

Union Construction Workers' Compensation Program

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TO: Board of Trustees & Alternates

FROM: Kevin Gregerson, Program Administrator

RE: **MN Office of the Legislative Auditor's (OLA) 2009 Evaluation Report on Minnesota's Workers' Compensation System**

James Nobles, Legislative Auditor, released the above-referenced Report February 25, 2009. He stated in his cover letter to the Members of the Legislative Audit Commission that in preparing the report OLA "received the full cooperation of the Department of Labor and Industry, and we also received helpful insight from the Office of Administrative Hearings, the Department of Commerce, and the *Union Construction Workers' Compensation Program*." The report has a summary, introduction and 81 pages of detailed graphs, findings and recommendations. Attached for your review is an excerpt of the report which *compares the UCWCP with the statutory workers' compensation system*. The full report is available on-line at: www.auditor.leg.state.us.

COMPARISONS OF THE UCWCP TO THE MN STATUTORY WC SYSTEM

- **"Though limited, evidence suggests that injured workers in the UCWCP fare as well as, if not better than, comparable workers using the state system."**
- **"The dispute resolution process in the UCWCP is far simpler and results in lower workers' compensation benefit costs than the state system."**
- **"UCWCP claimants were less likely to agree that it took too long for their benefits to start." And... "Injured workers in the UCWCP are less likely to have disputes that require formal dispute resolution activity."**
- **"Workers' compensation costs under the UCWCP are lower than those for comparable construction workers using the state system."**
- **"Since the UCWCP has lower denial rates, lower costs, and no evidence of greater worker dissatisfaction, and since it is a much simpler system, we conclude that it is worth considering broader use of the UCWCP approach in Minnesota."**

While we all assumed the OLA's report would reflect positively on the UCWCP, it is gratifying to see how well the program stood up to an impartial and thorough review. I hope you enjoy reading the enclosed excerpt. Please call with any questions.



