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Jon Wesley Wise

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COMMISSION ADMINISTRATION OF WORKERS' COMPENSATION:
AN ALTERNATIVE TO LOUISIANA'S CUMBERSOME
COURT-ADMINISTERED SYSTEM

In the 1981 Regular Session of the Louisiana Legislature, the House of Representatives examined a bill which proposed sweeping change in the structure of Louisiana's Workers' Compensation Act. The proposal, House Bill HB986, provided for transfer of workers' compensation claims from the court system to a commission administered system, and was offered as a means of curing the defects and inequities which plague the present system. The House, however, rejected the proposed commission system, thus preserving court administration of compensation.

Two relevant questions emerge from the controversy surrounding House Bill 986: first, what factors caused such a bill to be introduced, and second, what weaknesses in the bill led to its defeat? These questions will be explored through an examination of the present court administration of workers' compensation claims in Louisiana and through a brief analysis of commission administration as it exists in forty-five other states. House Bill 986 will then be compared with comparable provisions of other jurisdictions. Finally a normative model for a Louisiana Workers' Compensation Commission will be suggested and examined.

Court Administration in Louisiana to Date

From its inception in 1914,¹ Louisiana's workers' compensation system has been administered through the courts. The original act was drafted by the Employee's Liability Commission, an advisory body appointed by the governor for the purpose of proposing either remedial legislation to improve the then existing industrial accident law or an altogether new system of compensation.² The original act imposed upon the employer the no-fault principle of liability for injuries to his employees, established a schedule of compensation and regulatory procedures for determination of liability, provided for methods of payment, and delegated to the courts the adjudication of contested claims.³ The system adopted for administering the act was deliberately conservative—the commission placed much emphasis on

1. 1914 La. Acts, No. 20.

2. W. MALONE & A. JOHNSON, WORKER'S COMPENSATION § 36 in 13 LOUISIANA CIVIL LAW TREATISE 49 (1980).

3. 1914 La. Acts, No. 20, also known as the Burke-Roberts Employer's Liability Act.

providing "as simple a manner for the adjustment of difficulties between employer and employee as is consistent with the purposes of the act."⁴ Based on this conservatism, the advisory body rejected a commission form of administration, although several other states already had such a system.⁵ This reticence to remove worker's compensation entirely from the courts may be attributed to the experimental nature of worker's compensation at the time; instructively, the Commission's report indicates that subsequent development in the administration of the system was contemplated as the state's experience with the system increased.⁶ While the Louisiana Worker's Compensation Act has been amended numerous times,⁷ the basic framework now in effect for administering the system by the courts is quite similar to that included in Act 20 of 1914.⁸

The plan adopted in 1914 and prevailing to day provides for two possible types of claim administration, depending on whether the claim is contested. If no dispute exists between the employer and the employee as to the amount of or right to compensation, the employer will begin making compensation payments with no need for court supervision (except in the case of lump sum settlements⁹). The vast majority of compensation claims are handled in this fashion.¹⁰ Self-administration of non-contested claims was preferred by the 1914 legislature because this method provided the advantage of being inexpensive to administer and allowed for a simple, direct settlement between the worker and his employer.¹¹

Nevertheless, the absence of an administrative agency to super-

4. *Official Journal of the Proceedings of the Senate of the State of Louisiana*, 1914 Reg. Sess. at 42 (May 14, 1914) [hereinafter cited as *1914 Senate Journal*.] See also *id.* at 36: "The Commission has been strongly impressed with the necessity of adhering to all that is most conservative in this kind of legislation."

5. *Id.* at 36, 42.

6. *Id.* at 36. Another consideration affecting the Commission's decision was "that the expense incident to the commission, if it is to serve any useful purpose at all, is greater than the resources of the State at this time would justify." *Id.* at 42.

7. *E.g.*, 1980 La. Acts, Nos. 509, 599, 604, 666; 1975 La. Acts, Reg. Sess., No. 583. The most notable of these amendments was Act 583 of 1975, which greatly increased the schedules of payment, and redefined total and partial disability.

