

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEETING

Thursday February 2, 2012 – 9:30 A.M.

Department of Workforce Development
GEF-1 Building Room D-203
201 East Washington Avenue
Madison, Wisconsin

MINUTES

Individuals Present:

Management: James Buchen, Earl Gustafson, Dan Petersen, Ed Lump, Michael Gotzler

Labor: Phil Neuenfeldt, Sally Feistel, Anthony Rainey

Chairperson: Daniel LaRocque

Office of the Secretary of the Department of Workforce Development: Jonathan Barry, Deputy Secretary; Georgia Maxwell, Executive Assistant; Connie Schulze, Legislative Advisor.

Department Staff (Unemployment Insurance Division): Craig Barkelar, Division Administrator; Andrea Reid, Deputy Administrator; Susan Blesener; Robert Junceau; Eric Volkmann; Tom McHugh, Treasurer, Unemployment Reserve Fund and Director, Bureau of Tax and Accounting; Ben Peirce, Director, Management and Information Services; , Lutfi Shahrani, Director, Bureau of Benefit Operations; Janet Sausen; Mitch Cohen; Robert Usarek; Timara Budack; Pamela James; Ramon Natera; Shashank Partha; April Belshaw; Amy Banicki; Bill Brueggeman; Jason Schunk; Emily Savard; and Robin Gallagher.

Others Present: Becky Kikkert (Office of the Governor); Joan Ballweg, Assembly Representative; Glen Wavrunek, Office of Representative Mark Pocan; Steve Gillitzer, Office of Senator Robert Wirsch; Tracey Schwalbe, General Counsel, Labor and Industry Review Commission; Rebecca Hogan, Wisconsin Manufacturers and Commerce; Bob Andersen, Legal Action of Wisconsin; Victor Forsberger, Unemployment Compensation Appeals Clinic; Brian Dake, Wisconsin Independent Businesses, Inc.; Larry Smith, UC Management Services; Thomas Coomes, Director, Public Finance Dept. Municipal Securities Division, Citigroup.

- 1. Call to Order and Introductions:** Mr. LaRocque called the meeting to order at 9:40 a.m., and welcomed Assembly Representative Joan Ballweg.
- 2. Meeting Minutes:** Motion (Feistel), second (Lump) to approve the minutes of January 12, 2012, approved 8 ayes, 0 noes.
- 3. Financial Statements:** Tom McHugh, Unemployment Insurance Division Bureau of Tax and Accounting Director, reviewed the current Reserve Fund Financial Statements (7-page handout).

Mr. McHugh noted that benefit overpayments as of December 31, 2011 totaled approximately \$127 million, compared to approximately \$92 million as of December 31, 2010. Regular state overpayments comprise \$59 million of the 2011 total overpayments, while the remainder is comprised of federal or reimbursable employer money. Thus, full collection of all of the overpayment amounts would result in the return of \$59 million to the Unemployment Reserve Fund.

Referring to the cash analysis portion of the handout, Mr. McHugh pointed out that employer receipts in 2011 were approximately \$793 million, and \$578 million in 2010. He noted there had been an increase in the wage base, as well as rate changes for individual employers. In addition, payrolls and taxable wages were up. The total increase in cash for 2011 was approximately \$1.1 billion compared to approximately \$850 million the previous year. Benefit disbursements charged to employer accounts in 2011 totaled some \$865 million compared to approximately \$1.1 billion in 2010. In 2011, approximately \$146 million was charged to the balancing account, while in 2010 approximately \$157 million was charged to the balancing account.

In 2011 the total cash increase was approximately \$1.1 billion, while the disbursements were less; thus the fund took in more than it paid out in 2011. Using a graph included in the handout, Mr. McHugh pointed out that the last time that the inflow of dollars exceeded the outflow was in 2000. In 2011 the fund began to take in more than it paid out, and it is projected (for the first time in a long time) that disbursements will be outnumbered by payments into the fund with no appreciable change in that outlook.

Craig Barkelar commented that it is projected that the Reserve Fund will be solvent in 2014. He noted that he hopes changes will be made to make certain there is an adequate balance in the fund before the next recession. Mr. Barkelar added that the fund met projections for 2011 and that the outlook is positive.

Mr. Buchen inquired about the numbers used in the 2011 projections and wondered whether what actually happened exceeded what was built into the projection. Mr. Barkelar responded that at the start of 2011, the thought was there would be a larger deficit than the \$1.3 billion actual at year end 2011. Beginning in January and continuing through the year, the deficit was reduced by some 10%.

