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Rooting out a pro-worker judge

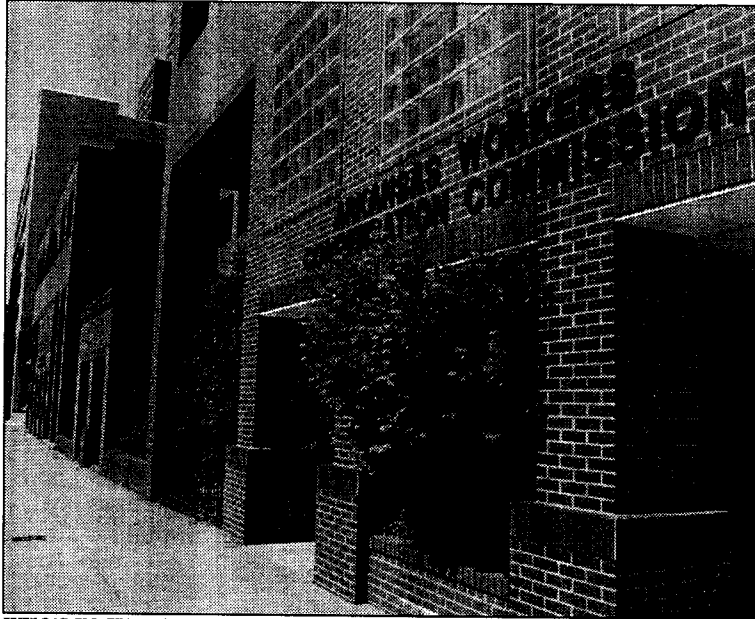
Business and government, working together.

BY DOUG SMITH

■ Federal court records show that insurance companies, the Chamber of Commerce, Gov. Mike Huckabee and his appointed department heads teamed up to remove a Workers Compensation Commission administrative law judge they accused of partiality toward injured workers. What they did may not be illegal — although the fired employee, Eileen Harrison, is suing to get her job back — but it's a stark example of state government granting corporate wishes.

The case will go to trial, probably this winter. On Monday, U.S. District Judge Howard Sachs of Kansas City rejected a motion to dismiss Harrison's suit against the two men directly responsible for her firing — Eldon F. Coffman, chairman of the state Workers Compensation Commission, and Michael K. Wilson, management's representative on the Commission. Both are Huckabee appointees. The third commissioner, Pat West Humphrey, labor's representative, opposed the firing. Humphrey was first appointed by Gov. Bill Clinton and reappointed by Gov. Jim Guy Tucker. Coffman and Wilson say Harrison was canned because they were dissatisfied with her work, particularly her declaring unconstitutional part of a pro-management workers comp law. They say there's nothing improper about superiors firing unsatisfactory subordinates. But Judge Sachs said there were legitimate questions as to whether Harrison's firing violated her First Amendment rights of free expression.

After his ruling Monday, Judge Sachs recused from further consideration of the case, because, he said, a key issue at trial may be the comparative truthfulness of Coffman



WHO'S IN CHARGE: Lawsuit says big business wields heavy influence at commission meant to help injured workers.

and U.S. District Judge Henry Woods of Little Rock. The two have given conflicting testimony. Judge Woods is Harrison's father. (Which is why the case was assigned to Judge Sachs in the first place; the Little Rock judges recused.) Judge Sachs, who has served in the Eighth Circuit with Judge Woods for 20 years, said he hadn't known when he accepted assignment that Judge Woods' veracity might become an issue. Sachs suggested that Chief Judge Roger L. Wollman of the Eighth Circuit Court of Appeals at St. Louis appoint a judge from outside the Eighth Circuit.

The case really begins in 1993, when employers and the Chamber of Commerce pushed through the legislature a major, pro-employer revision of the state workers comp law. They argued, with some evidence, that the existing law had become unbalanced in workers' favor. At the time, the cost of workers compensation insurance was soaring; only a handful of companies still sold workers' comp insurance in Arkansas. Many of the state's biggest employers, such as Wal-Mart and Tyson Foods, were choosing to self-insure, which resulted in even higher workers comp premiums for small companies still forced

to purchase insurance.

Mike Wilson, then a state representative from Jacksonville, sponsored the bill for the Chamber. He was later appointed to the management seat on the Workers Compensation Commission. Gov. Jim Guy Tucker supported the bill. State Insurance Commissioner Lee Douglass helped management lawyers write it. The legislature passed the bill (now Act 796 of 1993) over the bitter

and continuing, opposition of organized labor and trial lawyers who represent injured workers.

Harrison was an administrative law judge for the Commission from 1991 to Aug. 19, 1998, when she was fired. Administrative law judges hear claims filed by injured workers

seeking compensation. Law-judge decisions can be appealed to the commissioners. In 1997, Harrison made a momentous ruling in the case of Tracy Reddick, who had been seriously injured when her arm was caught in a machine. While Reddick was unconscious in the hospital, blood and urine samples were taken for drug testing. Act 796 says that every employee gives implied consent for drug testing. Harrison ruled that part of the law unconstitutional.

