

BOLI: 120 Years of Service to Working Oregonians

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Foreword

This history of the Oregon Bureau of Labor and Industries (BOLI) has been written in two segments. The first segment appeared in 2004 to mark the 100th anniversary of BOLI's creation in 1903. The second segment covers the last twenty years of BOLI's history.

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Introduction

At the dawn of the twentieth century, America was undergoing a series of profound changes that were drastically altering the nation's economic, political, and social landscape. The completion of the transcontinental railroad system and technological advances that fueled the nation's productive capacity led to the rapid expansion of industry and the rise of giant corporations in enterprises such as steel, oil, meatpacking, and coal. Seeking new employment opportunities presented by this expansion, more Americans left the farm for the city and took jobs as industrial wage earners. They were joined in the late nineteenth century by a new wave of immigrants who came to the United States seeking better lives and often found themselves clashing with native-born workers in their quest for opportunity and acceptance. Throughout the last two decades of the nineteenth century, these developments were accompanied by the rise of labor unions and the outbreak of fierce industrial conflict as workers sought to secure a larger share of the prosperity their labor was instrumental in creating. During the decade of the 1890s alone, armed workers battled Carnegie Steel and the state militia in Homestead, Pennsylvania, launched a strike against the Pullman company that led to a nation-wide injunction and the jailing of railroad union leader Eugene V. Debs, and engaged in dozens of lesser known but equally militant clashes. For many Americans, the ferocity of these conflicts led to fears that the new industrial order might not be compatible with the maintenance of democratic values, equality of opportunity, and social stability.

These troubling developments did not manifest themselves to the same degree in Oregon. The shift from farm to factory was less pronounced, with industrial wage earners accounting for only five percent of the state's population by the end of the nineteenth century. Nonetheless, there were some 4,000 manufacturers in the state by 1900, reflecting growth in key industries

such as lumber, timber, and canning. As capital expanded, so, too, did labor, with the number of unions in Oregon doubling between 1900 and 1903, and the Oregon Federation of Labor, an affiliate of the American Federation of Labor, forming in 1903. Conflict between labor and capital was not as intense in Oregon as was the case in other parts of the country, but Oregonians certainly recognized the rapidly changing dynamics of their own economy and the social problems that had accompanied such changes elsewhere.¹

During the first two decades of the twentieth century, a period that came to be known as the Progressive era, a national consensus had formed among many politicians, civic leaders, intellectuals, and clergy around a broad set of reforms that would regulate corporate behavior, improve conditions for workers, and limit industrial strife. Public demand for these reforms was also fueled by muckraking journalists and social crusaders who exposed the excesses of corrupt politicians and irresponsible corporations and publicized the plight of workers in mills, mines, and factories to a mass audience. Progressives believed that with government acting as an arbiter and referee, as President Theodore Roosevelt had done in helping to settle a national coal miners' strike in 1902, industrial conflict could be settled in ways that not only benefited the parties involved but also served the broader public interest. Roosevelt's intervention in the coal strike foreshadowed a period when citizens sought to assert their power through aggressive use of the initiative and referendum process, government began to regulate more closely the conduct of business and commerce, and expanded notions of workers' rights became focuses of public discourse and public policy.

It was in this context that many states, including Oregon, established bureaus or agencies to oversee the conduct of labor relations and industrial affairs. Officially called the "Bureau of Labor Statistics and Inspector of Factories and Workshops," the legislature approved formation

of the Oregon Bureau of Labor (BOL) on February 24, 1903 with bipartisan support. Speaking on behalf of the Bureau's creation, Governor George Chamberlain observed: "Troubles between capital and labor have not at any time seriously interfered with the business interests of the state." Still, proponents hoped that the new agency charged with enforcing "all laws enacted for the protection of the working classes" would help Oregon avoid the bitter conflicts raging in other parts of the country. Reflecting the Progressive belief that class conflict undermined efficiency and productivity, advocates declared that BOL "will save a large amount of wealth that is wasted in discord between capital and labor." The Bureau was initially granted three major areas of responsibility: inspection of factories; enforcement of new laws regulating child labor; and overseeing the number of hours women could work. The agency was also directed to compile statistics on labor and commerce in Oregon and report this data to the legislature. This emphasis on statistics embodied the Progressive faith that obtaining the best and most unbiased sources of information would result in better political decision-making and more enlightened public policy. Guided by these assumptions, the Bureau of Labor began to develop a regulatory apparatus for the protection of Oregon's workers. It benefited from having an able and energetic man as its first commissioner in the person of O. P. Hoff, who led the fledgling agency through the first decades of its existence.²

Chapter 1 **O. P. Hoff, 1903-1919**

O. P. Hoff was a Norwegian immigrant who made his way to Oregon as a gold prospector after the Civil War. Hoff gained the bulk of his labor experience as an agent for the Southern Pacific Railroad. Regarded as not being too closely aligned with either management or labor, Hoff fit the prototype of the disinterested expert that Progressives thought best suited to represent the public interest. As he noted in his first biennial report to the legislature, although some might regard BOL as “solely a labor union affair,” the agency existed both “for the good of labor and the industrial advancement of the state.” Throughout his tenure Hoff attempted to maintain this balanced perspective in his role as labor commissioner.

Hoff was initially appointed to the post of labor commissioner but then stood for election quadrennially as required by Oregon law, a reflection of Oregonians’ desire for popular oversight of government and one that departed from the practice of most states whose labor commissioners were appointed rather than elected. During his first four years in office, Hoff operated as a one-man operation and did not obtain a staff until the 1910-12 biennium, when the legislature provided funding for the hiring of four deputy commissioners. The need for sufficient funding and resources to fulfill its mission, especially as industry grew larger and workers’ demands for services and protection increased, has remained an ongoing and at times contested issue throughout BOL’s 100-year history.³

Hoff traveled to all corners of the state seeking to understand the needs of workers and employers and the specific problems associated with work in different employment settings. Inspecting the state’s businesses and factories was one of Hoff’s earliest and most enduring preoccupations. Public awareness of hazardous workplace conditions was exemplified by

incidents such as the 1911 fire at the Triangle Shirtwaist Company in New York City that had killed 146 workers, mostly young immigrant women, in a factory whose exits had been sealed. Hoff's investigations of Oregon factories and workplaces revealed the widespread existence of unsafe conditions akin to those found at Triangle. In his first biennial report, he found 212 industrial accidents and twenty-seven fatalities, the latter occurring mostly in logging and sawmill operations. Two years later in 1906, he reported making 673 factory inspections and finding examples of dangerous or unsafe conditions in all but twenty of them. Among the problems he found were open elevator shafts and unguarded moving parts on machines. As Hoff's workplace investigations deepened his awareness of unsafe and inequitable conditions facing working Oregonians, he began to advocate corrective action. One of his initial recommendations proposed that employers be required to install guards on machinery with potentially hazardous moving parts.⁴

According to Hoff, workers were too often placed at risk by the refusal of employers to accept responsibility for job safety. As one employer informed Hoff: "The truth is it [addressing a workplace hazard] has been put off for so long that we will have become accustomed to it [and] we are unconscious of the danger and someone is injured." Hoff could scarcely contain his displeasure over this kind of attitude. In his 1904 report to the legislature, he recounted a situation where he had warned an employer that a saw suspended by a rope could easily slip and result in a serious injury. A week after Hoff issued this warning, he learned that the rope had indeed snapped, ripping open the abdomen of the operator. The commissioner noted that the problem could have been solved with a \$.25 expenditure and complained that even after the incident, the employer was slow to remedy the situation.⁵

Like many Progressives, Hoff favored conciliation over conflict but in the case of factory inspection, quickly became an advocate for increased enforcement power for BOL. The initial factory inspection legislation had only granted the commissioner authority to recommend changes in hazardous conditions. In 1907, at Hoff's urging, the legislature significantly expanded the commissioner's ability to sanction uncooperative employers. Employers were now required to take action to remedy unsafe conditions and could be fined for non-compliance. In cases of willful violations, they would also be liable for damages. These expanded powers and improved staffing yielded almost immediate results, with Hoff reporting a thirty-percent reduction in accidents in 1908. Yet in 1911, BOL still found 5,179 accidents had occurred over a two-year period and listed over eight pages of accidents in its report, including crushed toes, lost fingers, burns, and bruises. Hoff summarized the evolution of his views on job safety and BOL's responsibilities in 1916. After touring thirteen states and observing working conditions in 112 manufacturing plants in twenty-six localities, he concluded that "factory laws cannot be too rigidly enforced." To be sure, working Oregonians were better protected, and employers had become more aware and responsible because of the Bureau's activities. Nonetheless, vigorous enforcement remained the key to ensuring that Oregon's workplaces would remain safe environments.⁶

BOL was also charged with regulating the employment of child labor. This was yet another Progressive era preoccupation reflecting social revulsion over public revelations of children being exploited by unscrupulous employers, thereby compromising their "moral, intellectual, and physical development." As the 1911 BOL report observed, child labor was a fundamental social challenge that could no longer be evaded or ignored: "The child labor condition in any state is one of the barometers which indicate the intellectual standard of the

people.” Moreover, the labor movement and social reformers lamented that child labor undercut wages for adult workers, eroding efforts to establish wage standards in employment and forcing families to send their children to work. Responding to these imperatives, the 1903 law creating BOL contained several provisions applying to child labor. Children were required to attend school until age fourteen, were prohibited from working during school hours, limited in how many hours they could work, and barred from holding jobs in occupations deemed dangerous or unsafe. The child labor law was administered by a Child Labor Board headed by Millie Reid Trumbull, an important figure in the history of social welfare in Oregon. Trumbull served in this post from 1903-1931 and became one of the state’s foremost advocates on behalf of children.⁷

Trumbull was a veteran of the settlement house movement and had worked in Chicago with the pioneering social crusaders Jane Addams and Florence Kelley before coming to Oregon. Although the legislature granted BOL authority to enforce child labor laws, it provided no funds for this task until 1911. Trumbull deeply resented the lack of resources devoted to her vital task. Comparing the funding provided the Oregon Historical Society with the legislature’s allocation for the Industrial Welfare Commission, which succeeded the Child Labor Board in 1913, Trumbull tartly observed: “One group has the task of protecting the living workers, the other to care for the relics of a dead and gone past.” Trumbull’s complaint would become a persistent theme among BOL officials, who often found the legislature either unable or unwilling to appropriate sufficient resources to fund the Bureau’s expanding responsibilities.⁸

Like Commissioner Hoff, Millie Trumbull had initially preferred conciliation to prosecution in attempting to eradicate the employment of children. Yet she noted that child labor was increasing due to the growing number of factories, the rising cost of living, and the accompanying stress on families that forced more children out of school and into the workplace.

Trumbull forged a close relationship with the public schools, especially in Portland, and reported considerable progress in her quest to “protect and improve [children’s] rights to an education.” Her efforts were threatened, however, by the labor shortages created by the outbreak of World War I. The number of work permits granted to minors rose from 3,096 in 1915-16 to 19,263 in 1919-20. Trumbull voiced concern about boys working in shipyards past midnight and the employment of “juvenile industrial hoboes’ who roamed across the Pacific Northwest in search of work. Affirming the sense of moral outrage that set a tone for BOL, she bluntly denounced the wartime rise in child labor: “Some parents seem to have gone money crazy and children are being sacrificed to the opportunity which the war industry has brought.”⁹

In keeping with the Progressive era’s commitment to protecting groups of workers believed to be vulnerable, the Bureau was also assigned responsibility for enforcing wage and hour laws applying to the employment of women. Indeed, it was the attempt to enforce the ten-hour day for women that had led to the famed Supreme Court case *Muller v. Oregon*, where the justices upheld Oregon’s law as a legitimate limit on the freedom of contract to advance a desirable social goal: the protection of women from overwork. O. P. Hoff was a strong advocate of protective legislation for women. When employers continued to violate the legal limit on the daily amount of hours women could work, he moved from a conciliatory to a more punitive approach, observing that employers could no longer claim ignorance of the law as an excuse for their non-compliance. In addition to enforcing wage and hour laws, BOL also sought better working conditions for women, as exemplified in a 1909 case where an Astoria retailer pleaded guilty to failing to provide female clerks with places to sit while performing their work. The storeowner was not fined but did agree to provide seats for her workers to meet BOL’s demand.¹⁰

With the creation of the Industrial Welfare Commission in 1913 and the legislature's passage of the nation's first enforceable minimum wage law, BOL became more aggressive in its defense of working women. The impetus for the minimum wage legislation, as was the case in other states, stemmed from research showing that women often earned wages below the level needed to support themselves and their families at a basic level of comfort. The Oregon Consumers' League, a reform organization led by the crusading priest Edwin O'Hara and researcher Caroline Gleason (later known as Sister Miriam Theresa), was instrumental in campaigning for expanded protection of women's employment rights. The new law limited women's work to a nine-hour daily and a fifty-four-hour weekly maximum, provided for a forty-five-minute lunch break, and established a minimum weekly wage of \$8.64. Under Millie Trumbull's direction, the Industrial Welfare Commission inspected workplaces to ensure that employers were complying with the new regulations. However, as was the case with children, labor shortages during World War I led to requests from employers and women workers to relax regulations on the hours of work. Staunchly committed to the notion that women workers were susceptible to exploitation, Trumbull stood firm and vowed to resist "the hysteria which had threatened for a time to sweep aside every line of protection which had required years in the building."¹¹

Although the Bureau devoted much attention to protecting women and children, it extended its services to all workers who were deprived of receiving wages for the labor they had performed. Early in his tenure, Hoff sought to curtail the practice of "crimping," a collusive arrangement between ship captains and boarding house owners that induced sailors to desert and allowed the conspirators to pocket the unpaid wages owed the seamen. The passage of legislation regulating the conduct of private employment agencies provided BOL with yet

another new area of responsibility. The Bureau monitored the practices of private employment agencies and acted in cases where agencies misrepresented wage scales and working conditions in their efforts to attract employees. BOL worked to obtain refunds for travel expenses and fees in instances where workers were enticed to take jobs under false pretenses. Ensuring that workers were paid for their labor would become one of BOL's most fundamental responsibilities, and it would increase its oversight under Hoff's successors to insist that employers live up to this most basic of obligations.

Hoff did not confine himself to merely enforcing the laws. Early on, he adopted a more expansive vision of the labor commissioner's role. Reflecting the reform spirit of his times, his distaste for the exploitation of workers, and his attachment to democratic values, he used his position as a bully pulpit from which he attempted to shape public opinion on a variety of social issues. One of his most deeply felt concerns was the status of Oregon's teachers. Observing that teachers were "about the poorest paid class of wage earners in the State," Hoff sharply questioned the values and priorities of Oregonians: "Is there not something wrong in our economic affairs that permits those who are training the minds of the children of this commonwealth to be so poorly paid? He also denounced the social tendency to treat female domestics as servants and not accord them the dignity and respect they were due, asserting that "the woman who holds the health of the family in her hands should be no inferior person."¹²

In addition to his advocacy on behalf of working women, Hoff spoke out frequently on the importance of the labor movement as a vehicle for social justice and social harmony. "Organization of wage earners is recognized as a principal defense of the American standard of life," he declared in 1909. "Labor unions, properly conducted, are a benefit to the State, to capital, and to humanity in general." Hoff deplored strikes and lockouts as "wasteful" and used

his office to help mediate labor conflict, noting approvingly that Oregon had fewer strikes than other states. Instead of strikes, Hoff urged labor to promote the union label to assure the public that it was patronizing businesses where workers were treated fairly. He also lobbied for Election Day to be made a compulsory holiday, a move he believed would increase working-class participation and advance the cause of democracy in Oregon.¹³

Hoff's social progressivism did not extend to immigrant workers, however. Since Chinese and Japanese immigrants had first come to the West Coast and the Pacific Northwest in the second half of the nineteenth century, they had often encountered hostility from native-born workers. Native-born workers feared, not without justification, that the new arrivals might be used by employers to undercut their wages and standard of living. This fear of economic competition mixed with racial and ethnic hostility, forming a potent political brew that led to unions and their political allies seeking to restrict and even ban employment and immigration of workers from Asian countries. Labor organization in Oregon had in part been fueled by antagonism towards Chinese and Japanese workers and among the demands that labor made when BOL was established was that the new agency track "to what extent [Chinese and Japanese] employment comes in competition with the white industrial classes of the state."¹⁴

O. P Hoff not only collected and reported data on Chinese and Japanese employment but unequivocally declared his opposition to workers of Asian origin. "The Chinese and Japanese laborer has always been a menace to the white laboring man and woman," he declared in 1907. "Every honest means must be used to stop Oriental immigration to this country" for "unless stopped, [it] will, by reason of [its] large numbers, undertake to control the political, as well as the economical affairs of this country." Several years later, Hoff rejected the argument that Chinese and Japanese workers were performing labor that native-born workers were unwilling to

do: “The claim that there is work that can not be done by the Orientals that our own people will not do is not borne out by the facts.” His ethnic and racial antagonism was not just reserved for Asia workers; he also denounced “the most ignorant classes from Southern Europe” as threat to the status of incumbent workers. Hoff’s stance on immigrant workers reflected both the economic fears and ethnic stereotyping prevalent in Oregon and the Pacific Northwest during the late nineteenth and twentieth centuries and represented the most serious blemish on BOL’s otherwise distinguished record of advancing the rights and defending the interests of working Oregonians.¹⁵

After serving as labor commissioner for sixteen years, O. P. Hoff went on to become Oregon’s state treasurer. Under Hoff, BOL’s responsibilities had rapidly expanded, underscoring Progressive-era Oregon’s commitment to using state government as a vehicle to protect the rights and interests of workers. The agency also gained growing acceptance from employers who increasingly realized that holding all businesses to a uniform set of standards diminished destructive competition and created a more stable environment for managerial decision-making. Using the system of factory inspection BOL had developed as an example of the benefits of regulation, Hoff observed in his final report to the legislature that the agency’s actions had “reduced the hazards of industry and ... been equally beneficial to industry itself by a marked and noticeable increase in the efficiency of and a more contented spirit on the part of workers.” And Hoff also established BOL as not simply a vehicle of administration and enforcement but also a voice of conscience, not hesitating to express his moral and ethical concerns about the status of workers, the practices of employers, or the health of democracy. Future commissioners would all be influenced by this legacy as they contended with new challenges and assumed additional responsibilities.¹⁶

Chapter 2 **Charles H. Gram, 1919-1943**

O. P. Hoff was replaced as BOL commissioner by Charles H. Gram, who had served as a deputy commissioner at the agency since 1907. Like Hoff, Gram was a Scandinavian immigrant who had come to Oregon as a teenager in the late nineteenth century and worked in sawmills and at a Portland transfer company. In contrast to Hoff, Gram had been closely associated with the labor movement prior to joining BOL, having served as president of both the Portland Central Labor Council and the Oregon Federation of Labor. Although Gram retained his sympathies for the labor movement, he conducted the office in the nonpartisan fashion begun by his predecessor. This approach clearly resonated with the public, who returned him to office six times during a period of considerable social volatility in both Oregon's and the nation's political history.¹

By the time Gram assumed office in 1919, the reform impulse that had animated the Progressive era had begun to wane. The Bolshevik Revolution of 1917 and a wave of nationwide strikes that occurred after World War I led to a conservative backlash and dampened social enthusiasm for reform. As the decade of the 1920s unfolded, Oregonians sought to cope with the onslaught of rapid social change, as exemplified by new forms of transportation (the automobile), communications (the radio), and consumption (the rise of installment buying and chain stores). In Oregon as elsewhere, these coping mechanisms often involved embracing traditional values and suppressing perceived disruptors of social order and stability, as evidenced by the Ku Klux Klan's rise as a political force. The 1920s were also a decade when business interests largely superseded those of labor, although under Governor Walter Pierce's administration, Oregon remained committed to pursuing Progressive principles in the areas of

conservation, tax policy, and management of public utilities. Despite this less welcoming social and political atmosphere, Charles Gram and BOL maintained the agency's commitments to safeguarding the interests of working Oregonians and even extended its reach in several critical areas.

