

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Sixth Session
March 21, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:39 p.m. on Monday, March 21, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman Marcus Conklin, Vice Chair (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Andrew Diss, Committee Manager
Jordan Grow, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Ron Dreher, Government Affairs Director, Peace Officers Research Association of Nevada
Leslie Bell, Occupational Safety and Health Representative, Washoe County Sheriff's Deputies Association
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO
Michelle Jotz, representing Las Vegas Police Protective Association Metro; and Southern Nevada Conference of Police and Sheriffs
Melissa Johanning, Vice President, Las Vegas Police Protective Association Civilian Employees
Jack Mallory, representing International Union of Painters and Allied Trades District Council 15; and Southern Nevada Building and Construction Trades Council
Kevin Ranft, representing American Federation of State, County, and Municipal Employees Local 4041
Francis Flaherty, Vice President, State Bar of Nevada

Chair Atkinson:

[Roll was called, and there was a quorum present.] We will open the hearing on Assembly Bill 267.

Assembly Bill 267: Revises provisions governing representation of injured workers in hearings or other meetings concerning industrial insurance claims. (BDR 53-611)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:

I was asked by the Peace Officers Research Association of Nevada (PORAN) to sponsor A.B. 267 in order to provide an employee of a labor organization, rather than a full-time employee of a labor organization, the right to represent members when meeting with the insurer at the initial hearing officer appeal.

Ron Dreher, Government Affairs Director of PORAN, will now, along with Ms. Leslie Bell, explain why the change in *Nevada Revised Statutes* (NRS) 616C.325 is needed and why the initial bill needs to be amended.

Ron Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:

Our proposed amendment is included with the prepared testimony we provided the Committee ([Exhibit C](#)).

Chair Atkinson:

I think there may be some confusion, because your testimony refers to Assembly Bill 167 but this bill is Assembly Bill 267.

Ron Dreher:

You are correct. We made an error when we prepared this, but my statements do relate to A.B. 267. [Read from prepared testimony ([Exhibit C](#)).]

Chair Atkinson:

So you want to cross out "full-time" but leave in "employee"? [Mr. Dreher indicated yes.] On page 2, line 6, "or employed by the employee's labor organization," you want to delete that? [Mr. Dreher indicated yes.]

Okay. I want to make sure all the Committee members understood that.

Assemblywoman Carlton:

I want to make sure I understand to whom this pertains. When I read the term "labor organization" certain things come to mind. In your definition of "labor organization" you are including professional associations also, is that correct?

Ron Dreher:

Yes, that is correct.

Assemblywoman Carlton:

I want to make sure with our staff that your definition truly is the definition; otherwise we would need to add the term "association". I believe a labor union and an association are two distinct, different entities. Would you consider a consultant an employee?

Ron Dreher:

Yes, we would. If they employ a consultant, like Ms. Bell, we would consider her an employee.

Leslie Bell, Occupational Safety and Health Representative, Washoe County Sheriff's Deputies Association:

For a matter of clarification, I am an employee of the Washoe County Sheriff's Deputies Association (WCSDA); I am not a consultant. I believe it is embedded in the law that you have to be an employee, not a consultant. I spoke with the original author of this legislation, Danny Thompson, and he specifically wanted it to be an employee, so that there is accountability behind the association and not consultants doing the work.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Leslie Bell:

The Washoe County Sheriff's Deputies Association (WCSDA) approached me last July and offered me a position with them as a consultant. I handled claims for Washoe County for almost 20 years. I owned a third-party administrator for workers' compensation self-funded claims. I was surprised they came to me and offered me this position, but after many discussions we came to a point where there was a mutual respect and they believed I could assist them in navigating the program due to my experience. I am available to any member. They contact me, enroll me, and then I go on the clock. I help them with hearings, appeals, and leave bank issues. In addition, I go with them to doctors appointments, and I try to help facilitate the care process so that there are not costly administrative delays. I help them to resolve problems before it gets to the point of having a hearing. Where we hit the brick wall was the fact that I was not a full-time employee. It has caused a lot of problems, not just with hearings, but in meetings with the county and the third-party administrator, to resolve issues that are very simple in nature and get turned into contested matters.

In my research I found there is not a legal definition of full-time versus part-time in our statute or regulation. I believe this is the most efficient way to correct the problem, instead of spending years administratively trying to solve the problem of what the definition of full-time or part-time is. Again, "consultant" should not be there; we believe the association needs to be accountable for its representatives. We believe this will solve the problem and open the path for other associations or labor organizations that perhaps need representation on a part-time basis. The Culinary Union is the only union I am familiar with that has a full-time representative. We believe this offers the

ability for other people to have the proper representation and assistance in this process.

Chair Atkinson:

You said the word "consultant" should not be there?

Leslie Bell:

No, we do not believe a consultant should be able to do this. We believe it needs to be an employee, which is why we are removing only the term "full-time."

Assemblyman Ocegueda:

I guess this goes under the classification of no permanent friends, no permanent enemies.

Leslie Bell:

Assemblyman Ocegueda and I have a long history. I also used to handle the claims of the City of North Las Vegas. My issue is that workers' compensation is fairly black-and-white to me. I was trained that injured workers are, in effect, the reason why I was there. I also do consulting for medical providers who are having problems with reimbursement. In my brain it either is or it is not. There are no sides for me. I was not trained to take sides. I was trained that this is a legal liability and you either are eligible or you are not. So I believe I can effectively represent them when called upon.

Assemblyman Goedhart:

What is the difference between having a part-time employee represent someone and having a consultant represent someone? Why does the term consultant, as it relates here, have negative connotations?