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

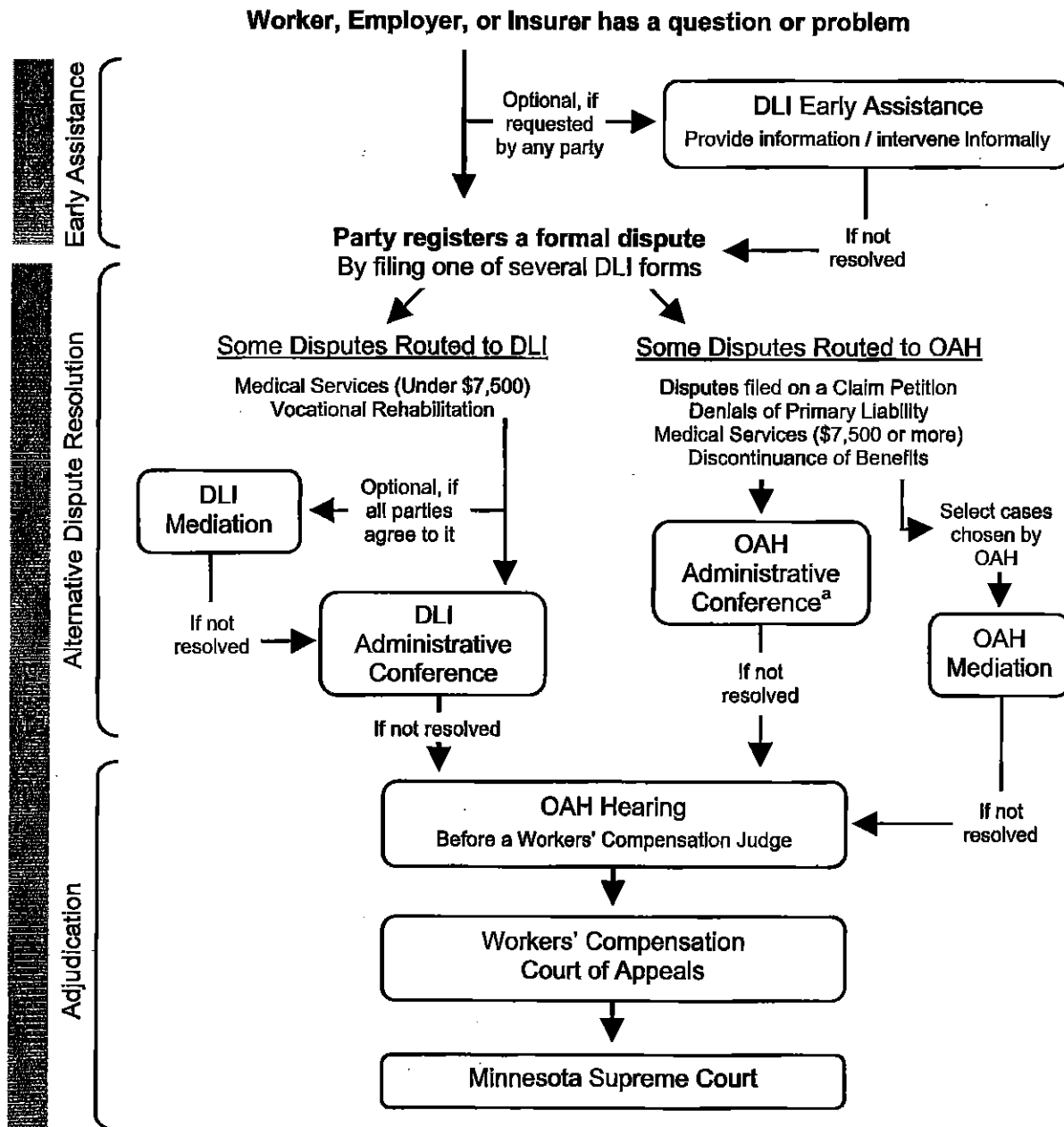
EVALUATION REPORT

Oversight of Workers' Compensation

FEBRUARY 2009

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Figure 3.1: Dispute Resolution Process for Minnesota's Workers' Compensation System, 2008



NOTES: DLI is the Department of Labor and Industry. OAH is the Office of Administrative Hearings. Disputes may be settled by agreement of the parties (with or without mediation) at any time. If DLI or OAH administrative conferences do not result in mutual agreement, the presiding official will render a decision on the case; disputed decisions go to an OAH hearing. Multiple disputes associated with a single claim may be consolidated at one agency. Also, DLI may refer some complex cases in its jurisdiction to OAH.

^a For simplicity, we refer to several types of OAH proceedings as "administrative conferences." These include settlement conferences for disputes filed on claim petitions, administrative conferences for discontinuance disputes, and medical and rehabilitation conferences.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota's dispute resolution system for workers' compensation.

their claims (or multiple claims) are treated holistically. As currently designed, the database is not well-suited to this approach.⁸

The information system also does not currently support certain electronic transactions that would improve efficient management of the process. For example, some types of communication to parties in the dispute—such as sending OAH hearing notices—could be done electronically rather than by mail. The system currently does not support that function. In addition, OAH would like to have an electronic calendaring system that would facilitate scheduling of OAH settlement conferences and hearings. Under current practice, scheduling can take a great deal of time.

Comparison to the Union Construction Workers' Compensation Program

The UCWCP was designed to resolve disputes quickly in a simpler, less adversarial process than the state system.

To explore ways to simplify the dispute resolution process, we examined an alternative used by construction unions and employers: the Union Construction Workers' Compensation Program (UCWCP). The UCWCP was designed to resolve disputes quickly in a simpler, less adversarial process than the state system. It tries to get injured workers back to work quickly to reduce workers' compensation costs for the employer and reduce wage and benefit losses for injured workers. We compared the two systems with regard to the process used to resolve disputes, the overall cost of benefits paid, and effects on injured workers.

We found that:

- **The dispute resolution process in the Union Construction Workers' Compensation Program is far simpler and results in lower workers' compensation benefit costs than the state system.**