Early in Gram's tenure, BOL expanded its oversight of workplace safety, asserting that "we hold accident prevention to be our most responsible duty." One area that had especially concerned both O. P. Hoff and Charles Gram was the danger posed by improperly maintained steam boilers. Between 1918 and 1920, ten workers had died in boiler accidents, and Gram expressed concern that while neighboring states were setting safety standards, Oregon was becoming a "dumping ground" for defective or unsafe boilers. In 1920, the legislature directed BOL to inspect steam boilers to ensure their safe operation. Initially, the legislature provided no funding for boiler inspection, but eventually, it imposed inspection fees on businesses to fund BOL inspectors, whose efforts were supplemented by insurance company personnel. In the first biennium after the law was enacted, inspectors designated as "dangerous" 900 out of the 3,200 boilers they had inspected, attesting to the magnitude of the problem the new legislation was seeking to address. Like his predecessor, Gram insisted that the bureau receive sufficient funds to fulfill its obligations. He praised Oregon's strong labor laws but expressed concern that "these laws have become but promissory notes, impressive to be sure, of the good will of the people of Oregon, but of no avail until translated into reality by proper financial support necessary to a complete administration." The issue of adequate funding, especially for workplace inspection, would become even more acute during the Depression with sharply reduced state funding and diminished fee collection from businesses forced to close due to hard times.²

The agency's oversight responsibilities increased throughout the 1920s to include inspection of plumbing, air tanks, electrical wiring, and elevators. BOL's growing workload was documented in the agency's 1925-26 report to the legislature, showing that the number of factory inspections had risen from 678 in 1905 to 2,572 in 1915 to 5,944 in 1926. Inspectors recommended over 13,000 changes to ensure the safety of factory equipment in 1925-26 alone. The Bureau, however, did not rely solely on inspection to ensure workplace safety. In 1919, it launched a joint safety education and accident prevention initiative with the Oregon Industrial Accident Commission and a regional branch of the National Safety Council, devoting special attention to hazardous conditions in the lumber industry. The Industrial Accident Commission went on to assume primary responsibility for educating workers, employers, and the public about accident prevention, while BOL's safety efforts continued to focus on factory inspections.³

Although the Bureau described accident prevention as its "most responsible duty," dealing with wage claims was, according to Gram, "the most trying work of BOL." Workers often incorrectly believed that the Bureau had the authority to force employers to pay back wages and were disappointed to learn that their expectations for redress could not be met. Although many claims of failure to pay wages reflected misunderstandings and no employer wrongdoing, agency officials did find numerous examples where workers, especially those lacking union representation, had valid complaints against their employers. Gram was especially concerned by what he saw as the serious social implications of employers failing to pay workers for their labor: "When a man sells his labor power and that is his only resource and [he] is then unable to realize on it," Gram observed, "a wretched state of affairs is at once created." Non-payment of wages robbed workers of the self-respect associated with productive labor, reduced the consumer dollars that were spent in local communities, and fueled suspicion and distrust

between workers and employers. Writing in the context of post World War I strife, the Bolshevik Revolution, and radical critiques of the existing social order, Gram issued the following warning shortly after assuming office: "...we know that to deal with the worker unjustly and to default in payment of wages is to encourage and breed dangerous radicalism." With these concerns in mind, he committed BOL to aggressive action on behalf of wage claims and attempted to expand the agency's authority in this area.⁴

Examples of defrauding included instances where workers were compelled to buy company stock as a condition of employment and subsequently found themselves unable to recoup their investment when the business closed. Workers in most cases had no right to exercise a lien on their employers' assets and were preyed upon by unscrupulous attorneys who promised results that they knew would not be forthcoming. BOL was also concerned about the repeated deductions of hospital and medical fees in migratory camps, a practice that exploited the vulnerability of mobile workers and in some cases failed to deliver on the promise of medical coverage. At Gram's urging, the legislature enacted a law in 1925 that guaranteed regular pay days. However, the law's coverage was limited to certain businesses and did not allow BOL to seek legal action against violators. Since "debtors were willing to take advantage of persons in no position to enforce their claims in a court of justice," the commissioner judged "the effect of the law [to be] simply zero." Summarizing his views on wage claims and advocating greater regulatory power at a time when it was politically less popular, Gram declared: "It has been said that we have more laws than needed, but our experience has proved that there should be greater protection furnished the classes of workers described herein [those being defrauded of wages]." It was not until 1931 that Oregon legislators, influenced by the onset of the Depression, granted

BOL the authority to seek court action against employers for back wages as Gram had requested.⁵

The devastating impact of the Depression on working Oregonians presented BOL with an unprecedented set of challenges. Two of the state's main industries, wood products and agriculture, suffered immensely. Between 1929 and 1933, employment in wood products plunged by forty per cent, personal income fell fifty-six percent, and farmers suffered a sixty-four percent decline in total cash income. Governor Julius Meier responded cautiously to the crisis, cutting state budgets severely, providing limited funds for relief, and approving an old-age pension plan that left counties short of sufficient resources to implement its provisions. Commissioner Gram spoke out vigorously on behalf of stronger measures to deal with the extreme circumstances facing working Oregonians. His reaction was animated by a strong sense of moral outrage about business ethics which he denounced as undermining the status of working people: "Independent self-sustenance must be advanced as the first and best definition of success and regardless of considerations of business or profit, must be made available to our outcast citizens who have been induced to abandon that standard by the tactics of modern industry."⁶

Anticipating the programs that emerged during Franklin Roosevelt's New Deal, Gram advocated a broad series of government interventions aimed at creating jobs and reviving the state's economy. He defined the problem facing the nation as one of "underconsumption" rather than "overproduction," insisting that "until the needs of workers are fully supplied through the natural purchasing power of their employment, there is underconsumption." He proposed providing unemployed workers with jobs working on forest protection, road and track repair, and land cultivation. He also called for shortening the workday to five-six hours to make employment more readily available. At the root of Gram's argument was his profound belief in

the dignity and value of productive labor: “Is it not better that a man be required to earn what he needs than to give it to him as a dole? And, in advocating that Oregon’s old-age pension system be adequately funded by the use of payroll taxes, Gram not only foresaw the advent of Social Security but also offered a forthright vision of how BOL under his leadership viewed its responsibilities: “We believe it is the duty of the state to provide for all its citizens by furnishing employment to all those who are able-bodied and in need; and to care for all who on account of age or infirmities are unable to care for themselves.”⁷

Gram’s aggressive advocacy of a strong government role in addressing the challenges posed by the Depression was largely rejected by Governor Meier and his successor, Charles Martin, both of whom were opposed to greater state intervention in economic and industrial affairs. Yet despite gubernatorial coolness to BOL’s more visionary suggestions and serious budget cuts that hampered its effectiveness, the agency moved on several fronts to protect the interests of workers during the Depression.

With so many Oregonians out of work, the agency assumed a larger role in helping the unemployed find jobs. Since 1915, BOL had been empowered to regulate the conduct of fee-charging private employment agencies, prompted by concerns that workers were at times paying for services that were not actually provided. One of Commissioner Gram’s first major initiatives upon assuming office in 1919 had been his participation in the formation of the United States Employment Service, which encouraged states to operate their own employment services under federal supervision. State affiliates were established in Eugene, Marshfield, Portland, and Salem. By the early years of the Depression, workers began to rely much more heavily on the state employment offices. Between 1930 and 1932, the state agencies assisted 183,000 workers with job placement while private agencies offered aid to only 25,000 jobseekers. Here, then, was

an area where BOL was able to expand its authority and provide needed services to Oregonians in their quest for security and employment. The bureau ceded oversight of public employment services in 1935, when the Oregon State Employment Service was created and placed under the authority of the Unemployment Compensation Commission.⁸

The Bureau also continued its oversight of working conditions for women and minors. In 1931, the Industrial Welfare Commission and the Board of Inspectors of Child Labor merged to form the State Welfare Commission, with the labor commissioner serving as executive secretary. The commission was hampered by a lack of funding and relied on BOL to cover at least some of its expenses. One of the commission's primary responsibilities, setting minimum wages for women workers, became quite contentious under the pressure of a depressed economy. The commission relied on the recommendations of conference boards comprised of representatives from employers, labor, and the public that investigated demands to raise or lower wages. In 1931, cannery employers petitioned to lower the minimum hourly wage for women workers from 27½ cents to 25 cents per hour. The conference board recommended that the reduction be granted, but the commission decided to maintain wages at the previous level. Yet it subsequently approved the request of women cannery workers for a five-cent reduction in their hourly wages so that they would not be undercut by male workers being hired at a lower rate. For the most part, the commission rejected requests to lower wages or to allow increases in the hours women could work. And throughout the 1930s, the commission issued orders setting wages for an expanding number of occupations in both the manufacturing and service arenas.⁹

During Charles Gram's years in office, the bureau also became involved in the resolution of labor disputes. Influenced by the World War I-inspired War Labor Board's success in diminishing labor conflict and concerned by outbreaks of worker militancy following the war,

the legislature in 1919 created the State Board of Conciliation and Arbitration. The board was the first of its kind in the country and operated under BOL's supervision. The three-member board, composed of representatives from employers, workers, and the public, conciliated labor-management conflicts over wages and working conditions. When the parties agreed, the board acted as an arbitrator but shunned involvement once a strike or a lockout had occurred.

The board consistently rejected adopting a compulsory approach, explaining that "any settlement of a dispute that is brought about through a manly spirit of kindness and compromise on what is seen to be an honest desire to be fair is preferable." Initially, the board's activities were limited. For example, from 1920-1922, its services were used on only eleven occasions. By the 1930s, however, with the resurgence of the labor movement and the increasing militancy of workers, the board began to play a larger and much more prominent role in attempting to mediate labor conflict.¹⁰

Indeed, Commissioner Gram demonstrated considerable personal courage during his intercession in a bitter lumber and sawmill workers' strike in the spring of 1935. Governor Charles Martin, who had rejected New Deal social policy and was virulently antiunion, dispatched the Oregon National Guard to protect strikebreakers at the Stimson Mill in Washington County. Joined by local police, the Guard threatened to begin shooting picketers if they did not disperse. It took the personal, on-site intervention of Gram and Otto Hartwig, head of the state Industrial Accident Commission and himself a former Oregon AFL president, to persuade the pickets to leave, thereby averting bloodshed. In helping to settle this two-month long strike involving 7,000 workers, the Bureau took the unusual step of agreeing to oversee a hiring hall to help the parties to resolve their differences. BOL's involvement was less dramatic on other occasions, but the commissioner remained active in dispute resolution as union

organizing accelerated with the creation of the Committee on Industrial Organization (CIO) and its ensuing competition with the AFL for the loyalties of workers. Between 1938 and 1940 alone, the conciliation board became involved in thirty-four disputes affecting 7,000 workers. The board eagerly accepted this new level of responsibility, with Charles Gram declaring that labor conflict would be more easily resolved if unions and employers were to avail themselves of the bureau's services.¹¹

The bureau's attitude towards Chinese and Japanese workers also appeared to change under Gram's leadership. The agency did continue to compile statistics on Chinese and Japanese Oregonians, documenting their property holdings and expenditures on domestic and foreign products. This reporting, which reflected ongoing public antipathy towards Asians, did not cease until 1929. At the same time, BOL began to show greater sensitivity to the plight of ethnic workers. In 1925, Charles Gram joined with his counterparts from California and Washington in warning Chinese contractors for Alaska canneries about exploiting Japanese, Chinese, Mexican, and Filipino workers, who he described as "ordinarily a most helpless and defenseless type." Gram subsequently reported some progress in persuading the contractors to treat their workers more fairly, especially in the payment of wages.¹²

The Bureau also undertook initiatives in several areas that would later become objects of more extensive activity. In 1923, Gram helped launch and chaired the Seasonal Employment Commission, bringing together growers, canners, and other employers in the agricultural and food processing industries to discuss their workforce needs. The commission's principal activity was publicizing the availability of jobs to address the mismatch between supply and demand that was endemic in a seasonal industry. Following World War II, the treatment of farm workers would receive much greater attention as workers of color replaced the native-born, and

conditions in the fields deteriorated. The agency also began to develop rules and regulations governing apprenticeships. BOL's role in this arena would expand greatly under Gram's successors as post World War II Oregon faced serious shortages of skilled craftspeople.

After thirty-six years at BOL, including twenty-four as labor commissioner, Charles Gram retired in 1943 at the age of seventy-six. He was the oldest serving state official at the time of his departure. When Gram assumed office in 1919, the bureau had a staff of seven. By the end of his tenure, it had grown to thirty-two, reflecting BOL's expanded duties and the commissioner's ability to convince the legislature to provide additional funding for the agency to meet its obligations. Under Gram, BOL had become more involved in ensuring workplace safety, moved directly into the arena of dispute resolution in labor conflicts, and grown much more aggressive in defending the rights of working Oregonians to be fairly and promptly paid for their labor. Faced with the daunting circumstances of the Depression, bitter clashes between labor and management, and the beginning of World War II, Gram insisted that the state's responsibility to defend the safety and security of working Oregonians not only be maintained but extended. His comment on the regulation of private employment agencies eloquently summarized his views on BOL's role and the contributions he made to upholding its mission: "It is our experience that all the regulations possible will not make one go straight without continual watching, if he is not so inclined."¹³ Throughout Charles Gram's six terms in office, BOL's "continual watching" had helped to make Oregon's workplaces safer and fairer. He also succeeded in firmly establishing the bureau as a respected, influential force in shaping social policy and advancing the public interest.

Chapter 3

William E. Kimsey, 1943-1955

Charles Gram was succeeded by William E. Kimsey, a veteran BOL official who had served on the State Board of Conciliation and Arbitration since the early 1920s and was elevated to the post of deputy labor commissioner several years before Gram's retirement. Kimsey took office amid tumultuous changes prompted by America's entry into World War II and guided the agency through the complex process of conversion to a peacetime economy. Under Kimsey, BOL would assume major new responsibilities that emerged from the social and economic demands that war and its aftermath imposed on Oregonians. And while the Bureau extended its jurisdiction into new arenas, it shed some of its previous obligations as part of a post-war redefinition of its duties.

World War II had a profound impact on Oregon, prompted by the growth of new industries to meet wartime demand and the need for additional sources of labor to replace workers who had entered the military. President Franklin Roosevelt's Executive Order 8002, prompted by pressure from Black Americans led by union and civil rights leader A. Philip Randolph, opened defense industry jobs to Blacks. Attracted especially to jobs in newly opened shipyards, more Blacks moved into Oregon, with their numbers in Portland alone increasing fivefold by 1944. Mexicans entered Oregon through the bracero program, an arrangement between the American and Mexican governments that permitted employers to contract for the services of agricultural workers for a specified period. Women and minors obtained employment in war industries and other businesses facing labor shortages. These rapidly changing work force demographics presented BOL with new challenges as it sought to balance the acute need for

labor with maintaining standards and protections for workers that had been painstakingly crafted over the course of three decades.¹

BOL was especially concerned by the influx of minors into the work force. The number of work permits issued to minors increased from 2,845 in 1940-41 to 72,918 by the end of 1944, and the Bureau noted “hundreds of cases of altered birth or baptismal certificates and worthless affidavits” that were submitted by young people falsely attesting to their age. Oregon law changed during the war to require school attendance through the twelfth grade, and BOL insisted that child labor standards be “strictly enforced.” Although more untrained workers were entering industry, the agency expressed pride that accident and injury rates had not markedly increased. BOL did allow some modification in the number of hours that women and minors could work in response to labor demand. Yet the agency still insisted that fundamental protections be maintained and did not hesitate to fine employers who violated wage and hour standards applicable to women and minors. The state experienced minimal lost time from labor disputes, reflecting the willingness of most workers to forego labor militancy in the interests of supporting the war effort.²

Anticipating the end of war, Commissioner Kimsey outlined BOL’s approach to the task of conversion to a peacetime economy. Discounting the desire of some women to remain in the labor force, he asserted that: “Every possible adjustment to restore family heads to their accustomed place in the economic picture must be made.” Kimsey also looked to private industry rather than public employment as the primary source of new jobs and anticipated a shift from high paying war industry jobs to jobs in the service sector that offered lower wages. Along with other policy makers across the country, Kimsey and the Bureau were clearly concerned about the stresses involved in converting from a wartime to a peacetime economy. Like many

observers, he feared plunging consumer demand, high unemployment, a sputtering economy, and social unrest as real possibilities following the war. As it turned out, many of these fears failed to materialize. In fact, Oregon continued to experience population growth, industrial expansion, and new job opportunities as demands for housing and consumer goods increased, and Cold War tensions with the Soviet Union boosted federal spending and industrial employment.³

In thinking about Oregon's workforce needs, BOL began to place a much greater emphasis on job training, and one of the hallmarks of Kimsey's administration was an expansion of the agency's commitment to develop and sustain a growing network of apprenticeship programs. Since 1931, Oregon had established a state commission to develop rules and regulations for apprenticeship programs in both the vocational and construction trades. It was not until World War II, however, and in the immediate post-war years, that the state and BOL devoted major attention and resources to the supervision and encouragement of apprenticeship training.

