

**Massachusetts Workers' Compensation
Advisory Council Minutes**

September 21, 2004

Department of Industrial Accidents

160 Winthrop Avenue

Frank Janas Training Room

Lawrence, MA 01843

Present: Chairman Thomas M. Jones. CM: Robert Banks; Edmund C. Corcoran, Jr.; Mickey Long; Carol Falcone; Kenneth J. Paradis, Jr.; Inez Leonardo (Tony Frias); Peter Scantalides (Business & Technology).

Also Present: DIA: Jack Tynan, Director of Administration; Richard Morris, First Deputy Director of Administration; William Taupier, Deputy Director of Administration and EDP; Gayann Wilkinson, Director, Office of Safety; Dan DeMille, Lawrence Regional Manager; Marcy Goldstein-Gelb, Executive Director-MassCOSH.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: Vice-Chairman Paul Byrne; CM John A. Pulgini; CM: Jeanne-Marie Boylan; Bruce Cochrane; Joan Lenihan (DLWD).

Agenda:

Chairman's Welcome

DIA Update

- Stop Work Orders - William Taupier, Deputy Director of Administration & EDP
- Budgetary Matters - Jack Tynan, Director of Administration
- Judicial Update - Daniel O'Shea, Senior Judge

Action Items

- Minutes - August 11, 2004

Changes to the Safety Grant Program

Gayann Wilkinson, Director - DIA Office of Safety

Daniel DeMille, Regional Manager (Lawrence)

Dying for Work in Massachusetts

Marcy Goldstein-Gelb, Executive Director - MassCOSH

Miscellaneous

Chairman's Welcome

Chairman Jones conducted today's meeting. He requested that all participants introduce themselves to Attorney Peter Scantalides, an Ex-Officio member representing the Department of Business and Technology.

DIA UPDATE

Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics (see attached report). Total stop work orders issued: 28; total compliance investigations completed: 1,416; total fines collected: \$38,949. The total SWO fines collected in FY'04 is \$343,528. Mr. Taupier noted that these numbers are final as of August 31, 2004.

Mr. Taupier noted that the collection of fines was unusually high due to the collection of a \$30,000 fine from AAA Tree Climbers in Saugus. Mr. Taupier stated that this company had five employees who were not on the payroll and were avoiding both taxes and workers' compensation coverage.

Mr. Taupier explained that an investigation was initiated against AAA Tree Climbers in April after receiving an anonymous tip. An investigator was sent out to do a field investigation, which resulted in a Stop Work Order being issued. The owner of the business made a commitment to the DIA that they would obtain a workers' compensation policy. The DIA would later learn that the company reopened and continued to operate illegally without insurance. The DIA went back to the worksite and issued a default SWO. Ultimately, the owner was taken to court and a criminal complaint was filed against him. Mr. Taupier reported that AAA Tree Climbers came into compliance just last month after accumulating a \$30,000 fine.

CM Banks suggested that the DIA find a way to publicize the incident to help bring attention to the problem of non-compliance.

CM Long mentioned that businesses that do not pay for workers' compensation insurance save a significant amount of money which allows them to under bid on contracts. He explained that employers who purchase insurance end up footing the bill for those injuries of uninsured employers resulting in higher premiums. CM Long suggested that a new approach to correct this inequity needs to be reviewed.

CM Long further stated that a New Hampshire bill had recently passed that requires all construction-related employers to provide the Commissioner of the Department of Labor with a workers' compensation compliance statement stating: "the total number of employees employed during the 4-month period preceding the request and shall state the total number of hours the contractor, subcontractor, and independent contractor compensated such employees during the 4-month period

and which hours apply to the appropriate National Council on Compensation Insurance (NCCI) classification code applicable to the scope of work performed."

CM Long suggested that the Council consider drafting a similar bill in scope to present to the legislature.

Chairman Jones requested that CM Long provide the New Hampshire law to the Executive Director so it can be shared with other Council Members.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for August 2004: 1,203. Total number of cases filed for August 2003: 1,305. Total number of cases filed for fiscal year 2005: 2,396. Total number of cases filed for fiscal year 2004: 16,394. A downward trend in cases filed continues. Total number of First Report's filed for August 2004: 2,807. Total number of First Report's filed in fiscal year 2005 (to date): 5,103. Total number of First Reports filed in fiscal year 2004: 36,739. Total number of on-line filings in August 2004: 230. Total number of First Reports filed on-line using the DIA's Information Portal on the Internet: 1,401.

Mr. Taupier proceeded with his Section 65 update. Estimated uninsured claims (§65) filed for fiscal year 2005: 28 (this number is still being investigated). Uninsured claims paid by the Trust Fund for fiscal year 2005: \$758,459. Total number of Section 65 claims filed for fiscal year 2004: 213. Of those cases, 194 were actual uninsured injuries. Total number of uninsured claims paid by the Trust Fund for fiscal year 2004: \$4,415,278 (books were closed on August 31, 2004).

