

JUN 4 - 2014

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Frank A. McGuire Clerk
Deputy

JOHN LARKIN,

Petitioner,

WORKERS' COMPENSATION APPEALS
BOARD and THE CITY OF MARYSVILLE,

Respondents.

Case No. S216986

Court of Appeal Case No.
C065891

W.C.A.B. Case No.
ADJ7191871

ANSWER TO APPELLANT'S BRIEF ON THE MERITS

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CERTIFICATE OF INTERESTED ENTITIES/PERSONS

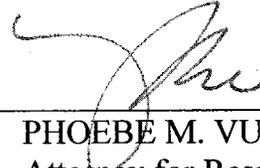
Name of Interested Entity/Persons	Non-Party	Nature of Interest
Court of Appeal		Respondent Court
Workers' Compensation Appeals Board		Respondent Court
City of Marysville		Respondent
York Insurance Services Group		Respondent
Mastagni, Holstedt, Amick, Miller & Johnsen		Attorney for Petitioner
John Larkin		Injured Worker; Petitioner
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PARSAC (Public Agency Risk Sharing Authority of California) 1525 Response Road Sacramento, CA 95815	X	Financial/Public Entity Association
ABAG (Association of Bay Area Governments) 101 8 th Street Oakland, CA 94607	X	Financial/Public Entity Association
SCORE (Small Cities Organized Risk Effort) 1792 Tribute Road, Suite 450 Sacramento, CA 95815	X	Financial/Public Entity Association
NCCSIF (Northern California Cities Self-Insurance Fund) 1792 Tribute Road, Suite 450 Sacramento, CA 95815	X	Financial/Public Entity Association
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77 W. Lincoln Avenue Woodland, CA 95695		
PARMA (Public Agency Risk Managers Association) 707 Third Street West Sacramento, CA 95605	X	Financial/Public Entity Association

Dated: June 3, 2014

Respectfully submitted,
LENAHAN, LEE, SLATER & PEARSE, LLP

By: _____



PHOEBE M. VU, Esq.
Attorney for Respondent,
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ANSWER TO BRIEF ON THE MERITS

**TO THE HONORABLE CHIEF JUSTICE AND TO THE
HONORABLE ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE STATE OF CALIFORNIA**

INTRODUCTION

JOHN LARKIN, (hereinafter “Petitioner”), by and through his attorney of record, filed a Petition for Review seeking review of one issue. On April 9, 2014, Review was granted by this Court. On May 8, 2014, Petitioner submitted his Opening Brief on the Merits (hereinafter “Petitioner’s Brief”). Respondent CITY OF MARYSVILLE, P.S.I., (hereinafter “Respondent”), by and through its attorney of record, hereby timely Answers Petitioner’s Opening Brief on the Merits and respectfully requests that the Court uphold the decision of the Third District Court of Appeal (hereinafter “Third D.C.A.”) as it is supported by the clear language of the law, legislative history, and statutory scheme.

QUESTION PRESENTED FOR REVIEW

- I. Whether the benefits provided by Labor Code Section 4458.2¹ extend to “volunteer” peace officers or whether the statute applies to regularly sworn, salaried officers, as well.

BACKGROUND

Petitioner sustained a specific injury to his neck, right shoulder, left upper thigh, face, right biceps and nose on November 21, 2008 when he

¹ All further statutory references are to the California Labor Code, unless expressly stated.

was involved in a motor vehicle accident during the course of his employment. At the time of injury, applicant was a regularly employed, full-time salaried peace officer for the City of Marysville. He voluntarily resigned his position with the City following the motor vehicle accident. Workers' compensation benefits were furnished.

This matter was set for an Expedited Trial on May 25, 2010 before the Honorable Workers' Compensation Judge, (hereinafter "WCJ"), Dudley Phenix. Prior to the Expedited Trial, the parties submitted a Pre-Trial Conference Statement stipulating that the only issues for determination were applicant's claim to temporary disability ("TD"), the appropriate earnings rate, and the applicability of Section 4458.2. Contrary to Petitioner's Brief, the applicability of Section 4850 benefits (a different species of indemnity) were not raised at any point in time, nor were Section 4850 benefits paid to Petitioner.

TD benefits had been furnished at the rate of \$672.31 per week. Petitioner's indemnity rate was based on the statutorily defined two-thirds of his average weekly wage per Section 4453. Petitioner sought temporary disability indemnity benefits payable at the maximum statutory temporary disability rate under Section 4458.2. His actual weekly income of \$1,008.47 was not high enough to justify the maximum TD rate of \$916.33 (to qualify, he would need to earn \$1,374.46 per week; two-thirds of \$1,374.46 is the maximum TD rate of \$916.33).

On July 12, 2010, WCJ Phenix issued a Findings and Award concluding that Petitioner was not entitled to the maximum TD rate under Section 4458.2; Petitioner's rate was to be based upon his actual income. Petitioner's average weekly earnings were determined to be \$1,008.47, resulting in a TD rate of \$672.31 per week.

