



ISSU

Independent State Store Union

508 N. Third St. • P.O. Box 863 • Harrisburg, PA 17108

717-234-2568 • 800-692-ISSU • Fax: 717-234-5458

issu@comcast.net; www.oneissu.org

ISSU represents government civil service employees protecting the common good for the Commonwealth

February 14, 2012

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The Honorable John Pippy, Chairman
Senate Law and Justice Committee
Room 281, Main Capitol Building
Harrisburg, Pennsylvania 17120

The Honorable Jim Ferlo, Minority Chairman
Senate Law and Justice Committee
Room 535, Main Capitol Building
Harrisburg, Pennsylvania 17120

Dear Chairmen Pippy and Ferlo:

After completing prepared testimony at the January 24, 2012 Senate Law and Justice Committee meeting, a participating witness erupted into a scurrilous tirade that amounted to an attack on the Independent State Store Union (ISSU). During the outburst, ISSU was berated for our positions on the proposed legislation and our long standing defense of the current state store system based on reasonable and responsible alcohol policy. The commentary quickly denigrated to personal attacks on ISSU and the leadership of this union.

The opportunity for interested citizens, represented groups and affected parties to appear before a committee of the legislature to discuss impacts and concerns of pending legislation is truly a valuable method to promote an open and transparent legislative process. While ISSU appreciates and respects the rights of proponents and opponents of pending legislation to express their views publically through the committee hearing process, we do not believe it is appropriate to use the hearing process to disparage such groups in an attempt to discredit their concerns or positions.

In our opinion, that is exactly what happened at the January 24th hearing and, as a result, we are compelled to respond in writing to address the baseless accusations and personal attacks on this union.

First and foremost, ISSU was assailed over our opposition to the PLCB initiative to be exempted from civil service requirements and it was asserted that our concern was linked to the employee grievance process. The following statement was offered in a strained attempt to connect the two.

“The real issue here - plain and simple - exists now with or without this legislation. And that is their meet and discuss unit. And they use civil service to process their grievances. If their future members don’t have civil service they will have to ask

their members, as I have to, to finance their own defense and pursue their own grievances. Right now they count on the taxpayers to pay for that. We have a collective bargaining agreement. We have a legally binding grievance and arbitration procedure. They use civil service."

The above statement is completely inaccurate. It is not based in fact nor supported by statistical data.

By way of background, all civil service covered employees that have been aggrieved by an action of their employing agency, have the absolute right to request a hearing on the matter before the Civil Service Commission. Employees that are also represented by a Collective Bargaining Agreement (CBA) or Memorandum of Understanding (MOU) can decide to pursue the matter through the internal grievance and arbitration process or they can request a hearing before the Civil Service Commission – they cannot simultaneously pursue both avenues of review. If the aggrieved employee decides to utilize the Civil Service Commission hearing, they must file for a review with the Commission within twenty days of the employer action.

Our review of the Civil Service hearing adjudications, as posted on the State Civil Service Commission website, indicated a total of 114 cases for employees of the PLCB from 1995 to the present. Of those 114 cases, only nine cases involved employees covered by the bargaining unit represented by ISSU. In comparison, a preliminary review of our grievance records indicates at least 400 grievances were filed on behalf of our members through the internal grievance and arbitration process during the same time period. Obviously, the assertion that ISSU utilizes civil service to process our grievances is unsubstantiated and without merit.

Additionally, I would like to point out that two of the nine civil service hearings referenced above involved probationary status employees. Under a CBA or MOU, employees in probationary status have no grievance or arbitration rights. However, under the Civil Service Act, probationary employees have the right to a hearing if they believe they have been aggrieved. In the two probationary status cases referenced above, ISSU provided legal representation to the aggrieved parties.

Contrary to the imprudent claims made at the hearing, the above evidence clearly illustrates that ISSU not only aggressively defends our members through the internal grievance and arbitration process but it confirms that we only pursue civil service remedies when no internal procedures are available to the aggrieved employee.

ISSU was also assailed for our concerns regarding civil service advantages for veterans in the recruitment and hiring process and our belief that veterans would be disenfranchised under the proposed legislation. The following was offered regarding our concerns of veterans' preference currently guaranteed under civil service:

"But what I heard here earlier was absolutely shameful from the leadership of ISSU and it was a significant red herring. But to use vets, people who have served this country, in the way they did here... Umm, this legislation as drafted now will not cost one vet their job.

We agree that the legislation will not cost any veteran their job. Our direct testimony focused solely on the fact that if the PLCB was exempted from civil service, veterans would be disenfranchised from future employment opportunities with the Board by virtue of the elimination of the veterans' preference awarded through testing. Our position was supported by the published remarks of Marwan Kreide, former Chairman of the Civil Service Commission, who reaffirmed our position that without civil service preferences and protections, bureaucrats will not hire vets.

Further, the following statement is inaccurate.

“It protects those with civil service who already have civil service and will continue to do it.”

If the PLCB is exempted from civil service requirements, current civil service employees will not be protected because it is impossible to run parallel systems. This is clearly evident in the language of the PLCB initiative relating to personnel. As drafted, the PLCB initiative clearly states that civil service status will be “grandfathered” only as long as current employees remain in the position/classification they hold when the legislation is enacted. In other words, if a civil service covered employee is promoted, demoted, or reclassified, they would lose their civil service protection.

If there is any shame associated with the discussion of veterans and the impact the proposal would have on them, it falls on those who support an initiative that supposedly provides more flexibility in hiring, is less burdensome to bureaucrats and might save a few dollars – all at the expense of veterans.

In further support of our concern that the elimination of civil service would disenfranchise veterans in the recruitment and hiring process, I would again point to the spoken testimony.