As a 1950 apprenticeship conference report noted, "depleted by years of depression, war, death, and retirement," Oregon faced severe shortages of skilled workers that threatened to impede its continuing industrial expansion and economic prosperity. At BOL's urging the legislature increased its support for apprenticeship programs, providing funds for a full-time director in 1945 and additional resources to promote the activities of the Oregon State Apprenticeship Council. A year later, the Bureau reported the existence of 1,388 approved apprenticeship programs. The State Council, comprised of employer, union, and public representatives and the state director of vocational education, oversaw twenty-seven local apprenticeship councils, sixteen state councils, and sixty-four sub-councils that developed guidelines and standards for craft and vocational programs. Apprenticeship was especially

attractive to returning veterans, who comprised eighty-seven percent of registered apprenticeships in 1948 and whose enrollments remained high throughout the immediate post-war period.⁴

BOL aggressively touted not only the economic but also the social benefits of apprenticeship. By providing “skilled craftsmen capable of doing the required work in their trades quickly, efficiently, and in the best interests of the taxpaying public,” apprenticeship played a crucial role in helping build the infrastructure for an expanding state economy. The Bureau also asserted, perhaps with some exaggeration, that apprenticeship was a deterrent to juvenile delinquency, a major social concern during the 1950s: “Seldom is a well-trained and employed craftsman involved with the law.” Nonetheless, as a vehicle that helped ease the transition of veterans into civilian life and provided young people with the opportunity to enter a respected, well-paid profession, apprenticeship became one of the BOL’s most visible and valued programs. Although the legislature in 1949 limited shifted administration of vocational apprenticeship away from the bureau to the State Department of Vocational Rehabilitation, BOL retained oversight of trade and craft programs. Its commitment to ensuring quality apprenticeship training would continue under Kimsey’s successors.⁵

In 1949, BOL took on one of the post World War II period’s most compelling challenges: enforcing a new Oregon law barring discrimination in employment. During World War II, the federal government had established the Fair Employment Practices Committee (FEPC) to help enforce President Roosevelt’s executive order opening the defense industry to Black workers. When efforts to extend the FEPC failed following the war, states moved to implement their own enforcement mechanisms, and Oregon became the sixth state to enact a Fair Employment Practices Act. The law was an acknowledgment of Oregon’s troubled history regarding its

treatment of ethnic and racial minorities and also as a response to the migration of Blacks to Oregon during World War II. Although these new arrivals found good-paying jobs in the defense industry, they often encountered a hostile reception from local citizens and continued to face discrimination in seeking housing and other employment opportunities.⁶

The new law barred discrimination in employment based on race, religion, color, or national origin and applied to both employers and unions. In keeping with BOL's tradition of preferring conciliation over legal action in its initial discharge of a new responsibility, Kimsey declared: "Elimination of discrimination can best be accomplished by reason and not by force. This law, to be effective, must be sustained by the moral attitude of the public." To that end, the Bureau devoted considerable attention to educating business, labor, and the public about their duties and obligations regarding fair employment practices. In the first year after the law was passed, BOL staff addressed thirty-one audiences totaling 1650 persons, distributed 26,000 pieces of literature to 3,400 organizations, and supported local efforts to improve social relations among different racial and ethnic groups.⁷

Although the agency was often successful in helping settle cases without resorting to public hearings or enforcement decrees, it did not hesitate to act against recalcitrant parties bent on circumventing the law. In 1951, when a local lodge of the Brotherhood of Railway Carmen refused to admit Black members, BOL obtained a cease-and-desist order. The local lodge disbanded rather than open its ranks, and it took intervention by the national union to obtain compliance. For the most part, however, the Bureau was able to resolve discrimination complaints without the need for legal action. It also reported progress in making job applications and classified ads non-discriminatory, opening more occupations to racial minorities, and

convincing state agencies that their fears over public reaction to interacting with workers of color employed in government service were unfounded.⁸

In another arena, however, BOL's capacity to carry out its responsibilities was seriously tested. Commissioner Kimsey reported a tremendous increase in the demand for inspections resulting from rapid growth in home and business construction during the post World War II period. Electrical installation was a particular area of concern, with the number of inspections rising by 300 percent between the 1946-48 and 1948-50 biennia. Additional funding from the legislature allowed the agency to hire twelve new inspectors in 1949 but with the continuing construction boom, BOL struggled to fulfill its obligations. Recognizing this burden, the legislature in 1952 shifted the responsibility for factory inspection to the Industrial Accident Commission, limiting BOL's jurisdiction to boiler, electrical, and pressure vessel inspection. This shift acknowledged the Bureau's expanded role in the areas of training and employment, along with its new responsibilities in civil rights enforcement. Before relinquishing its factory inspection obligation, BOL proudly noted that it had visited 12,226 factories between 1950 and 1952 and recommended 11,115 changes to improve safety, confirming its faithful performance of these duties over the first fifty years of its existence.⁹

In submitting BOL's twenty-fifth biennial report to the legislature in 1953, W. E. Kimsey attached a fifty-year history of the agency's accomplishments. Throughout his years as commissioner, Kimsey had been less public than his predecessors in using his office as a bully pulpit, preferring to fulfill BOL's responsibilities in a more understated manner. In part, this approach reflected broad public acceptance of the agency's mission, greater awareness from employers about their legal and ethical obligations to their employees, and a consensus that "the welfare of the state demanded the enactment and enforcement of such [labor] laws." Yet Kimsey

also placed himself and BOL in a broader moral context in his introduction to the 50th anniversary report. The agency's expanding role in protecting working Oregonians, he observed, "grew out of the fundamental decency of Oregonians, who believed themselves their brother's keeper." Repeating an image used by his predecessor Charles Gram, Kimsey described "the laws we have administered during fifty years" as "the promissory notes of Oregonians to humanity. It has been the duty of the Bureau of Labor to make these notes negotiable."¹⁰

Chapter 4 **Norman O. Nilsen, 1955-1975**

After William Kimsey decided not to seek re-election, Norman Nilsen succeeded him as labor commissioner in 1955. Like Kimsey and Charles Gram, Nilsen was a BOL veteran, having previously served as director of the agency's apprenticeship division. A Norwegian immigrant, Nilsen had been orphaned at age fourteen and at one time had worked as a union plumber. These experiences profoundly shaped his approach as labor commissioner. As he explained in an interview just before his retirement: "I was a working stiff myself for many years. And I felt that any American had the right to a job or to live where he wanted. The laboring person should always have dignity. And this was something we always tried to give people who sought our services."¹

Animated by this philosophy, Norman Nilsen would both build on and extend the work of his predecessors, especially in leading BOL's response to calls for social change and challenges to the status quo that arose during the 1960s. Some of the Bureau's previous responsibilities, such as electrical, boiler, and elevator inspections and conciliation services, shifted to other agencies during Nilsen's administration. However, as the cry for social equality and inclusion grew louder in both the state and the nation, BOL not only stepped up its activities in the civil rights arena but also began to confront a broader set of discriminatory practices, most notably as they affected women and older Oregonians. The Bureau also became much more involved in monitoring and seeking improvements in the conditions facing farm workers, who played a vital role in Oregon's critical agricultural sector.

A law passed in 1959 requiring that a prevailing wage be paid on public construction projects added a new set of enforcement responsibilities to the Bureau's jurisdiction, and the

establishment of the Oregon Conciliation Service in 1957 gave the agency additional obligations in labor-management relations. Under Nilsen, BOL's research division authored a series of penetrating reports on new social and economic trends in Oregon, calling attention to the changing needs of working Oregonians and challenging policy makers to address the needs of a more diverse and evolving work force. Operating in an environment in which government was asked to assume new duties and spearhead social reform, the Bureau embraced its traditional role as a voice for working Oregonians with new vigor and aggressiveness during Norman Nilsen's long tenure as labor commissioner.

The conditions encountered by migrant farm workers who entered Oregon to harvest crops became a new focus for BOL shortly after Nilsen assumed office. During the mid-1950s, church organizations became active in assisting these workers and calling for legislative action to address the deplorable conditions under which they worked and lived. Prodded especially by the Oregon Council of Churches, who estimated that 30,000-40,000 migrant workers were present in Oregon each year, the legislature launched an investigation, and BOL established a migrant labor division in 1958. In BOL's 1954-1956 biennial report, Commissioner Nilsen bluntly summarized the problem: "Unorganized, virtually unprotected by social legislation, and ineligible for many of the education, health, and welfare benefits... migrants frequently find maintenance of even a minimum standard of living an impossibility." A Bureau sponsored study that appeared in 1959, written by Tom Current and Mark Martinez Infante, was aptly titled "And Migrant Problems Demand Attention." This candid report, based on numerous interviews with migrant workers, was unsparing in identifying the magnitude of the problem and underscored BOL's commitment to address the problem. One immediate result of this flurry of activity occurred with the passage of the Farm Labor Contractor Act in 1959. This legislation required

crew leaders overseeing farm workers to be licensed by the state. At the same time, the wage and hour division assumed responsibility for inspecting conditions in the fields where migrants worked and the camps where they lived during harvest time. With these steps, BOL began to assist a vulnerable population of workers, many of Mexican descent, and subject growers, labor contractors, and crew leaders to heightened oversight and scrutiny.²

Throughout the 1950s and 1960s, however, BOL reports reflected the difficulties the agency faced in attempting to improve conditions for farm workers. The Bureau was hampered by a lack of personnel available to inspect fields and labor camps, although it did add part-time inspectors during peak harvest months to expand its oversight. Some success was reported in weeding out unscrupulous and irresponsible contractors who failed to honor the terms of their agreements with farm workers, especially regarding wages. Yet BOL noted that after “seven years of pleading,” it had failed to convince many growers and farm labor contractors that written contracts would be preferable to oral agreements in outlining the terms of employment with farm workers. The extent of the problem was spotlighted in the Bureau’s 1964 report, which estimated the presence of 20,500 migrant workers at peak harvest time. BOL conducted 1,469 inspections of sanitation in the fields and 335 checks on conditions in camps where farm workers lived. In the mid-Willamette Valley, fifty percent of the fields inspected were found to have substandard sanitation in toilet facilities and lacked access to clean drinking water. Towards the end of Nilsen’s tenure, farm labor contractors were required to file surety bonds with the commissioner and provide workers with written statements outlining the terms and conditions of their pay and employment. Yet this arrangement contained many loopholes and was characterized as “unworkable” in the Bureau’s 1972 report. The continuing power imbalance between farm workers and growers, coupled with BOL’s lack of resources and limited

enforcement power, clearly frustrated an agency committed to improving conditions in the fields.³

Farm workers were not the only group of workers BOL took special steps to assist under Nilsen's administration. Portland's Black population had doubled between 1950 and 1970, and organizations like the Urban League and the NAACP pressed for fair treatment in housing, education, and employment. Latinos, too, became more aggressive in demanding their rights. In this context BOL became an important vehicle by which state government could affirm its commitment to ensuring full citizenship for people of color. BOL's civil rights responsibilities expanded beyond enforcing fair employment practices to encompass admissions policies to vocational and professional training schools and ensuring equal access to public accommodations and housing. In 1957, the Bureau established a civil rights division to administer and coordinate these functions, and this new entity quickly became a visible public presence seeking to ensure fair treatment for all Oregonians under the law.⁴

BOL maintained its strong commitment to "education, persuasion, conferences, and conciliation" in its approach to civil rights, continuing to make presentations to community and civic groups (Bureau staff made over 400 presentations during the 1956-58 biennium), encouraging the formation of local inter-group councils and human rights commissions, and monitoring hate crimes and other manifestations of racial or ethnic intimidation. Throughout the late 1950s and early 1960s, BOL reported progress in several areas, citing the growing ranks of Portland teachers of Black, Asian, and Native American descent and the breaking of the color line in fields such as banking, real estate, apprenticeship, and union leadership. The Bureau helped begin a job development program for minorities in Portland, worked with labor and management to open jobs on the waterfront, and in the late 1960s, launched an effort to help

members of the Umatilla tribe near Pendleton to start businesses. Despite this progress, the Bureau's statement in its 1962-1964 report reflected a keen awareness of the need for vigorous civil rights oversight and enforcement: "There is no time for complacency when any citizen in the state faces discrimination based on his race, religion, color, or national origin."⁵

By the late 1960s and early 1970s, BOL reported a rising backlog of civil rights complaints (390 alone by the end of the 1970-72 biennium), and the agency expressed its solidarity with the rising tide of impatience and militancy driving these complaints: "It has become evident that in our democracy the perpetually discriminated against, those historically deprived and forever frustrated, cannot and will not always act like free, privileged, and polite middle-class persons." Indeed, the administration of the civil rights division became a contested political issue during the 1970s, pitting BOL against the executive branch of state government. Republicans, led by Governor Tom McCall and supportive state legislators, sought to relocate the civil rights division and place it under the authority of the state attorney general. This proposed move was in part prompted by wrangling between Commissioner Nilsen and Attorney General Lee Johnson over BOL's complaints that Johnson's office was excessively charging the Bureau for the use of its attorneys in civil rights cases and was not responding expeditiously to requests for their services. Norman Nilsen also feared that the civil rights division would be subject to greater political pressure if it were transferred to the executive branch and noted that if civil rights complaints were filed against state agencies, investigations of charges might be compromised.⁶

BOL successfully resisted these attempts to transfer the civil rights division and took steps to increase the division's efficiency. The Bureau sought and eventually obtained new powers of subpoena while also streamlining procedures to expedite appeals of the labor

commissioner's final judgments. In the area of housing, where resistance to integration of neighborhoods was especially pronounced, BOL also became more aggressive in its intervention. In a highly visible case during the early 1960s, Commissioner Nilsen issued a cease-and-desist order against a Portland contractor who reneged on his promise to build a home for Black couple. BOL also worked to promote "voluntary affirmative action programs" with Oregon businesses and in the early 1970s, contracted with the Equal Employment Opportunity Commission to conduct an outreach program that would ensure Latinx access to job training and placement programs. Although BOL never relinquished its belief in the importance of educational efforts to change social attitudes on racism and prejudice, by the end of Norman Nilsen's terms in office, it had become much more committed to vigorous enforcement as a vital tool in fulfilling the responsibilities of the civil rights division.⁷

Demands during the 1960s for fair treatment for people of color encouraged the rise of new social movements that identified discriminatory practices faced by women and senior citizens. Once again, BOL assumed additional obligations in ensuring that female and older Oregonians would receive equal protection and opportunity under the law. Following the passage of a 1959 law barring age discrimination in both public and private sector employment, BOL established a "Senior Workers Division" and held twenty-three conferences across the state to publicize and explain the new law. The new law responded to several critical developments: growing life expectancies that swelled the ranks of older workers and an economy that was beginning to shift from manufacturing and extractive industries towards service-oriented occupations. Many workers in their 40s and 50s faced difficulties finding new employment, and the Senior Workers Division developed a dual strategy to assist them after the passage of the 1959 law.⁸

Noting the aging of Oregon's work force and its diminishing pool of younger workers, Bureau officials spent considerable time not only explaining to employers their obligations under the law but also emphasizing that they should regard older workers as assets. In addition to educating employers, BOL initiated a "Creative Job Search Technique" (CJST) program in 1962 that helped older workers to develop personal strategies for job seeking, acquire new skills, and position themselves to meet the changing needs of the job market. The program reported considerable success in helping older workers find jobs or seek out additional training. One out of every four participants in CJST, which was conducted by BOL staff under the aegis of Portland State College, found work within a few weeks of completing the program, and one in seven participants went on to take additional courses to help upgrade their skills.