Petitioner filed a Petition for Reconsideration before the WCAB on July 21, 2010 alleging that WCJ Phenix erred in finding that Section 4458.2 did not apply to Petitioner. WCJ Phenix filed his Report and Recommendation on Petition for Reconsideration on July 27, 2010, recommending that the WCAB deny the Petition for Reconsideration as submitted by Applicant. Defendant filed an Answer to Applicant's Petition for Reconsideration on July 29, 2010 supporting the WCJ's findings and correct interpretation of the law. The WCAB issued its Order Denying Reconsideration on August 11, 2010, and adopted and incorporated WCJ Phenix's Report on Petition for Reconsideration, thereby affirming that applicant was not entitled to the maximum TD rate under Labor Code Section 4458.2.

From that Order Denying Reconsideration, Petitioner then submitted his Petition for Writ of Review to the Third D.C.A. on August 26, 2010. Respondent timely Answered on September 14, 2010. The Third D.C.A. granted the Petition for Writ of Review. The matter was set for oral argument on December 18, 2013. Thereafter, the Third D.C.A. issued its

Opinion on January 28, 2014 affirming the WCAB's Order denying reconsideration. Petitioner filed a Petition for Writ of Review with this Court, which was granted on April 9, 2014. Respondent hereby timely Answers on the grounds that the decision of the Third D.C.A. was legally justified.

LEGAL DISCUSSION

I. THE PLAIN LANGUAGE OF SECTION 4458.2 REQUIRES IT BE READ IN CONJUNCTION WITH SECTION 3362 IN DETERMINING ITS SCOPE.

The plain language of Section 4458.2 confines its applicability only to the class of volunteer peace officers as described in Section 3362.

Section 4458.2 provides:

If an active peace officer of any department *as described in Section 3362* suffers injury or death while in the performance of his or her duties as a peace officer . . . his or her average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum for each, respectively, in Section 4453. (Lab. Code § 4458.2 (2014) (emphasis added).)

Notably, Petitioner's brief fails to cite Section 4458.2's express limiting language and reference to Section 3362. Therefore, the plain language of Section 4458.2 requires that it be read in conjunction with Section 3362 in interpreting its application and scope.

II. SECTION 3362 LIMITS THE APPLICATION OF SECTION 4458.2 MAXIMUM BENEFITS SOLELY TO VOLUNTEER PEACE OFFICERS.

A. THE STATUTORY SCHEME AND PLACEMENT OF SECTION 3362 UNDERSCORES ITS APPLICABILITY ONLY TO VOLUNTEER PEACE OFFICERS.

The goal of statutory construction is to ascertain and effectuate the intent of the Legislature. (*Hsu v. Abbata* (1995) 9 Cal. 4th 863, 871.) The words of the statute generally provide the most reliable indication of legislative intent. (*Hsu, supra*, at 871.) However, where the statutory language is ambiguous, one must look to the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes. (*Pacific Gas & Elec. Co. v. County of Stanislaus* (1997) 16 Cal. 4th 1143, 1152.)

Section 3362 is contained in Chapter 2 (“Employers, Employees, and Dependents”), Article 2 (“Employees”) of the Labor Code, which discusses the different categories of “employees” entitled to workers’ compensation benefits. Chapter 2, Article 2 addresses specific categories of workers not ordinarily eligible for workers’ compensation benefits. This section refers to “volunteers” (i.e. volunteer firefighters, volunteer peace officers, and volunteers of recreation and parks districts) who may be “deemed” “employees” for the purposes of extending workers’ compensation benefits if the public agency designates the workers as such in accord with the procedures set forth in Section 3362.

Given the statutory scheme and placement of Section 3362, it is clear that Section 4458.2 maximum benefits were designed to grant workers' compensation benefits upon a class of workers that would not have been entitled to any workers' compensation benefits. Allowing a public agency to "register" and "deem" such volunteers as "employees" in order to confer workers' compensation benefits falls in line with the protections granted to other classes of volunteers delineated in Chapter 2, Article 2.

- B. THE PLAIN LANGUAGE OF SECTION 3362 DESCRIBES A PROCESS BY WHICH ONLY VOLUNTEER PEACE OFFICERS MUST BE "DEEMED" AN EMPLOYEE IN ORDER TO RECEIVE WORKERS' COMPENSATION BENEFITS.

Section 3362 provides, in part:

Each male or female member *registered* as an active policeman or policewoman of any regularly organized police department having official recognition and full or partial support of the government of the county, city, town, or district in which such police department is located, shall, *upon the adoption of a resolution by the governing body of the county, city, town or district so declaring, be deemed an employee* of such county, city, town or district for the purpose of this division *and shall be entitled to receive compensation* from such county, city, town, or district in accordance with the provision thereof. (Lab. Code Section 3362 (2014) (emphasis added).)

Based on the language of Section 3362, the law provides workers' compensation benefits for a class of persons who are not ordinarily considered "employees" for the purposes of workers' compensation

benefits if they meet certain criteria to be “activated” and “deemed” an “employee.”

