

# *Oregon* EMPLOYMENT DEPARTMENT

## Advisory Council Meeting Minutes April 3, 2003

### Members:

**Gary Barnes**

Northwest Food Employers, Inc.  
Business

**Vacant**

Labor

**Sam Brooks**

S. Brooks & Associates  
Business

**Vacant**

Public

**Gwyn Harvey**

Public

**Paul Johnson**

Victim Offender Reconciliation Program  
Business

**Pat Maberry, Chair**

Public

**Tim Nesbitt**

Oregon AFL-CIO  
Labor

**Linda Rasmussen**

Communications Workers of America  
Labor

**Bob Shiprack**

Oregon State Building and Construction Trades Council  
Labor

**Lisa Trussell**

Associated Oregon Industries  
Business

**Sandra Morgen**

University of Oregon  
Public

### Present

Gary Barnes, Sam Brooks, Gwyn Harvey, Paul Johnson, Sandra Morgen, Linda Rasmussen, Tim Nesbitt, Bob Shiprack, Lisa Trussell

### Excused Absent

Pat Maberry

### Employment Department Staff

Tamara Brickman, Tom Byerley, Larry Hanson, Greg Hickman, Marc Perrett, Carla Corbin

The meeting began at 9:36 am.

### Minutes

The minutes for the February 20, 2003 special meeting were approved on February 26, 2003.

### Council Affairs

Greg acted as chair since Pat was unable to make the meeting.

Gary Barnes shared that he has lived in Oregon most of his life. He has spent over 32 years in Industrial Human Resources and currently negotiates labor agreements and in the arbitration process represents grocery, wholesale warehouse and produce employers.

Tim requested that an overview of the Trade Act of 2002 Health Coverage Tax Credit be included on the May agenda.

Bob Shiprack requested that an overview of the new employment codes be included on the May agenda.

## Legislative Update

### **Independent Contractor Bills**

Tamara explained that SB 40 replaces the current independent contractor test to emulate the IRS guidelines. It is likely that the Senate Business and Labor committee chair will move the bill forward. The department has met with the proponents of the bill to develop language that will not place the department out of conformity with federal law. However, the proponents wish to keep their language regarding “general direction and control.” DOL has notified the department that this specific language places it out of conformity with federal law.

HB 2649 amends subsection 8 of the current law. These changes will cause substantial erosion of coverage and increases in administration. Although, the proponent of this bill is looking for exemption from workers’ compensation coverage the vehicle is the Employment Department’s statute that the Workers’ Compensation Division does not use to apply in determining independent contractor status. HB 2989 and SB 899 are other bills that would change the criteria in determining whether an individual is an employee or an independent contractor.

In discussing these bills, the Council chose to bring to a vote whether to keep the current independent contractor language and follow up with an interim committee to address whether the language should be updated.

**Vote** – 8 Aye Votes (Sam Brooks, Gwyn Harvey, Paul Johnson, Sandra Morgen, Linda Rasmussen, Tim Nesbitt, Bob Shiprack, Lisa Trussell)  
0 Nays

### **Agency Priority 1 Bills**

Of the 48 priority 1 bills that the department is tracking, Tamara summarized 18. At the top of the list are the independent contractor bills. Other bills that concern the department are HB 2584 as it places the burden of proof on agencies. Tamara is working with the proponent of this bill to ensure that the department’s tax process is not included in bill’s intent. HB 3023 could place the department out of conformance with federal law by requiring that collections be turned over to private collection agencies within six months. The proponents of HB 3066 have requested the department to submit a budget note that would fund programs to improve child care and assist child care providers. SB 459 has a significant fiscal impact for the department in that it would require the department to issue final orders then the appeal process would bypass the Employment Appeals Board to go to the Court of Appeals.

### **AFL-CIO Bill**

SB 2 unanimously passed both houses and was signed by the Governor. It will allow those qualified unemployed workers having exhausted all benefits to receive an additional 13 weeks of extended benefits. Tim Nesbitt explained that this was basically a rewrite of HB 2049 from the first special session in 2002. With funding coming from the department’s Reed Act Fund, it does not increase employer’s taxes. Depending on the May economic forecast, the sponsors will look at introducing a bill that would provide a second extension of benefits.

### **OSBCTC Bill**

Bob Shiprack noted that HB 3322 will not likely go forward. It is very narrow and addresses one apprenticeship program exempting them from the waiting week requirement.

### **SB 284 Point – Counterpoint**

Lisa, representing AOI the proponent of SB 284 and Tim, representing AFL-CIO opposing the bill, provided the other Council members with the two sides of the bill. Lisa noted that the employer issues are in paying an individual to undergo drug testing causes the department to decide the individual is an employee and eligible for unemployment insurance benefits even though, failing to pass the drug test and a last chance agreement means “last chance.” Lisa also noted that AOI was trying to get at break periods include during work time. Tim’s issues with the bill were that it turns the department into a drug enforcer and could defy bargaining agreements.

During the discussion the other Council members asked questions of Lisa and Tim and inserted their views. Tom Byerley was asked to join the discussion to supply technical help in dissecting the issues. Tom shared that the department does not have a process nor does the bill dictate a process for employers to notify the department that an individual has failed a drug test, thereby, not requiring the department to become a drug enforcer. Tim suggested that the bill should not override bargaining agreements. Lisa noted that the bill does not require these elements in a policy, just that if they were in the policy the department needed to find it reasonable. Lisa stated that she would look at including Tim’s suggestion in the amendment to the bill.

### **Governor’s Transition Task Force Update**

The transition team has completed its task and composed a draft report. Tim shared copies of the draft report with the Council. The report addresses workforce and economic development at both the state and local levels necessitating more timely responses to business and workers. The strategy is not to create a new diversion but use current funding such as the unspent funds from the JOBS Plus program and energy settlements. The report addresses providing training in growing occupation areas.

### **Strategic Plan Update**

Greg Hickman explained that the a year ago staff was asked to suggest fixes that would make the department work better and also to provide information on areas that did not require fixing. Larry Hanson shared that two groups representing UI and ES developed procedures to more efficiently administer the programs for the 2005-07 biennium while Marc Perrett addressed how to better partner with other agencies. The Exec team is in the process of approving the first draft of the plan. The timeline for the project calls for their approval April 10, 2003. The next step is to obtain the Governor’s approval then bring the plan before the Council for input. Larry will return to the May meeting to obtain the Council’s input.

## **WIA Reauthorization**

HR 1261 was amended on March 20, 2003 and passed out of the House Committee on March 26, 2003. It is expected to be before the full House soon. The amendments in HR 1261 have significant changes from the current Workforce Investment Act. Some changes are: the structure of the state board, local board role and structure, planning will occur every two rather than five years, consolidation of funding streams, funding and infrastructure of One Stops, statewide activities, reduction of performance measures, increased emphasis on job training and less emphasis on job placement/employment. Marc Perrett asked that the Council sign a letter to the Senators Smith and Wyden expressing their concerns with HR 1261 as currently written.

Pat Maberry had submitted an addendum to the letter but the Council chose not to make any inclusions to the letter.

Decision: The Council approved and signed the proposed letter as written.

The meeting adjourned at 12:02 pm.