Mr. Barnes whether an informal Attorney General opinion is binding. Mr. Barnes indicated that informal opinions are issued by the Attorney General in a shorter period of time than a formal legal opinion. Assistant Attorney General Williams indicated that an informal legal opinion would entail slightly less research than a formal legal opinion but that a formal Attorney General opinion would go to the Opinions Section of the Attorney General's office and would entail detailed research. Mr. Barnes indicated that the research is the same, so the informal opinion should not differ from the formal legal opinion of the Attorney General. Mr. Barnes also indicated that BWC had already obtained guidance from the Attorney General on this issue.

Mr. Matesich asked if the Attorney General's opinion would contain advocacy by the Attorney General's office. Mr. Barnes indicated that the Attorney General would offer an independent review of the law.

Mr. Fulton made a motion which was seconded by Mr. Caldwell which would allow the Board of Directors to delegate authority to Mr. Lhota to ask the Attorney General to research Mr. Fulton's request regarding the authority of the Administrator to make charges to the State Insurance Fund. Mr. Lhota, Mr. Fulton and the Administrator will work on the specific language of the request.

A roll call vote was taken, and the motion carried by an 11 – 0 vote.

Adjournment

There was a motion to adjourn at 1:20 p.m. by Mr. Caldwell, which was seconded by Mr. Harris.

Minutes taken by Tom Woodruff, BWC Staff Counsel and Ellen Wentzel,
BWC Legal Counsel