8. See LA. R.S. 23:1291 (1950), 1292 (1950), 1293 (1950), 1294 (1950), 1295 (1950), 1311 (Supp. 1980), 1312 (1950), 1313 (Supp. 1958), 1314 (1950), 1315 (1950), 1316 (1950), 1317 (1950), 1318 (1950), 1319 (1950), 1331 (1950), 1332 (1950), 1333 (1950), 1351 (Supp. 1979).

9. See LA. R.S. 23:1274 (Supp. 1977).

10. See E. CARADINE, *COURT ADMINISTRATION OF A WORKMEN'S COMPENSATION SYSTEM* 212, 214 (1975).

11. See *1914 Senate Journal*, *supra* note 4, at 42.

vise certain aspects of non-contested claims has led to criticism. Walter Dodd, in his exhaustive work on worker's compensation administration, concluded that the principal defects of the Louisiana compensation law were the failure to provide for the reporting of industrial accidents to a central bureau and a *failure to establish any machinery for the supervision and follow-up of uncontested claims*.¹² The significance of the last shortcoming becomes apparent when one considers that the responsibility for informing the worker of his rights under workers' compensation is placed solely on the employer. Under the present self-administered system, no means exist for overseeing the employer's payment of compensation or for ensuring that the worker is receiving the proper schedule of benefits accorded by statute. The first defect listed by Dodd, Louisiana's failure to provide for the reporting of accidents in the case of non-contested claims, has resulted over the years in a complete absence of statistical data by which to analyze the functioning of the self-administering system, a situation in which Louisiana is apparently unique.¹³

A claim enters the court system when the employee is not satisfied with the amount of compensation he is receiving or when a dispute exists as to the employee's entitlement to compensation at all.¹⁴ The employee's claim is placed on the docket of the district court, where, although expedited periods for answer and preference on the docket are provided,¹⁵ the claim is still subject to much of the normal delay involved in litigation. Since no award will be granted an employee until the court renders judgment, one criticism of this procedure is that courts cannot provide relief in the early stages of the worker's disability, usually the time when the employee is in immediate financial need.¹⁶ Another aspect of courtroom litigation unwelcome to the impoverished employee is the expense of counsel. This expense often is augmented further by the need to acquire expert medical testimony when the degree of the employee's injury is at issue.

Consequently, the expense and delay involved in courtroom

12. See W. DODD, ADMINISTRATION OF WORKMEN'S COMPENSATION 97 (1936).

13. See U.S. CHAMBER OF COMMERCE, ANALYSIS OF WORKER'S COMPENSATION LAWS 36 (1976). Louisiana is the *only* state which has no provision for reporting of accidents by employers. *Id.*

14. See LA. R.S. 23:1311 (Supp. 1980).

15. See LA. R.S. 23:1315 (1950). Within 10 days after service of the petition, an adverse party must answer the same. In addition to section 1315, the various district court rules provide for compensation cases to be given preference on the docket.

16. See W. MALONE & A. JOHNSON, *supra* note 2, at § 37, at 52.

litigation coupled with the worker's immediate financial need have led to the prevalence of compromise settlements in Louisiana. Compromise settlements are provided for by statute,¹⁷ and often result in a compensation agreement for less than the workers would be entitled to by law if a bona fide dispute existed as to the extent of the employer's liability or coverage. Such agreements are advantageous to the employee in one respect—they alleviate the problems created by delays in the court system and allow funds to flow more quickly to the worker. However, this *advantage* seems less appealing when one observes that the worker is often accepting less than his rightful entitlement because the system cannot insure a delivery of benefits promptly enough to meet the injured worker's needs. Although each compromise requires court approval,¹⁸ the worker's rights can hardly be said to be protected when the basis for the compromise is not the dubious nature of the employee's claim, but his own impecunity.

