Senate Special Committee on Workers' Compensation Reform
December 8, 2010

Testimony: Marc R. Poulos
Executive Director Indiana, Illinois and Iowa
Foundation for Fair Contracting

Chairman, Members of the Committee on Workers' Compensation Reform, thank you for the opportunity to speak to you about Collectively Bargained Workers Compensation.

I am Marc Poulos, Executive Director and Counsel for the Indiana, Illinois, Iowa Foundation for Fair Contracting ("III FFC"). The III FFC is a labor-management organization funded solely by participating contractors signatory to the International Union of Operating Engineers. Local 150, AFL-CIO ("IUOE Local 150").

I join you today in support of Collectively Bargained Workers Compensation ("CBWC") on behalf of the III FFC and IUOE Local 150.

Before 1911, Illinois relied on common law and the traditional court system to handle claims relating to workplace injuries. After the government, business and labor recognized that a change was needed, the first workers' compensation system was created in Illinois. However, decades later we are still faced with a system in need of change. Similar to moving claims from the courts to the Illinois Workers' Compensation Commission ("IWCC") in 1911, there are new and innovative methods to move claims to yet another venue: the collective bargained arena. One key provision of collectively bargained workers compensation is the opportunity for labor and management to agree upon an alternative dispute resolution ("ADR") mechanism rather than the traditional workers' compensation arbitration process through the Workers' Compensation Commission.

Workers compensation costs are often a sizeable portion of an employer's costs for an employee. While it is true that less than 4% of Illinois workers are injured each year and that this injury rate is 27% lower than the national median, workers' compensation insurance premiums are 24% higher than the national median.[1] The high cost of workers' compensation for employers is especially true in the construction industry. One study compared the statewide rate for all industries as less than $3.00 per $100 of payroll. But within the construction trades, costs ranged from $8.01 per $100 of payroll for electrical wiring to $29.94 per $100 of payroll for concrete construction.[2]

The concept of CBWC is voluntary and simple. It is a process that allows an employer and an employee's exclusive bargaining agent to design, operate and implement a workers' compensation program designed to meet the needs of the workers. If successful, the worker returns to work earlier, reducing lost earnings and benefits and reducing the amount of claims paid out, thereby reducing costs to the employer. Several states including: California, Minnesota, Florida, Massachusetts, Pennsylvania, Colorado, Kentucky, Maine, Hawaii, New York, Maryland and Missouri already provide a statutory mechanism for CBWC programs and most are not limited to a specified industry.[3]

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[1] Illinois Workers' Compensation Commission FY 2009 Annual Report at 22, *available at*: http://www.iwcc.il.gov/annualreport09.pdf.

[2] Michael P. Kelsay, James I. Sturgeon, and Kelly D. Pinkham, *The Economic Costs of Employee Misclassification in the State of Illinois* 2-3 (unpublished Report, University of Missouri-Kansas City, 2006) (on file).

[3] *See* CAL. LABOR CODE § 3201.5 and § 3201.7 (2007); MINN. STAT. § 176.1812 (2007); FLA. STAT. ch. 440.211 (2007); MASS. ANN. LAWS ch. 152, § 10C (2007); 34 PA. CODE § 123.401 and § 123.402

Initially, CBWC is not a way of funding workers' compensation insurance. Rather, it is a way of resolving workers' compensation claims. Essentially, CBWC takes insurance carriers out of the driver's seat and allows the true interested parties to collaboratively manage the injury. In other words, rather than creating an adversarial environment, CBWC creates a managed care environment that allows the employee and employer to become invested in the rehabilitation or retraining process.

Currently, Illinois law does not permit alternative dispute resolution of workers' compensation claims. However, Illinois law does allow for certain disputes to be handled through "voluntary arbitration," including those disputes involving temporary total disability ("TTD"), medical expenses and permanent partial disability ("PPD"). While normally only IWCC Arbitrators can only preside over a workers' compensation case, Section 19(p) of the Act contemplates additional approved arbitrators.[4] But, voluntary arbitration is not mandatory, must be agreed to by both parties, and is not a final decision 19(f). CBWC creates a mandatory ADR mechanism and a final decision.

In addition, currently Section 8(a) of the Act provides for the ability to petition the IWCC for the approval of a panel of physicians.[5] A collectively bargained Panel of Physicians was approved by the IWCC in 2006.[6] However, a Panel of Physicians alone will not fully implement the purpose behind CBWC.

