



# State of Ohio

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## **INSPECTOR GENERAL'S TASK FORCE**

Thomas P. Charles, Inspector General

# REPORT OF INVESTIGATION

**AGENCY: Ohio Bureau of Workers' Compensation**  
**FILE ID NO.: 2006271 DATE OF REPORT: August 21, 2007**



State of Ohio  
**Office of the Inspector General**

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THOMAS P. CHARLES, Inspector General

## REPORT OF INVESTIGATION

**FILE ID NUMBER:** 2006271

**AGENCIES:** Ohio Bureau of Workers' Compensation

**BASIS FOR INVESTIGATION:** Inspector General Initiative

**ALLEGATIONS:** Mismanagement, Manipulation of BWC  
Premium Rates for Ohio Employers

**INITIATED:** November 2, 2006

**DATE OF REPORT:** August 21, 2007

## **EXECUTIVE SUMMARY**

File ID No. 2006271

In November 2006, a task force led by the Office of the Inspector General (“OIG”) opened an investigation involving the methodology used by the Bureau of Workers’ Compensation (“BWC”) to override calculated premium rates for contributing employers to the state’s insurance fund.

While employers in other states can shop and compare premium rates through private insurance companies, Ohio offers a group-rating system to assist employers in reducing their premiums. Because some employers do not qualify for discounts despite demonstrating good workplace safety practices, the BWC has permitted similarly situated employers to join group programs in which they share payroll and risk factors, allowing them to qualify for premium discounts of up to 95 percent. Employers who are unable to qualify for a group rate may request manual overrides of their rates.

Ohio is one of the few states that operate a public, or government-run, workers’ compensation program. BWC sets premium rates for Ohio employers utilizing an actuarial program that calculates an employer’s payroll and the risk factors associated with each job type.

Concerned about a lack of controls, former BWC Administrator William E. Mabe ordered an internal audit of the override process in the spring of 2006. The audit report revealed that many Ohio employers had received manual overrides to their calculated premium rates, thereby drastically reducing their annual premiums. Although manual overrides are common in the insurance business for legitimate reasons, what set these cases apart was both a lack of documentation to support the overrides and the fact that decisions about whether or not to grant the overrides were the choice of one man – John Romig, BWC’s former chief of employer services.

Our investigation found that companies that received overrides had been involuntarily removed from group-rated programs after filing serious claims, and that their newly calculated premium rates had soared to the extent that the companies' financial futures were in jeopardy. Consequently, panicked employers contacted BWC, their elected officials or both, and many subsequently saw their premiums lowered.

While this sequence of events raises serious questions about fairness and equity, we found that the Ohio Revised Code gives the BWC administrator or his designee broad authority to set premium rates arbitrarily, without approval or oversight from anyone. At the BWC, that person was Romig, the designee of former BWC Administrator Jim Conrad.

Conrad and Romig told us that BWC liberally used its discretionary authority to give Ohio employers so-called "exception" premium overrides in an attempt to keep companies that had filed serious medical claims in business. Although Conrad, Romig and other BWC officials did not adequately document their decisions, we found no evidence to contradict this assertion, nor did we find any evidence that they or other BWC personnel accepted gifts or anything else of value from employers in exchange for the overrides.

We did find that BWC responded in a more urgent manner to legislative inquiries regarding overrides than they did when employers contacted the agency on their own.

The Task Force also investigated an allegation that BWC improperly awarded Cincinnati-based Busken Bakery a \$40,000 safety grant in 2001. Busken did not initially qualify for the grant, and it was alleged that it was awarded after officials at the bakery boasted that they intended to contact then-Governor Bob Taft.

We determined that this allegation was unsubstantiated. However, we also found that Romig was given unfettered control of the grant process and that he unilaterally approved the grant request after another BWC official denied it because he believed that Busken had conscientiously sought to protect its workforce from injury. Thus, even though Romig had the authority to award the grant, we believe that he lacked the justification to override the earlier

denial.