Once a compensation claim comes before the court, the judge must determine the extent of the employee's disability and the amount of the award. This judgment must contemplate accurately what the employee's future ability to earn a living will be, for in most instances the court will have no further contact with the compensation claimant. Moreover, Louisiana Revised Statute 23:1331 provides that a judgment of compensation may be modified *only* if a change occurs in the physical condition of the worker or if the original judgment was obtained through error, fraud or misrepresentation.¹⁹

The inflexible nature of this process of dispensing awards has produced a unique response by the courts. Fearful of the consequences that might result from a non-correctable, judicial misestimate of the employee's disability, judges often were inclined to give as liberal an award as possible. To do so, the court devised a formula for defining total disability that included a very broad range of injury. By statute, prior to 1975, total disability was defined as an inability "to do work of any reasonable character."²⁰ However, the jurisprudence, beginning with *Knispel v. Gulf States Utilities*²¹ in 1932, interpreted "work of any reasonable character" as being "work of the same or similar description that [the worker] is accus-

17. LA. R.S. 23:1271 (Supp. 1966).

18. See LA. R.S. 23:121 (Supp. 1972), 1271 (Supp. 1966).

19. See LA. R.S. 23:1331 (1950).

20. LA. R.S. 23:1221 (1950).

21. 174 La. 401, 141 So. 9 (1932).

tomed to perform."²² Under this interpretation, a worker was deemed totally disabled if he could not return to his *former work*, regardless of whether he was capable of performing a less strenuous or demanding occupation.

Because of the application of the *Knispel* formula, the percentage of total disability awards in Louisiana became disproportionately high compared with other states.²³ Employers criticized the results of the formula, claiming that its application resulted in a large number of fraudulent total disability claims and a marked increase in insurance premium rates. On the other hand, representatives of labor contended that such a scheme was necessary to offset the comparatively low benefits afforded by partial disability.²⁴ However one perceived the rule, the *Knispel* formula represented an attempt to mollify jurisprudentially the harsh, inflexible character of Louisiana Revised Statutes 23:1331, the court preferring to make the plaintiff's award overly generous rather than to risk the possibility that it would be deficient.

In 1975, the legislature amended the total disability definition, replacing the expression "work of any reasonable character" with the phrase "to engage in any gainful occupation."²⁵ This language was apparently an attempt to abrogate legislatively the disability standard of *Knispel*. In the wake of the 1975 amendments, which also increased the level of partial disability benefits, the courts seemed willing to apply what has come to be known as the "odd-lot" doctrine.²⁶ Total disability under this doctrine is recognized when a claimant may be capable of holding various jobs from time to time, but is unable, due to his limited capacities, to obtain stable, continuous employment. Unlike the former total disability standard, the plaintiff has the additional burden of proving not only that he cannot return to his former employment, but also that he must be considered in the category of odd-lot workers. This additional burden of proof in order to obtain *total* disability benefits, coupled with legislative increases in the percentage of *partial* disability benefits, arguably should make the courts inclined to grant more partial

22. 174 La. at 410, 141 So. at 12.

23. See W. MALONE & A. JOHNSON, *supra* note 2, at § 272, at 606.

24. See E. CARADINE, COURT ADMINISTRATION OF WORKMEN'S COMPENSATION IN LOUISIANA 258 (1975).

25. LA. R.S. 23:1221 (Supp. 1975).

26. For a comprehensive analysis of the odd-lot doctrine, see Note, *Odd Man In: Louisiana Adopts the Odd-Lot Doctrine—A Suggested Analysis*, 42 LA. L. REV. 821 (1982).

disability awards, and thus relieve a major shortcoming of the *Knispel* era.

However, a shift away from total disability to partial disability awards does not resolve two of the major problems in this area—post-award supervision of claims and modification of awards. Once the court has granted an award, it generally exercises no further supervision over the claimant.²⁷ The sense of finality that surrounds a court judgment in Louisiana is foreign to the concept of worker's compensation as a form of social insurance, and instead is more akin to traditional tort litigation. As long as the courts are reluctant to modify judgments at later dates, little reason exists for thinking that the courts will be less inclined in the future to grant total disability than they have been in the past. Furthermore, the dispensation of partial disability awards is measured on the basis of a percentage of difference between the wages actually earned by the worker and wages earned prior to his injury.²⁸ The scale of benefits necessarily changes on a weekly basis, and proper administration of such an award would require supervision of the worker's income—a function which the courts are essentially unable to provide.²⁹

In summary, court administration of worker's compensation in Louisiana may be said to suffer from several deficiencies. First, the courts lack any program for receiving injury reports and processing any type of useful data for analysis of the effectiveness of the system. Second, the judiciary has no machinery for the supervision and follow-up of uncontested claims. Third, the delays and expenses inherent in the litigation process, coupled with the availability of compromise and lump sum settlements, often result in the worker accepting a compromise rather than obtaining the true amount of benefits entitled him. Fourth, the inflexibility of the awards system encouraged courts to make total disability awards rather than to risk the possibility of underestimating a claimant's injuries. Fifth, the courts have no supervision or follow-up on claims once they have been settled. And finally, in Louisiana there is no provision for a rehabilitation program for injured workers.