The key provisions to CBWC are as follows:

- ADR supplements, modifies or replaces procedural mechanisms within the WCA;

- The selection of an exclusive list of providers for medical treatment (much like we do when limiting health, dental and eye care plans to selected network providers). This allows for occupational medical specialists for construction workers, resulting in a meaningful first exam, quicker specialist referrals, fewer treatments, fewer treating physician disputes, credible and consistent light duty work restrictions, quicker approvals and appointments for specialty exams, and closer monitoring of medications;

- The selection of impartial medical examiners, provided at the request of either party, allowing specified second opinions that are fair, honest and influential. Examiners are required to complete exams and record reviews in a timely manner;

- Creation of a return-to-work or retraining program ("light duty");

(2007); COLO. REV. STAT. § 8-70-114 (2007); 803 KY ADMIN. REGS. 25:150 (2007); ME. REV. STAT. ANN. Tit. 39-A, § 110 (2007); HAW. REV. STAT. § 386-3.5 (2007); N.Y. WORKERS' COMPENSATION LAW § 325-8.1 (2007); MD. CODE ANN., LABOR AND EMPLOYMENT § 9-104 (2007).

[4] 820 ILCS 305/19(p).

[5] 820 ILCS 305/8(a).

[6] *In the Matter of Olmsted Dam Labor Management Committee*, IWCC 06-P-1 (January 16, 2007), copy of Order attached as Exhibit A.

- Requires the Selection of an exclusive list of vocational rehabilitation providers;

- Creation of safety committees recognizing that, with a comprehensive safety program, everyone wins when injuries are avoided.

In addition, the process by which a CBWC program is administered is simple:

- Within three days of medical treatment or the first day off work a CBWC Advocate:
    - Contacts the employee and discusses the process, the Panel of Physicians, and collects authorizations;
    - Collects relevant data including statements and accident reports; and
    - Makes contact with the employer and its workers' compensation carrier.

- If there is a dispute over the injury itself, the Advocate attempts to resolve the dispute. If there is no resolution, the parties are directed either to a Mediator or Arbitrator to hear the dispute.

- If the dispute was resolved by the Advocate, the Advocate monitors the claim, including whether the employee follows through with his or her first appointment with one of the physicians on the Panel of Physicians.

- The Advocate also helps effectuate the Employee's return to full duty work when released by a treating physician.

- If modified duty is required, the advocate facilitates this return to duty

- In the event a dispute arises over medical care, TTD or return to work, the Advocate, within time restraints, intervenes as a neutral arbiter of the dispute

- If the dispute is not resolved, the Advocate directs the parties to the CBWC Mediator or Arbitrator.

This process recognizes that employers lose when they are paying workers compensation benefits to employees instead of a paycheck to the worker on the jobsite. It also recognizes that workers making more than the IWCA's statutory minimum, as well as fringe benefits, lose when they do not return to work in a timely manner.

The fact of the matter is that unions have operated with ADR mechanism like CBWC for years in the form of grievance and arbitration procedures, as well health and pension benefits, labor management cooperatives, vacation savings and retirement enhancement benefits. Some Unions, like the IUOE, Local 150, not only formed and funded multiple Taft-Hartley benefit funds, but also administer their own employee benefits. IOUE Local 150 does this through the Midwest Operating Engineers Health and Welfare Benefit Funds which communicates directly with members, determines the service provider and

network of doctors for members, processes its own health and pension claims, provides and denies benefits, operates a pharmacy, and determines the network of benefits providers on behalf of its members.

In States that already use CBWC programs the results are staggering.

In Minnesota, among CBWC employers:

- Indemnity claims rates per 1 million of payroll were 18% lower
- Overall claims rates per 1 million dollars of payroll are between 5 and 10% lower
- Total incurred benefit costs per $100 of payroll is about 40% lower
- Average benefits paid per claim are 32 – 36% lower
- Vocational rehabilitation is required half as frequently
- Vocational rehabilitation costs 50% less than non-CBWC employers
- The employee's rehabilitated under CBWC plans are more likely to return an injured employer to the pre-injury employer
- CBWC claims were less likely to require dispute resolution services[7]

Similarly, a Cornell University reported CBWC in New York resulted in a 26% reduction in the length of claims and a 41% reduction in the cost of claims as compared to statutory system claims.

The fact of the matter is that under a CBWC system, even undisputed claims receive personal attention. Further, lawyers are never eliminated at any stage; statutory benefits remain the same, there is better and constant communication between all interested parties, members are educated, the process is non-adversarial, and there is guided care through the best network of doctors and a Panel of Physicians and independent medical examiners familiar with construction-related industries. In other states, all of these elements have proven to return workers to the job sooner, creating less permanent disability situations, and lowered claims paid, including vocational training. This is not because the Commission takes time to maneuver claims; rather it is because insurance companies make "initial denials," resulting in a lack of a coordinated communication effort, a lack of guided care and a worker unfamiliar with the workers' compensation system traversing the process.