We also found that the owner of Busken Bakery, Daniel “Page” Busken, made \$2,250 in contributions to the Taft/Bradley campaign fund, including a \$1,500 donation one month before the grant was awarded. Although these contributions appear to be suspicious, we were unable to prove any connection between them and the grant approval.

Information concerning premium overrides and legislative constituent inquiries was forwarded to the Joint Legislative Ethics Committee (JLEC). As a result, JLEC referred one case to the Franklin County Prosecutor.

Our investigation found three omissions. As a result, we are making four recommendations and are asking BWC to respond within the next 60 days with a plan outlining how these recommendations will be implemented.

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## **I. BASIS FOR INVESTIGATION**

Shortly after being appointed administrator of the Ohio Bureau of Workers' Compensation ("BWC" or "Bureau") on October 31, 2005, William E. Mabe became concerned about a potential lack of internal controls in BWC's manual-override process.<sup>1</sup> As a consequence, Mabe ordered the Bureau's Internal Audit Division to conduct a manual-override audit, which concluded in August 2006. The audit spanned the period January 1, 2003, through September 30, 2005. The internal audit report, issued in October 2006, identified several significant internal-control and policy issues; and recommendations for addressing those issues were included in the report.<sup>2</sup> The OIG-led Task Force,<sup>3</sup> already reviewing investments and other matters at the BWC, was deemed to be the appropriate authority to conduct a thorough and independent investigation of those issues.

## **II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION**

The Task Force reviewed emails, documents, written correspondence, the special internal audit report and prior reports involving BWC activities. We also issued subpoenas and conducted interviews, including interviews of former BWC administrators William Mabe, Jim Conrad, and Tina Kielmeyer.

## **III. DISCUSSION**

### ***Authority***

Sections 4123.29 and 4123.34 (C) of the Ohio Revised Code ("ORC") and Section 4123-17-12 of the Ohio Administrative Code ("OAC") establish the laws and rules the Administrator of BWC must follow to set premium rates, establish reserves and modify insurance rates based on

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<sup>1</sup> The manual-override process is described later in this report.

<sup>2</sup> A copy of the final internal audit report is attached as Exhibit A.

<sup>3</sup> Member agencies of the Inspector General's Task Force that assisted in the review of the manual-override process include the Office of the Inspector General, Ohio Bureau of Workers' Compensation-Special Investigations Unit, Ohio Ethics Commission, Office of the Ohio Legislative Inspector General and the Ohio State Highway Patrol.

employers' individual safety experiences. This authority includes, but is not limited to, allowing the Administrator to establish rates to ensure the equitable distribution of losses among occupations or industries, and applying the rating system the Administrator deems is best suited to fairly determine the risk of individual employers.

As a result, the Administrator or his designees have wide latitude to grant premium overrides, to adjust group and premium rates, and to adjust reserves and experience histories of the state's employers. The law also allows the Administrator to obtain the advice and consent of the BWC Oversight Commission, but does not require him to do so.

The ORC and the OAC require the Administrator to consider a variety of factors when making premium adjustments. However, the factors are neither all-inclusive nor all-exclusive. Specifically, OAC Section 4123-17-12 (E), indicates: "Notwithstanding the provisions of this rule, the Administrator may consider any special circumstances that may affect the determination of a catastrophe loss (Exhibit B)." When adjusting rates or premiums, the Administrator also has broad discretion to deviate from normal practices in deference to the goal of retaining businesses in Ohio.

### ***Setting Premium Rates***

As a rule, the BWC sets premium rates in one of two ways: by manual classification or by base-rating. In order to calculate a premium rate by manual classification, the Administrator first consults the National Council of Compensation Insurance's ("NCCI") standardized list of job types. That list includes an anticipated cost of workplace injuries for each job type. The cost is expressed as a rate of \$100 of an employer's payroll for each type of job. Thereafter, the NCCI manual classification is multiplied by an employer's annual payroll, adjustments are made for the employer's workplace safety experience and the premium rate is set.