Commission Administration

The alternative to court administration, a system administered

27. See W. MALONE & A. JOHNSON, *supra* note 21, at § 37, at 55.

28. See *e.g.*, LA. R.S. 23:1221 (Supp. 1975).

29. This lack of supervision includes no program for vocational rehabilitation, a topic which will be explored more fully later at pp. 1207-08, *infra*.

by a special *worker's compensation* commission or agency, exists in some form in the other forty-nine states.³⁰ To understand the function of a commission in a worker's compensation program, one might first determine what the objective of a worker's compensation law ought to be, and then observe how effectively a commission attempts to satisfy these objectives. The National Commission on State Worker's Compensation Laws, in its 1972 report, listed five goals for a modern workers' compensation program. The first two objectives deal primarily with coverage of the law. The last three objectives, dealing with administration of the program, are: (1) provision of sufficient medical care and rehabilitation services, (2) encouragement of safety, and (3) an effective system for the delivery of benefits and services.³¹

Rehabilitation

Rehabilitation of the worker is an objective for which a commission is probably indispensable. By their structure courts are prevented from taking an active role in a rehabilitation process; on the other hand, a commission may be tailored specifically to fulfill this goal. In fact, rehabilitation has been effected in different states in various ways: by creating a department within the commission to run a rehabilitation program;³² by working in conjunction with an existing rehabilitation department in another state agency;³³ or by mandating employer rehabilitation programs.³⁴ Rehabilitation is almost universally recognized as both an important and a desirable function of a commission system. From the worker's viewpoint, rehabilitation is a means for restoring him to a position of self-sufficiency. Likewise, for the employer and society in general,

30. Limited commission administration exists in the four states which, along with Louisiana, preserve court administration. See, e.g., ALA. CODE, § 25-5-2; N.M. STAT. ANN. § 52-1-62; TENN. CODE ANN. § 50-1028; WYO. STAT. §§ 27-12-801, 802, 803.

31. THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS 15-24 (1972).

32. N.J. STAT. ANN. § 34:16-21, which states:

There is hereby established the Rehabilitation Commission which is placed in the Department of Labor and Industry for housekeeping purposes. The commission is hereby designated as the sole State agency to administer and supervise vocational rehabilitation and independent living rehabilitation authorized by this chapter.

33. See, e.g., CAL. LAB. CODE, § 139.5 (Supp. 1976 & 1978). The California statute provides for a rehabilitation unit within the Division of Industrial Accidents which has the responsibility to "foster, review and approve rehabilitation plans developed by a qualified rehabilitation, representative of the employer, insurance carrier, state agency, or employee." *Id.*

34. See, e.g., IOWA CODE ANN. § 85.70 (Supp. 1970 & 1974) (West).

rehabilitation serves to return another skilled worker to the work force.

Safety

Encouragement of safety would no doubt also result in economic benefit to society, since a reduction of accidents would proportionately reduce the number of claims. Programs to encourage safety, however, have received much less attention and funding than programs concerning rehabilitation.³⁵ Arguably, a system which would require reporting of all work-related accidents would encourage safer work areas and focus attention on dangerous conditions.

