



STATE OF MAINE
WORKERS' COMPENSATION BOARD
Board of Directors' Business Meeting

February 14, 2023

A business meeting of the Maine Workers' Compensation Board of Directors was conducted on Tuesday, February 14, 2023 via Zoom and in person at the Board's Central Office at 442 Civic Center Drive, Augusta.

PRESENT: John Rohde (*Executive Director/Chair*), Ron Green, Glenn Burroughs, Lynne Gaudette, Serina DeWolfe, and Penny Picard (*Directors*), Richard Hewes (*General Counsel*)
VIA ZOOM: Richelle Wallace (*Director*)

I. CALL TO ORDER

Executive Director Rohde called the meeting to order at 10:09 a.m. with over 25 people participating both remotely and in person. Executive Director Rohde reviewed the hybrid meeting format and remote participation procedures. Board members and staff introduced themselves for the recording.

II. APPROVAL OF MINUTES

1. Draft Minutes of 1/10/2022 Board of Director's Business Meetings

Director Green MOVED TO ACCEPT THE MINUTES OF THE 1/10/2023 BOARD MEETING AS WRITTEN; Director Burroughs SECONDED. **MOTION PASSED 7-0.**

III. SUBCOMMITTEE REPORTS

1. Personnel Subcommittee

Director Picard reported that the subcommittee will conduct second interviews for two applicants for the Caribou Administrative Law Judge position. Nineteen applications have been received for Deputy Director of Benefits Administration position. The Board continues to explore options for new office space for the Portland Regional Office.

2. Budget Subcommittee

The Budget Subcommittee met to discuss the Portland office move.

3. IME Subcommittee

Director Gaudette reported that the IME subcommittee reviewed the application process and documented questions to be asked of applicants. Performance reviews will undergo a similar process.

A change to Chapter 4 of the Board's rules has been suggested. The subcommittee recommends adding a new subsection with suggested language. Executive Director Rohde asked if the Board would like to vote on the recommended language today or have a draft of the proposed rule prepared for the March meeting. The Board preferred to wait for the draft.

Director Gaudette noted that on the IME performance data, some providers are still not meeting the timelines. The subcommittee will discuss how to incentivize those providers to be more timely.

A new application to be a vocational rehabilitation provider was received and reviewed by the subcommittee.

Director Gaudette MOVED TO APPOINT KATIE LYNN NAPIERKOSKI TO THE LIST OF BOARD-APPROVED VOCATIONAL REHABILITATION PROVIDERS FOR A TWO-YEAR TERM BEGINNING FEBRUARY 14, 2023. Director Burroughs seconded. **MOTION PASSED 7-0.**

IV. EXECUTIVE DIRECTOR REPORT

1. Annual Report

The Annual Report was sent to the Board on 2/13/2023.

3. Labor and Housing Committee

Executive Director Rohde testified before the Appropriations Committee regarding the supplemental budget. There were no issues. Directors Penny Picard and Glenn Burroughs are up for reappointment. The confirmation hearing will be held on March 2nd with the Labor and Housing Committee (LBHS).

4. IME

The IME subcommittee will interview Dr. Sacha Matthews this Friday.

5. Appellate Division

In the past, concerns were noted about how long the appellate process took to get to a decision. The Appellate Division has worked to improve the timeframe to about 10 months.

V. GENERAL COUNSEL REPORT

1. Portland Regional Office

Deputy General Counsel Seanna Crasnick was able to put the Board in contact with someone who provided a list of addresses for potential new office space. Seven locations were provided, most of which are near the mall. The locations will be visited on Thursday.

2. Personnel

Once again, the advocate position in Caribou is vacant. The position was posted with no applications received. As such, the posting has been extended until the end of this month. General Counsel Hewes asked meeting participants to spread the word to attorneys who may be interested.

VI. OLD BUSINESS

1. Chapter 5 Rulemaking

Executive Director Rohde reported that the Chapter 5 rulemaking timeline has changed due to the need for a legal pre-review by the Attorney General's office. The response from the pre-review was received just yesterday and was very thorough. More information will be provided next month.

2. Legislation

Currently, LD 53 An Act to Ensure Accountability for Workplace Harassment and Assault by Removing Intentional Acts and Omissions from Workers' Compensation Exemptions is the only bill printed that directly relates to workers' compensation. The public hearing for LD 53 is Thursday, February 16th. LBHS meetings can be streamed via their committee webpage.

Director Gaudette noted that at the last Board meeting the directors were not comfortable making a decision on this bill as the language was too vague and it could potentially lead to unintended issues. The directors were hoping for more clarification before the bill went to a public hearing. The concern is that the bill in current form has the potential to jeopardize the exclusivity of the workers' compensation system.

Executive Director Rohde stated the goal is always to achieve consensus and that the Board can still vote neither for nor against LD 53. Public testimony has yet to take place, but the genesis of the bill deals with sexual harassment.

Director Picard MOVED TO OPPOSE LD 53. Director Wallace seconded. Discussion continued.

