FILE NAME: Shipbuilders Council of America (SHIP)

DATE: 1972 Dec 13

DOC#: SHIP003

DOCUMENT DESCRIPTION: Minutes of SCA Special Meeting on Longshoremen's and Harbor Workers Compensation Act

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SHIPBUILDERS COUNCIL OF AMERICA
SPECIAL MEETING ON
LONGSHOREMEN'S AND HARBOR WORKERS COMPENSATION ACT

DECEMBER 13, 1972

In accordance with letter to All Shipyard Delegates dated November 28, 1972, a special meeting of shipyard representatives was held at the Watergate Hotel December 13, 1972 to discuss the ramifications of Public Law 92-576, the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972.

E. P. Ruddy, Secretary of the Council presided.

The following, representing shipyards, were present:

Dorothy Alleback	Sun Shipbuilding
Henry Brown	Dravo Corporation
William Butler	Sun Shipbuilding
M. J. Carroll	Jeffboat
Harry Fisher	Todd Shipyards
M. R. Guy	Bethlehem Steel
R. M. Hartman	Bethlehem Steel
Michael L. Harris	Jeffboat
Harry G. Hill	Todd Shipyards
Harold Knebel	St. Louis Shipbuilding
R. L. Norsworthy	Newport News Shipbuilding
V. G. Noel	Dravo Corporation
Richard J. Querrey	St. Louis Shipbuilding
Edward Renshaw	St. Louis Shipbuilding
M. P. Redford	Norfolk Shipbuilding
Lloyd Rials	Newport News Shipbuilding
Robert F. Sherman	Savannah Machine & Shipyard
J. S. Stratton	Ingalls Shipbuilding
R. A. Stubblefield	Newport News Shipbuilding
Charles F. Tucker	Norfolk Shipbuilding & D. D.
J. D. Wechsler	Ingalls Shipbuilding
Delmar J. Young	Kaiser Engineers

The following were guests of the Council at the meeting:

Eugene Mittelman	Minority General Counsel Senate Committee on Labor and Public Welfare
John E. Stocker	Acting Deputy Director, Office of Workmen's Compensation Programs, Department of Labor
John Sidwar	Office of Workmen's Compensation Programs, Department of Labor

The meeting was called to order at 9:45 and after general announcement and introductions, Mr. Ruddy described briefly the organization and representative position of the Shipbuilders Council of America in the U.S. shipbuilding and ship repair industry. The purpose of the special meeting was then explained as a meeting of appropriate representatives from the member shipyards for an informal exchange of views and the possible development of unified industry positions on the amended Act which became effective November 27, 1972.

It was pointed out that whatever recommendations came out of the meeting would have to be acted on by the Board of Directors of the Council.

At this point, Mr. Mittelman arrived and was introduced.

The chair then asked for a report by Mr. Edward Renshaw, President of St. Louis Shipbuilding, on a meeting that had been held in New Orleans December 4 by the Shipbuilding Committee of the American Waterways, of which he is a member, for discussion of the new amendments to the Act. Mr. Renshaw is also a member of the Shipbuilders Council and is Regional Vice President, Inland Rivers.

Mr. Renshaw reported that the December 4 meeting of AWO had been attended by representatives of a large number of the smaller shipyards with employment in the individual yards running from as small as 50 up to several thousands of employees.

He noted that all aspects of the amendment had been discussed at the meeting but that the greatest concern, by far, was the extension of jurisdiction to cover all shipbuilding and ship repair employees. It appeared that the majority of the yards were booked well in advance with fixed price contracts and there is no way to recoup the additional cost arising from the amendments.

One yard of about 1,300 employees was reported to have estimated that it would sustain a loss of about one-half million dollars. Other yards reported estimates of potential losses which varied from state-to-state depending on the level of state compensation benefits.

Mr. Renshaw noted that other features of the legislation discussed at the meeting included the concern that 66-2/3 of the employee's weekly wage approached the take-home pay of the employee and there would be great difficulty in getting people back to work once on compensation. Also, the new right of selection of the doctor by the employee was felt to be a most unwelcome change which would lead to malingering.

He noted, however, that overriding all of this was the extension of jurisdiction.

Mr. Renshaw reported that the AWO Shipbuilding Committee had formed a committee of five, representing geographically the small yards, to plan a course of action hopefully as a joint venture with a similar small group representing the Shipbuilders Council the thought being that there should be unified industry effort to seek some relief from the amendments which were felt to be discriminatory against the shipyard industry.

Responding to an inquiry as to how the yards had priced out the potential added costs, Mr. Renshaw reported that discussion with the underwriters and national compensation board disclosed that the increased benefits and jurisdiction change would raise base rates for the first year from about $5 or $6 to over $13 per $100 of payroll.

During the discussion which followed, a number of points were made including the following:

* In the Inland Rivers yards before enactment of PL 92-576, the state coverage of employees was about 95 percent while the Federal was from 3 to 5 percent. Under the amendments, nearly 100 percent are covered by the Federal Act.

* In a typical ship repair yard, coverage prior to the new Act was 75 percent Federal and only 25 percent by the state, while in shipbuilding as opposed to repair, about 75 percent of the yard's employees were under state coverage. Thus the jurisdictional change had a much greater impact on shipbuilding yards than in ship repair.

* Question was raised as to how the new amendments should be interpreted with regard to coverage and the point was made that the amendments could be interpreted to mean that everybody that walks in the gate of a shipyard is now covered.