A volunteer peace officer is “activated” and eligible where (1) he or she is “registered” as an active peace officer; (2) is a part of a department having official recognition or support by the government entity in which the department is located; (3) has been “deemed” an “employee” of the government entity through an official resolution; and (4) is qualified to receive workers’ compensation benefits.

Regularly sworn peace officers, such as Petitioner, do not have to go through the “activation” process to be “deemed” an “employee” eligible for workers’ compensation benefits as described in Section 3362. Rather, by virtue of being “in the service of an employer under any appointment or contract of hire,” Petitioner is *automatically entitled* to workers’ compensation benefits under Section 3351. Because volunteer peace officers do not work “under any appointment or contract of hire,” but rather provide volunteer services of their own volition, they are not automatically deemed an employee eligible for workers’ compensation benefits under Section 3351. Thus, such volunteers would be ineligible for workers’ compensation benefits absent Sections 4458.2 and 3362.

To apply Section 3362 to both volunteer and regularly sworn peace officers would obviate the need for Section 3362 altogether, because it would “activate” and “deem” employment upon regularly sworn peace

officers who are already otherwise entitled to workers' compensation indemnity under Labor Code. Therefore, the express language of Section 4458.2 limits its applicability to those peace officers under Section 3362, which references only volunteer peace officers who must undertake registration process in order to be "deemed" employees for the purposes of obtaining workers' compensation benefits. Given this statutory scheme, the decision of the Third District Court of Appeal is supported by the law's clear language.

III. LIMITING MAXIMUM BENEFITS UNDER SECTION 4458.2 TO VOLUNTEER PEACE OFFICERS AVOIDS THE ABSURD RESULT OF EXPANDING MAXIMUM BENEFITS TO A CLASS UNINTENDED BY THE LEGISLATURE.

A. EXTENDING MAXIMUM BENEFITS TO REGULARLY SWORN PEACE OFFICERS WOULD CREATE A RESULT NEVER CONTEMPLATED AND WHOLLY UNINTENDED BY THE LEGISLATURE.

Section 4458.2 was first introduced and enacted in 1961 as Assembly Bill 2016 ("AB 2016") by Assemblymen Nisbet, Hegland, and Kennick. (Assem. Bill No. 2016 (1961 Reg. Sess.)) The original form of Section 4458.2 was enacted as follows:

"If a *male member* registered as an active police member of any *regularly organized volunteer* police department as described in Section 3362 suffers injury or death while in the performance of *his* duty as a *policeman* . . . his average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453." (Former Lab. Code § 4458.2 (Amend. 1989)(emphasis added).)

Assemblyman Nisbet wrote to Governor Brown on June 12, 1961 explaining AB 2016's purpose in “. . . provid[ing] coverage for *volunteer policemen* . . . and [TD benefits] shall be fixed at the maximum weekly earnings. . .” Assemblyman Nisbet further described the class of persons intended to receive maximum benefits as “volunteer policeman [who] are regularly active registered members of a regularly organized police department . . .” (Exhibit A, 6/12/1961, Assemblyman Eugene Nisbet, letter to Gov. Edmund G. Brown, Jr.)

Additionally, a “Report on Assembly Bill 2016” authored by the Office of Legislative Counsel dated July 5, 1961 explained that AB 2016 would provide “*volunteer policeman*, irrespective of remuneration, shall receive workmen's compensation benefits for injury or death while performing duties as a policeman, based upon maximum average weekly earnings . . .” (Exhibit B, 7/5/1961, Legis. Counsel, Rep. on Assem. Bill No. 2016 (1961 Reg. Sess.).)

Additionally, *Matteson v. WCAB* (1968) 33 CCC 635 is illustrative of the legislative intent and purpose. In *Matteson*, the WCAB held that a regularly employed police matron was entitled to TD benefits based only on her *actual earnings*, rather than the maximum earnings presumptions afforded by Section 4458.2, as that presumption was applicable *only* to volunteer peace officers. Although *Matteson* pre-dates the 1989 Amendment (as discussed below), the spirit, meaning, and intent behind

Sections 4458.2 and 3362 did not change its applicability only to volunteer peace officers.

Therefore, based on the plain language of the law, legislative purpose, and case law, as outlined by the above-referenced sources, Section 4488.2 was enacted to solely benefit the class of volunteer peace officers, as opposed to both volunteer and regularly, sworn peace offices.

B. THE 1989 AMENDMENT TO SECTION 4458.2 DID NOT BROADEN ITS SCOPE TO INCLUDE REGULARLY SWORN PEACE OFFICERS, BUT RATHER MODERNIZED ITS SCOPE TO INCLUDE GENDER NEUTRAL TERMS.

The current Section 4458.2 reflects changes made through Assembly Bill 276 (“AB 276”) as amended in 1989. These changes are emphasized in the above-referenced pre-1989 version in italics and demonstrate the Legislature’s implementation gender-neutral language. Section 4458.2 retained its application to volunteer peace officers with its direct reference to Section 3362. While the current version of Section 4458.2 no longer includes the term “volunteer,” reading Section 4458.2 in conjunction with Section 3362 (as expressly required by the law) clearly demonstrates that its application only to volunteer peace officers.