Effective delivery

The third objective, an effective system for delivery of workers' compensation benefits and services, represents probably the most fundamental aspect of a compensation program. The advantages of compensation over traditional tort litigation in effect are nullified unless benefits are delivered quickly and in the proper amount. A commission functions toward this end in several respects. Generally, a commission takes the initiative in administering the compensation act. Most commissions provide for a compulsory system of accident reporting. The majority of commissions also maintains some type of supervision over non-contested claims.³⁶ In one situation such supervision includes informal hearings to determine awards in all cases, whether contested or not.³⁷ In states which provide for direct agreement between employer and employee, commission approval of the agreement is often required.³⁸ In some situations, the commission further functions as a monitor to prevent any egregious errors in settlements and to insure that the worker understands the full extent of his statutory entitlements before settlement. Moreover, commissions are capable of playing a supervisory role *after* an award has been granted. For example, in the case of a partial disability award which would be based on wage loss, a commission could make

35. The National Commission suggested, as an encouragement to safety, that each state adopt an experience rating system of insurance premiums paid by employers. See REPORT, *supra* note 31, at 22. Supervision of such a program clearly would be an administrative task; but one compatible with the majority of state commissions which administer the insurance requirements of their state's respective compensation acts.

36. H. SOMERS & A. SOMERS, WORKMEN'S COMPENSATION 150-56 (1954).

37. See N.Y. WORK. COMP. LAW § 20 (McKinney).

38. See, e.g., N.J. STAT. ANN. 34:15-57.

the weekly determinations of a claimant's prior/present wage differential—an administrative function which a court might have difficulty implementing.³⁹

Additionally, the existence of a *separate* agency to hear workers' compensation claims has a direct impact on the speed of the adjudicatory process. Unlike the courts, a commission which hears only compensation cases is able to bring claims to a swifter conclusion—a desirable goal for both the employer and employee. Furthermore, commissioners or referees hearing the claims might be better able to reach proper conclusions on complex questions of medical and industrial facts⁴⁰ because of their expertise in the field.

Nevertheless, commission administration, although consistently recognized as more functional than court administration,⁴¹ is not free from problems. An initial difficulty when establishing a workers' compensation commission arises over how the agency will be funded. Creation of a commission and the subsequent costs of administration inevitably involve large appropriations. Thus, a state contemplating a shift to commission administration is likely to weigh the value of the services rendered by a commission against the added expense of the body. The need for such a value choice has been avoided in some states by funding the commission through an assessment on insurance companies and self-insurers.⁴² Such a system is advantageous because it is self-supporting. However, when the cost of the system is placed on the insurer, premiums will rise, and the cost eventually will be passed on to the employer, thus negating much of the benefit the employer could expect to receive by more accurate disability assessment.

Another criticism frequently leveled at commission administration relates to the structure of the commission and the political

39. See Malone, *Total Disability Evaluation Under the Louisiana Compensation Act*, 20 LA. L. REV. 486, 508 (1960). Professor Malone's analysis was confined to suggesting a method of continuous supervision of laws through the court system. The inadequacy of the courts for this role was recognized later in W. MALONE & A. JOHNSON, *supra* note 2, at 55.

40. Whether this is indeed the case would appear to depend on what qualifications are established for deputy commissioners and/or referees. If the only requisite is that the deputy commissioner/referee be a practicing lawyer (as is the case in many states), one wonders how this qualification exceeds that of an experienced trial judge.

41. See W. DODD, *ADMINISTRATION OF WORKMEN'S COMPENSATION* 62-99 (1936); H. SOMERS & A. SOMERS, *WORKMEN'S COMPENSATION* 145-56 (1954); M. BERKOWITZ, *WORKMEN'S COMPENSATION: THE NEW JERSEY EXPERIENCE* 96-115 (1960).

42. See U.S. DEPT. OF LABOR, BULL. NO. 279, *WORKMEN'S COMPENSATION, THE ADMINISTRATIVE ORGANIZATION AND COST OF ADMINISTRATION* 94-97 (1966).

nature surrounding appointments to the agency. If a commission is headed by a single, appointed commissioner, the selection of this commissioner is likely to be a political issue. Many states, in opting for a board of three or more commissioners, attempt to avoid the charge of politicization of the commission by including in its membership a varied group of interests.