Since BWC conducts annual surveys of employers' payrolls, premium rates for individual employers can change from year to year. The rate can rise when the employer is penalty-rated

due to the filing of an insurance claim, and it can fall when the employer is credit-rated for having a good safety record.

Base-rated premiums are determined by examining industry-wide claims costs, rather than using an individual employer's experience and safety history. Smaller employers, which typically incur less than \$8,000 in annual losses, are always base-rated regardless of their workplace safety experience.

### ***Group Ratings***

The BWC's Group Rating Program was established in 1991 by House Bill 222. It enabled similarly situated small businesses or job types that did not individually qualify for merit rating<sup>4</sup> to band together as a group. Each group is sponsored by an organization such as a trade association, and a group with a high enough payroll and limited likelihood of collective loss can obtain discounts of up to 95 percent for its members. Thus, members of group-rated programs share risk and qualify for discounts that they could not achieve individually.

In a group-rated program, all employers pay the same premium rate. The rate is calculated by using the collective payroll of the group's employers, along with the collective workplace safety histories of those employers, to arrive at a single rate.

It is important to note that whether an employer's premium is calculated as part of a group rate by manual classification or by base-rating, that premium rate is not absolute. The Administrator still has the legal authority to adjust the annual premium to give a cost benefit to an individual employer.

### ***Overrides***

Employers' insurance premiums are calculated using a computerized actuarial program. An

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<sup>4</sup> Merit rating is a premium rating method that assigns an employer a credit – or penalty – rate modification based on an employer's loss experience during the rating period.

override is a manual adjustment of that premium, resulting in a lowering of the employer's insurance rate.

Mabe informed us that overrides are common in the insurance industry. Most are corrections to premiums made for routine reasons such as system miscalculations, employer corrections or modifications to reported payrolls, claims that were overturned via adjudication or administrative hearings, or fraudulent claims that were resolved. A catastrophic loss of the type referenced in OAC Section 4123-17-12<sup>5</sup> also may result in a premium override.

In addition, the Administrator or his designee may simply use his discretion in granting an override. Overrides made in this fashion are referred to as "exceptions."

Section 4123-17-27 of the OAC provides a formal process for an employer to appeal risk and rate matters to the BWC Adjudication Committee. Employers can protest experience and claims histories, but not premium rates. Thus, an employer can contest the validity of a claim that caused its BWC premium to increase, but it cannot contest the formula used to arrive at the premium rate. Nevertheless, the Administrator or his designee still retains the authority to adjust an employer's rate and risk ratings. Consequently, not all protests come before the Adjudication Committee because some employers choose to present their cases to the BWC department responsible for the program at issue for possible reconsideration.

### ***Group Ratings and Overrides***

Group rating typically affords employers an opportunity to enjoy steeply reduced premiums, but events may occur that cause employers to be expelled from their groups. At that point, a premium override may be the only means by which an employer can reduce its premium.<sup>6</sup>

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<sup>5</sup> OAC 4123-17-12 defines "catastrophic loss" as an occurrence in which two or more employees of one employer are killed or receive injuries resulting in permanent and total disability.

<sup>6</sup> We found that some employers had previously taken advantage of (or had failed to qualify for) premium reduction programs like BWC's Safety Grants, or the One Claim Program. However, even with those premium reductions, and without group discounts, employers were still unable to afford the cost of BWC premiums.

Here is an example scenario:

An employer with a small-to-medium payroll and a good workplace safety record is expected to pay a premium of \$6,000 per year. The employer later joins a group of similarly situated businesses and is given the maximum group discount of 95 percent, thereby decreasing the employer's premium from \$6,000 to \$300 per year.