If instituted, I believe CBWC will also return workers to the job site much faster. Another benefit will likely be premium credits from insurance carriers for participating contractors, similar to those provided by nine separate insurance companies in California for CBWC contractors.

The goal of CBWC is no different than the current statutory system today, return employees to work in their pre-injury state, at full pay with fringe benefits, as soon as possible in order to minimize financial loses to the employee and employer. I believe CBWC is just a better way to get there.

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[7] *Minnesota Department of Labor and Industry*, Office Memorandum re: Construction Collective Bargaining Agreement Claims and Cost Comparison, Oct. 31, 2007, copy attached as Exhibit B.

I urge you to support Collectively Bargained Workers Compensation.

Thank you. I am available if anyone has any questions.

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IN THE MATTER OF
OLMSTED DAM LABOR MANAGEMENT
COMMITTEE

06- P - 1

ORDER

This matter comes before the Commission pursuant to a motion filed July 21, 2006 by the Olmsted Dam Labor-Management Committee seeking approval by the Illinois Workers' Compensation Commission of a Collectively Bargained Panel of Physicians pursuant to Section 8(a) of the Workers' Compensation Act. Hearing on the Motion was held before Commissioner Rink on August 23, 2006, in Mount Vernon, Illinois. After due consideration, the Commission approves the Panel of Physicians as proposed in the July 21, 2006, motion by the Olmsted Dam Management Committee, as set forth below.

The Commission understands that a joint venture, made up of Washington Group International/Alberici, (hereinafter "WGI/ALBERICI" which is a general contractor has entered into a Memorandum of Understanding dated May 10, 2006, with a number of southern Illinois union halls. The memorandum adopts a panel of physicians which is consistent with Section 8(a) of the Workers' Compensation Act. The Memorandum of Understanding also provides for the Olmsted Dam Labor-Management Committee which brought the present motion. Pursuant to Article VIII of the Memorandum of Understanding, the Labor-Management Committee is empowered to implement the terms of the Memorandum, including seeking approval of any portion of the Memorandum so required under Illinois law. The Panel of Physicians is adopted in Article III of the Memorandum of Understanding, and the specific physicians included in the Panel are listed in Exhibit B. Both the Memorandum of Understanding and Exhibit B are attached to this Order. The Commission notes that in establishment of the Panel, geographic considerations were taken into account, and that physicians are available to injured workers in the Herrin, Carbondale and Paducah geographic areas. The Commission finds that the Panel of Physicians discussed herein meets the requirements of Section 8(a) of the Workers' Compensation Act and is approved.

Ex. A

IT IS THEREFORE ORDERED BY THE COMMISSION that the Motion to approve the collectively bargained Panel of Physicians pursuant to Section 8(a) of the Illinois Workers' Compensation Act is hereby granted

DATED: JAN 16 2007

pwr/pr
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Paul W. Rink

Mario Basurto

David L. Gore

OFFICE MEMORANDUM

MINNESOTA DEPARTMENT OF LABOR & INDUSTRY

A trusted resource utilized by employees and employers ...

DATE: 10/31/2007

TO: Patricia Todd, Shawn Peterson

FROM: Brian Zaidman

PHONE: 284-5568

SUBJECT: Construction Collective Bargaining Agreement Claims and Cost Comparison

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The workers' compensation collective bargaining agreement (CBA), also called the Union Construction Workers' Compensation Program, started handling workers' compensation claims in 1997. For contractors accepted into the program, the CBA provides:

- safety services to help prevent injuries;
- dispute resolution services involving facilitation, mediation and arbitration;
- medical care through an exclusive provider organization (starting in July 2004);
- a panel of neutral doctors for second opinions; and,
- vocational rehabilitation services through a panel of neutral rehabilitation counselors.

The effectiveness of the CBA program can be assessed by comparing various workers' compensation measures with available data about the construction industry. For this comparison, information from the CBA annual data reports for 2003 and 2004 was compared to information from the Minnesota Ratemaking Report and from the DLI workers' compensation claims database. (A blank CBA annual data report form is attached.)