Furthermore, Bill analysis of AB 276 provided that the 1989 Amendment would “amend existing law so that *peace officers who are volunteers . . .* are entitled to receive workers’ compensation benefits if they are injured, disabled, or die within the line of duty.” (Exhibit C, 8/25/1989,

Legis. Analyst, analysis of Assem. Bill. No. 276 (1989-1990 Reg. Sess.) p. 6.)

The Assembly Finance and Insurance Committee further clarified the legislative background upon which AB 276 was premised. (Exhibit D, 8/22/1989, Assem. Com. On Fin. & Insur., Republican Analysis, Rep. on Assem. Bill 276 (1989-1990 Reg. Sess.), proposed amendment.) Prior to the 1989 Amendment, “volunteer peace officers [could only] recover [workers’ compensation benefits] *only if* their regular employer would compensate for such voluntary service.” (Exhibit D, 8/22/1989, Assem. Com. On Fin. & Insur., Republican Analysis, Rep. on Assem. Bill 276 (1989-1990 Reg. Sess.), proposed amendment.) The purpose behind AB 275 was to “automatically [qualify] volunteers for maximum benefits” and create “additional workers’ comp liability on the part of local public entities which operate reserve police forces.” (Exhibit D, 8/22/1989, Assem. Com. On Fin. & Insur., Republican Analysis, Rep. on Assem. Bill 276 (1989-1990 Reg. Sess.), proposed amendment.)

In an internal memorandum to Senator Presley, dated August 25, 1989, authored by a legislative analyst, AB 276 was described as “extend[ing] workers’ compensation coverage to individuals who serve as volunteer or paid reserve or auxiliary peace officers.” (Exhibit E, Legis. Analyst Sue Burr, mem. to Senator Robert Presley, Aug. 25, 1989, p. 1.)

Prior to 1989, “peace officers” were defined as law enforcement personnel regularly employed and compensated by local agencies; it did not distinguish between volunteers, partially paid, or fully paid peace officers. As passed by the Assembly, AB 276 “expanded the definition of ‘employee’ for workers’ compensation. . . to include any qualified person who is deputized or appointed . . . as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, a reserve police officer of a regional park district or transit district, or a deputy of the Department of Fish and Game.” (Exhibit F, 9/7/1989, Legis. Counsel’s Dig., Sen. Conc., Assem. Bill 276 (1989-1990 Reg. Sess.)) Thus, AB 276 “extended to these [volunteer employees] the maximum earnings presumption.” (*Id.*)

Given this colored legislative background, although the term “volunteer” was removed from Section 4458.2 under the 1989 Amendment, the Legislature intended to retain its original meaning and application by directing Section 4458.2’s applicability to the class of volunteer peace officers discussed in Section 3362.

C. THE FISCAL IMPACT OF PROVIDING MAXIMUM BENEFITS TO REGULARLY SWORN PEACE OFFICERS WAS NOT CONTEMPLATED NOR INTENDED BY THE LEGISLATURE.

Even following the 1989 Amendment, the maximum average weekly wage (“AWW”) qualifying for maximum TD benefits under Section 4458.2 was \$336.00, or \$17,472 annually, in 1989. (Former Lab. Code Section

4553, Amend. 2014 (2014).) This entitled volunteer peace officers to TD indemnity at a rate of \$224.00, or two-thirds of \$336.00, per week. (Former Lab. Code Section 4553, Amend. 2014 (2014).) Thus, Section 4458.2 was premised on the relatively limited financial exposure of providing minimal TD benefits (\$224.00 per week) to a relatively small class of volunteer peace officers.

The current maximum AWW is \$1,600.08, or \$83,204.16 annually, which increases the 1989 threshold by more than five times. (Former Lab. Code Section 4553, Amend. 2014 (2014).) Based on the current figures, a peace officer would be entitled to maximum TD benefits at \$1,066.72 per week (two-thirds of \$1,600.08), for up to 104 weeks of indemnity. (Cal. Lab. Code Section 4553 (2014).) As further discussed below, a regularly sworn peace officer is also entitled to full salary continuation per Section 4850 for up to one year in lieu of TD indemnity, which may also be supplemented by an additional year's worth of TD indemnity as defined by Section 4553.

As Petitioner points out, there are as many as 73,100 regularly sworn peace officers in California who would be eligible for such maximum benefits. (Petitioner's Brief, 10.) To grant regularly sworn police officers maximum TD benefits under Section 4458.2 would create a fiscal catastrophe unintended nor contemplated by the Legislature. Rather, the

true purpose behind Section 4458.2 was to grant maximum benefits to a small, distinct class of volunteer peace officers who would not otherwise receive any benefits under the workers' compensation system.

IV. LIMITING SECTION 4458.2 MAXIMUM BENEFITS DOES NOT CREATE MANIFEST INJUSTICE TO THOUSANDS OF SWORN OFFICERS, BUT RATHER PRESERVES THE STATUTORY SCHEME UPON WHICH THE LEGISLATURE INTENDED.