Director Picard said there is just too much unknown in this bill and does not define enough to support the bill as written. Director DeWolfe asked if the Board should wait until after the language has had a chance to be amended? Executive Director Rohde explained that when a bill is printed the process is to choose either "for" "against" or "neither for nor against," the bill goes to a public hearing for testimony and then on to a work session. If the Board does not vote for one of those options, the amount of information that can be provided on behalf of the Board at public hearing becomes very limited. Additionally, if the Board were to choose voting against the bill, in our testimony it can be stated what the issues are. As a result, the Board may be asked to help draft language that is more specific.

Director Green noted that he deals with this type of situation regularly and sometimes a position can be taken too soon. It may be worth waiting for more language to be developed before voting either for or against LD 53.

Director Wallace noted that a vote today would be based on how the bill is currently written. Director Green agreed but also noted that would put the Board on record as being against the bill. Director Picard agreed that we are looking at the bill as is right now but felt that by opposing the bill we would have a better stance to make changes while trying to protect the parties potentially affected by the bill.

Director Green said the bill is scheduled for public hearing on Thursday, only two days from now. Director Gaudette, while noting that she is opposed to the bill in its current form, she asked as a procedural question: If we vote to oppose the bill as written, does that leave leeway for changes to the Board's position?

Executive Director Rohde said we will know more after the public hearing and asked is there was agreement that the language was too broad. Director Picard noted that based on the discussion from last month, everyone agreed that the language was too broad. Director Burroughs asked that since it sounded like nothing had changed from last month, then why did the Board need to vote today? He asked what had changed in the interim. Director DeWolfe agreed and felt that with only two days until the public hearing, it felt premature to vote now.

Executive Director Rohde said that it seemed like there was more consensus than it appeared and asked if the Board wanted to caucus or keep the discussion going? The record was paused while the Directors caucused for 10 minutes.

Upon return, Director Green called the question and the members voted on the MOTION TO OPPOSE LD 53:

Director Wallace – Yes
Director Gaudette – Yes
Director Picard – Yes
Director DeWolfe – No
Director Burroughs – No
Director Green – No

Executive Director Rohde voted no, and the **MOTION FAILED**.

Executive Director Rohde said he would still like to keep working towards consensus.

Director Green MOVED TO VOTE NEITHER FOR NOR AGAINST LD 53. Director Burroughs seconded. Discussion continued.

Director Green stated that the Labor position on this bill is simple – the language is too broad but Labor is not ready to turn their backs on those intentionally harmed at work.

Director Gaudette agreed that Management didn't want to harm those employees either but would like to see more specific language and opposes LD 53 as currently written.

Executive Director Rohde would prefer to have consensus before giving testimony and reminded that we can say the bill is too board as is and should be worked on further. A vote of neither for nor against will allow the Board to have its say on the language issues.

A vote on the MOTION TO VOTE NEITHER FOR NOR AGAINST LD 53 was held.

Director Wallace – No
Director Gaudette – No
Director Picard – No
Director DeWolfe – Yes
Director Burroughs – Yes
Director Green – Yes

Executive Director Rohde voted yes, and the **MOTION FAILED**.

Director Burroughs noted that voting against that motion still means the Board is going into the public hearing as not supporting the bill. Director Green noted that in the current position we can't do much for testimony. Director Gaudette summarized that we are back to the same place as last month. Executive Director Rohde pointed out that with a vote of "neither for nor against" he can give testimony and answer questions at the public hearing. Several Directors asked where that left the Board with both motions having failed. Executive Director Rohde said he would be there in his capacity as an Administrator, not a representative of the Board, and would only be able to answer questions asked by the LBHS committee. He would not be able to offer information about the language concerns unless asked.

Director Green noted that what the two votes have done is taken away the Executive Director's ability to speak on behalf of the Board – which is not how the process usually works. Executive Director Rohde agreed that he would say that he was there to answer administrative questions only. Director Green pointed out that for the ED to even point out the issues the Board has with the bill's language, the Board would have to give him permission to do so. Questions were posed about what the ED could or couldn't say. In order to testify and present information, there has to be a decision which of the three positions the Board will take. The legislature will only recognize the three positions of for, against, or neither for nor against.

Director Green said the way to correct this would be to have a motion to reconsider the first motion. Discussion continued. The Management members asked to caucus again. The record was paused for 9 minutes to allow caucus.

Director Gaudette MOVED TO RECONSIDER THE VOTE TO TESTIFY NEITHER FOR NOR AGAINST LD 53. Director Picard seconded and asked that the Labor and Management positions be noted in the testimony.

A vote on the MOTION TO RECONSIDER THE VOTE TO TESTIFY NEITHER FOR NOR AGAINST LD 53 was held.

Director Wallace – No
Director Gaudette – Yes
Director Picard – Yes
Director DeWolfe – Yes
Director Burroughs – Yes
Director Green – Yes

Executive Director Rohde voted yes, and the **MOTION PASSED 6-1.**

Executive Director Rohde thanked the Board members for their hard work and willingness to keep the discussion moving forward.

VII. NEW BUSINESS

There was no new business.

VIII. ADJOURNMENT

Director Burroughs MOVED TO ADJOURN; Director Picard SECONDED.

MOTION PASSED 5-2. (*Directors Burroughs and Green opposed.*)

The meeting formally adjourned at 11:20 a.m.