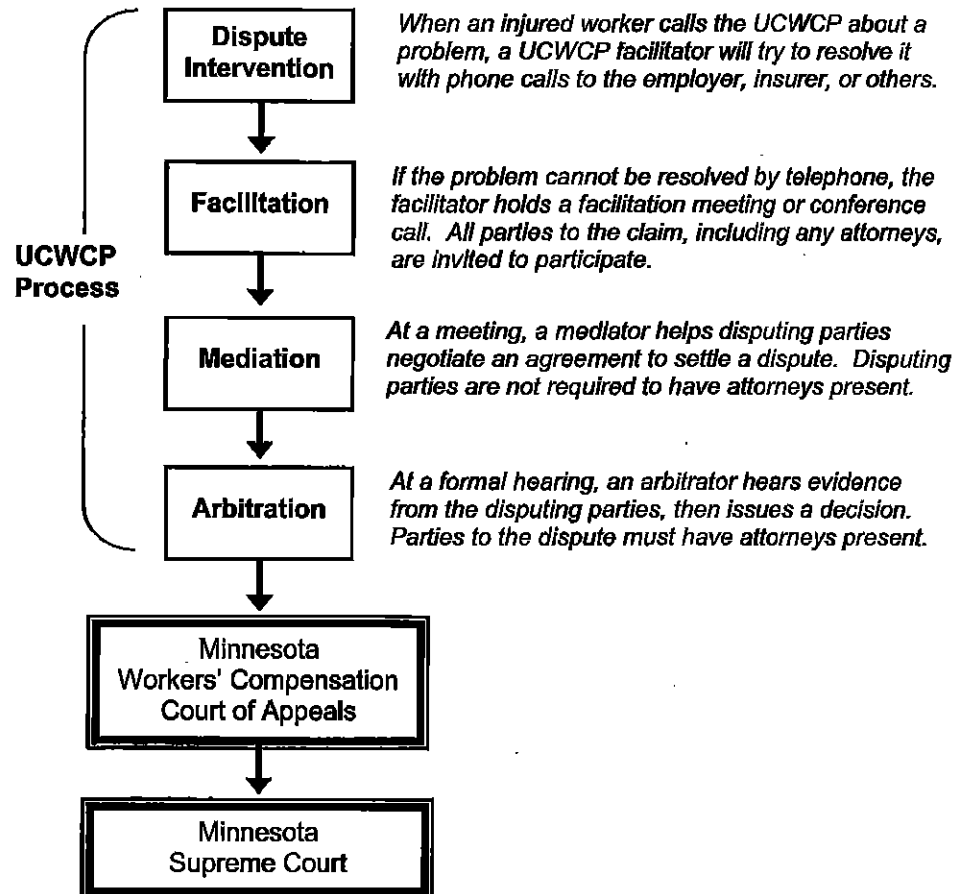
Process Comparison

The UCWCP's dispute resolution process is simpler than the state system in several ways. First, the UCWCP dispute resolution process uses a single entity to resolve disputes, unlike the state, which uses two (DLI and OAH). Second, as shown in Figure 3.2, the UCWCP process has a single path and fewer steps than the state's process (shown in Figure 3.1). Nearly all disputes in the UCWCP process use the same sequence of steps—dispute intervention, facilitation, mediation, and arbitration—although disputes typically do not reach the later stages.⁹ This is a notable contrast to the state system's multiple steps and paths, the sequence of which varies from case to case. The UCWCP also simplifies the

⁸ Dispute records contain information on the employees and claims associated with them. If needed, the system can be programmed to group dispute records by claim or individual.

⁹ Some disputes may go directly to mediation. To further speed the process, parties in a dispute over primary liability can bypass mediation and go directly to arbitration.

Figure 3.2: Dispute Resolution Process in the Union Construction Workers' Compensation Program (UCWCP), 2008



NOTE: The UCWCP Board of Trustees selects private attorneys who know workers' compensation law for a panel of available mediators and arbitrators. In most cases, UCWCP staff select from the panel to assign a mediator or arbitrator to each case (working in alphabetical order as cases arise). Under some circumstances, parties can mutually request a particular panel member. For each case, the UCWCP asks the mediator/arbitrator to assess whether they have any conflicts of interest in the case. If so, they contact the parties to disclose the conflict and/or recuse themselves.

SOURCE: Office of the Legislative Auditor, compilation from documents describing the Union Construction Workers' Compensation Program.

dispute resolution process by treating each case as a whole. All disputes related to a claim are considered together.

Finally, the UCWCP uses neutral physician examiners and exclusive treatment providers that are jointly selected by participating employers and unions. In contrast, workers and insurers can generally choose their own doctors for

examinations and treatment under the state system.¹⁰ The rationale for the UCWCP approach is that it makes the process less adversarial and shorter by reducing disagreements. The disadvantage is that injured workers are required to choose a doctor from the program's physician network.