Allied to the skepticism attaching to political appointment of commissioners is the charge that introduction of an administrative agency to handle workers' compensation only serves to remove compensation from the hands of a capable, though overworked, court system and place it in the hands of underpaid, inefficient bureaucrats. Such disillusionment with bureaucracies is understandable.⁴³ Nevertheless, the decided preference among the states for commission administration suggests that, despite the normal problems of administration, a commission remains the more effective means for delivering compensation benefits to the worker.⁴⁴

The first serious attempt to introduce commission administration into the Louisiana Workers' Compensation Act occurred during the 1981 Regular Session of the legislature. House Bill HB986, as initially proposed, would have removed completely the adjudication of compensation claims from the district courts. To replace the courts, the bill provided for the establishment of a Workers' Compensation Commission within the Department of Labor.⁴⁵ The Commission was to be composed of a single commissioner (the administrative head of the commission), and an unspecified number of deputy commissioners, to be appointed by the Commissioner.⁴⁶ These deputy commissioners were to preside over the initial hearing of contested claims, in much the same manner as a district judge.⁴⁷ Parties dissatisfied with the award granted by the deputy commissioner could then appeal to the commissioner. From the commissioner's ruling, appeal by either party would be permitted to the circuit court for the district where the claim was originally heard.⁴⁸

In addition to entrusting the judicial aspects of workers' compensation to the commission, House Bill 986 also provided for cer-

43. In the words of one author, "No compensation law can be better than its administration." H. SOMERS & A. SOMERS, *supra* note 36 at 143.

44. *Id.* at 148.

45. La. H.B. No. 986, § 1292, 7th Reg. Sess. (1981).

46. *Id.*

47. *Id.*

48. *Id.* § 1351.

tain administrative duties to be performed by the commission. The commission would have required employers to report all work-related injuries to the commissioner.⁴⁹ Moreover, the commission was to be responsible for seeing that employers provided injured employees with appropriate vocational and rehabilitative training.⁵⁰ Rehabilitation under the bill would have been at the initiative of the employer, and not through a commission-sponsored rehabilitation program. However, if the employer refused to provide such training, the commissioner could have then *required* the employer to do so.⁵¹

The provisions of House Bill 986 represented a major departure from Louisiana's present system of court administration. The strengths and weaknesses of the bill are perhaps best evaluated by comparing the bill's major tenets with comparable provisions of other jurisdictions.

Administrative Structure

House Bill 986 proposed a commission headed by a single commissioner. This structure is virtually identical to Iowa's Industrial Commission, from which House Bill 986 was patterned in part.⁵² In both the proposed Louisiana system and the Iowa system, the commissioner is appointed by the governor. The commissioner subsequently appoints deputy commissioners to preside at initial hearings of claims. Other states utilize the single commissioner approach, choosing, however, to vest appointment of the commissioner with the Department of Labor.⁵³

Many states attempt to avoid the charges of political favoritism and commission bias by providing for multi-member commissions.⁵⁴ For illustration, the Industrial Accident Board of Texas offers what must certainly be the ultimate attempt at political compromise.⁵⁵

49. *Id.* § 1293(B). This system of accident reporting would have put Louisiana in step with the other forty-nine states.

50. *Id.* § 1226.

51. *Id.* § 1226(3). "The commissioner may order that the service and treatment recommended in the report, or such other rehabilitation treatment or service deemed necessary, be provided at the expense of the employer or insurer." *Id.*

52. See IOWA CODE § 85.1.

53. See, e.g., N.J. STAT. ANN. § 34:1-57 (1945). The Director of the Worker's Compensation Bureau is appointed by the New Jersey Commissioner of Labor. *Id.*

54. See, e.g., N.Y. WORK COMP. LAW § 140 (McKinney). New York's Workmen's Compensation Board consists of thirteen members, appointed by the governor for rotating terms of seven years. *Id.*

The Board consists of three members: an employer of labor, a person employed as a wage earner, and a practicing attorney. Such a system might be a practical one for Louisiana, where workers' compensation is such a politically volatile issue.