Several years later, the employer files a claim for a serious workplace injury that includes high medical costs and long-term disability. The claim not only changes the employer's workplace safety history, it also changes the experience and premium rate for the group's member employers. As a result, the employer who filed the claim is removed from the group and a new premium is calculated based on the original premium of \$6,000 per year, plus a 25 percent penalty rate for a single claim or a 50 percent penalty rate for two serious claims. Having previously paid just \$300 per year, the employer's new premium has now skyrocketed to between \$7,500 and \$9,000 annually.

Such a scenario can have devastating financial consequences for a small employer. Consequently, given such high stakes, some employers see no option other than to try to find some way to persuade BWC to grant an override.

***Allegation 1: BWC administrators lowered the insurance rates of Ohio employers by granting "exception" premium overrides without proper justification.***

The BWC internal audit examined 75 overrides and determined that 48 of them were typical. The remaining 27 were "exceptions" granted by BWC Administrator Jim Conrad's designee, Chief of Employer Services John Romig.

We found that the exceptions Romig granted were purely discretionary and followed no known policy. There was no consideration of fairness and equity, Romig's decision-making practices lacked relevant supporting documentation.

Both Conrad and Romig told us that keeping Ohio employers in business was of paramount importance to BWC and was the sole reason for the granting of exception premium overrides. For years, BWC had been labeled “the silent killer of jobs” by former Governor George Voinovich, and Conrad and Romig said it was critical that the agency – particularly during austere times – not be perceived as hindering Ohio’s economic development efforts.

As we have noted, ORC 4123-17-12 (E) gives the Administrator or his designee wide latitude to grant exception premium overrides. As a result, Romig made unilateral override decisions predicated on his perception that the overrides were necessary to keep Ohio employers in business. Based on our interviews, our examination of relevant records and on information provided in response to subpoenas, we determined that Romig received no financial remuneration or anything else of value for making these decisions.

While it is clear that Romig had the statutory authority to grant exception premium overrides, it is also clear that the override process was not fair to all employers who contribute to the state insurance fund. While some employers received exception premium overrides, others did not, and we found no policy that provided a framework for the granting of some overrides and the denial of others.

As Conrad’s designee, Romig unilaterally made most of the exception override decisions, with little oversight and minimal documentation. The result was a highly arbitrary decision process that lacked proper oversight and verifiable criteria for determining the “special circumstances” identified in ORC 4123-17-12 that might support an exception premium override.<sup>7</sup>

Accordingly, we find reasonable cause to believe an act of omission occurred in this instance.

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<sup>7</sup> In response to the 2006 internal audit ordered by former administrator Mabe, BWC put into place a policy that attempted to address the issue of internal controls and premium overrides that were based on employer experience modifications. That policy, enacted in July, 2006, and updated in 2007; was put into place after the premium overrides were granted by Mr. Romig and after the premium overrides that are the subject of this report. A copy of the 2006 policy is attached as Exhibit C. The 2007 override resource manual is attached as Exhibit D.

***Allegation 2: BWC administrators altered the insurance premium rates of Ohio employers based on political pressure from state legislators.***

All legislators engage in constituent advocacy as part of their responsibilities to the people they serve. In turn, state agencies that receive inquiries from lawmakers on behalf of constituents frequently are more responsive than they are when the inquiries come from members of the public.

Conrad told the Task Force that any time a legislator made an inquiry on behalf of an employer, the employer's concerns were reviewed, whereas when individual employers made their own inquiries about their premium rates, the queries received less attention. We discovered, however, no evidence of wrongdoing stemming from those legislative inquiries.

The Task Force reviewed more than 80 legislative inquiries logged by BWC that were made on behalf of constituent employers. Only nine of them resulted in an override, and none of the BWC employees interviewed alleged that they were pressured or otherwise induced by a legislator to lower an employer's premium rate. Romig referred to these legislative inquiries as "just another layer of hassle to deal with." Likewise, we found no evidence that BWC officials accepted or were offered gratuities in exchange for premium overrides, and there was no evidence of improper influence exerted on BWC officials in order to obtain premium overrides.