Mr. McHugh reviewed the tax revenues for 2010 and 2011, pointing out that there was an increase in revenue for 2011 of some \$264 million, approximately a 31% increase over 2010. In contrast, the benefits paid out in 2011 represent a 21% decrease from 2010. As a footnote, Mr. McHugh pointed out that the total benefits paid out in 2011 were approximately \$2.1 billion to 446,000 claimants, while in 2010 total benefits of \$3.1 billion were paid to approximately 531,000 claimants.

Mr. McHugh directed the Council back to the balance sheet which showed taxable employer receivables of \$93 million as of December 31, 2011. This balance included \$24.5 million of interest and penalties, the remainder being tax receivables.

4. Status of Law Changes Approved on January 12, 2012:

Mr. LaRocque advised that AB 504 (containing 5 proposals that the Council approved at its January 12 meeting), included in the meeting packet, had been heard the previous day at a joint hearing of the Labor Committees, but that it had not yet been voted on.

5. Department Proposal Regarding Rate of Interest on Delinquencies:

Mr. LaRocque noted that he had sent an email to Council members the previous week regarding a change to the proposal to reduce the rate of interest employers are charged on delinquencies. That proposal is a part of AB 504, and was one of the several items approved by the Council in January. Email responses approving the change were received from 8 of 10 Council members, while 2 had not responded. The change in the rate proposal, which is incorporated into AB 504, makes the annual rate 9% or prime rate plus 2 percentage points, whichever is greater.

6. Senate Bill 346, Assembly Bill 450 and Assembly Bill 457

Mr. LaRocque reported that AB 450 (special occupational training for benefit claimants) received approval of the Assembly and Senate Labor Committees with several amendments that had been made subsequent to the Council's consideration of the bill at its January 12th meeting. He called attention to the summary of the amendments contained in the meeting packet. Mr. LaRocque reminded the Council of their stated intention to further consider SB 346 and AB 457 and invited Representative Ballweg to present her comments on AB 457.

Representative Joan Ballweg, Chairperson of the Assembly Committee on Labor and Workforce Development, distributed a February 2, 2012 letter to the Council prior to the meeting. Attached to the letter was a January 12, 2012 memo of Legislative Council analyzing a part of AB 457 (work rule violation proposal) and related federal law. Representative Ballweg extended her thanks to the Council for its proposals, AB 504. She urged the Council to continue to consider the work rule violation proposal. Representative Ballweg noted that the projected savings that would come through adoption of the work rule violation provision is approximately \$20 million. She is willing to address questions Council members may have.

Representative Ballweg noted that AB 450, the bill for special training for benefit claimants, (also approved by the Council at the January 12th meeting) has been amended and that a summary of the proposed amendments was included in the packet distributed. She also noted there is a change in the interest rate proposal that will tie the rate to the market and fluctuate with the market. With regard to the training proposal, Representative Ballweg noted that some changes were made that make it clear the trainee is not an employee for UI purposes and that the stipends paid are not wages and will not be considered for wage credit purposes. There are protections added for claimants related to job refusals. In addition, the training placement is limited to 6 weeks; there is no placement unless the training can be completed within the first 26 weeks of the benefit year. Finally, the law has a sunset provision.

6. Department Proposal for Changes to Wis. Admin. Code Chapters DWD 126 (Registration for Work) and 127 (Work Search):

Mr. Barkelar noted the department has raised various ideas regarding the work search requirements, and added that it is a hot topic at the federal level. He explained that work search is an important way to keep people attached to the labor market. Wisconsin's administrative rules on the topic were promulgated in 1984 with a minor change in 2005. Looking at current trends and changes other states (FL, IN, PA, MN, UT) have made, the department decided to start working on Wisconsin's rules.

Mr. LaRocque referred to the 4-page document included in the Council's meeting packet which lays out the department's thoughts on proposed changes. He noted that the proposal would require a change in the statutory requirement for job search actions as an eligibility condition by increasing the requirement from 2 job search actions each week to 3. He added that the materials distributed also include a copy of each of the current rules, DWD 126 and DWD 127. With regard to the current rules for permissible actions to satisfy the work search requirement, he noted there are ten categories, many of which are redundant or can be consolidated. The proposal reduces the number of categories to 4 and deletes the catch-all provision, which says "perform any other reasonable action" category.

Mr. LaRocque noted there has been discussion about claimants' repeat applications to a single employer, adding that the perception is that repeat applications are, in some cases, annoying to employers or a pro forma exercise. He added that repeat applications can sometimes be legitimate, but that there is a balance to be achieved. The proposal prohibits claimants from counting more than one application to a single employer in 4 weeks except when a new job is posted or the employer's practices encourage repeat applications.