Acknowledging these successes, the legislature in 1965 funded an expansion of the program and helped CJST to obtain matching federal dollars. This additional funding allowed BOL to offer the program on a statewide basis and to reach over 13,000 workers during its two years of existence. Unfortunately, CJST was discontinued during the 1966-1968 biennium when its funding was terminated, an experience that would become more common as the federal resources available for job and employment training shrank during the acceleration of the Vietnam War.⁹

In addition to addressing racial, ethnic, and age discrimination, the Bureau also responded to the budding social movement seeking fair and equal treatment for women. Throughout BOL's history the agency had conscientiously enforced protective legislation governing wages, hours, and working conditions for women. This emphasis shifted under Norman Nilsen's leadership, as women began to insist on having equal access to jobs once exclusively reserved for men. In part, the shift from protective measures towards ensuring equal treatment reflected the growing numbers of women entering the labor force. Between 1950 and

1960, the ranks of working women in Oregon increased thirty-two percent from 162,000 to 214,500. By 1966, women constituted thirty-eight percent of the Oregon labor force. The legislature recognized this trend when it followed the federal Civil Rights Act of 1964 with its own directive barring discrimination in employment based on sex.¹⁰

Even before the enactment of laws prohibiting sex discrimination in employment, BOL had expressed concern over the clustering of women in lower paying service and clerical jobs and noted the special burden facing the increasing number of women who were single heads of households. After acquiring the responsibility to enforce the new law, BOL formed an advisory committee that held hearings across the state and helped the Bureau develop policies to address sex discrimination. One important change that the committee recommended was dropping the protective standards for women historically enforced by the Wage and Hour Commission, most notably rest periods and limits on overtime that were now regarded as discriminatory. In 1970, further reflecting the spirit of the times, the advisory committee suggested that BOL “hire a qualified woman at a non-discriminatory salary range” to oversee the agency’s enforcement efforts.¹¹

By 1972, BOL had developed guidelines for employers on how to eliminate discrimination against women in hiring, wages, and promotional opportunities. In keeping with its historic pattern of accompanying conciliation with enforcement, the Bureau took referrals from the federal Equal Employment Opportunity Commission (EEOC) in addition to dealing with complaints filed with it directly. These complaints totaled 331 in the 1970-72 biennium. The Bureau’s report from this period succinctly explained the impetus behind these complaints and underscored its commitment to ensuring fair treatment for working women in Oregon: “Women, in general, will no longer accept a secondary role in the world of work.”¹²

Early in Norman Nilsen's administration, the Bureau assumed a new obligation regarding public construction and expanded its duties in the labor-management relations arena. In 1959, the legislature passed a law requiring that a prevailing wage be paid on state-funded public works projects. This legislation was a state version of the federal Davis-Bacon Act that provided for the prevailing wage to be paid workers employed on federally funded public works projects. The law affirmed the state's commitment to maintaining wage standards, limiting cutthroat competition in the bidding process, and ensuring quality work on construction projects funded by the state for community betterment. Yet, as Commissioner Nilsen observed, the new law represented yet another unfunded mandate for BOL, since the legislature provided no new funding for its administration. Moreover, the power to determine prevailing wage rates was left up to labor and management, with the commissioner being permitted to intervene only when the parties themselves were unable to agree. Circumstances improved in 1966 when the Bureau gained authority to set rates annually. Eventually, the wage and hour division assumed responsibility for administration, but the need for additional staff remained, thereby limiting BOL's ability to ensure the law's smooth and efficient functioning.¹³

Besides its new obligations in inspecting migrant labor camps, enforcing anti-discrimination laws, and determining prevailing wage rates, BOL's duties expanded in some of the traditional areas under its purview during Nilsen's administration. In 1957, the Oregon Conciliation Service was established on a full-time basis to help resolve labor-management disputes and enhance the effectiveness of the collective bargaining process. Several years later, the labor commissioner was given authority to determine appropriate bargaining units in health care facilities, an area where demands for union representation were steadily increasing. The passage of a 1963 law providing for collective bargaining in Oregon's public sector led to more

requests for the Conciliation Service's involvement in helping settle disputes between public employers and public employees. Reflecting the agency's traditional willingness to comment on matters of public policy, the Bureau complained in 1968 that the lack of uniform practices and procedures in the public sector meant that employer-employee relations "have proliferated to the point of chaos and confusion." This call for a comprehensive law covering collective bargaining in the public sector was heeded five years later with the passage of the Public Employee Collective Bargaining Act in 1973.¹⁴

During the 1960s and early 1970s, the Bureau also responded in other ways to social demands for inclusion, equality, and reform. The State Apprenticeship Council now required that all apprenticeship programs include non-discrimination language in their bylaws and in 1966 began the OUTREACH program, which later received federal funding, to recruit more racial and ethnic minorities into the building and construction trades. BOL's Apprenticeship Division designated one full-time field representative to focus on minority recruitment, an indication of the agency's commitment to creating job opportunities in construction. Overall enrollment in apprenticeship programs continued to increase (sixty percent during the 1968-70 biennium), and a 1967 law expanded apprenticeship into new areas such as police, firefighting, and metal trades. The reform spirit also was manifested in the Bureau's continuing arguments for establishing a state minimum wage that would cover both men and women. This request was granted in 1967, officially moving Oregon towards a uniform wage policy for all workers regardless of age or gender and extending coverage to many Oregonians not included under federal minimum wage guidelines.¹⁵

The crusading spirit of BOL during Norman Nilsen's nearly two decades of service as labor commissioner was exemplified by the prolific activity of the Bureau's research division.

BOL had long produced vital statistical information on many aspects of Oregon's economy that it distributed to elected officials, employers, unions, and civic organizations. Under the direction of Dr. Eric Weiss, the research division began to examine major public policy issues with a passion and fervor reminiscent of the Bureau's Progressive era origins. BOL's guiding principle was that its research should "break new ground," respond to "genuine current needs," and "provide evidence and the concept of new positions based on this evidence." The Bureau's observation in its 1972 biennial report that "research should never remain only an academic exercise" affirmed its commitment to addressing the key social and economic challenges facing working Oregonians and made it a respected resource at both the state and even the national level.¹⁶

The titles of the research division's reports reflected its activist approach. Anticipating the concerns later expressed by the women's movement, "The Self-Supporting Woman in Oregon" (1958) documented the "prevalence of low wage standards for working women" and bluntly asserted that "the problem of the self-supporting woman is one of discrimination based upon prejudice." Ten years later, "They Carry the Burden Alone" further documented the struggles and hardships of women who were single heads of households. These reports and others issued by the research division identified the difficulties facing different groups of working Oregonians, offered specific recommendations for change, and explicitly challenged policy makers, employers, and labor organizations to help implement these recommendations. Commenting on the serious problems facing self-supporting women, "They Carry the Burden Alone" concluded: "We are too rich and economically too advanced to permit ourselves such anachronistic neglect." The Research Division's 1964 explanation of its focus on Oregon's "Silent Poor" further testified to the strong moral imperative behind its inquiries. The "Silent

Poor,” it observed, were “those employed or employable fellow Oregonians who somehow are left always between the battlelines of the great economic and social forward thrusts in our time, in a no man’s land of privation and gray hopelessness.” Consistently, the research division at the Bureau attempted to understand how new social, economic, and technological trends were affecting Oregon’s workers and insisted that attention be paid to the circumstances under which they worked and lived.¹⁷

In 1956, Norman Nilsen issued his first biennial report as labor commissioner. To spotlight BOL’s impact on the lives of Oregonians, the Bureau used a fictional “Mr. And Mrs. Wage Earner” as representative workers. The Bureau’s prototypic “Mr. Wage Earner” was a “man of middle years who is employed in a semi-skilled occupation in the lumber industry.” “Mrs. Wage Earner” was described as an “office worker in a downtown office building.”¹⁸

The social and economic circumstances that Mr. and Mrs. Wage Earner faced, however, changed dramatically during the nearly two decades that Norman Nilsen served as BOL commissioner. Mr. Wage Earner, the semi-skilled woodworker, was much more likely to face job insecurity or displacement as Oregon’s economy began to shift towards more service-oriented industries and occupations. With the entry of more women into the work force and rising divorce rates, Mrs. Wage Earner was far more likely to be a “Ms.” than a “Mrs.,” struggling to support a family on one income. And if either Mr. or Mrs. Wage Earner encountered discrimination based on gender, race, or ethnic origin, they were now supported by social movements and a BOL newly empowered to act on their behalf.

It was the singular achievement of BOL under Norman Nilsen’s leadership to recognize the profound changes affecting its prototypic Mr. and Mrs. Wage Earner and implement new educational, research, and enforcement initiatives to help working Oregonians adapt to these

changes. While the Bureau maintained its traditional responsibilities, it aggressively sought to ensure that amid growing prosperity, the needs of all Oregonians, including farm workers, female heads of households, and workers of color, would not be ignored. Indeed, in his introduction to a Research Division report on job satisfaction in Oregon (the last authored during his tenure), Norman Nilsen offered a fitting summary of the sentiments that had guided his nearly twenty years as labor commissioner: “In presenting this document, I subscribe to its final observation: Maintaining a spirit of pioneering independence, Oregon has often been first in the Nation to move into areas of social indifference and neglect and to reclaim them for human concern and social justice. Now facing the issue of job quality, it is time for Oregon to move again.”¹⁹

Under Norman Nilsen’s direction, Oregon did “move again,” with BOL maintaining and extending its historic role of taking on “social indifference” and insisting that pursuing “social justice” remain an integral part of government practice and public policy.

Chapter 5

Bill Stevenson, 1974-1979

Bill Stevenson became the Oregon Bureau of Labor's fifth commissioner following Norman Nilsen's retirement at the end of 1973. Stevenson represented a departure from BOL tradition in several respects. He was the first of O. P. Hoff's successors to come from outside the agency, with his prior experience including work as a field representative for the AFL-CIO and several terms as a state legislator. He was much younger than his predecessors, assuming office in 1974 when he was just thirty-four years of age. And in an agency whose commissioners tended to serve for extended periods, Stevenson remained in office for only four years. Nonetheless, Stevenson oversaw some important changes at the Bureau, especially in the administrative arena, that strengthened the agency and enhanced its level of service to its constituents.

One of Stevenson's primary concerns was a serious backlog of cases that had developed at the Bureau's civil rights division. Complaints had continued to rise throughout the late 1960s and early 1970s, reflecting greater public awareness about anti-discrimination laws and a growing willingness on the part of women and people of color to seek government intervention on their behalf. By 1975, the division had a backlog of nearly 1,500 cases. Due to the increased number of complaints and limited manpower (the civil rights division had only fourteen investigators on its staff), many complaints went uninvestigated for six months, and final dispensation of complaints often took a year or more. These lengthy delays led to diminished public confidence in the Bureau's ability to enforce civil rights laws adequately. And like his predecessor, Stevenson also tangled with the attorney general, in this case over legislation BOL

was seeking that would have enabled the Bureau to hire its own lawyers for civil rights cases rather than having to rely on the attorney's general's office.¹

In addition to the ongoing administrative complications within the civil rights division, BOL also acquired an additional civil rights responsibility a year before Bill Stevenson assumed office: enforcing a new law barring discrimination in employment and public accommodations based on physical or mental disability. Once again, Oregon was in the forefront of seeking expanded protections for workers, but disabled Oregonians who filed complaints under the new law were disappointed by the delays in investigating their allegations. Commissioner Stevenson candidly acknowledged the problem, calling it both "discouraging" and "totally unacceptable" in a November 1975 *Oregonian* interview. He made improving the civil rights division's performance a top priority and took aggressive steps to address the problem during his term in office.²

To reduce the backlog of cases, Stevenson in 1976 hired thirty temporary investigators for a ninety-day period to assist full-time staff in the investigation and processing of civil rights complaints. A year later, the legislature approved funding to hire thirteen permanent twenty-seven temporary staff to work in the Civil Rights Division. Although the allocation was less than half of what the Bureau requested, the infusion of new funds did increase the division's capacity to deal with complaints more expeditiously. In addition to adding staff, the division also tightened its intake and screening procedures, began to notify employers more promptly about complaints filed against them, and encouraged "predetermination settlements" and "conciliation agreements" to speed the resolution process. By the end of Stevenson's term, the Bureau reported some progress in cutting its backlog and restoring public confidence that the state was prepared to handle discrimination complaints fairly and efficiently.³

Like his predecessors, Stevenson was also committed to maintaining and expanding apprenticeship opportunities in Oregon. New programs in forestry, logging, and emergency medical technician training were established during his term in office, and in keeping with its traditional commitments, BOL was especially pleased that thirty of the seventy-nine trainees in the forestry program were women and minorities. Helping women and minorities enter apprenticeship programs in the building and construction trades remained a priority for the Apprenticeship Division, especially in the wake of the U. S. Department of Labor establishing affirmative action guidelines to increase participation by these underrepresented groups. The Bureau's seveded field representatives not only worked with employers and labor organizations but also were involved with community groups seeking to meet affirmative action goals and open construction apprenticeship programs to a more diverse range of participants.⁴

The Research Division also continued its inquiries into the challenges facing working Oregonians, conducting seven new studies between 1975 and 1978. It examined issues such as underemployment, the challenges facing welfare recipients seeking to enter the labor market, and the migration of Indian youth to urban areas, along with updating its acclaimed "Up Against the Middle-Age Barrier" study. The titles of these studies--"Those Who Have Fallen Behind the Rest," "Human Beings: Not Faceless Statistics"--affirmed the Bureau's ongoing concern with the plight of those Oregonians struggling to adapt to a changing economy, find secure, remunerative employment, and have their problems taken seriously by public policy makers and their fellow citizens. These studies were a reminder that although the lives of working Oregonians had steadily improved during the seventy-five years of BOL's existence, these improvements did not extend equally to all.

Stevenson devoted considerable attention to improving the agency's organizational efficiency. Besides working to reduce backlogs in the civil rights division, the Bureau was able to diminish backlogs of wage claims through the adoption of new procedures that accelerated the processing of complaints. Stevenson also established a public information office to enhance citizen awareness of the agency's varied functions and services. He had hoped to expand BOL's authority by incorporating the departments of employment and workers' compensation under the Bureau's aegis. Although this initiative failed, the commissioner successfully resisted a proposal to shift oversight of private employment agencies from BOL to the state commerce department. Reflecting on his achievements, Stevenson concluded that his administration had turned the agency from a "bureaucratic nightmare to an increasingly efficient vehicle whose purpose is to protect the interests of working Oregonians and to assist the business community in complying with Oregon labor laws." This assessment may have exaggerated the Bureau's administrative shortcomings. However, it aptly summarized BOL's direction under Stevenson, its efforts to manage its responsibilities more effectively, and secure sufficient resources to meet its diverse obligations.

Chapter 6

Mary Wendy Roberts, 1979-1994

Mary Wendy Roberts, a veteran politician and member of a prominent Oregon political family (her father was a state senator and her stepmother governor of Oregon in the early 1990s) who had served in both houses of the Oregon legislature, became the first woman to hold the post of BOLI commissioner. Roberts succeeded Bill Stevenson in January 1979. Reflecting the agency's service to both employees and employers, BOL became the "Bureau of Labor and Industries (BOLI)" under Roberts, a name change that acknowledged the multiple constituencies the Bureau served in fulfilling its mission. During her fifteen years in office, Mary Wendy Roberts was a highly visible figure whose tenure coincided with profound changes that were sweeping through Oregon's economy, its workplaces, and its government. Under Roberts, BOLI entered new areas of civil rights enforcement, expanded its efforts to protect the wage claims of workers, and paid special attention to the problems facing farm workers and youth. The Bureau was especially cognizant of Oregonians struggling to balance the demands of work and family life and called attention to this emerging challenge long before it became a recognized public concern. Toward the end of Roberts' term, however, she and BOLI were forced to contend with serious budget cuts and proposals for consolidation that threatened to fundamentally alter the scope of the agency's authority.

A hallmark of Roberts' administration was her vigorous enforcement of anti-discrimination laws. She continued Bill Stevenson's efforts to process civil rights cases more efficiently, reaching an agreement in 1980 on a lawsuit filed by Legal Aid and committing the Bureau to handling complaints more expeditiously. By 1986, Roberts reported that civil rights

complaints were being resolved within a six-and one-half month period and gained credit for restoring public confidence in BOLI's ability to provide capable and efficient service.¹

As more women continued to enter Oregon's labor force (the figure stood at more than fifty percent of women over the age of sixteen by 1980) and the Oregon Fair Employment Practices Act was expanded to include provisions barring sex discrimination, BOLI was frequently called upon to determine whether employers were engaging in unlawful practices of sex discrimination and sexual harassment. In several high-profile cases, some of which involved discrimination against male workers, Commissioner Roberts affirmed the Bureau's commitment to fair and equal treatment in the workplace. She found both a Portland plumbing company and its local union discriminated by negotiating a collective bargaining agreement that provided husbands of female employees better medical coverage than that offered the wives of male employees (for women, coverage was limited to pregnancy). Roberts granted back pay to a male counter agent who claimed he was fired from his job, because management preferred female clerks who they thought would be more likely to attract male customers. She ordered compensatory damages to be paid to a woman after a Bend company told the Pinkerton agency that it did not want to hire women as security guards. This was the first time in Oregon that damages for mental suffering were awarded in a sex discrimination case. And in 1985, an appeals court upheld Roberts' ruling that the city of Roseburg was paying a female employee less than it paid other city administrators performing substantially similar work. Debra Mobley, the worker whose case BOLI has supported, succinctly explained the importance of the Bureau's role: "I think it is very good that there is the Bureau to enforce the statutes, so individuals need not get a private attorney. Women should know there is a place to go."²

BOLI also remained “a place to go” for Oregonians facing racial and ethnic discrimination in both the workplace and in public accommodations. As the state continued to become more racially and ethnically diverse during the 1980s and early 1990s, incidents of harassment, intimidation, and discrimination persisted, underscoring Oregon’s historic difficulties in accepting people of color as co-workers and neighbors deserving of fair treatment and social inclusion. In the words of historian David Peterson del Mar, “many [Oregonians] remain[ed] uncomfortable with the state’s growing diversity.” For Commissioner Roberts, acts of racial and ethnic discrimination posed a fundamental challenge to basic concepts of fairness and decency that BOLI had consistently sought to uphold. Under her guidance the agency forcefully intervened on behalf of people of color who were subjected to humiliation and disparate treatment. A nightclub that maintained a policy of barring interracial couples from entry was ordered to pay a \$2,500 fine for mental suffering incurred by the complainant. In an especially notorious 1987 case, Roberts awarded \$5,000 in pain and suffering damages to a Black woman who was denied entrance to a Noti tavern. The commissioner placed her action in a broader context, noting the recent rise of hate groups throughout the Northwest. Her intention, she asserted, was “to send a message to folks that Oregon is not a Mecca to people who practice these discriminatory acts.”³

The Bureau also reacted to new forms of discrimination that were either being recognized as illegal or antithetical to concepts of fair treatment in the workplace. Early in her term, Commissioner Roberts created a Handicap Research Project to study disabilities and their effect on employment. BOLI’s commitment to preventing discrimination based on disability was illustrated by a 1983 Oregon Supreme Court decision upholding the commissioner’s ruling that a worker with a degenerative spinal condition should be allowed to continue working since the risk

to his health was not conclusively established. Hailing the ruling, Roberts cited both state statute and the agency's moral obligation to ensure "the fullest possible participation in the economic life of the state" for its citizens and the right "to engage in remunerative employment." Besides disability, BOLI began to deal with discriminatory treatment that stemming from the AIDS epidemic. In 1988, BOLI found that a Eugene restaurant had discriminatorily fired a worker who disclosed in a television interview that she was infected with an AIDS-related complex. The commissioner also spoke out against a 1992 ballot measure's attempt to exempt gays from civil rights protections and advocated legislation that would ban discrimination due to sexual orientation. These strong gestures and public actions not only highlighted BOLI's traditional commitment to ensuring equal treatment but also reinforced that the Bureau would not shrink from the controversies associated with allegations of discrimination based on issues of sexuality and sexual orientation.⁴

Wrenching changes in Oregon's economy that occurred during her tenure presented Commissioner Roberts with another set of daunting challenges. The timber industry, long a mainstay of Oregon's economic and social structure, suffered a sharp decline in employment during the 1980s resulting from restrictions in logging on publicly owned forests, intensified foreign competition, unsustainable logging practices, and mechanization. Over 150 mills closed in the 1980s alone. These events led the legislature to create a "Wage Security Fund" in 1985. Under this law Oregon became the first state in the nation to set aside funds to compensate workers whose employers went out of business and lacked the assets to pay final wages that were owed. An assessment on employers provided resources for the fund, which paid up to \$2,000 per claimant.⁵