“And I believe Mr. Conti has talked to leaders in the caucuses, I know he has talked to the ISSU about it and he has talked to me about it, about the Board’s willingness to continue a feature that would still provide some advantage similar to what exists now and I think that is worthy of discussion.”

The fact that the Board recognized the need to “provide some advantage similar to what exists” validates our concern that this PLCB initiative, as originally drafted, would disenfranchise veterans from employment opportunities with the Board. The current version of the initiative now contains language that attempts to ease those concerns although the attempt is still inadequate. The proposal now contains a requirement that the Board shall adhere to the provisions of current law relating to veterans’ preference for non-civil service positions.

Veterans’ preference for civil service covered positions is far more advantageous for veterans than non-civil service positions. Veterans’ preference for civil service covered positions provides an additional ten points to testing scores; veterans’ preference for non-civil service positions does not. While current law requires non-civil service agencies to give preferences to vets, that rarely happens. The fact remains that without civil service preferences and protections, bureaucrats will not hire vets.

If there is a red herring it is the implausible argument that the legislation can “provide some advantage similar to what exists” for veterans. There is no acceptable substitute to the veterans’ preference provisions provided under the requirements of the Civil Service Act.

Additionally, the following statement was offered in an attempt to discredit ISSU and our positions in support of reasonable and responsible alcohol policy over pricing initiatives designed to simply produce additional revenue:

“On one hand they say that the Commonwealth shouldn’t make money off this and that, you know, it shouldn’t be a revenue producer, yet they don’t want you to raise prices on high velocity items so they can continue to be high velocity items. There is no consistency in their message, except whatever the PLCB wants to do has got to be wrong.”

A careful review of this statement demonstrates that our message is nothing but consistent and we appreciate the inadvertent confirmation of our consistent policy positions.

As part of their pricing initiative, the Board projects that they could increase revenue and profitability on higher-end or higher-velocity items through variable mark-up. They estimate that, depending on market conditions, they could easily produce an additional \$20 million to \$70 million annually. This additional revenue would be generated by increasing the mark-up on standard items – that are usually less expensive and are high-velocity – while decreasing the mark-up on premium items which are usually more costly. As a result, popular and less costly items would increase in price while high-end premium items would decrease in price – thus, creating winners and losers among products at the expense of the consumer, including licensees.

In our testimony, we recognized that variable mark-up by private retailers is a component of competition. However, in a state owned alcohol distribution system, variable mark-up, or market-based pricing, can only result in unnecessary and unreasonable price manipulation on products to increase revenue at the detriment of the consumers and the system. We believe our position on the variable mark-up proposal is consistent with our defense of the system from a reasonable and responsible alcohol policy perspective and our opposition to policies targeted solely towards generation of revenues.

It should also be noted that other groups appeared at the hearing in question in opposition to the PLCB sponsored variable mark-up or market-based pricing initiative. The testimony included a claim that our only consistent message is that *“whatever the PLCB wants to do has got to be wrong.”* While we disagree with that blanket assessment, in this particular case we do believe their policy initiative is misguided. In light of the testimony of others at the hearing, it is obvious that we have support in that belief.

An attack on the Memorandum of Understanding that we utilize for representation of our members, not only exhibited a total disdain for this union but sought to minimize the weight and standing of MOUs in the collective bargaining process.

“But when I listen to what they had to say, umm, what’s really going on here is that they do not, they’re not, their members are not represented by a collective bargaining agreement...In fact, under current law, and the status that they operate under now, if the state wanted to, they could ignore that Memorandum of Understanding, it is not a binding agreement. We have a collective bargaining agreement. We have a legally binding grievance and arbitration procedure.”

It is truly unfortunate that anyone would seek to diminish the value of Meet and Discuss groups and the Memorandum of Understanding process for first level supervisors as established by the Public Employee Relations Act – the same Act that gave rank and file members the right to Collective Bargaining Agreements. The above statement seems to suggest that employees of Meet and Discuss groups, who are represented through a Memorandum of Understanding, are second class citizens with respect to workers’ rights – we unequivocally disagree with that attitude.

It should be noted that ISSU is not the only union that utilizes the MOU process in representing Commonwealth employees. According to the 2012 Governor's Annual Work Force Report, there are 5,586 first level supervisors represented through the MOU process. These 5,586 individuals are employed in sixteen different bargaining units that are represented by ten different unions, including AFSCME which represents six of the sixteen bargaining units.

It is well-established that ISSU has defended the existing state store system based on the responsible and reasonable alcohol policy and the "Common Good for the Commonwealth" arguments. The members of ISSU have always worked hard to protect the current system while insuring a responsible alcohol policy for this great Commonwealth. We will continue to focus our defense of the current system based on those arguments going forward.

We are not a professional union – we are a union of professionals. We are a union of professional state store workers charged with the responsible sale of alcohol.

We are an employee operated union and our principal officers and board members represent our members. We work in the state stores during the day and represent our members on our time. We vigorously represent every member of this union because every member has a 100% stake in this system.

We stand by our members, we stand by our convictions and we stand by our testimony.

We respectfully request that this correspondence be included with official transcripts of the January 24, 2012 Law and Justice Committee in order to provide a balanced record with respect to the disparaging comments made about ISSU at that hearing.

We appreciate the opportunity to supplement the record in this important matter in order to provide fair and accurate information to the members of the Senate Law and Justice Committee, and the legislature as a whole, as they consider future actions on the proposed changes to the Liquor Code.

Sincerely,



Dennis Harty, President
Independent State Store Union



Jeremy Phillips, Vice-President
Independent State Store Union

cc: Senate Law and Justice Committee Members