Overall, construction employers in the CBA program, compared to all construction industry employers, have slightly fewer claims, pay significantly lower benefits per claim, have claims that require vocational rehabilitation less often, and have fewer claims disputes. These results are consistent with a shorter average duration of indemnity benefits, in which workers are more likely to return to work without requiring additional services. The comparisons, detailed in Tables 1-3, show that:

- The indemnity claims rate per $1 million of payroll is about 18 percent lower among the CBA employers (Table 1, measure 2);
- The overall claims rate per $1 million of payroll is 5 percent to 10 percent lower among CBA employers (Table 1, measure 3);
- Total incurred benefit costs per $100 of payroll are about 40 percent lower among CBA employers (Table 1, measure 8);
- Average benefits paid per claim are about 32 percent to 36 percent lower among CBA employers (Table 1, measure 13);

EX. B

- Vocational rehabilitation is required half as frequently among the CBA claims as among all construction-worker claims (Table 2, measure 1);
- Vocational rehabilitation plans for CBA claimants are about half the cost of plans among all construction claimants (Table 2, measure 2);
- The CBA vocational rehabilitation plans are much more likely to result in returning injured workers to the pre-injury employer than are all construction-industry plans (Table 2, measure 3); and,
- CBA claims are much less likely to require dispute resolution services (Table 3, measures 1-4).

Detailed results and technical notes

The DLI workers' compensation claims database does not include a flag to indicate whether a claim is or is not covered by the CBA program. Therefore, direct comparisons of claims-level statistics using the DLI claims database is not possible. All the comparisons involve comparing CBA program-level statistics reported on the CBA's annual data reports with all construction claims, which include the CBA claims.

Table 1 shows the comparison of claims incidence and cost. In order to create a comparison group to the CBA program, statistics for the ten largest insurance classifications represented in the CBA program (out of a total of 56 classifications present) were combined. The ten classifications account for over 70 percent of the CBA program's payroll (see Table 4). The MWCIA's Ratemaking Reports for 2006, 2007, and 2008 were used to collect the first report statistics for the policy years corresponding to the CBA program reports for these classifications. This also had the effect of more closely matching the groups by eliminating data from classifications with less union representation, such as construction of detached residential units.

Table 1 measures 1-3 show the rates of 2003 and 2004 claims reported per $1 million of payroll. This is used to adjust for the difference in the size of the CBA program compared to all insured construction employers. For both claims years, the CBA claims incidence rates are lower than the construction industry rates. Measures 4-8 show the incurred benefit costs per $100 of payroll. Incurred benefits include the benefits paid to date and the case-specific reserves. While the costs for medical-only claims are the same, indemnity claim costs are much lower for CBA employers. Measures 9-13 display the average incurred costs per claim. While the medical-only claim costs are slightly higher for CBA claims, the difference is very small. The average incurred total benefit cost for indemnity claims is approximately $8,000 lower for the CBA claims.

In Tables 2 and 3, the CBA statistics are compared to the results for all construction indemnity claims in the DLI claims database. Table 2 compares the use and outcome of vocational rehabilitation benefits. Measure 1 constructs a vocational utilization rate by calculating the ratio of the number of vocational rehabilitation plans started during the year to the number of indemnity claims occurring during the year. While this is not a "perfect" utilization rate, the same calculations were performed for both the CBA and all construction statistics. The results show that injured workers in the CBA program are much less likely to require vocational rehabilitation services.

Table 2 measure 2 shows the average cost of vocational rehabilitation plans closed during each of the years. To make the closed plan comparisons more similar, the all construction plan closures were limited to injuries occurring during or after 1997. The table shows that the average cost per closed plan among the CBA claims is approximately half the cost of the plans among all construction claims. Measures 3-5 reinforce this finding, showing that the CBA plans are more likely to close when the injured worker returns to the pre-injury employer, which is the least expensive type of plan closure (see the Minnesota Workers' Compensation System Report, 2004). Additionally, the CBA plans are much less likely to close with the worker finding a job with a different employer and are somewhat less likely to result in closing without a return-to-work.

Table 3 shows measures of disputes and dispute resolution activity. The percentage of claims involved in dispute resolution activity is the ratio of the number of disputes filed to the number of indemnity claims filed during that year. In this measure, the CBA claims are counted if they use mediation, which is the dispute resolution service beyond facilitation. Facilitation compares to the phone intervention services provided by DLI, although it is possible to hold informal conferences as part of facilitation. The CBA claims involved in their dispute resolution services do not file dispute resolution forms with DLI, so they are not included in the construction industry claims statistics. The construction industry claims are counted as requiring dispute resolution if they have at least one of the following forms files during the year: a certification request, a request for assistance, a claim petition, a request for discontinuance conference, an objection to discontinuance, or a petition to discontinue benefits. Claims with disputes in the previous year were not counted in the latter year. Claims with injuries in 1997 and later were included. Measure 1 shows that a much lower percentage of CBA indemnity claims are involved in disputes than are the construction claims as a whole.