Mr. Taupier offer the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2005: 79. Number of §37/37A petitions paid in fiscal year 2005: 0 (109 claims have been approved for payments totaling \$783,810). The amount paid on these claims in fiscal year 2005: \$0. Number of §37/37A petitions filed in fiscal year 2004 (to date): 365. Number of §37/37A petitions paid in fiscal year 2004: 460.

The amount paid on these claims in fiscal year 2004: \$19.7 million. COLA reimbursements to insurers in FY'05 (to date): \$136,696. COLA reimbursements to insurers in FY'04: \$19,806,728.

Budget/Personnel Issues

Mr. Taupier stated that the DIA has hired one Judge and one employee in Claims Administration. The total number of positions filled by full-time employees at the DIA (including the WCTF) as of August 2004: 276 (243 DIA employees, 33 WCTF employees). The DIA has no contract employees. Five temporary employees are being utilized within the DIA as of this report.

Judicial Update

Senior Judge Daniel O'Shea updated Council Members on the information contained within the DIA's vital statistic report (see attached). Conference Queue: 1,418; Hearing Queue: 1,590; Reviewing Board Inventory: 153; Impartial Exams: 393 (5 waivers).

Council Members asked how long it would take an injured employee to advance to a hearing when there are 1,400 cases in the queue. The Senior Judge provided a brief overview and stated there are many complicating factors to be

considered including, the number of judges on-line and the number of conferences in the queue. Senior Judge O'Shea stated that he would begin reporting the conference timeframes in his monthly updates.

Senior Judge O'Shea reported that there has been an increase in the number of impartial physicians interested in being placed on the DIA's impartial roster. The DIA has aggressively conducted outreach initiatives targeting various regions and specialties. The Senior Judge stated that he believes the DIA is processing approximately 40 new applications, with Cape Cod and the western part of the State included.

With respect to the judicial appointment process, the Senior Judge stated that Judges Horan, Sullivan and Rose have begun hearing cases. The Senior Judge stated that Judges Purcell, Harris and Walker have left the DIA. The DIA has placed an advertisement in this week's Lawyer's Weekly looking for candidates to fill the two remaining vacancies: 1 ALJ position and 1 AJ position. The Senior Judge noted that ALJ candidate Bernie Fabricant interviewed in front of the Governor's Council last Wednesday and will be voted on tomorrow.

ACTION ITEMS

Chairman Jones asked for a motion to accept the Minutes for August 11, 2004.

Motion made to accept the Minutes for August 11, 2004.

MMS - passed.

BUDGET UPDATE

Mr. Tynan informed the Advisory Council Members that a preliminary draft budget request of \$19.8M for FY'06 had been submitted to DLWD. The Director of Administration noted that the budget reflects a 2.8% increase over the FY'05 budget of \$19.3M.

Mr. Burton stated that the Advisory Council would be forming a Budget Subcommittee once the DIA's initial spending plan was finalized. The Executive Director welcomed interested Council Member to participate on the subcommittee.

CHANGES TO THE SAFETY GRANT PROGRAM

Chairman Jones introduced Gayann Wilkinson, Director of Safety and Dan DeMille, Regional Manager of the Lawrence Office.

Ms. Wilkinson explained that when she began working for the Office of Safety in November of 2003, she examined the Safety Grant Program in an effort to find ways to improve the application process. One issue that was discovered was that there was no tracking system in place for the grants. Ms. Wilkinson stated that another issue that emerged came from the RFR document which was enormous and redundant. The RFR was revised to make it more manageable and easier to understand for the applicants.

Ms. Wilkinson reported that the new grant application has gone out for the first time and the feedback has been positive. She explained that a datasheet has been included in each application that requires information regarding: the number of

employees that are going to be trained, whether they are women or minorities, the hazards to be addressed, and where the training will be located (for demographic purposes).

Ms. Wilkinson stated that there was a total of \$1,562,674.43 requested for funding in 2005. Of this figure, there were sixty-six (66) requests in all; thirteen (13) of them were ineligible, ten (10) were below 50%, and seven (7) withdrew.

Ms. Wilkinson mentioned that after reviewing the applications, it was evident that a large amount of money was being spent on administrative costs (\$440,000 of the \$800,000).

Ms. Wilkinson explained that her office contacted all of the 2005 applicants and notified them that administrative costs would not be paid. The Office of Safety invited all the vendors to meet with them to justify any additional costs. This new policy reduced the amount of recommended funding to \$574,474, leaving \$225,552 to give out in the second round of applications.