Cost Comparison

Workers' compensation costs under the UCWCP are lower than those for comparable construction workers using the state system. For policy years 2003 through 2005, we estimated that insurers will pay 43 percent less in workers' compensation costs per \$100 of payroll for UCWCP participants than for comparable construction workers in the state program.¹¹ Both indemnity and medical payments were substantially lower under the UCWCP (50 percent lower for indemnity benefits and 37 percent for medical benefits). Almost all of the difference in medical payments occurred on indemnity claims. There was very little difference in medical benefit payments for medical-only claims.

Supporters of UCWCP argue that the program reduces costs because it resolves disputes more quickly and results in a faster return to work for injured employees. Comparable data on time to resolve disputes was not available, but lower dispute rates and lower costs for the UCWCP suggest that the UCWCP resolves disputes more quickly than the state system.

Impact on Injured Workers

To assess the quality of injured workers' experiences under the UCWCP and state system, we compared denial rates, dispute rates, and injured workers' satisfaction with their claim experience. We found that:

- **Though limited, evidence suggests that injured workers in the UCWCP fare as well as, if not better than, comparable workers using the state system.**

Insurers denied claims of construction workers in the UCWCP slightly less often than they did for comparable construction workers in the state system. We estimated that from January 2003 to July 2008, insurers denied primary liability for an average of 10.2 percent of UCWCP claims, compared with 11.1 percent for comparable workers in the state system. Insurers also made fewer "type 2"

¹⁰ Some employers participate in a workers' compensation certified managed care plan that has been certified by the state to manage health care for injured workers. Injured workers of participating employers must use providers in the managed care plan under most circumstances.

¹¹ Our comparisons are based on data compiled by DLI from UCWCP's annual reports and Minnesota Workers' Compensation Insurance Association's annual ratemaking reports. To identify construction workers comparable to the UCWCP participants, DLI used the 10 (11 for 2005) construction classifications with the largest payroll covered by the UCWCP. These top classifications account for about 70 percent of the UCWCP's total covered payroll.

Workers' compensation costs under the UCWCP are lower than those for comparable construction workers using the state system.

Injured workers in the UCWCP are less likely to have disputes that require formal dispute resolution activity.

denials for UCWCP claims.¹² For the same five-and-a-half-year period, insurers made type 2 denials in 7.8 percent of UCWCP claims compared with 9.9 percent for construction worker claims in the state system.

Injured workers are less likely to have disputes that require formal dispute resolution activity under the UCWCP than the state system. Although the two systems use different processes to resolve disputes, we defined formal stages to be facilitations that involve a meeting, mediation, and arbitration for the UCWCP and mediation, administrative conferences, and OAH hearings for the state system. Over the last three years for which we have data, disputed claims in the UCWCP were less likely to reach the formal dispute stage (20 percent compared with 25 percent under the state system).¹³

We compared survey responses of likely UCWCP participants who made a workers compensation claim in 2006 or 2007 with construction workers who had a claim under the state system.¹⁴ Among 14 questions about their claim experience, results were mixed—some favored the UCWCP and others favored the state system, as shown in Tables 3.8 and 3.9. Only two differences were statistically significant: UCWCP claimants were less likely to agree that it took too long for their benefits to start, while state claimants were more likely to be satisfied with their vocational rehabilitation providers. Large majorities of both groups were satisfied with their health care providers, even though UCWCP participants were required to select providers from a network established by the program.

Lower workers' compensation benefits for injured workers do not necessarily mean that the workers are financially worse off. By state law, injured workers under both systems are entitled to the same benefit levels; they receive the same compensation for wage loss, permanent impairment, and medical expenses.¹⁵ Cost differences may arise because workers return to work more quickly under one system than the other (the goal of the UCWCP).

¹² As discussed in Chapter 2, an insurer can accept overall liability for a claim (acknowledging a work-related injury) but deny payment of indemnity benefits. Denials under these circumstances are referred to as "type 2" denials.

¹³ The data is based on dispute resolution activity between January 1, 2006, and August 1, 2008, for UCWCP, between July 1, 2005, and June 30, 2008, for OAH, and January 1, 2006, and December 31, 2008, for DLI. Because UCWCP-reported dispute resolution activity for 2 years and 7 months, we compared this activity with 2 years and 7 months of UCWCP indemnity claims.

¹⁴ DLI's claims data do not identify whether a claimant participates in the UCWCP. Using data available in the claims database and information provided by the UCWCP, we identified likely UCWCP participants as those claimants who had a construction job when injured and worked for an employer participating in the UCWCP. Our "likely UCWCP participant" group may include some nonparticipants because some employers who participate in the UCWCP have multiple unions representing construction workers. Workers are covered by the UCWCP only if both their employer and union agree to participate in the program. To restrict our state system comparison group to construction workers who are more likely to be union members, we excluded construction workers with weekly wages under \$600.