When employers wanted to dispute their premium rates, they contacted BWC, elected officials or both for assistance. We concluded that legislators, almost without exception,<sup>8</sup> acted in good faith and that premium reductions were given by BWC to keep Ohio companies in business.

Accordingly, we do not find reasonable cause to believe a wrongful act or omission occurred in this instance.

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<sup>8</sup> The Joint Legislative Ethics Committee has determined that former Senator Jeffrey Armbruster communicated with BWC on behalf of two of his own businesses – Armbruster Energy Stores and Pinzone-Armbruster Inc. – to lower his premium rates. The case has been referred to the Franklin County Prosecutor's Office.

***Allegation 3: BWC administrators ignored the recommendations of their actuarial consultant and gave excessive group-rated premium discounts to Ohio employers.***

Since 1990, BWC's actuarial consultant, Mercer Oliver Wyman ("Mercer"), has been conducting analyses that have reached the same conclusion: The premiums paid by employers in group-rated programs are not high enough when compared with the losses they generate, and premiums paid by non-group employers are too high when set against their losses.

Although studies by Mercer reached that conclusion in 1990, 1991, 1993, 1994, 1995, 2001 and again in August 2004, BWC continued to offer premium discounts of up to 95 percent to group-rated employers, thereby allowing non-group-rated employers to subsidize the losses created by these discounts. By the time that Mercer issued its group-rating analysis in 2004, the firm found that non-group-rated employers were subsidizing group-rated employers to the tune of approximately \$170 million a year (Exhibit E). Mercer has consistently recommended that group-rated discounts not exceed 60 to 65 percent.

In 2004, BWC's Actuarial Section finally began work on a phased-in plan that would lower the maximum discount offered to group-rated employers from 95 percent in 2005 to 93 percent in 2006 to 90 percent in 2007. The BWC analysis showed that, by 2007, the total premium for group-rated employers would increase from \$405.8 million to \$438.8 million. Meanwhile, the analysis showed the total non-group-rated employer premium would decrease from \$1.21 billion to \$1.18 billion.

The 2006 Internal Audit Report on manual overrides likewise concluded that the inequities in premiums paid by group-rated and non-group-rated employers resulted in many of the requests for premium overrides. Consequently, the internal audit also recommended that BWC adopt internal controls and a plan for reducing the maximum discounts offered to group-rated employers.

Questioned about BWC's group-rated discounts, Conrad said he believed that BWC was following Mercer's recommendation by decreasing the maximum group discount from 95

percent to 90 percent.

Accordingly, we believe an act of omission occurred in this instance.

***Allegation 4: Busken Bakery received a grant from BWC as a result of political influence.***

In 2001, Cincinnati-based Busken Bakery applied to BWC for a \$40,000 safety grant. The agency denied the grant because the bakery did not have a pending injury claim on file pertinent to the grant the company was requesting. We reviewed this matter after receiving an allegation that Busken Bakery received the grant after contacting the office of then-Governor Bob Taft. Our investigation concluded that while Busken did receive the grant, the allegation that it was manipulated by the governor's office was unfounded.

Mark Giordano, a BWC ergonomics consultant, originally met with Busken Bakery officials Daniel "Page" Busken and Pat Fenech. After Giordano informed the two bakery officials that BWC was denying the grant, Busken and Fenech told Giordano they intended to discuss the matter with Conrad at an upcoming BWC breakfast. Conrad recalled taking a tour of Busken Bakery and seeing the automated cake icing machine that was purchased with the grant money, but said he did not approve the grant or order anyone else at BWC to approve it.

Romig approved the Busken grant, but he told the Task Force that no one instructed him to do so. Busken argued that the cake icing machine would reduce the risk of repetitive-motion injuries and, although the company did not meet standard criteria for the grant, Romig said he finally approved it because he believed that Busken had shown initiative in its worker-safety program.