Supervision of Claims

House Bill 986 provided for compulsory accident reporting, the initial step in the supervision of claims in the other forty-nine states.⁵⁵ However, the bill did not contain a requirement that non-contested claim settlements be approved by the commission before becoming final. Such approval would result in scrutiny of non-contested claims and serve to insure that the claimant's knowledge of his rights was sufficient at the time of settlement. This liberal approach, while admirable, is not followed in most other statutes.⁵⁷ More commonly, commissions tend to refrain from any intervention between employer and employee until a claim is disputed.⁵⁸

In addition, no provision was made in House Bill 986 to eliminate compromise or lump sum settlements. The retention of compromise settlements can hardly be viewed as progressive legislation—by retaining compromise, much of the supervisory benefits attained by introducing commission administration are neutralized. Despite this result, many states still preserve some type of compromise procedure.⁵⁹ Although such settlements supposedly are made only with commission approval under special circumstances, in some jurisdictions approval of compromise settlements is often perfunctory.⁶⁰

Another area which House Bill 986 made no attempt to reform was in *post-award supervision* of claims. In contrast, a number of states empower commissions to modify awards if the original estimate was not, or is no longer, appropriate.⁶¹ Such a provision

55. See TEX. WORK. COMP. CODE ANN. tit. 130, art. 8367 (Vernon).

56. See U.S. CHAMBER OF COMMERCE, *supra* note 13, at 36-37.

57. New Jersey provides for this type of overseeing in non-contested cases; in fact, if no petition is filed by a worker after twenty-one days, the New Jersey Workmen's Compensation Bureau may institute a claim itself on behalf of the worker. N.J. STAT. ANN. § 34:15-50.

58. FLA. STAT. ANN. § 440.19.

59. IOWA CODE § 85.22; MO. REV. STAT. § 287.390 (Vernon); TEX. WORK. COMP. ANN. tit. 130, art. 8307 (Vernon) § 5a; UTAH CODE ANN. § 35-1-82.51.

60. H. SOMERS & A. SOMERS, *supra* note 41, at 48.

61. N.Y. WORK. COMP. LAW § 123 (McKinney) (review of claims may be made at any time); TEX. WORK. COMP. CODE ANN. tit. 130 art. 8306, § 7. (commission limited to modifying an award by increasing benefits while proportionately decreasing the period of payment).

would appear essential if a Louisiana commission were to shift toward granting more partial disability awards, based on a wage loss system.

Rehabilitation

House Bill 986 mandated that the *employer* finance rehabilitation. In this area, the Act's wording was almost identical to the rehabilitation provision in Florida Workers' Compensation Act.⁶² While every commission-administered workers' compensation system has some provision for rehabilitation,⁶³ not every state has opted for an employer-financed plan. In fact, many states provide for *state-financed* rehabilitation. Both systems usually provide for mandatory employee vocational training (if needed), to be limited to a maximum period of one year.

Among states which require employer financed rehabilitation, Florida's plan probably ranks most favorably insofar as it contemplates a fairly comprehensive training program that will restore the worker to "suitable gainful employment."⁶⁴ Some states require only a very meager outlay by the employer for a much more limited period.⁶⁵

However, any employer-sponsored rehabilitation program suffers from one central criticism—that it is subject to abuse by the employee and lacks sufficient administrative supervision. Accordingly, a number of states created divisions within the respective workers' compensation commissions to deal exclusively with injured-worker rehabilitation.⁶⁶ Other states provide for inter-departmental cooperation between the workers' compensation agency and a separate state rehabilitative agency.⁶⁷

The advantage of state-administered rehabilitation lies in the comparative ease of supervision. Placing the responsibility on the employer to rehabilitate the employee serves only to fragment the rehabilitation system. By keeping the entire process in one administrative agency, smoother operation would be effected and more consistent results achieved.

62. FLA. STAT. ANN. § 440.49 (West).

63. See U.S. CHAMBER OF COMMERCE, *supra* note 13, at 28-29.

64. See note 62, *supra*.

65. See IOWA CODE ANN. § 85.70 (1975) which provides for maximum rehabilitation payments of twenty dollars a week.

66. See, e.g., statutes quoted in notes 32 & 33, *supra*.

67. Texas has perhaps the most efficient system of this sort. See TEX. WORK COMP. ANN. tit. 130, art. 8306, § 7.

The Future of Commission Administration in Louisiana

Having examined with a critical eye both the present court-administered system and the first legislatively introduced alternative, one must then ask what, if anything, should be done to alter or amend Louisiana's present system of workers' compensation administration.