¹⁵ *Minnesota Statutes* 2008, 176.1812, subd. 4.

Table 3.8: Opinions About the Claim Experience, Union Construction Workers' Compensation Program Compared with the State System, 2008

(N=UCWCP, state)	Percentage of Survey Respondents Who Agreed or Strongly Agreed	
	Union Construction Workers' Compensation Program (UCWCP)	Likely Union Construction Workers Using State System
I knew how to get the workers' compensation process started when I got hurt on the job. (N=90, 142)	68%	68%
My employer has helped me get the benefits I need. (N=88, 138)	77	68
Getting workers' compensation benefits has been a frustrating experience. (N=85, 140)	42	48
I felt sufficiently informed about my rights. (N=88, 141)	60	65
The insurance company handling my claim has treated me fairly. (N=88, 139)	65	54
I have had no trouble getting the medical treatment I need. (N=89, 147)	72	78
A person who gets hurt on the job should talk to a lawyer as soon as possible about workers' compensation. (N=76, 118)	48	48
It took too long for my benefits to start. (N=83, 130)	24	41

NOTES: None of the differences between the two systems was statistically significant at the 95-percent confidence level except "It took too long for my benefits to start." The above figures (N and percentage who agreed) were calculated after excluding respondents who did not answer the question or had no opinion.

DLI's claims data do not identify whether a claimant participates in the UCWCP. We identified likely UCWCP participants as those claimants who had a construction job when injured and worked for an employer participating in the UCWCP. To restrict our state system comparison group to construction workers who are more likely to be union members, we excluded construction workers with weekly wages under \$600.

SOURCE: Office of the Legislative Auditor, analysis of survey responses from workers' compensation claimants, September 2008.

Table 3.9: Claimants' Satisfaction with Various Parties, Union Construction Workers' Compensation Program Compared with the State System, 2008

(N=UCWCP, state)	Percentage of Survey Respondents Who Were Satisfied or Very Satisfied	
	Union Construction Workers' Compensation Program (UCWCP)	Likely Union Construction Workers Using State System
Your employer's actions after you reported the injury or illness (N= 89, 143)	77%	67%
The health care providers who treated you (N=90, 146)	79	85
The insurance company that handled your claim (N=89, 142)	66	55
Your attorney (N=18, 62)	94	82
Your vocational rehabilitation providers (N=33, 72)	76	90
State agency or UCWCP employees that you contacted for help (N=28, 65)	61	72

NOTES: None of the differences between the two systems was statistically significant at the 95-percent confidence level except for satisfaction with vocational rehabilitation providers. The above figures (N and percentage who were satisfied) were calculated after excluding respondents who did not answer the question, had no opinion, or who said the statement did not apply.

DLI's claims data do not identify whether a claimant participates in the UCWCP. We identified likely UCWCP participants as those claimants who had a construction job when injured and worked for an employer participating in the UCWCP. To restrict our state system comparison group to construction workers who are more likely to be union members, we excluded construction workers with weekly wages under \$600.

SOURCE: Office of the Legislative Auditor, analysis of survey responses from workers' compensation claimants, September 2008.

High-wage workers have a strong financial incentive to get back to work quickly.

To the extent that UCWCP participants get back to work earlier, they would be better off financially because workers' compensation benefits only partially compensate injured workers for their lost wages and benefits. For example, as of October 2008, wage-loss benefits equal two-thirds of an injured worker's gross wages up to a maximum of \$850 per week. The maximum weekly benefit payment is reached with a weekly wage of \$1,275 or an annual wage of \$66,300. Union construction workers earning more than this wage are compensated at less than two-thirds of their weekly wage. In addition, workers' compensation does not cover losses in nonwage benefits, such as pension and health insurance benefits, which typically do not accrue for union construction workers when they do not work. Union construction workers, therefore, have a strong financial incentive to get back to work quickly. Unfortunately, we could not evaluate the two systems with respect to return-to-work time because comparable data were not available.

While we cannot conclude that injured workers are better off under the UCWCP, we found no evidence that they are worse off. Since the UCWCP has lower denial rates, lower costs, and no evidence of greater worker dissatisfaction, and since it is a much simpler system, we conclude that it is worth considering broader use of the UCWCP approach in Minnesota.