In the course of our investigation, we also found that Busken Bakery owner Page Busken made three political contributions totaling \$2,250 to the Taft/Bradley campaign fund between January and November 2001. The last contribution, for \$1,500, was made on November 19, 2001. Romig awarded Busken the \$40,000 safety grant on December 26, 2001.

Busken said he knows former Governor Taft personally because their children attended school together, but he said he did not call the governor about the grant. Busken further stated that he couldn't recall ever contributing a comparable sum of money to one candidate, and he acknowledged that the timing of his contributions and the awarding of the grant could appear to be suspicious.

Nevertheless, we were unable to determine that any BWC official was aware of Busken's political contributions or his acquaintance with the former governor. Likewise, Romig said he was never told by anyone from BWC or the governor's office to award a safety grant to Busken. The decision was his and his alone.

Again, as Conrad's designee, Romig unilaterally made decisions regarding the awarding of safety grants, all with little oversight and minimal documentation. The result was a highly arbitrary decision making process that ignored even the supposed threshold requirement that Busken have an active claim. Consequently, we determined that the safety grant award process lacked both proper oversight and a verifiable set of criteria for decision making.

Accordingly, we find reasonable cause to believe an act of omission occurred in this instance.

#### **IV. CONCLUSION**

Given by law the discretion to arbitrarily grant Ohio employers huge insurance premium discounts or consign them to financial ruin, Romig, as the administrator's designee, wielded almost imperial power at BWC. He unilaterally granted "exception" premium overrides and awarded grants to fortunate or persuasive business owners, using authority given to him both by statute and by Conrad.

While keeping Ohio businesses afloat was, and remains, a laudable goal, BWC failed to establish proper criteria, policies and documentation in the awarding of exception overrides. We also question the propriety of Romig's decision to arbitrarily award a safety grant to an unqualified

recipient. However, we found no evidence that Romig or anyone else at BWC either accepted anything of value or acquiesced to any external pressure in exchange for making those decisions.

Finally, we believe that it is long past time for BWC to adopt the findings of its own actuarial consultant with regard to the huge premium discounts the Bureau has granted to employers in its group-rated programs. Although Mercer has been recommending since 1990 that group-rated discounts not exceed 60 to 65 percent, BWC continued to offer discounts of up to 95 percent. Not only have these discounts been unfairly subsidized by non-group-rated employers, but the staggering savings they have provided to group-rated employers have caused some of those employers to experience exponential rate increases when medical claims have resulted in an expulsion from their group program.

We have forwarded all information and documentation regarding the contacts Ohio legislators made on behalf of employers to the Joint Legislative Ethics Committee (JLEC). JLEC made a referral to the Franklin County Prosecutor's Office.

## **V. RECOMMENDATIONS**

Based on the results of this investigation, we make the following recommendations and request that BWC respond to the Task Force within sixty days with a plan of action as to how these recommendations will be implemented:

1. In order to ensure adequate internal controls and fairness to all Ohio employers, BWC should follow both the recommendations in the October 2006, Internal Audit Report and the agency policies established in response to that audit. In the event the audit and/or the policies do not set out specific criteria, considerations or guidelines for granting premium overrides, BWC should create and adopt such criteria and guidelines. Because the audit recommendations also suggested a time table for implementation, we request BWC provide a status report on the implementation of the audit recommendations.

2. BWC should follow the established minimum threshold criteria for awarding safety grants, and develop additional policies to ensure a more fair and equitable system rather than relying on an arbitrary process when awarding safety and other grants.
3. BWC should follow the recommendations of its actuarial consultant and the internal audit report in the establishment of premiums for group-rated employers, in order to address the inequities associated with the group-rating process.
4. BWC should ensure that it gives equal consideration to all override requests made by employers, legislators and others.