Norman I. White

TESTIMONY
PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY
BEFORE THE HOUSE JUDICIARY COMMITTEE
AND
HOUSE LABOR RELATIONS COMMITTEE

NOVEMBER 30, 1989
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TESTIMONY OF NORMAN I. WHITE

BEFORE THE
JOINT HOUSE JUDICIARY AND LABOR RELATIONS COMMITTEE

November 30, 1989

Chairman Caltagirone, Chairman Cohen, members of the House Judiciary and Labor Relations Committees, I am Norman I. White, partner in the Harrisburg law firm of McNees, Wallace & Nurick. As a veteran of over 20 years in the representation of management clients in all phases of employment law, I am here today as a representative of the Pennsylvania Chamber of Business and Industry to discuss House Bills 1012, 1013 and 1030.

The State Chamber represents over 3,600 employers who employ well over 1 million Pennsylvania workers and account for over $200 billion in annual gross sales. These employers, our members, are concerned about the prospect of all three of these bills.

With me today are:

James Mackie, Director of Risk Administration, Acme Markets, Inc.

Kip Brown, Safety Director of Dana Corporation

Donald FioRito, Manager of Insurance, PP&L

Thomas R. Bond, Esq., Supervisory Attorney,
Workers Compensation Dept., Marshall,
Dennehey, Warner, Coleman & Goggin

These bills will wreck a system of compensation that has served the interests of business, labor and the public well for over 70 years. Our workers compensation system embodies no-fault and exclusive remedy concepts that have proven to be the bedrock of economic stability and economic development. We do not believe that it overstates the case to suggest that the enactment of these bills will dramatically stunt the growth of our state economy.

In the Poyser case decided by our Supreme Court in 1987, and again in the Barber case of 1989, the no-fault and exclusive remedy concepts of our Workers Compensation and Occupational Disease Acts were reaffirmed. Those cases both dealt with allegations of intentional actions by the employer that led to injuries to Pennsylvania workers. These decisions raise legitimate concerns for business, labor and the public. We do not believe that these bills are the solution to those concerns. While creating a new tort action, 1012 and 1013 deprive the employer of the legitimate defense that the employee knew of the danger and worked with it despite that knowledge. It is an exercise in cynicism to subject an employer to litigation with its hands tied behind its back, as these bills do. Section 8373(c) of 1012, the Toxic Free

Workplace Bill, makes inadmissible the knowledge of the employee that the substance he was working with had unreasonable levels of toxicity. Section 8372(c) of 1013, the Hazard Free Workplace Bill, makes inadmissible the knowledge of the employee that he knew he was working without a warning device, guard or other safety device. Thus, the balance of our workers' compensation law is removed in these bills. The employee may well be at fault -- contributing to and perhaps causing his own injury -- but the employer is not permitted to introduce that evidence. Instead, the employer is subject to two suits, one under the workers' compensation laws and a second for damages under these proposed laws. Quite obviously, the employee and his attorney will profit handsomely from this new equation. The employer community will suffer and the public will suffer even more because the employer may seek additional insurance coverage and raise his prices to the public to cover the premium -- if coverage can be found. If not, the employer will simply leave his community and the state or go out of business. The public -- the community -- will remain behind, deprived of its economic stability.

One other observation about these bills cannot be overlooked. 1012 and 1013 apply only to employers of 25 or more employees. All employers are concerned about safety or should be. All employees have a legitimate right to a safe workplace.

It is immoral to suggest that the life and safety of a worker for a small employer is less important to this state than one working for a larger employer. Indeed, we suggest that large employers do put their money where their mouth is when it comes to worker safety and exposure to recognized hazards. These large companies do employ the safety engineers and hire the consultants to assure workplace safety. This does not mean they are perfect, but it does mean that they try.

All of these comments, we are sure, have been anticipated by the proponents of these bills. We are certain that they are convinced that business is crying "wolf" yet again. We are certain that they are also convinced that serious and lasting injuries have occurred to workers with the full knowledge of their employers and that this alleged egregious, flagrant failure to show concern for workplace safety requires a far more severe remedy than just another workers' compensation claim.

We suggest that no one in his right mind can argue with the general rule of House Bill 1012 stated at 8372(a): "It shall be unlawful to unreasonably expose an employee to any toxic substance in the workplace." Further, fair-minded persons could not argue with Section 8371 of House Bill 1013: "It shall be unlawful to remove, disconnect, alter or cause to have removed, disconnected or altered, a warning, guard or

other safety device from any machine, tool or other implement located in the workplace." Indeed, both of these concepts are part of and enforced under provisions of the federal Occupational Safety and Health Act (OSHA) and the National Labor Relations Act (NLRA). Responsible employers have not and do not condone the intentional infliction of the types of harm described in these bills. What we do argue with in the most vigorous terms are the remedies proposed by 1012, 1013 and 1030.

We urge you -- Chairman Caltagirone and Chairman Cohen -- to convene a select group of business and labor leaders to discuss these issues and propose solutions that business, labor and the public can live with. When this state found itself in an unemployment compensation crises, just such a procedure was used -- it worked. In fact, business and labor began discussing workers' compensation at Linden Hall last year. The areas of agreement were far more numerous than those of disagreement. In our view, these discussions proved that the business community is ready and willing to confront the issues raised by these bills responsibly and not turn its back. The state of Wisconsin, and our neighboring state of West Virginia, have dealt with these issues in ways which preserved their economic development potential. With goodwill, we believe that Pennsylvania can find its solutions, as well.

We strongly urge you to consider our suggestion to convene a select committee.

Thank you.