A. THE LEGISLATURE HAS PROTECTED AND ENSURED THE RIGHTS OF REGULARLY SWORN PEACE OFFICERS BY VIRTUE OF PROVIDING SECTION 4850 BENEFITS.

Petitioner repeatedly argues that the Third D.C.A.'s interpretation of the Labor Code causes "manifest injustice to thousands of sworn officers" by limiting Section 4458.2's application only to volunteer peace officers. (Petitioner's Brief, 9.) However, when Section 4458.2 is considered in light of the entire Labor Code Statutory scheme, it is clear that regularly sworn peace officers are entitled to numerous workers' compensation benefits above and beyond that applicable to volunteer peace officers.

Specifically, Section 4850 entitles all regular, full time peace officers² to one year's worth of full salary continuation benefits while disabled as a result of an industrial injury. Section 4850 provides for an expansive list of regularly employed public employees entitled to Section

² Per Petitioner's Brief, as many as 73,100 regularly sworn peace officers in California are entitled to full salary continuation for up to one year. (Petitioner's Brief, 10.)

4850 salary continuation; of importance is the fact that volunteer peace officers do not qualify. Under the current scheme, regularly sworn peace officers may elect to pursue full salary Section 4850 benefits for up to one year, in addition to TD benefits paid at two-thirds of their average weekly wage. Thus, on this basis, the rights of regularly sworn peace officers, such as Petitioner, are expanded and greatly protected, whereas volunteer peace officers are not entitled to the same protections.

B. THE LEGISLATIVE PURPOSE BEHIND SECTION 4458.2 WAS TO INCENTIVIZE VOLUNTEERISM.

In light of the absence of workers' compensation benefits available to volunteer peace officers, Section 4458.2 was created to incentivize volunteerism. The policy behind Section 4453.2 was to "encourage public service . . . by providing maximum benefits to volunteers injured [while providing volunteer services]." (*Larkin v. City of Marysville* (2014) 223 Cal.App. 4th 538.) As discussed above regarding the legislative history and schema of Section 4458.2, a volunteer peace officer would not be entitled to any workers' compensation benefits if he or she were injured in the line of duty because they are not deemed employees.

To incentivize public service and volunteerism, the Legislature created Sections 4458.2 and 3362 to provide some measure of compensation to volunteer peace officers, without extending the full benefit of salary continuation afforded to regularly employed peace officers. This

distinction makes sense given that “volunteers” would not normally have a “salary” or sufficient source of income from their duties as a peace officer to sustain themselves while temporarily disabled, if the amount of their temporary disability benefit was determined by what the volunteer was “paid” (if anything) at the time of injury. The public policy underlying the special designation for volunteers is to encourage public service.

Therefore, the Court of Appeal’s application of Section 4458.2 ensures that volunteer peace officers are afforded the maximum statutory benefits in the furtherance of their volunteerism.

CONCLUSION

Labor Code Section 4458.2 by its clear terms limits its application to those peace officers defined under Section 3362. Section 3362 describes a class of volunteer peace officers who must go through a registration process in order to be deemed eligible for workers’ compensation benefits. Without this registration process, these volunteers would be ineligible for any workers’ compensation benefits. Additionally, Section 4458.2 must be construed in conjunction with the entire workers’ compensation statutory scheme which clearly defines the applicability of Sections 4458.2 and 3362 only to volunteer peace officers to encourage public service, all the while limiting fiscal liability to a small class of volunteer peace officers.

For all these reasons, respondent requests this Court uphold the decision of the Third District Court of Appeal.

Dated: June 3, 2014

Respectfully submitted,

LENAHAN, LEE, SLATER & PEARSE, LLP

By: 

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CERTIFICATE OF BRIEF LENGTH BY APPELLATE COUNSEL

Pursuant to California Rules of Court, Rule 8.204(c)(1), I, PHOEBE M. VU, appellate counsel, relying on the word-count of my computer program, certify that the length of this Answer to Appellant's Brief on the Merits is: 3,483 words.

Dated this 3rd day of June, 2014



PHOEBE M. VU, ESQ.

VERIFICATION

I, PHOEBE M. VU, do hereby declare as follows:

1. I am an attorney at law, duly admitted and licensed to practice before all courts of this State, and my professional office is located at 1030 15th Street, Suite 300, Sacramento, County of Sacramento, California 95814.
2. I am the attorney of record for Respondent in the above-entitled matter.
3. I have read the foregoing ANSWER TO APPELLANT'S BRIEF ON THE MERITS and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 3rd day of June 2014, at Sacramento, California.



PHOEBE M.VU, ESQ.,
Attorney for Respondent,
CITY OF MARYSVILLE, p.s.i.

PROOF OF SERVICE
1013a, 2015 C.C.P.