Recommendations

RECOMMENDATION

The Legislature should amend state law to establish an ombudsperson for injured workers.

An ombudsperson would help those injured workers who are overwhelmed with the workers' compensation process.

The Legislature has established ombudspersons to assist Minnesotans involved with other state programs, including the Taxpayer Rights Advocate, Ombudsman for Managed Health Care Programs, and Ombudsman for Mental Health and Developmental Disabilities.¹⁶ We recommend that the Legislature establish a similar position specific to workers' compensation. As in other programs, we would expect an ombudsperson for injured workers to provide a fresh look at claimants' individual situations, problem-solve, and suggest options to claimants' dilemmas. DLI's dispute resolution staff cannot play such a role because they are to act impartially; the ombudsperson would provide a separate avenue for injured workers who want assistance focused on their point of view. We learned through our surveys that some injured workers feel overwhelmed with the workers' compensation process and lost in the system. An ombudsperson for injured workers would be a single point of contact for workers in similar circumstances.

The legislature could consider already-existing models for organizing the function. Options include establishing the office within the Department of Labor and Industry, as an independent state agency, or as an arm of an affiliated council or board.¹⁷ In a December 2008 report, the Commissioner of Labor and Industry presented a Workers' Compensation Advisory Council proposal to create a workers' compensation ombudsperson office as part of another administrative initiative.¹⁸ This proposal could be a starting point for the Legislature as well. With any option, we think it is essential that the position be established outside of DLI's Workers' Compensation Division.

¹⁶ *Minnesota Statutes* 2008, 270C.37; 256B.69, subd. 20; and 245.92.

¹⁷ The Office of Ombudsman for Long-Term Care is an office of the Minnesota Board on Aging. The Office of the Ombudsman for Mental Health and Developmental Disabilities is an independent state agency. The Taxpayer Rights Advocate is located in the Department of Revenue as a direct report to the Commissioner. Similarly, the Office of Ombudsman for State Managed Health Care Programs is in the Department of Human Services.

¹⁸ Minnesota Department of Labor and Industry, *Commissioner Recommendations, Workers' Compensation Advisory Council* (St. Paul, December 2008).

RECOMMENDATION

The Department of Labor and Industry and Office of Administrative Hearings should continue work on streamlining the dispute resolution process, with an emphasis on reducing the forms used to enter the system and focusing on individual workers and claims instead of disputes.

The state's dispute resolution process needs to be streamlined, and aspects of the UCWCP serve as a model.

There are several ways in which DLI, OAH, and the Legislature could simplify the workers' compensation system. DLI and OAH have already been working to consolidate disputes that are part of the same case. Restructuring the system to focus on claims and individuals rather than disputes would further enhance this effort. DLI could increase its early intervention efforts by holding meetings between all involved parties if an issue cannot be resolved quickly by phone or e-mail. The facilitation step used by UCWCP could serve as a model. Among the options that the Legislature could consider is greater use of neutral doctors. We have not studied all the effects of this option, but the UCWCP appears to have effectively used this approach.

Officials from both DLI and OAH said that the dispute resolution system needs to be streamlined across the two departments. One option is to assign conference duties to one organization. One DLI manager suggested that making a clear division between conference and trial duties would go a long way toward cleaning up the system. DLI officials suggested putting all conferences at DLI, leaving trials at OAH. However, OAH officials argued that most conferences already take place at OAH, so it would make sense to consolidate there. We do not make a judgment on which option to pursue. Any decisions to consolidate will have to be made in light of the budget and staffing situation following the 2009 legislative session.

RECOMMENDATION

To expand use of alternate workers' compensation programs like the Union Construction Workers' Compensation Program, the Department of Labor and Industry should (1) provide assistance to employers and unions in other industries that are interested in establishing alternate systems, and (2) evaluate establishing an alternate system for unionized state of Minnesota employees.

We support broader use of alternate systems like the UCWCP. DLI staff told us that employers and unions from industries other than construction may be interested in establishing alternate systems. The impetus for any new program must come from the industry employers and unions, but we think DLI could support the process with outreach and technical assistance. Another opportunity exists within Minnesota state government and its unionized workforce. The state as an employer and public employee unions could establish an alternate workers' compensation system through collective bargaining. As a first step, we recommend that DLI study how such a system might be structured.