It is possible that the construction industry dispute rates are higher because the claims are open longer, providing a greater opportunity for filing disputes. Therefore, measure 2 of dispute resolution activity was calculated by limiting the construction industry claims to those claims filed within two years of the dispute filing year. Thus, the dispute ratio for 2003 includes the disputes filed during 2003 for injuries occurring in 2001, 2002, and 2003, and the dispute ratio for 2004 includes the disputes filed during 2004 for injuries occurring in 2002, 2003, and 2004. While this reduces the construction industry dispute ratio, it remains much higher than the CBA claims' ratio.

Measures 3 and 4 are similar to the first two measures, respectively, but the construction industry disputes do not include claims with only certification requests filed. In both of these measures, the CBA claims had a lower dispute resolution activity ratio.

Comparison of the Union Construction Workers' Compensation Program (CBA) and Construction Industry Workers' Compensation Claims, Costs, and Outcomes

Table 1 Claims and Benefits

	measure	2003 Claims		2004 Claims	
		CBA	Construction[1]	CBA	Construction
1	medical-only claims per million $ payroll	1.78	1.95	1.78	1.80
2	indemnity claims per million $ payroll	0.57	0.69	0.52	0.63
3	total claims per million $ payroll	2.35	2.64	2.30	2.43
4	medical-only costs incurred per $100 payroll	$0.13	$0.12	$0.12	$0.12
5	indemnity claim medical costs incurred per $100 payroll	$0.56	$0.90	$0.53	$0.83
6	indemnity claim indemnity costs incurred per $100 payroll	$0.54	$1.01	$0.47	$0.90
7	indemnity claim total benefit costs incurred per $100 payroll	$1.11	$1.91	$1.00	$1.73
8	total benefit costs incurred per $100 payroll	$1.23	$2.03	$1.12	$1.86
9	medical costs incurred per medical-only claim	$ 710	$ 632	$ 700	$ 684
10	medical costs incurred per indemnity claim	$ 9,908	$12,959	$10,116	$13,169
11	indemnity costs incurred per indemnity claim	$ 9,562	$14,617	$ 9,003	$14,238
12	total benefit costs incurred per indemnity claim	$19,471	$27,576	$19,119	$27,407
13	total benefit costs incurred per claim	$ 5,243	$ 7,695	$ 4,874	$ 7,631

[1] Construction values based on MWCIA Ratemaking Report data for ten large contractor classifications.

Table 2 Vocational Rehabilitation[1]

	measure	2003		2004	
		CBA	Construction[2]	CBA	Construction
1	vocational rehabilitation utilization[3]	12%	23%	12%	26%
2	mean vocational rehabilitation costs per closed plan[4]	$ 2,783	$ 6,032	$ 3,764	$ 6,347
3	percentage returned to work with same employer	56%	40%	75%	41%
4	percentage returned to work with different employer	11%	26%	10%	26%
5	percentage closed without return to work	33%	34%	15%	34%

[1] Year refers to claim and form filing year (for utilization) and to year of plan closure for the other measures.

[2] Construction values use construction industry indemnity claims in the DLI claims database.

[3] The ratio of the number of vocational rehabilitation plans filed during the calendar year to the number of indemnity claims with injury dates in that calendar year.

[4] Mean vocational rehabilitation costs adjusted to 2005 wage levels.

Table 3 Dispute resolution[1]

	measure[2]	2003		2004	
		CBA	Construction[3]	CBA	Construction
1	dispute resolution rate, all years	11.2%	23.2%	8.7%	24.3%
2	dispute resolution rate, recent years	11.2%	18.6%	8.7%	18.2%
3	dispute resolution rate, excluding cert. requests, all years	11.2%	22.5%	8.7%	23.7%
4	dispute resolution rate, excluding cert. requests, recent years	11.2%	18.1%	8.7%	17.9%

[1] Year refers to injury year for denials and to year of dispute document filing for dispute activity.

[2] The ratio of the number of unique indemnity claims with a dispute filed during the calendar year to the number of indemnity claims with injury dates in that calendar year. The percentage in parentheses is the dispute resolution activity limited to indemnity claims incurred up to two years prior to the dispute filing.The four measures reflect changes in counting construction industry disputes.

[3] Construction values use construction industry indemnity claims in the DLI claims database.