* Certain office people, even though within the gate, may not be covered.

* In the State of Washington, a preliminary ruling has been issued holding that the only people still covered by the State Act are clerical.

* It was recognized that clean cut interpretations of the jurisdiction change may ultimately have to be made by the Courts but the apparent intent is to end a situation where two men in a shipyard on the same kind of work could be under different statutes merely because of the location of the work.

Further discussion of this last point brought out that during the hearings it was clearly understood by the Congress that except for a few yards, the shipyard industry was opposed to the expansion of coverage throughout the yard. However, the Congress made a deliberate choice to so expand the Federal jurisdiction with the primary reason being to bring an end to this anomaly of two men with the same injury receiving disparately different benefits because of the location in the yard where injury occurred. It was reported that at one point the Congress did consider amending the law to provide that within a certain geographic area all would be covered. However, this approach was abandoned.

The following was quoted from page 75 of the printed "Legislative History" of the Act by Mr. Mittelman in support of his explanation of the jurisdictional change:

> ". . . The Committee does not intend to cover employees who are not engaged in loading, unloading, repairing, or building a vessel, just because they are injured in an area adjoining navigable waters used for such activity. Thus, employees whose responsibility is only to pick up stored cargo for further trans-shipment would not be covered, nor would purely clerical employees whose jobs do not require them to participate in the loading or unloading of cargo. However, checkers, for example, who are directly involved in the loading or unloading functions are covered by the new amendment. Likewise the Committee has no intention of extending coverage under the Act to individuals who are not employed by a person who is an employer, i.e. a person at least some of whose employees are engaged, in whole or in part in some form of maritime employment. Thus, an individual employed by a person none of whose employees work, in whole or in part, on navigable waters, is not covered even if injured on a pier adjoining navigable waters."

Mr. Mittelman emphasized that this language meant that the intent is to cover all blue collar employees engaged in building or repairing but not everyone who works in the yard.

It also was emphasized in the discussion that no bill could have been reported out of the Congressional Committee that did not comply with the report of the National Commission on State Workmen's Compensation Laws. However, this was not a stumbling block; the big problem was to draft a bill which would effectively eliminate the third party suits

based on the warranty of seaworthiness.

Mr. Mittelman also reminded the group that the extension of jurisdiction was only a prelude to a future adoption of the Federal benefit levels by all of the states and that the consideration and enactment of national workmen's compensation standards will be a high priority item at the 93rd Congress. (See statement by Senator Javits attached to these minutes).

Another element pointed to as having been considered in the decision to go forward with an extension of jurisdiction was that many in the Congress saw the bill as a way to equalize costs between shipyards in various sections of the country. The elimination of competitive disparities between yards in different areas was stated as being a firm goal considered by the Senate Committee.

It was also pointed out that the Committee report on the bill was drafted after the National Commission report had become available in draft form and that the Committee had taken the report into consideration in considering the bill.

Discussion by the shipyard representatives present seemed to confirm the understanding that the amended Act applies to all shipbuilding and ship repair employees within the perimeter of the yard.

On the question of why the expansion of jurisdiction was not applied to other facilities along the waterfront, such as a steel mill which has some marine loading and unloading facilities, it was explained that the rationale was that to do so was not really practical because "you could not stop there." The result would have been a national workmen's compensation statute proposal which would have been too far afield politically from the legislation under consideration.

One of those present noted that if anyone covered under the state act, such as a clerk or office worker, goes aboard a vessel and is injured and coverage is handled under the state act, then the exclusive liability provision of the Federal statute no longer protects the employee from the third party suit exposure provision in the new amendments.

There was agreement by the attorneys present that the amendments are constitutional and that ample authority appears to exist under the commerce clause of the Constitution.

With regard to the new provisions on the choice of the physician by the employee, problems can be kept at a minimum by providing very good

medical care. It was explained that the amendments are patterned after New York compensation procedure and experience.

Shortly before the meeting adjourned, the following motion was offered to the group and adopted by those present.

> Resolved, That an ad hoc group from the Shipbuilders' Council be established to work with the ad hoc Committee of the Shipbuilders' Committee of the American Waterways Operators, Inc., to explore possible relief from the economic effect of that part of the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act which call for the extension of jurisdiction to include all employees engaged in shipbuilding or ship repairing.

The following companies indicated an interest in serving on the Council ad hoc group if formed - Ingalls Shipbuilding, Dravo, St. Louis Shipbuilding, and Newport News Shipbuilding.

The group recessed at noon for luncheon in the Terrace Room of the Watergate and were joined by Messrs Stocker and Sidwar of the Office of Workmen's Compensation Programs.

During the afternoon session, the representatives of the Office of Workmen's Compensation Programs outlined the change in law contained in the new legislation and disclosed that revised regulations are being drafted to cover the changes. The draft regulations were to be available before year's end but contrary to previous reports it was indicated that the 30 days for public comment prior to adoption would not be available. In this context, those present were asked to submit any views and recommendations as promptly as possible and not to wait for the issuance of draft regulations.

During discussion, Mr. Stocker distributed several proposed forms to all present which were described as for use in connection with selection of physician and the reporting of claims.

The question of self insurer versus insurance coverage led to a suggestion that the rules for self-insurers might be useful for review by the shipyard representatives. A reprint of the current rules now undergoing revision is attached. It is understood that the revisions to be made are quite minor.

The meeting adjourned at 3:15 p. m.

E. P. Rudolph