Ms. Wilkinson reported that after reviewing the second round of applications, they are recommending approximately thirteen more to be funded. From this number, they know that 7,421 will be trained; 2,559 are women and 1,855 are minorities. Ms. Wilkinson stated that she was encouraged to see many applicants who had never applied for Safety Training Grants before. Ms. Wilkinson stated that the Office of Safety will continue with an outreach program in an effort to attract Portuguese, Chinese, Spanish, and other minority groups.

Mr. DeMille remarked that another project the Office of Safety is working on is cataloging all the safety videos in the Frank Janas Training Center and placing them online.

He stated that most of the videos are from safety programs that the DIA had already paid for and that he would like to see more companies utilizing them.

Ms. Wilkinson asserted that she would like to see additional improvements made to the Safety Grant Program such as expanding the education efforts to non-English speaking employers and employees. Ultimately, Ms. Wilkinson would like to see both increased funding and money earmarked specifically for high-risk employees.

Council Members suggested that additional funding be placed into the budget as a line item that specifically designates certain amounts for high-risk employees. Council Members also suggested that the legislature should be educated on the importance of the funding by explaining how it affects their constituents.

DYING FOR WORK IN MASSACHUSETTS

Chairman Jones introduced the Executive Director of MassCOSH, Ms. Marcy Goldstein- Gelb. Ms. Goldstein-Gelb explained that MassCOSH is a non-profit membership coalition representing nearly 20,000 workers, unions, immigrants and environmental groups. Their goal is to promote safe and healthy working conditions through training, technical assistance and advocacy.

Ms. Goldstein-Gelb reported that in 2003, there were 81 deaths from occupational injuries in Massachusetts. She also noted that fifteen soldiers and marines were killed in Iraq and Afghanistan in 2003. The Department of Public Health (DPH) pulled together data from 1991 to 1999 and found that 633 workers died from occupational injuries, which averages

from 1-2 deaths per week. For every worker killed on the job, 10 more die from occupational disease. In 2003, approximately 800 workers died and 1,866 were newly diagnosed with cancer. She stated that many of the workplace fatalities in Massachusetts were preventable.

Ms. Goldstein-Gelb reported that in 2002, there was a significant increase of immigrants killed on the job. Nearly 25% (12) of those killed were immigrants; 10% Brazilian, 10% Latino (nearly double their representation in the workforce). From 1991 to 1999 (DPH data): there were 2.2 fatalities per 100,000 white workers; 2.7 fatalities per 100,000 per black workers; and 3.3 fatalities per 100,000 Hispanic workers.

Ms. Goldstein-Gelb explained that many employers who provide comprehensive safety training believe they are placed at a competitive disadvantage when bidding on projects. Ms. Goldstein-Gelb noted that this is a common misconception as the benefits of a safety training program far outweigh the costs.

Ms. Goldstein-Gelb remarked that although there has been a significant drop in claims at the DIA, it does not necessarily correlate to the number of injuries occurring in the workplace. She stated that there are various reasons that employees do not report injuries and illnesses. Many employees have a fear of losing their job if they speak up about an injury. In some instances, the employee is penalized when an injury is reported. Often, employees are unaware of their rights.

Ms. Goldstein-Gelb reported that the on-the-job injury rates for young workers (under 18) in Massachusetts are nearly twice the rate of adults. Several thousand seek treatment in emergency departments each year. Over 400 file workers compensation claims resulting in 5 or more lost work days. Nationally, the medical costs for occupational injuries for 16 and 17 years olds are \$141 million (2001). Ms. Goldstein-Gelb compared the vulnerabilities of child labor to immigrants in which they receive little or no training, they are unaware of their rights, and they are unaware that workers' compensation benefits exist.

Ms. Goldstein-Gelb presented the Advisory Council with several recommendations for improving the workers' compensation system in Massachusetts. First, she recommended the passage of House Bill 4458 which would allow up to 10 people to bring a civil action against an employer to recover amounts which should have been paid in securing workers' compensation insurance. Secondly, she recommended that the DIA promote accessibility to non-English speakers through personnel, public awareness, and forms. Thirdly, she recommended increased diversity amongst workers' compensation judges at the DIA. She also recommended that the Advisory Council recruit an injured worker to serve on the board.

Ms. Goldstein-Gelb suggested the strengthening of public awareness and enforcement of Massachusetts Workers Compensation protections and of OSHA's new record-keeping rule. Another proposal she suggested was to modify the DIA Safety Grant Program to allow for the training of youth workers.

MISCELLANEOUS

Chairman Jones thanked all those who participated at today's meeting.

Chairman Jones reminded Council Members that the next regularly scheduled Advisory Council meeting would be on October 13, 2004. The Chairman reminded Council Members that judicial interviews would be scheduled in November.

Chairman Jones adjourned today's meeting at 11:55 a.m.

The next regular meeting of the Advisory Council is scheduled for October 13, 2004 at 9:00 AM, at the Division of Industrial Accidents, at 600 Washington Street, 7th Floor, Boston, MA 02111.