As the number of plant closings accelerated during the 1980s, Commissioner Roberts had advocated establishing the Wage Security Fund, especially after observing an instance where a plywood company's closure had left 180 workers with unpaid final wages. Although the fund was created with the timber industry's difficulties in mind, it did not confine or restrict its coverage. In a notable 1990 case, the fund paid out \$13,000 to farm workers employed by a Medford farm labor contractor whose business had folded. Distributions from the Wage Security Fund increased rapidly, from \$200,000 in the 1986-1987 biennium to \$559,000 in 1990-1991. Although the fund did not provide full back pay or substitute for the loss of a job, it did offer workers some protection and demonstrated the state's commitment to extending the social safety net to displaced Oregon workers.⁶

As the Wage Security Fund affirmed, one of BOLI's oldest and most enduring responsibilities was its advocacy on behalf of workers denied payment of wages they had earned, and this obligation was maintained under the Roberts administration. In 1981, the commissioner announced the largest single wage claim payment in Oregon history, a \$225,000 assessment against ICN Pharmaceutical on behalf of ninety-nine workers. Five years later, the Bureau used Oregon woodworker lien laws to gain \$69,000 for ninety-five workers owed back wages. A 1986 case against Mt. Mazama Plywood that led to Commissioner Roberts' ruling being sustained in U. S. District Court epitomized the strong continuity in BOLI's recognition of the broader social implications of unpaid wages. As the commissioner asserted: "The wages of these thirty workers may seem insignificant to some, but we are dealing with the fundamental rights of workers to be compensated for their labor... We must not leave these workers without an advocate." During the tumultuous changes that were sweeping through Oregon's economy in the

1980s, BOLI's advocacy on behalf of workers denied wages remained an obligation that the agency continued to fulfill.⁷

One of BOLI's traditional responsibilities, the enforcement of child labor laws, received renewed attention during Mary Wendy Roberts' tenure. Although the worst abuses associated with the employment of minors had largely been eradicated, serious violations of the law and the rights of minors persisted. The Bureau lacked the staffing to perform extensive worksite inspections of child labor violations but moved aggressively against the most egregious instances of lawbreaking. After Northwest Advancement, a firm that employed minors to sell candy door-to-door, was cited for nearly 100 violations (including employing youth without work permits, encouraging them to lie about their ages, and refusing to give them meals until they had reached their sales quotas), BOLI revoked the company's right to operate in November 1986. In 1992, the Bureau fined Albertson's \$128,750 for 257 willful violations in a hotly contested case that resulted in one of the longest administrative hearings in Oregon history. And in the same year, the agency levied a \$187,000 penalty against Denton Plastics for 1,592 violations, including a fatality in which a seventeen-year-old worker died while operating a forklift. According to Commissioner Roberts, employers faced with shortages of young workers in a tight labor market felt pressure to ignore or evade the law. Noting that Oregon was one of a handful of states that financially penalized employers for violating child labor laws, Roberts and BOLI remained committed to ensuring that the rights and welfare of young workers would be respected. However, a lack of resources imposed constraints on the frequency of inspections and the consistency of enforcement.⁸

BOLI did not confine its activities on child labor to the arena of enforcement. Concerned by the growing numbers of youth who were working while attending school, Commissioner

Roberts appointed a Child Labor Task Force in 1990 to investigate the impact of after-school employment on their education. The following year, the task force offered recommendations encouraging cooperative undertakings among parents, teens, employers, and schools to ensure that youth employment would not conflict with educational achievement. BOLI also established a “Schools First” initiative to help these stakeholders strike a balance between school and work. Echoing the agency’s long held belief that youth should value school over work, Commissioner Roberts made BOLI’s position clear: “Getting an education is and should be the primary job of youth. They should not sacrifice their education for short-term economic advantage.”⁹

For adult Oregonians, along with other Americans, balancing the competing demands of work and family by the 1980s increasingly became a matter of concern. Noting the rise of both single-parent and dual earner households, Commissioner Roberts created an advisory committee in 1985 to examine the stresses faced by parents whose hours at work meant they were spending less time with their families. According to Roberts, “changing family structures and economic needs have obliterated any remaining myth that home and work are separate worlds.” In keeping with its reputation as an innovator in the field of workers’ rights, the Oregon legislature passed a law in 1987 that permitted parents of newborns or those who were adopting children under the age of six to take up to twelve weeks of unpaid leave. Four years later, a Family Medical Leave measure became law. Commissioner Roberts lobbied hard for this legislation, which provided up to twelve weeks of leave that workers could use to take care of a member of their immediate family who was suffering from illness.¹⁰

BOLI worked vigorously to enforce these new family and parental leave laws, which were regarded as among the most comprehensive in the nation. The agency sided with workers who attempted to use accrued sick leave to help pay for their time off the job and found their

efforts challenged by their employers. Commissioner Roberts fined the Oregon Department of Transportation for violating parental leave law in this regard, ordering the agency to pay \$5,000 in emotional distress damages to an employee who was denied the use of accrued sick leave. In the case of a Portland Gas and Electric Company employee, the Oregon Supreme Court in 1993 upheld the commissioner's ruling that sick leave could be used to help pay for time off even if company policy barred such an action. Although Oregon's law did not go as far as the commissioner had hoped (she wanted family leave legislation to apply to smaller businesses and part-time workers), it did offer workers the ability to deal with family emergencies while not risking their livelihoods or receiving penalties for placing family needs over work obligations.¹¹

One of BOLI's ongoing responsibilities and greatest frustrations during Mary Wendy Roberts' time as labor commissioner was the challenge it faced in attempting to improve conditions for Oregon's farm workers. In 1986, civil rights division officials Johnnie Bell and Luis Caraballo issued a report, "The Dilemma of Farm Worker Housing," that focused on the living conditions experienced by migratory workers. The report found that ninety percent of the housing sites for farm workers failed to meet basic public health standards. Concluding that little had changed in the nearly thirty years since BOLI had initially reported on conditions facing Oregon's farm workers, Bell and Caraballo offered a wide-ranging set of recommendations for improvement: more stringent enforcement of housing standards; expanded financial assistance to fund new housing; and closer monitoring and more regular inspection of farm labor camps. In December 1986, the state earmarked funds that could be loaned to build more farm worker housing. However, limited resources inhibited the Bureau's ability to act on most of these recommendations, although BOLI did intervene on issues of wage claims and other employment-related matters.¹²

A 1987 law granted the Bureau new authority to regulate the conduct of farm and forest contractors. Although budget cuts in the early 1980s had hampered BOLI's ability to inspect farm labor camps, the agency did gain funds in 1990 to hire new wage and hour division staff to help enforce the state's new minimum wage law and new rules for licensing of farm and forest contractor. In 1990, prodded by Pineros y Campesinos Unidos del Noroeste (PCUN), an organization devoted to improving the lives of farm workers, BOLI granted compensation to over forty farm workers who had submitted claims that they were not receiving the minimum wage. And by 1992, five years after the law on licensing farm and forest contractors had been passed, Commissioner Roberts reported debarring twenty-eight contractors for offenses such as failing to provide workers with written contracts and not notifying them of their rights under the law. These efforts did place some limits on the behavior of contractors and offered farm workers recourse against unfair treatment. However, BOLI simply lacked the necessary budgetary resources to fully enforce labor laws pertaining to farm workers, a fact that agency officials acknowledged and lamented.¹³

The Bureau also continued to enforce Oregon's prevailing wage law and promote apprenticeship programs. One notable achievement in the apprenticeship field was the establishment of a training program on the Warm Springs Reservation, the first of its kind in the United States directed by a state labor bureau. But throughout Mary Wendy Roberts' four terms in office, the Bureau faced continuing reductions in its budget that forced it to scale back its activities. Budget cuts in 1981 led to the loss of thirty employees, resulting in the elimination of the disabled workers program, a cessation in the inspection of farm labor camps, and greater lag time in investigating wage claims. After the passage of Measure 5's cap on property taxes in 1990 and its serious impact on funding for state government, the commissioner cut twenty-three

staff positions, amounting to twenty percent of BOLI's entire staff, for the 1991-1993 biennium. The commissioner also had a contentious relationship with some legislators based on both personality and policy differences. Towards the end of Roberts' final term in office, these deteriorating relations inspired proposals to merge BOLI with another state agency (Consumer Affairs was presented as one options) and make the labor commissioner an appointive rather than an elective office. In a political environment that was growing increasingly skeptical of the benefits of government regulation and reluctant to provide sufficient funds to maintain staffing levels in many state agencies, BOLI found it more difficult to sustain the quality of service it had historically provided.¹⁴

Perhaps the most striking element of Mary Wendy Roberts' fifteen years as labor commissioner was her consistent willingness to speak out against unfair treatment directed against Oregon's workers and her dogged pursuit of legislation and public policies that aimed to improve the quality of life for working Oregonians. She did not hesitate to take stands on controversial issues and repeatedly put the resources of her agency at the disposal of workers who lacked the power and visibility to argue effectively on their own behalf. Whether fighting against race and sex discrimination, advocating for people with disabilities, denouncing hate crimes, insisting that youth not place work over education, or assisting displaced workers, Roberts addressed workplace and employment issues with passion, determination, and vision. As the first woman to hold the post of labor commissioner, she displayed a special sensitivity to the problems facing working women. Most assuredly, Roberts was ahead of her time in seeking to address the complex challenges involved in balancing the demands of work and family life that often fell most heavily on female workers. Roberts' statement on this subject in a 1991 newspaper column succinctly embodied her approach as BOLI commissioner: "Balancing work

and family responsibilities is difficult because everyone thinks it is someone else's problem.”

What was needed, she argued, was for society to accept this responsibility and address it through public policies such as the Family Medical Leave Act. According to Roberts, “the end result will be a stable workforce that is productive and a society that puts its money where its heart is, when it comes to the well-being and happiness of the family.”¹⁵

Getting “society [to] put its money where its heart was” remained an elusive quest throughout Mary Wendy Roberts' tenure as BOLI commissioner, whether it came to supporting the “well-being and happiness of the family” or addressing the many other problems facing workers in a changing social and economic environment. But under Roberts' direction, BOLI maintained its long tradition of defending the rights of working Oregonians and insisting that fairness in the workplace was a vital measure of both public morality and social decency.

Chapter 7 **Jack Roberts, 1995-2003**

In 1995, Jack Roberts, a lawyer and a Lane County Commissioner, became BOLI's seventh commissioner after defeating Mary Wendy Roberts (no relation) in her bid for a fifth term. Capitalizing on the anti-incumbent and anti-government sentiment that emerged at both the national and state levels during the 1994 election, Robert's victory broke new ground in several respects. He was the first Republican to serve as labor commissioner in over forty years and promised to bring a new perspective to the administration of BOLI. Roberts favored a more business-friendly approach that emphasized compliance over punishment and pledged to assume a lower profile than his predecessor. Advancing a more limited definition of BOLI's role, he sought to streamline the agency's procedures and during his campaign, proposed to study the feasibility of merging or consolidating the Bureau's functions with those of another state agency. Roberts also wanted to have elections for labor commissioner conducted on a non-partisan basis and later argued that the position should be appointive rather than elective to "de-politicize" the Bureau's administration of state law. Although these views represented a departure from BOLI's traditional view of its responsibilities and its approach to administration, Roberts maintained many of the Bureau's regulatory commitments while seeking to restructure the agency. Therefore, his two terms as labor commissioner were marked by elements of both continuity and change as he led BOLI through the completion of the first 100 years of its existence.¹

Roberts' first year in office saw a flurry of activity as he sought to honor his campaign pledge to make BOLI's regulatory apparatus less cumbersome for business while still retaining protections for workers. His successful attempt to simplify the state's laws governing

pregnancy, parental, and family leave marked the new commissioner's first major initiative and set the tone for Roberts' approach to administration and the making of public policy.

Noting that BOLI's chart explaining Oregon's family, pregnancy, and parental leave regulations was a three-foot high document that many employers found confusing, Commissioner Roberts made simplification of the law a top priority. Yet he encountered opposition from employer groups who initially wanted to repeal laws pertaining to leave and subsequently proposed reducing the number of workers covered and prohibiting the use of accrued sick leave during a worker's time off the job. Roberts made it clear that he believed deeply in the concept of family leave and would not accept lowered benefits for workers as part of any reform package. As he explained when introducing his proposal in January 1995: "Workers should retain benefits. I think the protection is needed. The challenge is to create the protection without the bureaucracy."²

Buoyed by Roberts' concerted efforts to achieve this kind of balance, the Oregon legislature approved an overhaul of the state's leave policies which became law in July 1995. The new law simplified regulations, making them more streamlined and comprehensible as employers had requested. It also increased the time a worker had to be employed on the job before becoming eligible for leave and required verification of a child's illness once family leave exceeded three days. For workers, the law now enabled them to take leave for serious personal illness, affirmed the right to use accrued sick leave during time off the job, and by covering workplaces with smaller labor forces, extended the law's protections to an estimated 100,000 additional workers. Compliance with the new law was nearly universal, with BOLI reporting only forty-seven complaints from workers in the first year following its enactment. Most of these complaints were settled without workers having to take their cases to court. In this

instance Jack Roberts' effort to reduce the regulatory burden on business and retain (and even extend) vital protections for workers received broad approval from virtually all stakeholders, handing the new BOLI commissioner a notable triumph in his first legislative foray.³

Roberts' most visible effort to make BOLI's operations more efficient focused on a familiar area: civil rights enforcement. The timely processing of civil rights complaints had long been an issue at BOLI, exacerbated by rising numbers of complaints (a 76 percent increase from 1,557 to 2,749 between 1990 and 1995) and the reduction of the civil rights division's staff by fifteen percent. BOLI was legally required to decide within twelve months from the filing of a complaint whether proceed further in its investigation. According to the commissioner, the Bureau was often making these decisions just prior to the twelve-month deadline, a delay that in his view was unsatisfactory for all parties. Roberts implemented a new screening procedure that directed division staff to decide within thirty days of filing whether a complaint had sufficient merit to warrant additional investigation. This new procedure eventually succeeded in reducing to four-five months the time it took to process civil rights complaints. However, the screening policy generated complaints from some employers' attorneys who believed they would lack sufficient time to develop a defense and from plaintiffs' lawyers who feared that investigations would be rushed and deny their clients a thorough evaluation of their complaints.⁴

A third major initiative that occurred during Jack Roberts' first year in office was the passage of a new law reforming the administration of Oregon's prevailing wage regulations governing public works and construction projects. Reflecting a series of challenges by employers and their allies that had surfaced across the country, non-union contractor groups advanced a ballot measure in 1994 to repeal Oregon's thirty-year-old prevailing wage law. This proposal was overwhelmingly defeated by the electorate, and Jack Roberts had opposed the

repeal during his campaign for labor commissioner. Calls for reform of the prevailing wage statute persisted after the campaign, however, culminating in legislation that became law in July 1995.

The law directed that the labor commissioner use new procedures to determine prevailing wage rates. Specifically, this meant switching to local surveys of contractors rather than principally relying on federal data or pegging prevailing wages to those provided for in collective bargaining agreements. Equally important from BOLI's perspective, the new law required that contractors on prevailing wage projects pay a small fee to help finance administration and enforcement, addressing the Bureau's long-time complaint about lacking sufficient funds to meet its responsibilities. The new funding enabled the agency to conduct training sessions to educate employers and public agencies about their obligations on prevailing wage projects. Echoing his arguments in advocating reform of family and parental leave regulations, Commissioner Roberts expressed hope that the new prevailing wage legislation would address the concerns of all interested parties. "If we do it right," he asserted, "government can provide workers with important protections without making life miserable for the employer."⁵

Roberts' implementation of the new prevailing wage surveys, however, generated controversy. Previous prevailing wage surveys relying on federal data had tended to make the union wage the prevailing wage in an area or region. Roberts' survey of contractors was more regionally based and frequently found considerable disparities between the older rates and the wage data compiled under the new procedure. Before implementing new rates, he conducted a second survey to verify the results that had been received initially. Reaction to these findings varied. Non-union contractors and some newspaper editorials expressed approval of the process, citing the prospect of savings from lowered costs on prevailing wage projects. Some unions and

their allies dissented, charging that the commissioner had arbitrarily combined different types of trades and set aggregate rates, made no distinctions between different types of construction projects, and grouped counties in ways that mixed low and high-wage areas. In the view of these critics, the new survey too often resulted in the lowering of wages from their previous levels. Although this criticism was by no means universal, it did signify ongoing debate about the application of the new law, its impact on construction workers' wages, and how best to satisfy the interests of all the building and construction industry stakeholders.⁶

In keeping with his pledge to limit the scope of BOLI's authority and make it more business-friendly, Commissioner Roberts was successful in reducing the Bureau's regulatory responsibilities in several areas. He gained legislative approval in 1995 for eliminating the requirement that minors obtain work permits before being employed, shifting the burden from government to employers to verify the ages of young workers. After several years of debate, the legislature also granted Roberts' request that private employment agencies no longer be required to be licensed by BOLI, although in cases where job applicants paid fees, the Bureau still retained oversight and enforcement authority. These moves provoked some concern about the erosion of protections for workers but were largely seen as acceptable attempts to focus BOLI's efforts on more problematic issues in times of tight budgets and staff reductions. However, regarding farm workers' rights, BOLI's approach to regulation and enforcement raised concerns, especially during Jack Roberts' second term in office.⁷

The Bureau had long struggled in its efforts to oversee the conditions affecting Oregon's farm workers. In a 1993 message accompanying its budget request to the legislature, BOLI acknowledged difficulties in fulfilling these responsibilities. Referring to the monitoring of farm worker housing and a lack of resources, the agency concluded: "The Bureau's ability to locate

such camps has been virtually eliminated as a result of losing these positions.” Farm workers, who often did not speak English, mistrusted government, and feared reprisal or retaliation if they spoke out, hesitated to complain about mistreatment or exploitation. BOLI lacked the staff to conduct the outreach farm worker advocates and agency officials themselves claimed was needed to help persuade reluctant workers to file complaints. Nonetheless, Commissioner Roberts did not seek additional outreach staff to address farm worker concerns, leading PCUN to refer workers to private attorneys rather than BOLI when workers who were not paid by employers sought to obtain their back wages.⁸