RE: JOHN LARKIN v. The City of Marysville, psi, adj. by York

I, Beverly Govea, hereby declare and state that I am over the age of eighteen years, employed in the City and County of Sacramento, California, and not a party to the within action. My business address is 1030 15th Street, Suite 300, Sacramento, California 95814.

On this day, I served the **ANSWER TO BRIEF ON THE MERITS**, on the following parties:

Original to:

Supreme Court of the State of California
350 McAllister Street, Room 1295
San Francisco, CA 94102
(Original plus 13 copies)

WCAB
P.O. Box 429459
San Francisco, CA 94142-9459

Brian Dixon, Esq.
Mastagni, Holstedt, et al.
1912 I Street
Sacramento, CA 95811

Copies to:

State of California Court of Appeal-
Third Appellate District
914 Capitol Mall
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John Larkin
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Sacramento, CA 95834

Deborah DeMuyneck (via email only)
York Risk Services Group, Inc.
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Roseville, CA 95661

XX **(BY MAIL)** I placed each such sealed envelope, with postage thereon fully prepared for First-class mail, for collection and mailing on the parties in said action.

_____ **(BY PERSONAL SERVICE)** I personally delivered by hand said documents to the addressee(s) noted above.

_____ **(BY FACSIMILE)** I caused the said document(s) to be transmitted by facsimile to the telephone number(s) indicated to the addressee(s) noted above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 3, 2014, at Sacramento, California.



Beverly Govea



HOME ADDRESS
200 E. EIGHTEENTH STREET
UPLAND

SACRAMENTO ADDRESS
STATE CAPITOL
JUNE 14

RULES
MUNICIPAL AND COUNTY
GOVERNMENT
WATER
WAYS AND MEATS

Assembly California Legislature

EUGENE G. NISBET
MEMBER OF ASSEMBLY, SEVENTY-SECOND DISTRICT

June 12, 1961

1961 JUN 19 PM 4 07

GOVERNOR'S OFFICE

The Honorable Edmund G. Brown
Governor of the State of California
State Capitol
Sacramento, California.

Dear Governor Brown:

In Re: AB - 2016 - Nisbet - Relative to Workmen's Compensation for Volunteer Policemen

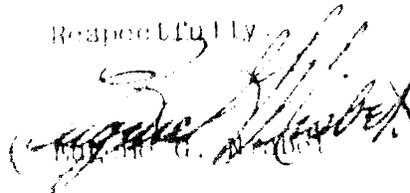
AB - 2016 adds Section 445.2 to the Labor Code to provide coverage for volunteer policemen according to a prescribed formula. His average weekly earnings are used for the purpose of determining temporary disability and if he is permanently disabled indemnity shall be fixed at the maximum weekly earnings provided by Workmen's Compensation provisions.

These volunteer policemen are regularly active registered members of a regularly organized police department. During the time they are actively engaged in police work they are exposed to the same hazard and possible injury as any other member of the department. This legislation is necessary, both for the protection of the city and the individual concerned.

This legislation came to me with the recommendation of the League of California Cities, and many other organizations who make use of this voluntary and valuable adjunct to law enforcement.

I sincerely request the Governor's most favorable consideration.

Respectfully,



EGN:sm



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REPORT ON ASSEMBLY BILL NO. 2016. NISBET.

SUMMARY: Adds Sec. 4450.2, Lab. C., re workmen's compensation.

Provides that a volunteer policeman, irrespective of remuneration, shall receive workmen's compensation benefits for injury or death while performing duties as a policeman, based upon maximum average weekly earnings provided by workmen's compensation provisions.

FORM: Approved. TITLE: Approved.

CONSTITUTIONALITY: Approved.

COMMENT: Section 4450.2, which is added to the Labor Code by this bill, is also added by A.B. 1899, now also before the Governor. A.B. 1899 provides that housing commissioners shall receive workmen's compensation benefits. As the two bills are not in conflict as to their subject matter, both would take effect if both are signed.

Ralph N. Kleps
Legislative Counsel

Hermin Wackenzie
Hermin Wackenzie, Jr.
Deputy Legislative Counsel

SC:150



DEPARTMENT
Finance

BILL NUMBER
AB 276

AUTHOR
Margolin, et al.

APPROPRIATE DATE
Conference Report #1
September 15, 1989

SUBJECT

Revises the statutes, policies and procedures for claiming, granting, funding and adjudicating worker's compensation benefits and claims. Increase workers' compensation benefits.

Requires a specified study of the workers' compensation insurance industry, and revises the statutory basis for workers' compensation insurance rate setting by the Insurance Commissioner.

Extends workers' compensation benefits to volunteer and part-time peace officers, as defined. The bill would also set the peace officer's temporary and permanent disability rates at the maximum rate.

