



NEW YORK STATE SENATOR

George Onorato

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February 25, 2010

ISSUE:

- [Labor](#)

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## **News From**

**State Senator George Onorato**

**Chairman, New York State Senate Standing Committee on Labor**

For Release: February 25, 2010

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### **SENATE LABOR COMMITTEE CHAIRMAN URGES WORKERS' COMPENSATION BOARD TO OBEY THE LAW AND ABANDON ITS NEW ADJUDICATION PROGRAM**

State Senator George Onorato, the Chairman of the State Senate Labor Committee, made the following statement following the Committee's public hearing yesterday on the new "Managed Adjudication Path" program being pursued by the New York State Workers' Compensation Board:

"Yesterday, the Senate Labor Committee heard unanimous opposition from workers' compensation judges and representatives of injured workers and employers to a new program that would allow judges to issue proposed decisions without allowing the parties the opportunity for a hearing to resolve disputed issues. The Workers' Compensation Board plans to start its new "Managed Adjudication Path" (MAP) program tomorrow. Under current law, if an injured worker and his employer cannot resolve disputed issues with the Board's conciliation counsel, they may request a hearing, appear before a judge, present testimony and receive a decision within 30 days. The MAP program would abandon this statutory requirement and have judges reviewing cases outside the courtroom and writing decisions from home. Witnesses told the Committee this would especially hurt unrepresented injured workers, many of whom are unfamiliar with the workers' compensation system and rely on pre-hearing meetings to understand their rights.

"The Committee held a public hearing in Albany yesterday where representatives of the New York State Bar Association, the AFL-CIO, the Business Council, injured workers, and private and public employers, including New York City, complained about the loss of their due process rights to a hearing under MAP. They criticized the failure by the Workers' Compensation Board to solicit their input before moving ahead with this major procedural change, noting that the Workers' Compensation Reform Act of 2007 allowed representatives of injured workers and

employers to negotiate and reach a satisfactory compromise that respected the rights of all parties. At the hearing, Judges, along with attorneys for claimants and employers, denounced the Board's lack of authority under current law to determine -- on its own-- that judges may issue proposed decisions without first holding a hearing. Many representatives also expressed concerns that MAP would chill their right to request a hearing following a proposed decision, citing the Board's ability to impose costs if it believes a party is continuing a claim without reasonable grounds.

"In my opening remarks, I outlined the relevant workers' compensation statutes, and noted that "The Law does not allow the Board -- on its own -- to change procedures established by the Legislature to resolve disputed issues between the parties. If the Board believes a change in current statutory procedures is needed, the way to accomplish that is by legislative amendment."

"The Chairman of the Workers' Compensation Board, Robert Beloten, who testified at the hearing, acknowledged that the Legislature has amended the conciliation statute at issue three times since its inception 20 years ago "making it a vital tool for the prompt resolution of issues within an accepted or established claim." Nonetheless, the Chairman claims the Board has a right to make further refinements to this law.

"The Workers' Compensation Board has provided little information as to why MAP is necessary. According to a Joint 2009 Report to the Governor by the State Department of Insurance and Workers' Compensation Board examining progress in resolving cases at the Board, the average number of workers' compensation hearings has been steadily decreasing since 2001. Witnesses at the hearing questioned why MAP was even needed, citing the success of existing procedures that have significantly expedited case resolution and reduced the number of hearings held. Nonetheless, the Board plans to reclassify current conciliators as administrative law judges and increase their salaries.

"This is not the first time the Labor Committee, which has legislative oversight of the Workers' Compensation Board, has observed the Board overstepping its statutory authority. Last year, the Board announced plans to use digital-audio recording as a pilot program at hearings, and solicited bids from vendors despite a longstanding law that requires the use of stenographers. Following a public hearing by the Labor Committee in October concerning the Board's lack of legal authority and overwhelming opposition to the proposal, the Board nonetheless signed a three-

year contract last month for nearly \$1 million with a Canadian company to use digital-audio recording at hearings throughout the State.

“Witness after witness at yesterday’s hearing called upon the Board to withdraw its plans to use the MAP program. I urge Chairman Beloten to reconsider his plans and, in the future, meet with the Labor Committee and other stakeholders in New York’s workers’ compensation system if he believes changes are needed to improve current procedures to protect injured workers and adjudicate their claims.”

- 30 -