Some legislators also questioned the Bureau’s support for capping fines against employers who failed to pay their workers, except in the case of willful violations, where the commissioner had sought larger civil penalties. Attempting to find some way to accommodate the interests of growers and farm workers, Commissioner Roberts tried to occupy a middle position on farm worker issues. He opposed a 1997 Senate bill that attempted to undercut protections for farm workers engaged in collective action to protest job related grievances but supported subsequent legislation that according to critics unduly limited the circumstances under which farm workers could complain about working conditions. For Roberts, fulfilling BOLI’s responsibilities to farm workers remained one of the agency’s most complicated challenges. Finding consensus among growers, farm workers, and legislators remained elusive, and the agency was severely limited by a continuing lack of the resources needed to provide consistent oversight and enforcement.⁹

In 1997, the legislature rebuffed Commissioner Roberts’ proposal to consolidate BOLI with other state agencies. It also rejected his attempt to make the position of labor commissioner appointive rather than elective, although Roberts did gain approval for his suggestion to make

elections for the post nonpartisan. Roberts did fulfill his campaign pledge to streamline the agency, cutting its staff by twenty-one percent and reducing its budget by \$2 million by the beginning of his second term. Despite this restructuring, the Bureau continued to exercise its authority in both familiar and new arenas where working Oregonians sought protection from employer abuses.¹⁰

Several prominent discrimination and civil rights cases reflected this sense of continuity. In 1996, Commissioner Roberts ruled in favor of a worker who was wrongfully discharged for reporting leaks in underground storage tanks to a state agency and fined the offending employer nearly \$50,000. This was the first whistleblower case to go through the entire BOLI complaint process and subsequently be upheld in state appellate court. A Portland Burger King restaurant was ordered in 1998 to pay \$15,000 in damages to a Black woman whom it refused to serve. Civil rights division administrator Johnnie Bell reflected the Bureau's consistent view of its responsibilities regarding discrimination complaints: "With the kind of national attention given to race relations, you would think that business establishments would not in this day and age discriminate against folks. But it happens every day."¹¹

In the final year of Jack Roberts' tenure as labor commissioner, BOLI reprimanded two companies whose labor practices reflected new challenges for regulators and were becoming the focus of increasing national attention. In 2002, Roberts fined a Wal-Mart store for discriminating against a worker who had filed a workers' compensation claim. He also penalized Labor Ready, a national temporary agency that specialized in providing workers for the construction industry. Labor Ready was ordered to pay a \$47,5000 fine for underpaying workers, and Commissioner Roberts recommended that the company be barred from bidding on public works projects for three years due to its repeated violations of state labor law. Even with

limited resources and a more conciliatory approach to regulation and enforcement, BOLI under Jack Roberts' leadership by no means backed away from its historic commitment to hold employers accountable for their failure to meet their obligations to their workers.¹²

In other arenas, too, Roberts' tenure reflected familiar themes and commitments. He was an avid supporter of apprenticeship and took steps to strengthen the programs that BOLI oversaw. As part of the Bureau's ongoing efforts to make apprenticeship more accessible to women and minorities, he approved changes in the apprentice selection process aimed at ensuring fairness and barring discriminatory screening of applicants. He also ordered BOLI personnel to no longer participate in the actual administration of apprenticeship programs, insisting that employers needed to assume greater responsibility to provide sufficient funding, staffing, and supervision. By the beginning of his second term, Roberts reported a thirty percent expansion of apprenticeship programs and rising graduation rates among enrollees.¹³

Even with his stated desire to lower the profile of the commissioner's office and avoid what he called "grandstanding," Jack Roberts did not entirely reject the tradition of BOLI commissioners using their office as a bully pulpit. This was especially true regarding the issue of gay rights. Roberts accepted an invitation from then Oregon Attorney General Ted Kulongoski in 1995 to file a friend of the court brief in a Colorado gay rights case that was eventually decided by the Supreme Court. He was the only statewide elected official in 1996 to testify in favor of making sexual orientation a protected category under state civil rights law. Roberts' predecessors might have questioned his attempts to downsize and consolidate the Bureau, but they doubtless would have applauded his willingness to take a moral stand on a controversial issue and seek to rally public support in favor of corrective legislation.¹⁴

Jack Roberts' eight years as BOLI commissioner reflected broader trends that had emerged both nationally and in Oregon. On the one hand, many Oregonians had come to perceive government as wasteful, intrusive, and not worthy of receiving their tax dollars beyond the amounts needed to fund basic operations. Yet these same citizens still expected to obtain certain services from the state and while willing to curtail the scope of governmental responsibility, still saw the need for regulation and oversight in the workplace.

As labor commissioner, Jack Roberts attempted to navigate between these competing impulses. The rejection of his proposals to restructure the agency suggested that the public and political leaders still wanted BOLI to remain as a specific, independent entity devoted to enforcing labor law and protecting workers' rights. Nonetheless, Roberts was able to win support for his efforts to limit the Bureau's authority. He also seemed to capture the public mood with his insistence on the need to make the office of labor commissioner nonpartisan. As he explained in May 1995: "I think that most Oregonians are tired of the polarization caused by partisan bickering, grandstanding, and politicking. Elected officials should be responsible to the people, not their party."¹⁵

Roberts held to this stance throughout his tenure as BOLI commissioner, often taking fire from business, labor, and advocacy organizations as he sought to devise policies and procedures that in his view would meet the interests and needs of all parties. Although his view of the labor commissioner's role and responsibilities differed markedly from that held by many of his predecessors, he brought the Bureau into the twenty-first century as an agency still committed to the protection of Oregon's workers but one that possessed fewer resources and more limited political support for the fulfillment of its vital mission.

Chapter 8 **Dan Gardner, 2002-2008**

Barred from seeking a third term in office, Jack Roberts was replaced as labor commissioner in 2003 by Dan Gardner. Gardner was a three-term state representative from Portland and a third-generation union electrician who had become politically active during the ballot initiative to repeal the prevailing wage in 1994. During his campaign he worked at fifty-eight different jobs to get a feel for the issues and concerns facing working Oregonians. Reflecting the worker-oriented focus displayed by most of his predecessors, Gardner attempted to elevate the visibility and standing of the Bureau during his tenure as BOLI commissioner. He was especially aggressive in the areas of prevailing wage enforcement and farm workers' rights, expressed strong support for apprenticeship programs, and sought to reinforce and in some instances extend the agency's regulatory authority as a hallmark of his administration.¹

One of Gardner's biggest challenges involved balancing his ambitions for BOLI with the dwindling resources at the Bureau's disposal. The budget cutting triggered by Measure 5's passage in 1990 continued during Jack Roberts' years in office, leaving BOLI with a staff of 106 in 2004, down from 159 employees a decade earlier. Several BOLI field offices had closed, and Commissioner Gardner opposed the loss of more full-service offices, fearing that additional closures would limit the Bureau's ability to serve Oregonians outside the I-5 corridor. Gardner also had to fend off legislative proposals to shift administration of the state's apprenticeship programs to the federal government. Moreover, reduced staffing exacerbated a persistent agency problem, the difficulty in expeditiously processing the over 2,000 civil rights complaints annually received by BOLI. In this context Gardner chose to target certain areas for vigorous oversight and enforcement while making the case for additional funding.

One of Gardner's most noteworthy actions, which he has characterized as the "crowning achievement" of his first term as commissioner, was his issuance of an administrative rule requiring that farm workers receive paid breaks and time off for meals while on the job. After failing to gain legislative approval for this proposal in 2003, Gardner issued the rule in early 2004 despite provoking sharp criticism from growers and contractors. Again, Oregon took the lead in extending workers' rights, becoming one of just five states to provide farm workers with paid breaks and one of only sixteen to offer time off for meal periods. Gardner defended his action as a moral decision, explaining "I think it's high time that some of the hardest working people in Oregon be allowed to have meal and rest periods. How can you expect someone to pick and eat a sandwich at the same time in the fields?" The commissioner extended this advocacy on behalf of Portland bus drivers who were having difficulty taking breaks. His efforts spurred agreements between transit workers and management that allowed for meals and rest periods as a contractual obligation. These actions signaled the commissioner's willingness to use his authority to ensure basic rights for workers as a matter of fundamental fairness and morality.²

Gardner took an aggressive approach regarding BOLI's prevailing wage responsibilities. In 2004, an out-of-state company that obtained a lucrative pipeline contract in Coos Bay came under fire for its shoddy work. Called on to investigate the contractor's labor practices, BOLI found what Commissioner Gardner described as a "rogue company that was ignoring state and federal laws" and levied nearly three million dollars in fines for prevailing wage violations. Gardner also grappled with the application of the prevailing wage to projects undertaken by public-private partnerships. This complicated and contentious issue led to a protracted conflict between BOLI and the Portland Development Commission (PDC), a quasi-independent body that oversaw urban renewal projects in the city.³

In March 2005, the Bureau applied prevailing wage requirements to a redevelopment site in northeast Portland popularly known as the “Tin Roof” project, claiming the PDC’s loan to a private developer made the project a “public work.” The PDC contested this determination, arguing it did not “contract” for the construction and had no ownership interest in the completed project. It extended this argument to other public-private projects, seeking to exempt them from prevailing wage obligations. Some members of the PDC also expressed concern that applying prevailing wage rates to more of its public-private projects might limit the ability of minority and women contractors to submit successful bids. Commissioner Gardner vehemently rejected charges that BOLI was “almost exclusively white and male-dominated” and sought to “proactively investigate construction projects in order to put prevailing wages in place.” In March 2005, the PDC upped the ante and sued BOLI over its interpretation, underscoring the high political stakes in this increasingly heated dispute.⁴

Commissioner Gardner formed a task force of key stakeholders to resolve the issue and avoid further litigation, but the group failed to reach consensus. In May 2006, a Multnomah County judge ruled in the PDC’s favor. Following BOLI’s appeal of this decision, the Oregon Court of Appeals subsequently upheld the lower court ruling. Outside of the legal process, building trades unions and the PDC agreed early in 2007 that most projects exceeding one million dollars would be subject to prevailing wage provisions. However, Gardner insisted that BOLI would continue to enforce state prevailing wage regulations regardless of the agreement. The issue culminated in a May 2007 ballot measure approved by Portland voters that curtailed the PDC’s independence by making it subject to greater oversight by city authorities.⁵

However, Gardner did not seek to apply prevailing wage rates uniformly to all PDC projects. In June 2005, he ruled that a redevelopment project connected to the Meier and Frank

department store site was exempt from prevailing wage provisions. Although he resisted the suggestion of some affordable housing advocates that residential construction be excluded from prevailing wage provisions, he determined that separate residential and commercial rates should apply on combination residential-commercial projects rather than the commercial rate, an approach he characterized as fairer and “the right thing to do.” Consistently, Gardner reaffirmed BOLI’s commitment to the prevailing wage as sound public policy ensuring high-quality work and decent standards for workers while revising some rates based on market share considerations and distinguishing between different types of projects in setting some rates at higher levels.⁶

Not surprisingly for a former electrician, Commissioner Gardner continued to honor the Bureau’s staunch support for apprenticeship programs. Supported by a federal grant, BOLI contracted with the Oregon Department of Transportation (ODOT) to help increase minority participation on its projects. The commissioner encouraged creation of pilot programs to restore shop classes in secondary schools, expansion of pre-apprenticeship programs, the provision of support during the application process, and intensive mentoring during training to increase minority and female participation in apprenticeship programs and boost completion rates. To streamline its oversight of apprenticeship, Commissioner Gardner proposed less frequent review of programs with high completion rates (seventy percent or better) but pledged to maintain annual monitoring of programs with greater levels of attrition to encourage improvement.⁷

Gardner prided himself on being an independent voice for working Oregonians, and he displayed this sensibility most vividly when he declined to implement the Bush administration’s proposed changes in overtime rules for salaried employees. In several cases state regulations governing overtime were more stringent than the proposed federal changes, and Gardner was

legally barred from implementing the new rules. In other areas the state attorney general ruled that the labor commissioner had discretion regarding implementation of the new rules, and Gardner elected to maintain the status quo rather than approve changes that would have denied overtime payment to certain salaried workers. Explaining his action, he asserted that “it is a family value for an employer to pay the premium of time and one half for taking workers away from their spouse, family, or home” when they worked more than forty hours in one week. According to Gardner, granting employers this power would encourage them to increase hours for their salaried employees and undercut a critical workplace protection giving workers some measure of control over the time they are compelled to remain on the job.⁸

Like his predecessors, Dan Gardner continued the tradition of speaking out on social issues that he regarded as relevant to BOLI’s mission. He was one of the chief petitioners for a successful 2002 ballot measure to raise Oregon’s minimum wage and adjust it to match rises in the consumer price index. In cases where BOLI has contracts with localities to investigate violations of local gender and transgender diversity ordinances, the commissioner insisted on going beyond the requirements of state law and enforcing the stricter standards used at the local level. As further evidence of his commitment to these issues, Commissioner Gardner went to Bend in 2004 to testify on behalf of a proposed ordinance protecting transgendered persons and urged local political leaders to strengthen the legislation. Later that year, Gardner appeared at a press conference opposing Ballot Measure 36, which proposed to outlaw same-sex marriage in Oregon. The labor commissioner deplored what he called “putting discrimination in the constitution of Oregon” by treating same-sex couples differently from married couples and denying them the basic rights he believed they are entitled to as citizens. Gardner also strongly

supported the state's first domestic violence leave law passed in 2007 and promoted agency efforts to educate employers about their responsibilities under the new legislation.⁹

Toward the end of his tenure at the agency, Commissioner Gardner noted the expanding use of non-compete and non-solicitation agreements by Oregon employers. Amid rising unemployment, layoffs, and downsizing, the commissioner lamented that this growing practice unfairly inhibited the ability of displaced workers to apply for jobs in their fields of expertise or to open their own businesses. During the 2007 legislative session, he sought to rein in these agreements by limiting the kinds of jobs they applied to, lowering the length of time workers would not be allowed into the labor market, exempting hourly workers, and establishing a pay threshold to protect lower paid salaried workers. After considerable advocacy by BOLI, the legislature imposed some limits on the use of non-compete arrangements but allowed non-solicitation arrangements to remain in place. Although Gardner expressed disappointment that non-solicitation agreements were not included in the final legislation, he hailed the expansion of workers' rights and pledged to return to this issue in the next legislative session.¹⁰

Commissioner Gardner, who faced no opposition in winning re-election to a second term in 2006, resigned in 2008 to take a position with the International Brotherhood of Electrical Workers in Washington D. C. Anticipating issues that would increasingly occupy his successors, he wanted BOLI to increase its outreach to Oregon's rising immigrant population and proposed increasing penalties for employers who willfully underpaid workers or attempted to take advantage of new immigrants. He also vowed to monitor increasing employer retaliation against workers who act as whistleblowers or who file workers compensation or workplace safety complaints. In a recent interview where he discussed his years at BOLI, Gardner echoed a principal concern of his predecessors: "Our budgetary problems kept us constantly having to

decide what kind of cases you took.” However, his conception of the commissioner’s role fully reflected the perspective of those who occupied the post during BOLI’s 100 years: “The duty of this office is to speak out for the workers of this state and serve as an independently elected voice. That’s what this office is all about.”¹¹

Chapter 9 **Brad Avakian , 2008-2019**

After Dan Gardner's resignation in March 2008, Oregon governor Ted Kulongoski appointed Brad Avakian to fill his unexpired term. Previously, Avakian had served in the Oregon legislature as a Portland area state representative and state senator. He withdrew from a race for Oregon secretary of state to become BOLI commissioner.

Avakian had been a civil rights attorney prior to entering politics and brought this perspective to the post of labor commissioner. Although the labor commissioner had authority to award damages to complainants, Avakian believed that these awards often fell short of those granted by juries in civil suits and looked to narrow this disparity. His strategy included an increased use of the "commissioner's complaint," seeing this action as an "important tool in providing justice to individuals." Avakian invoked this power to launch investigations where he concluded unlawful activity had occurred and the aggrieved party was unable or unwilling to come forward. This approach led to an expanded number of complaints, record-setting awards, and a series of high-profile cases that captured state and even national attention. Avakian also pursued initiatives to expand career and technical training in secondary education, diversify the ranks of construction apprenticeship programs, improve technical assistance to employers, and address pay inequality during a consequential tenure as BOLI commissioner.¹

Commissioner Avakian's determination to increase awards for vulnerable workers suffering harassment or discrimination emerged not long after he assumed office. In 2010, the Bureau settled a complaint against Oregon Department of Public Safety Standards director John Minnis for \$450,000. Minnis, a former state legislator charged with sexually harassing a

subordinate, agreed personally to pay \$65,000 to the employee he had mistreated. A 2012 settlement awarded \$340,000 to a worker threatened with firing by a Bend dentist if she did not attend a religious training session. In 2013, a \$400,000 payment went to a group of cross-dressers barred from entry by a Portland club owner, and a year later, a California based company with a facility in Klamath Falls was ordered to pay \$200,000 to several Latinx workers who had faced discriminatory treatment. These cases foreshadowed two record-breaking civil rights settlements launched by commissioner's complaints, one involving a truck assembly plant in Portland and the other an adult entertainment club in Beaverton.²

In September 2014, Avakian filed a commissioner's complaint against Daimler Truck in Portland alleging a pattern of intimidation and harassment directed against Black, Native American, and gay employees. The commissioner's complaint on behalf of five workers grew to a total of nine, who recounted being subjected to racial and homophobic slurs, threats of retaliation and physical violence, the display of a swastika in an employee bathroom, and discriminatory treatment in job assignments and training opportunities. Several of the most egregious incidents underscoring the hostile environment at Daimler occurred when harassers waved nooses in front of Black workers. The Bureau's complaint also charged that Daimler management had failed to take corrective action to address these behaviors. In January 2015, Daimler and BOLI reached the largest civil rights settlement in BOLI history, with the company agreeing to pay \$2.4 million to six workers, leaving those not included in the settlement to file civil suits. As part of the settlement, Daimler agreed to establish a hotline for complaints and train managers to conduct investigations of future allegations of misconduct. Reflecting on the settlement, Commissioner Avakian observed: "We'd like to think this kind of thing could not

happen in 21st Century Oregon. "But it's an indication that harassment and racial oppression does still exist."³

Parallel to the Daimler case, the Bureau issued a commissioner's complaint involving another disturbing instance of abuse. Avakian charged Star's Cabaret, an adult entertainment club in Beaverton, with employing girls aged thirteen and fifteen as nude dancers and subjecting them to discrimination, sexual harassment, and sexual abuse. Explaining the Bureau's action, Commissioner Avakian asserted that "it's unacceptable for employers to subject children to sexual harassment and abuse. We intend to bring charges that reflect the severity of [the] harassment." Eight BOLI investigators worked on the case and uncovered extensive evidence of exploitation and abuse. The thirteen-year-old had been coerced to dance nude and perform sex acts for customers, while the fifteen-year-old, a victim of child sex trafficking, had been molested by customers while dancing. The \$1.25 million settlement reached with the younger victim in June 2017 represented the largest individual civil rights settlement in BOLI history, and the older girl received an award of \$1 million several months later. In announcing the first settlement, Avakian underscored the Bureau's view of its fundamental obligations: "It sends a strong message that the most vulnerable among us will still receive the same protections and access to justice as everyone else."⁴

Two other cases following Avakian's re-election in 2012 thrust the Bureau into the vortex of cultural conflict swirling around tensions between LGBTQ rights and "religious freedom" and the "Me, Too" movement's campaign against sexual harassment and abuse. The case involving a Gresham bakery whose owners refused to design a wedding cake for a same-sex couple gained national attention and eventually reached the U. S. Supreme Court. The other case charging that leaders in the Oregon legislature had failed to respond to

allegations of sexual harassment rocked the state capitol, leading to legal challenges and an ongoing investigation. Attesting to the controversy stirred by these cases, they were not fully resolved until Brad Avakian left office, and new BOLI commissioner Val Hoyle approved the final settlements.