SUMMARY OF REASONS FOR DEFERRAL

Bill is part of two-bill package (AB 276 and SB 47) negotiated with the Governor's Office.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV SO	(Fiscal Impact by Fiscal Year)						Code Fund
		1989-90		1990-91		1991-92		
		FC		FC		FC		
Various	SO	C	Unknown	C	Unknown	C	Unknown	Various
8350/Industrial Relations	SO	C	Unknown	C	Unknown	C	Unknown	Special
2290/Insurance	SO	C	Unknown	C	Unknown	C	Unknown	217/Spec
1600/Misc. Other	RV	U	Unknown	U	Unknown	U	Unknown	Special

Impact on State Appropriations Limit--Yes

HISTORY, SPONSORSHIP, AND RELATED BILLS

This bill is related to AB 2032 (Margolin, 1989) and SB 47 (Lockyer, 1989).

Assembly Floor: N/A
Senate Floor: N/A

RECOMMENDATION:

Department Director Date

Defer to Governor's Office.

SEP 20 1989

Principal Analyst	Date	Program Budget Manager	Date	Governor's Office
(263) R. A. Gibbs	9/22/89	S. Calvin Smith	9/22/89	Position noted
		Mark Hill	9/22/89	Position approved
				Position disapproved

by: date:

ENROLLED BILL REPORT
CJ:BA,AB276-9.es

Form DF-43 (Rev 09/88 Pink)

NO ENROLLED BILL REPORT REQUIRED

Confidential

Health and Welfare Agency

DEPARTMENT Employment Development	AUTHOR Marcolin	BILL NUMBER AB 276
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Technical bill - no program or fiscal changes to existing program. No analysis required. No recommendation or signature.

Bill as enrolled no longer within scope of responsibility or program of this Department.

Comments:

AB 276 is the result of a negotiated effort to reform California's Workers' Compensation system. The Department defers to the Department of Industrial Relations with regard to the numerous provisions of this legislation.

There is one area of concern raised by both AB 276 and SB 47. Both bills establish a maintenance allowance for injured workers receiving vocational rehabilitation services after the workers' injuries become permanent and stationary. Under current law, temporary disability benefits are paid to workers receiving vocational rehabilitation services. Disability insurance (DI) benefits are not paid if an injured worker is receiving temporary disability benefits. Since these new maintenance benefits are not defined as temporary disability, DI benefits would be paid to workers who have become permanent and stationary, and are receiving maintenance benefits. Receiving both maintenance benefits and DI could result in an injured worker receiving more income after an injury, than before he or she was injured. It seems unlikely that this was the intent of the Legislature. The Department recommends that this issue be clarified during the next legislative session.

RECOMMENDATION

Defer to the Department of Industrial Relations

DEPARTMENT	DATE	AGENCY	DATE
Deborah L. Bronow Deputy Director Legislative Liaison Office	9/22/89	<i>[Signature]</i>	9/23/89

32:PH:rh

Margolin, et al.

September 15, 1989

AB 276

ANALYSIS

A. Specific Findings (Continued)

- o This bill would amend existing law so that peace officers who are volunteers, or partially paid by the local agency, are entitled to receive workers' compensation benefits if they are injured, disabled, or die within the line of duty. Clerical workers are specifically excluded. The bill also adds language to specify that persons who are deputized or appointed as a reserve or auxiliary peace officer shall be considered an employee of the governmental agency while performing the duties as peace officer.

Under current law, a regularly employed peace officer as defined, is entitled to workers' compensation benefits if he or she is injured, disabled or dies while performing the duties of a peace officer in the apprehension of violators of the law, or preserving the peace. The law establishes a presumption that any injury or disability that arises from these circumstances was sustained within the course of employment for workers' compensation purposes. However, peace officers who are injured while working for another employer are not covered by that section. Similarly, charter cities and counties are not required to extend benefits when the activity which led to the injury is prohibited by the applicable charter.

Existing law also permits local county boards of supervisors to extend workers' compensation benefits to persons who perform services without compensation by adopting a resolution to that effect.

B. Fiscal Analysis

- o The Department of Insurance estimates a \$1 million cost to staff the study required of the Rate Study Commission. The Department of Finance has not reviewed the basis of this cost estimate. Under the bill the Commission is not budgetarily accountable to anyone. (Page 8, lines 12-24)
- o The bill authorizes the four public members of insurance rating organizations board's of directors to spend \$100,000 annually of Department of Insurance budget resources for expert advice. This \$100,000 to be annually adjusted for any needed cost-of-living adjustment. Not clear if \$100,000 is on total experts or per expert hired. (Page 12, lines 24-40)
- o In January 1993 the Insurance Commissioner's designated statistical agent (rating organization) is to report the effect of this bill and SB 47. Unknown cost to secure these advisory, statistical agent services. (Page 13, lines 3-9)



AB 276 (Peace)
Analyzed: 9/6/89

ASSEMBLY FINANCE AND INSURANCE COMMITTEE
REPUBLICAN ANALYSIS

AB 276 (Peace) -- WORKERS' COMPENSATION: RESERVE POLICE OFFICERS
Version: 8/22/89
Recommendation: None
Lead: Pat Nolan
Vote: Majority

Summary: Designates any "qualified person" injured in the course of conducting assigned "peace officer" duties as an employee of the assigning entity for the purpose of workers' comp benefits, regardless of other employment. The measure also stipulates that such individuals shall receive benefits at the maximum rate irrespective of salary. Fiscal effect: no appropriation.