According to Judge Woods, Chairman Coffman said "We're not going to let it happen, and I think we can protect her."



MIKE WILSON, '93: As a state representative, the soon-to-be commissioner handled the Chamber of Commerce's legislation.

The business community had complained about Harrison decisions previously. The criticism intensified after the Reddick decision, which was overturned by the commissioners, who said Harrison lacked authority to rule a statute unconstitutional. At Commission meetings in 1997, Wilson said business people were agitated about Harrison's decisions and wanted her head. At the same time, the business community was putting the heat on Chairman Coffman for voting too often with Commissioner Humphrey, the labor representative, leaving Commissioner Wilson, the management representative, on the losing side. (The Commission chairman, who must be a lawyer, is supposed to be neutral, and usually casts the deciding vote. The management and labor representatives are not required to be lawyers. Wilson is a lawyer, Humphrey is not.) Steve Carter, a Wal-Mart lawyer and member of the Arkansas State Chamber

Humphrey said she received many complaints about law judges who were perceived as biased in favor of management, including Max Koonce.

of Commerce Workers Compensation Committee, and Bill Walmsley of Batesville, another management lawyer and member of the Chamber's Workers Comp Committee, complained to the governor's office through Marcus Devine, a Huckabee aide, about Coffman. Walmsley, a former state senator, said in a letter that under Coffman's chairmanship "a climate of autocracy, distrust and sheer arrogance has developed" at the Commission.

Mike Pickens, Huckabee's appointee as state insurance commissioner, and a strong defender of Act 796, faxed to Coffman a critical analysis by Walmsley of decisions "rendered by the Chairman and the Labor Commissioner," decisions from which

Commissioner Wilson had vigorously dissented. "These and other similar cases indicate a significant erosion of some of the most beneficial provisions found in Act 796 of 1993," Walmsley wrote. In November 1997, Devine, Pickens, Carter and Walmsley met with Coffman in Coffman's office. Walmsley said that the administrative law judges were interpreting the law wrongly and Chairman Coffman and Commissioner Humphrey were affirming these wrong decisions. At commission meetings in 1998, Wilson stepped up his criticism of Harrison's decisions and repeatedly said business wanted her out because they believed she was biased in favor of claimants. Wilson testified that he "probably" talked to Carter, the Wal-Mart lawyer, about discharging Harrison.

Judge Woods said in a deposition that he was attending a ceremony in Fort Smith when Chairman Coffman approached him and told

him his daughter was doing a fine job as administrative law judge, but the big self-insurers and some insurance companies wanted to get rid of her. According to Woods, Coffman also said "We're not going to let it happen, and I think we can protect her." Robert C. Compton, an El Dorado lawyer, said in an affidavit that Coffman told him that Harrison was doing a good job, that there had been some criticism of her, but Coffman thought she was safe. Coffman's testimony about these conversations does not match that of Woods and Compton. The Woods conflict is the matter Judge Sachs referred to in his recusal. (Incidentally, Compton is the father-in-law of U.S. District Judge William R. Wilson of Little Rock.)

Julie Benafield Bowman, chief executive officer of the Workers Comp Commission, said she received numerous calls from Brenda Turner, Huckabee's chief of staff, and Devine, the governor's aide, saying that Harrison should be fired. Bowman recommended to Coffman and Wilson that Harrison be fired. Coffman testified that Bowman told him the governor's office had ordered Harrison's firing.

At the Aug. 19, 1998, meeting, Wilson moved to fire Harrison. Opposing the motion, Humphrey said she received many complaints about law judges who were perceived as biased in favor of management, and she named Max Koonce. She said the Commission shouldn't purge law judges because of their decisions.

(Koonce had previously worked for Wal-Mart. This year, Gov. Huckabee appointed him to the state Court of Appeals. He is now a Republican candidate for the Arkansas Supreme Court. The Court of Appeals appointment allows him to use the title "Judge" on the ballot.)

Coffman joined Wilson in voting to fire Harrison. At the end of the meeting, Bowman

was instructed to inform Harrison, which she did. Harrison was told to leave that day.

On Aug. 20, John Gary Davis of Little Rock, a lawyer who represents workers, heard that Harrison had been fired and called the governor's office for an explanation. Devine told him that Harrison had been fired for "judicial activism."

Harrison says in her lawsuit that she was fired because she was "fair to claimants and not biased in favor of employers, insurance companies or self-insured." Wilson and Coffman say in their response "There is no evidence that anyone ever ordered plaintiff [Harrison] to decide cases in favor of employers whether the employers were entitled to win or not."

As state officials, Wilson and Coffman are represented by the attorney general's office. They are also represented by private counsel, J. Leon Holmes of Little Rock. Attorney General Mark Pryor gave permission for the hiring of Holmes, who is paid from Workers Compensation Commission funds. Harrison is represented by John T. Lavey, John L. Burnett and Janet L. Pulliam of Little Rock.