The first case stemmed from the refusal by Aaron and Melissa Klein, the owners of a Gresham bakery, “Sweet Cakes by Melissa,” to design a custom wedding cake for Rachel and Laurel Bowman-Cryer, a lesbian couple. The Kleins cited their religious objections to same-sex marriage in justifying their decision. Angered and distressed by this refusal of service, the couple contacted BOLI in 2013. The Bureau filed formal charges in 2014, finding that the Kleins had violated Oregon law by discriminating against the couple due to their sexual orientation. A year later, Commissioner Avakian ordered the bakery to pay the couple \$135,000 to compensate them for the emotional and physical suffering they experienced, in part due to Aaron Klein describing same-sex relationships as an “abomination.” The Kleins then took their case to conservative media, which made their treatment a cause célèbre symbolizing the state’s unwillingness to respect the exercise of religious conscience. Following this publicity, an ugly escalation occurred, with both sides reporting threats of retribution and physical harm. Supporters of the Bowman-Cryer’s subsequently launched a boycott of the bakery, eventually leading the Kleins to close the business.⁵

The Kleins received high-powered support from the First Liberty Institute, a national legal organization that regards “religious liberty” as a “foundational right,” and the law firm of C. Boyden Gray, who served as legal counsel to President George H. W. Bush. They took the case to the Oregon Court of Appeals in February 2016, and when the court upheld BOLI’s decision, appealed to the U. S. Supreme Court. In 2019, having recently affirmed a Colorado

baker's religiously based refusal to make a cake for a same-sex couple (*Masterpiece Cakeshop*), the Court directed the Oregon Court of Appeals to reconsider its *Sweet Cakes* ruling. Three years later, the Court of Appeals rendered a split decision, ruling that Sweet Cakes had violated Oregon anti-discrimination law while also concluding that BOLI did "not reflect neutrality" towards the Kleins' religious objections. As a result, the court directed BOLI to revise the damages award, declaring it could not be based on the religious statements of the owners, but only on their denial of service to the Bowman-Cryer's. In July 2022, Brad Avakian's successor, Val Hoyle, reduced the award from \$135,000 to \$30,000, declaring this reduction aligned the penalty with those imposed in similar cases. However, the First Liberty Institute has appealed Hoyle's ruling to the U. S. Supreme Court, claiming that the Kleins' constitutional rights were still being violated. The furor evoked by the Sweet Cakes case suggests that demands for religious exemptions from anti-discrimination laws and other workplace regulations are likely to continue, with assertions of individual liberty potentially clashing with BOLI's statutory obligation to ensure equal and non-discriminatory treatment.⁶

As the Sweet Cakes case unfolded, Commissioner Avakian and BOLI became embroiled in a heated conflict with Oregon legislative leaders over allegations of widespread sexual harassment in the state capitol. According to Avakian, twenty-three women who worked at the capitol contacted BOLI with complaints of sexual harassment by legislators and legislative staff members. In August 2018, citing concerns by some women about reprisals if they spoke publicly, Avakian issued a commissioner's complaint, accusing top legislative leaders, the legislature's chief counsel, and its human resources director of ignoring charges of sexual harassment and impeding the Bureau's investigation. House Speaker Tina Kotek and Senate President Peter Courtney expressed surprise at the complaint, noting the legislature had been

working with BOLI to develop sexual harassment training to address hostile workplace concerns at the capitol. They also rejected charges of non-cooperation, while others hinted that Avakian, who had lost several primary fights in his quest for other offices, harbored motives that were either “personal” or “political.” Lawmakers challenged Avakian’s efforts to subpoena them and other top officials as part of the Bureau’s investigation, filing suits claiming that BOLI was overstepping its constitutional authority, violating the privacy of complainants, and threatening to expose confidential information.⁷

After court rulings late in 2018 that rejected the legislature’s claims, Kotek and Courtney announced they would comply with the commissioner’s subpoenas. With Avakian leaving office shortly thereafter, incoming BOLI commissioner Val Hoyle launched a mediation process that concluded in March 2019 with a settlement between legislative leaders and eight women who had claimed harassment. In return for the parties dropping litigation, the state agreed to pay \$1.3 million to the women and take specific steps to curtail discrimination and harassment in the capitol, including the creation of a new equity office to handle complaints. As part of the settlement, the legislative counsel and human rights director were removed from involvement in future harassment investigations. Although the settlement agreement asserted that the “commissioner’s complaint process was politicized in a manner that inhibited both sides from participating thoroughly in the investigation,” Hoyle noted the BOLI complaint was critical since some victims would have “timed out” on their ability to sue. This case, encompassing rising demands for accountability and systemic change made by the Me, Too movement, represented yet another example of the challenging terrain that BOLI was navigating in fulfilling its mission.⁸

The Bureau's vigorous enforcement of workers' rights and imposition of stiff penalties for serious violations remained a consistent theme during Brad Avakian's service as labor commissioner. In September 2018, he proposed a \$5.2 million fine against the Legacy Health hospital system, citing its "widespread institutional disregard" for providing meal and rest breaks to its workers. This fine, which covered over 5,000 denied breaks, followed a previous judgment of \$276,000 imposed in 2017 for similar violations and represented the largest civil penalty in BOLI's history. A 2016 case involving Cornerstone Janitorial Services' failure to make overtime payments, accompanied by the falsification of records and threats of retaliation against workers, led to the company's receiving a lifetime ban. This ban marked just the second time in BOLI's history where a contractor had been permanently debarred from doing business in the state. In addition, the forty-six workers harmed by the company's actions shared a payment of \$144,000, underscoring Commissioner Avakian's declaration "it is important that taxpayer funded projects fulfill the basic promise of fair wages for a fair day's work."⁹

Avakian and the Bureau also dealt with an issue that had challenged his predecessor: determining the prevailing wage on projects featuring public and private funding sources. In 2015, BOLI found that the construction of residential and dining halls at Southern Oregon (SOU) should have been bid as a single commercial project with workers being paid at the prevailing wage commercial rate rather than the lower residential rate. After several subcontractors refused to pay, SOU eventually agreed to settle the case by paying 146 workers over \$1.5 million. Hailing the agreement, Commissioner Avakian observed "we're very pleased that Southern Oregon has stepped up, is paying the money, and that workers are going to get everything that they and their families earned."¹⁰

Although protection and enforcement of workers' rights garnered considerable attention under Avakian, BOLI expanded activities in other parts of its jurisdiction. Commissioner Avakian, himself an avid woodworker, took a special interest in the restoration of Career and Technical Education (CTE) in secondary education. He supported legislative efforts and a 2016 ballot measure to provide more funds for CTE programs, which resulted in over 800 shop classes being restored in Oregon's middle schools and high schools. Early in 2016, twenty-five schools received \$9 million in "career readiness" grants in fields such as advanced manufacturing, robotics, health care, and forestry. This push dovetailed with a strong commitment to apprenticeship training, seeing CTE as an "essential gateway" to attract younger workers to replace an aging construction workforce. BOLI's apprenticeship division also set goals to attract more women, veterans, and people of color into the construction trades and created a joint program with the Oregon Department of Transportation (ODOT) to diversify the workforce in heavy highway construction. While acknowledging the need to deepen BOLI's commitment to greater diversity in the trades, Avakian affirmed the Bureau's longstanding to inclusion: "We want to ensure that all Oregonians – including women and minorities – have access to the skills and tools necessary to have a fair shot at a well-paying, family wage job."¹¹

During Avakian's decade as labor commissioner, the Bureau took other steps to enhance its services to Oregon businesses and workers. The agency expanded technical assistance to employers, installed a new phone system to allow more efficient responses to queries, and reached out to rural communities to make assistance more accessible. It streamlined the Bureau's civil rights complaint process to dismiss meritless claims and reduce backlogs. Faced with limited staff resources, BOLI began to focus enforcement activity on workplaces with the highest number of wage and hour violations, an effort expanded by Avakian's successors. And,

in 2014, the Bureau received a report Commissioner Avakian had requested from the Oregon Council on Civil Rights that offered proposals on addressing pay inequality in Oregon.

This report, reminiscent of studies produced by the agency's research division in the 1970s, led to the creation of an equal pay best practices guide and changes in Oregon's equal pay law approved by the legislature in 2017.¹²

The spirit of Brad Avakian's tenure as labor commissioner is perhaps best exemplified by BOLI's intervention in two decisions made by the Obama administration. In 2012, after the U. S. Department of Labor (DOL) determined that several Oregon blueberry growers had shorted workers on piece rate payments, it invoked the "hot goods" provision of the Fair Labor Standards Act to bar shipments until growers remedied the situation. Growers cried foul, complaining that DOL did not provide them with sufficient notice and due process before taking this action. Avakian joined Oregon congressional representatives advocating on behalf of the growers, asserting that DOL had not proved its case and fearing that the "credibility of enforcement actions" would be undermined by what he characterized as a "bogus investigation."¹³

The other decision involved the case of Linda Campbell, a retired Air Force lieutenant colonel who in 2013 had unsuccessfully fought to have her partner Nancy Lynchild be buried with her in the Willamette National Cemetery in Happy Valley, Oregon. With the "don't ask, don't tell" policy on same-sex relationships in effect, Campbell needed a waiver from the Veterans Administration (VA) to allow Lynchild to be buried beside her at the cemetery, which was located on federal property. Upon learning that the VA was resisting Campbell's request for a waiver, Commissioner Avakian planned to file a civil rights complaint charging it with violating Oregon state law. VA Secretary Eric Shinseki eventually granted a waiver, which permitted the first same-sex couple burial in a national cemetery. Commissioner Avakian later

observed that this decision “touched my heart,” and made him feel “immensely privileged that Linda and Nancy brought us along on “their journey for equality.”¹⁴

The commitment to help others on “their journeys for equality” captured the foundational principle that guided Brad Avakian’s eleven years as labor commissioner. This commitment generated support and controversy, especially in cases that involved hot-button social and cultural issues. However, whether the issue was increasing access to training and job opportunities, curtailing abuses of power, or ensuring fair and equal treatment, Commissioner Avakian consistently sought to ensure that BOLI would support “journeys for equality” that improved the lives and prospects of working Oregonians.

Chapter 10 Val Hoyle, 2019-2023

After Brad Avakian decided not to seek another term as labor commissioner, Val Hoyle won the election to succeed him. In 2019, she became BOLI's tenth commissioner and the second woman to occupy the position. Like her immediate predecessors, Hoyle had served in the Oregon legislature. She represented a Eugene-area district as a state representative from 2009-2017 and acted as Democratic majority leader between 2013 and 2015. During her campaign Hoyle cited her working-class and union roots, record of legislative service, and business background in sales and marketing as relevant experiences that would guide her leadership as labor commissioner. Explaining her approach to the commissioner's position, Hoyle pledged to "connect people from different areas to get them to understand they had common interests." Concurrently, she remained committed to bolstering BOLI's enforcement role, declaring that "employers who work to follow the law and do the right things shouldn't have to compete with low-road, corner cutting businesses." To achieve these commitments, Hoyle acknowledged the need to speed up BOLI investigations, make technical assistance to employers more accessible, and align CTE more closely with other workforce programs. As she pursued these initiatives, Hoyle had to deal with the challenges posed by the COVID-19 pandemic, an unanticipated public health emergency that added special urgency to the Bureau's mission to protect working Oregonians.¹

Early in her term, Commissioner Hoyle declared that "my number one priority is to get the resources to hold employers accountable when they are not doing the right thing." She noted that BOLI's 109 current positions represented less than half the agency's staff from four decades earlier. Meanwhile, the legislature had given the Bureau additional enforcement responsibilities,

and wage claims had risen by twenty-five percent, encouraged by the agency creating opportunities for workers to file complaints online. In a May 2020 letter to advocacy groups, Hoyle lamented that demands for new “rules and rights” exceeded BOLI’s current capacity to enforce them. Reflecting the perspective held by her predecessors, she asserted that “without sufficient resources for investigation and enforcement, this continually growing list of rights and [protected] classes become little more than empty declarations and value statements.” Urging advocates to seek additional resources for BOLI, she spread the message of “no money, no mission” in explaining the Bureau’s urgent need for more funding.²

Commissioner Hoyle’s budget requests in the 2019-2021 and 2021-2023 included increased staffing for the Bureau’s civil rights division and enhanced resources to bolster fair housing enforcement, a new public records manager to provide easier access to case materials, a staff person in eastern Oregon to conduct outreach and publicize apprenticeship opportunities, and a veterans’ specialist for the apprenticeship division. She noted the challenge of meeting increased public records requests and rising employer demands for technical assistance on a self-funded basis, observing that “selling handbooks or charging people for their [own] public records just doesn’t seem like a sustainable model.” The Wage Security Fund, which helped finance the work of BOLI’s Proactive Investigation and Enforcement Unit (PIE), saw \$1.5 million dollars diverted to the state’s general fund in 2020, and prevailing wage enforcement was funded by public contract fees. Throughout her budget messages to the legislature, the labor commissioner highlighted the growing gap between increased responsibilities and limited resources. Her efforts paid off, especially during the 2021-2023 session, when the legislature provided funding for twenty new positions. Although this number fell short of the Bureau’s request, it

marked the largest budget increase for BOLI in nearly a half-century, a major accomplishment for the new commissioner.³

One noteworthy budget allocation for BOLI enhanced its ability to enforce fair housing law. Fair housing advocates had expressed concern about rising discrimination faced by renters in the Portland area market. During the 2020 legislative session, Commissioner Hoyle sought to re-establish BOLI's previous arrangement with the federal Department of Housing and Urban Development (HUD) where the Bureau investigated housing discrimination complaints it received from the federal agency. The new law revised an earlier legislative change in the BOLI-HUD understanding, making it "mandatory" rather than "discretionary" for the Bureau to bring charges in housing discrimination cases that could not be settled out of court. The one-time funding provided in the legislation enabled BOLI to hire additional staff to investigate complaints and educate landlords about their legal responsibilities. Subsequently, Commissioner Hoyle anticipated that HUD would provide funding to cover costs in the event of litigation. Although the funding was not renewed after the legislature's initial allocation, the effort to reconnect BOLI and HUD highlighted Commissioner Hoyle's determination to beef up fair housing enforcement as part of agency's commitment to non-discrimination.⁴

Barely a year into Val Hoyle's term as labor commissioner, the COVID-19 pandemic and summer wildfires emerged as critical public health threats that created serious challenges for workers and employers. BOLI quickly issued a series of temporary administrative orders aimed at protecting workers while providing employers with greater flexibility to help maintain public health. In March 2020, the Bureau ruled that working parents could use sick leave or other accrued leave under the Oregon Family Leave Act (OFLA) when schools or childcare centers were closed due to COVID. BOLI made this rule permanent in April 2021 and expanded the list

of reasons for taking sick leave to include additional emergencies such as evacuation orders or dangerous heat index levels. Manufacturers engaged in essential work related to food production and medical supplies were granted exemptions from overtime hours requirements provided they obtained the written consent of workers and abided by rules surrounding meal and rest breaks. Attorneys Megan Crowhurst and Cristen Casey summarized the Bureau's approach in an April 2022 article: "BOLI's rulemaking activities relating to public health emergencies demonstrate that BOLI is ready to use its authority to regulate when it believes there to be a pressing need to expand job-protected leave rights."⁵

In addition to settling the legislative sexual harassment and Sweet Cakes cases she inherited from her predecessor, BOLI remained strongly committed to its enforcement role under Commissioner Hoyle. Two cases that remain in litigation signaled the willingness of some large employers to question the scope of BOLI's authority and contest financial penalties it had recommended. In October 2022, the agency announced its intent to fine Pacific University nearly \$850,000 for refusing to provide pertinent documents related to the cases of seven university employees who were challenging disciplinary action taken against them. Pacific accused the Bureau of overstepping its authority while also arguing that some documents were confidential, subject to privacy concerns, or off-limits due to waivers. The university then sought a hearing before BOLI to assert these claims in a formal proceeding scheduled for November 2023.⁶

In another significant case, BOLI's longstanding dispute with Legacy Health systems over the issue of meal and rest breaks continued under Hoyle's watch. In December 2021, after settlement talks broke down, BOLI proposed increasing fines to \$8.7 million, prompting Legacy to file suit in federal court six months later. Legacy argued that the state's rules were based on

eight-hour shifts rather than the twelve-hour shifts typically worked by its nurses and charged BOLI with discriminating by allowing meal and rest break exemptions in unionized hospitals while imposing restrictions in non-union facilities. Legacy also declared that fines levied on all meal break violations would impose an “onerous” and costly burden that would impair its ability to operate. In January 2023, a federal judge rejected Legacy’s claims. Almost immediately, the company announced it would appeal this decision, extending the issue past Val Hoyle’s tenure to that of a third BOLI commissioner (Christine Stephenson) and underscoring Legacy’s determination to challenge the Bureau’s authority by continuing to exercise its legal options. The case remains under the jurisdiction of BOLI’s administrative prosecution unit with a “status conference” set for September 2023.⁷