Supported by: California Reserve Peace Officers Association; California Peace Officers' Association; California Police Chiefs' Association; California State Sheriffs' Association. Opposed by: California Organization of Police and Sheriffs; Department of Industrial Relations. Governor's position: unknown.

Comments: The comp system covers injuries which occur during the normal course and scope of employment. Placing responsibility for coverage of peace-officer injuries on the assigning public entity conforms with that design. Automatically qualifying volunteers for maximum benefits regardless of duty erodes the principle of rewarding "high-risk" professions (police, fire, etc.), however. Any specific change in the comp system's benefit structure goes against the Governor's stipulation that increased benefits must be accompanied by systemic reform. The Department of Industrial Relations opposes this bill because the new designations would create additional workers' comp liability on the part of local public entities which operate reserve police forces.

Under current law, volunteer peace officers can recover through the comp system for injuries sustained performing "peace-officer duties" only if their regular employer would compensate for such voluntary service (i.e., allows employees to serve as peace officers during work hours).

Assembly Republican Floor Vote -- 6/8/89
(72-1) Ayes: All Republicans except
Nocs: Brown
Abs.: Lancaster, Lewis, Statham
Senate Republican Floor Vote -- 9/6/89
(37-0) Ayes: All Republicans
Consultant: Peter Conlin



August 25, 1989

To: Senator Presley

From: Sue Burr

Re: AB 276 (Peace)-Workers' Comp for volunteer
peace officers

This bill would extend workers' compensation coverage to individuals who serve as volunteer or paid reserve or auxiliary peace officers. According to Legislative Analyst, the bill would be a candidate for a 28.8, because the Supreme Court decision in the City of Los Angeles case held that the state is not liable for reimbursement in programs that cover both public and private entities. Legislative Counsel, however, has indicated that the bill does contain a reimbursable mandate. I tend to agree with Legislative Counsel because, in the case of this bill, the only employers affected are public employers. In any event this is an issue that would probably ultimately be decided in court and because of the uncertain legal interpretations, it is not possible to assign a cost estimate to the bill.

We have not received any indication of opposition in the committee office. However, the policy analysis indicates that the California Association of Police and Sheriffs is opposed to the bill, but all other major law enforcement associations; e.g. the CPOA, Police Chiefs and State Sheriffs Assn support the bill. (The bill only received 1 no vote on the Assembly Floor and 1 no vote in the policy committee.)

RECOMMENDATION: Because the issue of reimbursement is uncertain based on legal grounds, I would recommend that you send the bill to the Floor on a 28.8.



CONCURRENCE IN SENATE AMENDMENTS

AB 276 (Peace) - As Amended: August 22, 1989

ASSEMBLY VOTE 72-1 (June 8, 1989) SENATE VOTE 37-0 (September 6, 1989)

Original Committee Reference: FIN. & INS.

DIGEST

Existing law:

- 1) Defines "employee" for workers' compensation purposes and expressly includes various persons in certain occupations or persons who perform certain voluntary services.
- 2) Extends special provisions to certain classes of workers concerning the earnings to be considered to determine the amount of compensation payable. Earnings are presumed to be the maximum fixed by statute for volunteer firefighters, volunteer police officers, or persons engaged in fire suppression, when injured while in the performance of duty. In most cases, workers' compensation benefit payments are generally determined at 2/3 of an employee's gross earnings at the time of injury, subject to statutory minimum and maximum amounts.
- 3) Defines the term "peace officer" to include specified law enforcement personnel regularly employed and compensated by local agencies. The term does not specifically distinguish whether these members may be volunteers, partly paid, or fully paid.

As passed by the Assembly, this bill included certain reserve police officers as "employees" for workers' compensation purposes and provided these persons temporary disability and permanent disability benefits at the maximum rate. Specifically, the bill:

- 1) Expanded the definition of "employee" for workers' compensation purposes to include any qualified person who is deputized or appointed by a proper authority and who is assigned specific police functions by that authority as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, a reserve police officer of a regional park district or transit district, or a deputy of the Department of Fish and Game.
- 2) Extended to these persons the maximum earnings presumption for temporary and permanent disability benefits described under #2, above, if injured while in the performance of duty.

- continued -

- 3) Provided that the term "peace officer" shall apply to law enforcement personnel whether or not the members are volunteer, partly paid, or fully paid. The bill excluded members whose duties are clerical in nature, such as stenographers, telephone operators and other workers not engaged in law enforcement operations or the protection or preservation of life and property.

The Senate amendments:

- 1) Delete Department of Fish and Game deputies from the expanded definition of "employee."
- 2) Clarify that the provision of the bill extending workers' compensation coverage to certain peace officers shall not apply to persons performing services as a disaster service worker.
- 3) Add other technical, clarifying amendments.

FISCAL EFFECT

State-mandated local program; contains a state-mandated costs disclaimer.

Doug Widtfeldt
324-7376
9/7/89:ashwi

AB 276
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