One solution would be a legislative reform of *some* of the deficiencies in court administration. Compromise and lump sum settlements could be eliminated statutorily, and the courts could be given greater post-judgment supervision of awards (including the ability to modify them). These reforms would improve the court's handling of claims; however, the change would do nothing to prevent the delays caused by crowded dockets. Furthermore, the court would still be ill-equipped to handle any of the administrative functions necessary to insure that the injured worker is provided for properly.⁶⁸

Alternatively, the legislature might create a small administrative agency to handle the *non-judicial* aspects of compensation.⁶⁹ An administrative agency under this approach would likely be no more than a bureau for accident-reporting and encouraging safety, since the courts would still be responsible for findings of facts and supervision of awards. If the agency is to have a role in supervising the worker's claim, little purpose is served by dividing responsibilities between the agency and the courts.

Each of the mentioned possible solutions appears inadequate. To resolve some of these inadequacies, a revision of Louisiana's Compensation Act requires the establishment of a commission. Although no absolute guidelines may be drawn (as the varied experience of other states demonstrate), a commission adopted in Louisiana should include certain features if it is to be a significant improvement over the present system.

Initially, the model Louisiana commission bill would provide for the creation of a Worker's Compensation Commission, within the Department of Labor. The commission would be headed by three commissioners—one member to be a representative of business, one member a representative of labor, and one member a practicing attorney with an expertise in workers' compensation.⁷⁰ This system,

68. See Malone, *supra* note 38, at 486.

69. N.M. STAT. ANN. § 52-1-62; WYO. STAT. ANN. §§ 27-12-801, 802, 803, 804 (1977).

70. See note 55, *supra*, and accompanying text.

based on the Texas Industrial Commission's structure, is perhaps not as authoritative or decisive as a single commissioner. Nevertheless, a tri-partite commission suggests a balance of views, and arguably removes the question of the commission's objectivity. The commission, once chosen, would appoint referees to hear contested claims. These referees should be practicing attorneys with some experience and/or special training in dealing with the complex issues they will be expected to face.

The functions of the model commission would include: 1) devising a system for accident reporting, 2) monitoring all claims from the moment of receiving the report of injury, 3) approving of *all* claims 4) supervising awards after judgment, including week-to-week evaluation in cases of partial disability and a rehearing at the request of either party for purposes of modifying the award and 5) creating a rehabilitation division, or co-operating with the Department of Health and Human Resources to insure proper rehabilitation of partially disabled workers.⁷¹

The procedures for instituting and processing claims would remain essentially the same as those now in use by the courts, with two major exceptions. First, compromise and lump sum settlements would be abolished. Second, appellate review of claims after hearings conducted by the referee and the commission, would concern only questions of *law*. This procedure would establish the commission as the ultimate fact finder, reinforcing its authority and reducing the number of appeals to the court system.

Conclusion

No system of administering workers' compensation can be flawless. As with any law, unforeseen complications will arise for which the statute does not provide, and for which statutory revision is the only answer. The ideal workers' compensation administration law, then, is not one which is free from all shortcomings, but one which is structured so as to guarantee that the major goals of a compensation system are achieved. In this respect, Louisiana's present system for court administration is fatally deficient. Although the jurisprudence over the years has developed mechanisms to off-

71. The costs of a rehabilitation program could be defrayed by imposing a tax on employers based on a percentage of their previous year's liability. See, e.g., CONN. GEN. STAT. ANN. § 31-283a (West). This would also act as an encouragement of safety, since employers would pay less if their percentage of work related injuries decreased.

set the inflexible nature of the awards system, the courts are simply structurally unable to satisfy the three major tenets of workers' compensation administration: rehabilitation of the workers, encouragement of safety, and prompt and efficient delivery of disability benefits.

On the other hand, a commission-administered system, if properly constructed, is well suited to provide the comprehensive supervisory role that is necessary to achieve such goals.

The need for change in the administrative structure of the Louisiana compensation act is becoming readily apparent, as the introduction of House Bill 986 indicates. What direction this change will eventually take is of vital interest. To be effective, a shift from court administration to commission administration must comprehend more than a change of titles. A commission administration must be developed which will address the major shortcomings of court administration—lack of rehabilitation, inadequate supervision of claims, and the existence of compromise settlements—and provide the employees of Louisiana with a useful and effective system of workers' compensation.

Jon Wesley Wise