Under Commissioner Hoyle, BOLI’s civil rights division continued to enforce anti-discrimination law in several noteworthy cases. In November 2020, after investigating complaints from Latinx workers employed by G4S Secure Solutions, a company that provided private security for Facebook at its facility in Prineville, the Bureau found substantial evidence of discriminatory treatment. These discriminatory acts included the use of derogatory language, the retaliatory alteration of work assignments, and managerial refusal to curb acts of harassment. In announcing a \$595,000 settlement covering five workers, Commissioner Hoyle asserted: “This settlement highlights the importance of civil rights enforcement in our state. Five Oregonians have received justice for the discrimination they experienced. It's illegal to be treated differently or subjected to harassment because of your race, sex, or national origin.”⁸

This case was followed by a 2021 conciliation agreement where BOLI directed the city of Dundee to pay \$180,000 to a female firefighter who charged the city’s fire chief with harassment and discrimination. BOLI investigators found evidence of “severe and pervasive sexual

harassment” that had occurred over an extended period, affecting not only the complainant but also other female firefighters. The city subsequently terminated the fire chief, tacitly acknowledging BOLI’s claim that it had failed to take corrective action once it became aware of complaints about the chief’s behavior. The case affirmed BOLI’s commitment to maintaining a safe workplace environment and ensuring that public officials who abuse their authority will face consequences.⁹

The civil rights division faced several instances of public scrutiny during Commissioner Hoyle’s tenure. In 2017, Michael Fesser a Black man who worked for a towing company in southeast Portland, filed BOLI claims alleging racial harassment and retaliation by his employer. A BOLI investigator dismissed his complaint. Later, evidence surfaced that the towing company employer had colluded with West Linn police who arrested Fesser for theft in retaliation for his complaint. The company paid Fesser over \$415,000 to settle a discrimination and retaliation lawsuit he had filed, and the town of West Linn paid \$600,000 to settle a wrongful arrest charge based on the action of one of its officers. Commenting on the case, which occurred before she took office, Commissioner Hoyle concluded that BOLI had “failed” Fesser and ordered a “full review.” “We will be making changes to our work,” Hoyle declared. “Michael Fesser deserved a thorough investigation and didn’t get one.”¹⁰

In the fall of 2019, BOLI’s civil rights division came under fire when its director, Carol Johnson, complained about insubordination and mistreatment from workers under her direction. Johnson, a Black attorney with previous administrative experience in civil rights enforcement, had assumed the leadership of the civil rights division as a Hoyle appointee in the summer of 2019. Johnson later resigned in the summer of 2020, alleging that her superiors had failed to support her and filing a lawsuit charging discriminatory treatment.

Commissioner Hoyle ordered an outside investigation into Johnson's charges, acknowledging her allegations were "profoundly disturbing" and declaring "I will not let insincere concerns about 'process' to be used as a cover for anti-Black bias in our workplace." Subsequently, the investigator tapped by Hoyle found that Johnson's claims of "pervasive anti-Black bias" at BOLI lacked credibility. Also, after reviewing Johnson's charge that she received insufficient support from Hoyle and BOLI's deputy commissioner, the investigator found "copious evidence" to the contrary. Commenting on the report, Commissioner Hoyle observed: "Getting to the bottom of these allegations wasn't just about (the labor bureau) as an employer, but about ensuring that all Oregonians can be assured that when they come to this agency, they will have fair access to justice. I am pleased to announce that this report affirms our work, our commitment, our values, and our direction."¹¹

Hoyle built on the work of her predecessors in seeking to fulfill one of BOLI's most fundamental obligations: ensuring that Oregon's workers received full payment for their labor. According to the Oregon Center for Public Policy, between 2006 and 2021, workers in Oregon filed claims seeking over \$50 million in unpaid wages. BOLI deemed many of these claims valid. However, as a 2022 Rutgers University study on wage theft in Oregon found, a limited number of unpaid wage complaints came from the industries known to have the highest incidence of wage violations. The authors concluded: "Our most important finding is that significant numbers of violations of Oregon's minimum wage ordinance are in fact going unreported."¹²

Under Commissioner Hoyle and Sonia Ramirez, BOLI's wage and hour division director, the Bureau took several significant steps to address the problem of wage theft more effectively. As Ramirez acknowledged in a 2021 interview, "complaint-driven practices are not pursued by

vulnerable workers in vulnerable workplaces.” To make the complaint process more accessible, BOLI created an online form that resulted in a near doubling of wage complaints and wage claims. The Bureau also worked with Rutgers University experts to develop a “strategic enforcement” approach that attempted to focus BOLI’s limited resources on those industries with “the most egregious offenders.” This effort included seeking greater coordination between the Bureau’s wage and hour and civil rights divisions, reflecting the understanding that “egregious offenders” often engaged in multiple acts of wrongdoing. Although the pandemic constrained these efforts by limiting opportunities for onsite inspection and developing alliances with community-based organizations, BOLI’s Proactive Investigation and Enforcement Unit (PIE) made strides in taking a more strategic approach and providing working Oregonians with greater recourse to recover unpaid wages.¹³

The enforcement of the Oregon Pay Equity Act (OPEA), approved by the legislature in 2017, fell to BOLI and Commissioner Hoyle as this sweeping new law took effect in 2019. With some exceptions OPEA required equal pay for comparable work, extended coverage to all protected classes of workers, and barred the use of salary history in determining pay while also providing a “safe harbor” exempting from penalty employers who conducted pay equity. BOLI issued administrative rules on implementing OPEA in November 2018. Some businesses complained that the Bureau had not provided sufficient guidance on how to conduct a pay analysis, and smaller businesses expressed concern they lacked the resources to carry out internal audits. Incoming Commissioner Hoyle attempted to assuage these concerns, indicating the agency would assume an educational rather than an enforcement approach, especially with smaller non- I-5 corridor businesses.¹⁴

Subsequently, Hoyle intervened directly in a pay equity claim involving her own agency. In February 2022, she filed a commissioner's complaint alleging the Oregon Department of Administrative Services (DAS) had failed to resolve pay inequities among investigators in BOLI's civil rights division. After DAS objected to BOLI's use of an outside vendor to conduct a pay audit, BOLI directed the Oregon Department of Transportation to undertake a survey. In the complaint, Commissioner Hoyle charged DAS with "unlawful employment practices" for not correcting pay inequities and for discriminating against two civil rights investigators who had opposed these practices. Hoyle's complaint not only affirmed the importance the Bureau attached to pay equity enforcement but also underscored the complexities associated with implementing the ambitious new law.¹⁵

During her tenure, Commissioner Hoyle devoted considerable attention to expanding apprenticeship and training opportunities for Oregon's workers. Her appointee to head the Bureau's apprenticeship and training division, Lisa Ransom, was a Marine veteran who had previously directed a "Helmets to Hardhats" program focused on helping veterans gain access to construction apprenticeship programs. In addition to encouraging greater diversity within building and construction trades apprenticeship programs, Hoyle called for an end to "stigmatizing apprenticeship" and advocated extending it to new fields and occupations. Attesting to the depth of these commitments, she took the rare step of publicly criticizing TriMet, the agency that administers mass transit in metro Portland, for threatening to cut maintenance mechanic apprenticeship programs and launched an online petition drive supporting its retention.¹⁶

Hoyle also shared her predecessor's strong commitment to the expansion of CTE programs in Oregon's middle and high schools. In a March 2022 statement announcing grants to

148 schools to develop training in new fields such as advanced manufacturing, robotics, and health care, Hoyle stressed the Bureau's determination to make CTE widely available: "It's important that all students, no matter where they live, get to experience unique CTE opportunities. There is no one way students learn or one path to success." And in May 2022, Hoyle's job training ambitions for BOLI received a further boost when the agency received a \$19 million allocation from Oregon's "Future Ready" program to expand pre-apprenticeship opportunities.¹⁷

In May 2022, Val Hoyle resigned as labor commissioner to run for an open congressional seat. She left behind a solid record of achievement during her three and one-half years in office. Buoyed by a significant infusion of funding, BOLI sought to make its services more accessible, affirmed its commitment to vigorous enforcement of labor, employment, and housing law, and spearheaded important initiatives to extend apprenticeship and job training to new occupations and industries. The Bureau also acted to protect workers during the COVID-19 pandemic while providing employers with guidance and support that enabled them to operate safely during a time of enormous stress and uncertainty. Reflecting on her tenure, Hoyle observed that the agency still needed additional resources and greater public awareness of its work from both lawmakers and the public. "No one knows what BOLI does, very few people," Hoyle explained as she prepared to leave office. "Legislators weren't aware of the budget cuts and the budget situation we were in." Hoyle's mantra of "no money, no mission" and her determination to change the "scarcity mentality" present at BOLI positioned the Bureau to meet its expanding responsibilities more effectively and extend greater protection and support to working Oregonians.¹⁸

Chapter 11 **Christina Stephenson (2023-present)**

Christina Stephenson won the election to succeed Val Hoyle and became BOLI's eleventh commissioner in January 2023. As a civil rights and labor attorney who operated her own law practice, Stephenson had considerable knowledge of BOLI procedures and extensive experience working with the Oregon legislature on employment policy. Her priorities as labor commissioner reflected familiar BOLI concerns: clearing backlogs in civil rights cases and speeding up wage and hour investigations; hiring mediators to help resolve disputes more quickly; expanding apprenticeship to new occupations and industries; and investing more heavily in strategic enforcement to counter egregious violations of workers' rights. More ambitiously, Commissioner Stephenson has envisioned beginning conversations with "thought leaders" about how to "shape the future of work in Oregon."¹

Two incidents that occurred shortly after Stephenson assumed office underscored challenges associated with meeting these priorities. In September 2021, with assistance from the Painters Union, workers filed claims with BOLI against a drywall contractor alleging non-payment of wages on a prevailing wage project. Nearly a year later, the Bureau informed the workers that it had completed its investigation and determined they were owed back pay. Workers grew frustrated, however, when the back pay failed to materialize and on two occasions marched into BOLI's Portland office demanding payment. At the second meeting in February 2023, just six weeks after Commissioner Stephenson's term began, BOLI's new deputy commissioner expressed sorrow that "it took so long for workers to receive their payments" and distributed the checks. Regretting the delay, the agency's wage and hour division director cited a high caseload level, a seventy-three percent increase in wage claims during the last fiscal year,

and the need for a modernized database to track claims more efficiently. The interval between the workers' filing wage claims, receiving verification by investigators, and finally receiving payments highlighted the difficulties the agency faced in fulfilling its obligations.²

The new commissioner also had to deal with controversy stemming from a grant made under her predecessor by BOLI's apprenticeship and training council. In August 2022, the council awarded half a million dollars to a nonprofit to create an apprenticeship program for cannabis workers, citing the cannabis industry as a likely source of future jobs. However, cannabis lacked legal status under federal law, thereby making the industry ineligible to qualify for federal funds as a registered apprenticeship program. After public disclosures that the nonprofit's co-founder operated a financially troubled dispensary while making campaign contributions to elected officials including both Stephenson and Val Hoyle, Commissioner Stephenson rescinded the funding in April 2023. In an interview, Stephenson acknowledged the miscue, pledging to create guiding principles and clearer rules for Future Ready grants. At the same time, the new commissioner has expressed interest in expanding pre-apprenticeship offerings through new K-12 partnerships and extending apprenticeship programs to new occupational arenas such as behavioral health.³

Commissioner Stephenson has also made countering wage theft a priority for her administration. Stephenson has embraced fully the concept of strategic enforcement, which she has called the "name of the game" and "an exciting place to invest" resources. By focusing on "repeat offenders and bad actors," she plans to let habitual wage and hour violators know they will face scrutiny. The commissioner is eager to find new ways to think about claims and move expeditiously from investigation to litigation when appropriate. She has also declared her interest in addressing the structural conditions that perpetuate exploitation.

In the 2023 session, the Oregon legislature provided BOLI with a nearly ten percent budget increase. This increase continues a trend toward providing the Bureau with more resources and will enable it to hire additional investigators, mediators, and support staff to help clear backlogs. These additional resources will help Commissioner Stephenson fulfill her campaign pledge assuring Oregonians that “there is someone in their corner” working to “make Oregon the best place to live and work in the country.”⁴

Conclusion to the 100th Anniversary Report

BOLI's establishment over 100 years ago reflected a social consensus that government regulation was needed to help reconcile the competing interests of workers and employers and provide legal protection to those at risk of being mistreated or exploited. Initially charged with overseeing factory inspection, child labor, and the hours of work for women, BOLI's responsibilities expanded dramatically during its first 75 years of existence. These new responsibilities in the areas of wage and hour standards, workplace safety, labor-management conflict, civil rights enforcement, family and medical leave, and apprenticeship were prompted by Oregon's rapid industrial growth, its changing workforce demographics, and Oregonians' support for government intervention as a necessary and appropriate tool for ensuring corporate accountability and social fairness. The fact that most of Oregon's labor commissioners were popular, able leaders who served lengthy terms in office gave the Bureau a sense of continuity and a record of achievement that enhanced its legitimacy and underscored BOLI's many contributions to the state's economic and social well-being.

The last two decades, however, have witnessed a shift in both national and state political sentiment that has favored less government regulation of workplace and economic affairs. As a result, the scope of BOLI's responsibilities has narrowed in recent years, and efforts to limit its authority even further have been advocated by some political and business interests. Moreover, the Bureau still faces the perennial problem of obtaining sufficient resources to fulfill its mission, a situation accentuated by an uncertain state economy and the likely prospect of limited state funding for the foreseeable future.

Yet for all the public skepticism about government and its role in regulating workplace and employment relations, Oregonians have made it clear that they still want a voice in choosing

their labor commissioner and maintaining BOLI as an independent agency. It should also be noted that as BOLI celebrates its 100th anniversary, its constituents, both workers and employers, face a series of daunting, complex challenges. Notions of job security and the obligations that employers owe to workers have changed profoundly, driven by global competition, the shift from a manufacturing to a service-based economy, and the accompanying loss of good-paying jobs. The relationship between employer and employee has been noticeably affected by these developments, with the rise of part-time and temporary employment, increasing hours of work, the shift toward treating workers as independent contractors rather than employees, the privatization of public jobs, and the erosion of employer-provided pension and health care benefits. The Oregon work force is also growing more diverse with the addition of more women, immigrants, and workers of color who are seeking equal opportunity and social integration, and the question of how best to balance the demands of work and family life has become a growing social concern that public policy is just beginning to address.

Although these issues and concerns differ from those that led to BOLI's creation 100 years ago, they represent challenges of a similar magnitude and hold critical implications for Oregon's future. Of course, the specific ways in which Oregonians will respond to these challenges is unknowable. However, the state has a rich tradition of innovation to draw on in the field of employment relations. And it also has BOLI, an agency whose expertise and social conscience can serve as invaluable resources in helping Oregonians refashion their state's social contract and make it relevant to the twenty-first century economy and workplace.

BOLI at 120

As BOLI approaches its 120th anniversary, the agency operates in the aftershocks of the COVID-19 pandemic, a seismic event that raised crucial questions about the employment relationship and the needs and expectations of workers. The pandemic brought a new term into popular discourse, “essential worker,” that recognized our reliance on the labor of others and reflected a new appreciation for those making sacrifices to provide vital services.

As workers reported experiencing extreme stress under COVID-19 conditions, the inadequacy of the social infrastructure supporting them became increasingly apparent. Employers struggled with recruitment and retention, and workers began to demand stronger safety protections, increased pay, affordable and accessible childcare, flexible scheduling, and a stronger voice in decision-making. COVID-19’s exposure of deep dissatisfaction with the terms of the employment relationship also generated intense public conversation about the need to address work-family balance, racial and gender inequities, and far-reaching technological changes affecting the performance of work. In April 2020, Claire Cain Miller, a *New York Times* staff writer, neatly summarized a growing social understanding prompted by these demands: “Worker well-being is the foundation for everything else.”¹

Over the past two decades, Oregon has expanded rights and protections for workers in anticipation of Miller’s perceptive observation. This expansion has included overtime for farm workers, predictive scheduling, restrictions on nondisclosure agreements, paid sick, family, and medical leave, a relief fund for immigrant workers, minimum wage increases, and legislation to promote pay equity. These measures and the pursuit of additional workplace reforms reflect the state’s commitment to promote worker well-being and address structural forms of discrimination that have left these commitments unfulfilled. It falls on BOLI to enforce these laws and provide

technical assistance to encourage employer compliance, while as BOLI's first commissioner declared, striving to promote "the good of labor and the industrial advancement of the state." These added responsibilities reflect the challenge the Bureau has faced throughout its history: the need for sufficient resources to meet its evolving and often increased responsibilities. Although BOLI has gained additional resources in recent years, the willingness of the state to continue this trend remains an important yet open question.

Beyond meeting BOLI's basic obligations, Commissioner Christina Stephenson has articulated an additional role for the Bureau: helping lead a conversation about the future of work in Oregon. The commissioner envisions this conversation as one that would allow Oregonians "to take ownership of our destiny and design an economy that works for everyone." She has also proposed making the quest to achieve "climate resiliency" an integral part of this conversation.

BOLI's history suggests that it is well suited to assume this role. It has the capacity to bring together key stakeholders, solicit the views of a broad cross-section of Oregonians, develop specific recommendations, and ensure that the advancement of worker well-being guides these deliberations. Its efforts to expand CTE training and create apprenticeship programs in new occupations provide a strong foundation for deeper thinking and analysis. And, in leading a conversation about the future of work, BOLI can draw on its proud tradition as a voice of moral authority and an honest broker able to build consensus and create effective partnerships.

Throughout its 120-year history, the Oregon Bureau of Labor and Industries has sought to fulfill its roles as both a regulator and a conciliator in addressing conflicts that inevitably emerge in the employment relationship. Reaching beyond its oversight of apprenticeship training, it has also played a larger role in workforce development and job creation. The rapid pace of change in

the workplace, rising activism among workers, and questions about the future of work present BOLI with challenges that are both new and familiar. The Bureau's history, along with its more recent work, demonstrates that it has met such challenges in the past and is prepared to take them on in the future.

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