Leslie Bell:

In my research of the history of the original legislation, apparently back when this bill was introduced and drafted, there was a consultant taking fees from members and not doing the right thing, but because he was a consultant, there was no upward responsibility or supervision. So according to my understanding of the historical perspective, this bill is there because of consultants doing bad deeds. In this regard you are an employee and directly supervised by the association.

Assemblyman Goedhart:

I think that if the consultant was retained by the employee's labor organization, whether or not they were part-time, full-time, or a consultant, they would still have to answer to the organization that hired him. I am not taking sides, but

I think all three of the above would be fine, and I do not know why one would be excluded. It would give more opportunities to the organizations and expand the pool of help to those people who need representation.

Assemblyman Segerblom:

Does the WCSDA pay you an hourly wage and deduct Social Security from your paychecks?

Leslie Bell:

Yes, I am payroll serviced. So there is a payroll agency to pay my wages instead of setting up an infrastructure to perform payroll.

Assemblywoman Kirkpatrick:

How does a labor organization or association go about hiring someone to perform this type of representation? What are the qualifications needed?

Leslie Bell:

In a perfect world one would hope that the insurer and the people handling the claim would provide this service and everyone would get along and not take sides. Unfortunately, at least in the last 15 years, everyone has taken sides, and there is a tremendous amount of distrust. I cannot really answer that question, but there are people who do what I do, and there are a lot of attorneys who could consult on behalf of organizations. There are people in my field, former claims examiners, and there is on-the-job training; you will not find a big pool of people doing this.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:

The reason that consultants were seen as a problem was that in the past there was a particular consultant who was disreputable. That is why full-time employees were written in there. We support this bill, especially with the amendment. I would have concerns that at the appeals level, that is, an administrative law judge, the record that is created is the only record that can be appealed in district court. So we still think attorneys are needed at the appeals level, but if the organization wanted to hire a part-time employee, we would certainly support that.

Michelle Jotz, representing Las Vegas Police Protective Association Metro; and Southern Nevada Conference of Police and Sheriffs:

We support A.B. 267 based on the comments you have already heard from Mr. Dreher.

**Melissa Johanning, Vice President, Las Vegas Police Protective Association
Civilian Employees:**

We are in favor of A.B. 267 for the reasons you have already heard.

**Jack Mallory, representing International Union of Painters and Allied Trades
District Council 15; and Southern Nevada Building and Construction
Trades Council:**

We support the bill as amended for the reasons stated by Mr. Dreher. I have been fortunate enough, as a full-time employee of a labor organization, to sit in hearings with members who have had workers' compensation issues. It is a very complex system, to say the least. There is some advantage to having somebody like Ms. Bell on a part-time basis who has extensive experience dealing with these types of situations at that first layer. There are also advantages to having regular folks from labor organizations there; in some cases they have better situational knowledge of how an accident may have come to happen.

**Kevin Ranft, representing American Federation of State, County, and Municipal
Employees Local 4041:**

Workers' compensation is a very complex matter, but we do have labor representatives throughout our organization who are very knowledgeable about the statutes. I personally sat in on a hearing, where I was told I could not speak; I was not a full-time employee. So for what should have been a simple issue, the individual ended up having to hire an attorney to represent him. I think this is going to be beneficial to our members and also to other members of labor organizations across the state. We are in favor of the bill as amended.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor? [There was no response.] Is there anyone wishing to testify in opposition?

Francis Flaherty, Vice President, State Bar of Nevada:

The State Bar of Nevada is in opposition to A.B. 267. That opposition is largely driven by the part that would be deleted through Mr. Dreher's amendment, which would have allowed nonlawyers to represent claimants at the appeals level. I am pleased to hear that part is being abandoned. However, the State Bar of Nevada still would have some lingering concerns. Ms. Bell seems eminently qualified to assist claimants at the hearing level, but as written, anybody who could be called an employee of a labor organization would be entitled to represent a claimant at the hearing level. I am not sure how many hours a week Ms. Bell works for PORAN, but if it is less than part-time, then she could work for someone else as well. She could end up working for

numerous organizations, and pretty soon we would have someone who really is a consultant, but they are on a payroll service with multiple organizations. I think the State Bar of Nevada would be more comfortable if there was some sort of registration or licensing requirement. Speaking for myself, I do not practice much in workers' compensation, but it is my understanding that those who represent employers can be nonlawyers provided they have met certain requirements and have been licensed and registered by the appropriate administrative agency. It would be the State Bar's preference that we have the same approach here with an employee who is less than a full-time employee of a labor organization.

Assemblywoman Carlton:

I do not believe full-time employees have to register or go through any of things you just mentioned. So did we miss something when we set this up?

Francis Flaherty:

I do not believe so. The State Bar of Nevada has absolutely no qualms or disagreements with the law as currently written. We have not had any complaints from union members or anyone else regarding full-time labor organization employees representing them. The concern is simply that not everybody out there may be as qualified as Ms. Bell, and we ought to have some controls in place.

Assemblywoman Carlton:

I draw the nexus that the full-time employee may not be as competent as Ms. Bell either. I know in these tough times a lot of organizations are turning their full-time employees into part-time employees because they simply cannot afford to keep them on the full payroll. So if we did not set up those qualifications for full-time, why would we have a higher standard for part-time?

Assemblyman Goedhart:

I think my colleague brings up a good point. The way we are differentiating standards for full-time, part-time, and consultants, we are now making assumptions about their qualifications.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone neutral wishing to testify? [There was no response.]

Assemblyman Ohrenschall:

I appreciate the Committee's time on this bill. I think with the amendment we have really tried to protect workers and protect their rights.

Chair Atkinson:

We will close the hearing on Assembly Bill 267. The meeting is adjourned [at 2:12 p.m.].

RESPECTFULLY SUBMITTED:

Jordan Grow
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 21, 2011

Time of Meeting: 1:39 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 267	C	Ron Dreher	Prepared Testimony