

LETTER OPINION
2006-L-28

September 6, 2006

The Honorable Robert R. Peterson
State Auditor
600 E Boulevard Ave Dept 117
Bismarck, ND 58505

Dear Mr. Peterson:

Thank you for your letter asking whether one person on the Workforce Safety & Insurance (WSI) Board of Directors may serve as the employee who has received WSI benefits and also as the employee representative for organized labor. For the reasons stated below, it is my opinion that one person may not serve as the employee representative who has received WSI benefits and as the employee representative for organized labor.

ANALYSIS

The WSI Board consists of 11 members.¹ The appointment and replacement of the members must insure that "[t]hree members represent employees; at least one member must have received workforce safety and insurance benefits; and at least one member must represent organized labor."² You ask whether this statute permits a single board member to be both the employee member who has received benefits and the employee member who represents organized labor.

When statutory language is clear and unambiguous, that language cannot be disregarded under the pretext of pursuing the legislative intent because the intent is presumed to be clear from the face of the statute.³ "The Legislature must be presumed to have meant what it has plainly expressed."⁴ The language in N.D.C.C. § 65-02-03.1(1)(b) is clear and unambiguous. The plain language indicates that the Legislature wanted one employee

¹ N.D.C.C. § 65-02-03.1.

² N.D.C.C. § 65-02-03.1(1)(b).

³ District One Republican Committee v. District One Democrat Committee, 466 N.W.2d 820, 824-25 (N.D. 1991); N.D.A.G. 2005-L-46.

⁴ Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1983), quoting City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940).

member to represent the perspective of an employee who had received benefits and one member to represent the perspective of organized labor.

That this is the Legislature's intent can be discerned from the statutory language itself. The Legislature was specific in determining the board's membership. The board is comprised of eleven members. Six of the members are employer representatives, and the class from which each of these board members must be selected is specifically set forth in the statute.⁵ Likewise, another member is a member of the North Dakota Medical Association,⁶ and another is a member at large who must be over the age of twenty-one.⁷ The remaining three are the employee representatives.⁸ It is clear that the Legislature intended that there would always be at least one board member who would be an organized labor employee representative, selected by the Governor from a list of three names submitted by a statewide labor organization.⁹ And it is equally clear that the Legislature intended that there would always be at least one board member who had received benefits, selected by the Governor.¹⁰

If the statute were read to allow the board member who has received WSI benefits and the organized labor representative to be the same person, an anomalous situation could arise. If a board member who served the dual purpose were to resign, leaving the Board without at least one member who represented labor and at least one member who had received WSI benefits, it would force the labor organization to nominate as that member's replacement only a person who had received benefits. The statute does not require that the labor organization limit its potential nominees in that manner. In such a case, if the labor organization did not submit among its three nominees to the Governor the name of at least one person who had received benefits, it would force the resignation of a sitting board member in order to fulfill the requirement of the statute. Likewise, if the labor organization submitted three names, only one of which was a person who had received benefits, it would require the Governor to name that person, and not one of the others, to the board. This would render the requirement of the submission of three names an idle act.¹¹ Statutes must be construed in a practical manner so that they do not produce an absurd or ludicrous result.¹² I do not believe this result is what the Legislature intended.

⁵ N.D.C.C. § 65-02-03.1(1)(a).

⁶ N.D.C.C. § 65-02-03.1(1)(c).

⁷ N.D.C.C. § 65-02-03.1(1)(d).

⁸ N.D.C.C. § 65-02-03.1(1)(b).

⁹ N.D.C.C. § 65-02-03.1(2)

¹⁰ Id.

¹¹ N.D.C.C. § 31-11-05(23) (the law neither does nor requires idle acts).

¹² Huber v. Oliver County, 602 N.W.2d 710, 716 (N.D. 1999).

Thus, it is my opinion that N.D.C.C. § 65-02-03.1(1)(b) requires one employee member to have received workforce safety and insurance benefits,¹³ and another separate employee member to represent organized labor.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁴

¹³ The statutory requirement that one board member must have received WSI benefits does not imply that the other board members may not have received benefits. This requirement exists to insure that at least one board member represents workers who have received or may receive benefits, and that this member does not have a competing or different purpose for serving on the board.

¹⁴ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).