With regard to work search waivers, Mr. LaRocque explained that the proposal tightens the granting of waivers, making them fewer, shorter, and more definite in terms of verification. He noted that the proposal would require employer verification and that without verification, a waiver will not be granted. There will be a waiver for recalls to work for 8 weeks, with a possible 4-week extension. The "new work" waiver will be limited to 4 weeks. Both will require employer verification.

Mr. LaRocque advised there are currently 11 categories describing work search waivers. The proposal will eliminate several and amend several of the categories. In DWD 127.02, paragraphs 5, 8, 9, 10, and 11 will be eliminated. The department processes will also give claimants specific notice of the work search requirement. Even if a claimant is doing some work, he or she will be required to do a work search since the claimant can find time to search for work even if he or she is doing some work.

Ms. Feistel noted that paragraph 11 mentions "training," and sought clarification of whether approved training would remain a basis for a waiver. Mr. LaRocque responded that the approved training and jury service waivers would remain in the rule, as acknowledged in the summary handout.

Mr. Buchen noted that paragraph 11 appears to refer to a “profiling” program which included an intensive program to get the claimant re-employed. Mr. LaRocque responded that the proposals were drafted with the thought that someone likely to exhaust benefits should do a work search. He also noted that waivers remain for jury duty and approved training, and that those waivers may extend longer than 8 weeks.

With regard to documentation of the work search, Mr. LaRocque explained the proposal will require all claimants to keep evidence of work search for a year in all cases. The handout describes the kind of evidence the rule would require be kept. Disqualification from benefits is a consequence of failure to comply.

Referring to Chapter DWD 126, Mr. LaRocque advised that registration is a part of eligibility and is done at the outset when the claimant applies for benefits. He noted that the current rules are difficult to understand. The proposal simplifies the rule by requiring registration as a condition of eligibility, which includes registration with Job Service by submitting a resume online with jobcenterofwisconsin.com (“JCW”) or other system prescribed by the department. The claimant must satisfy the registration rule to be eligible for benefits. The proposed changes to the work search and registration provisions will require a change to the statutes and the rules.

Mr. Buchen commented that the run-of-the-mill claimant is considered registered by filing the initial claim and that other requirement will apply if the department tells the claimant to do something else. He agreed that the current rule is confusing.

Mr. LaRocque explained the intent even in the current rule is that “registration” depends on following through with reemployment services when directed to do so. The current rule contains a provision for ineligibility for failure to register and states that one is registered not only by application but also by following through with reemployment programs and services, which would seem to include Job Service and JCW. The proposal would simplify the rule in ways that may not dramatically change the substantive intent of the current provision.

Mr. Buchen inquired whether the department has issued a notice of rule-making. Mr. LaRocque indicated that the department has not done so. Mr. Buchen suggested that the department begin working on the notice since it is now required, and added that it makes good sense to be in compliance.

Mr. Neuenfeldt stated that he wants to talk to various people about the proposals to make certain he understands their impact. Mr. LaRocque responded that the department understands that, and that the department is available to answer questions.

Mr. LaRocque called attention to the handout containing a summary of a survey of work search requirements in other states.

Mr. Gotzler asked about the selection process for the states surveyed. Mr. Barkelar responded that the states included are those that have recently reviewed their own provisions and made changes to them.

Mr. Buchen observed that with regard to work searches, some people aggressively will look for work more than 2 days a week. The reasonable expectation of those who know they are returning to work is that they do not want to pester employers. Other claimants are going to exhaust their benefits and then look for work. There is a lot that goes on in people's heads. The laws are fairly rigid and are intended to address those individuals who want to collect benefits and not look for work. It is tricky because of the variations in human behavior. He added that a person who does not want a job can present himself or herself as not wanting a job even though he or she interviews with 50 employers. The law must hold people accountable and require them to reasonably look for a job.

Mr. Lump inquired whether claimants can get help with a resume if they have difficulty, and was advised that the job centers can provide help. Mr. Gustafson inquired whether there is assistance available with various new social media technologies that may be of help in work search efforts. Mr. Barkelar responded that it may be useful at a future Council meeting if someone from the employment and training division would be available to answer questions on these topics. He noted that the job centers are trying to become more useful and can help people get registered. The job centers need employer participation and want to make it useful for those looking for candidates. He added that we can control unemployment by trying to get people into the workforce.

Mr. Gustafson observed that younger folks do not need instruction on the available social media technologies since they always use social media and likely would not think of not using it.

Motion to proceed to closed session (Buchen); second (Feistel). Ayes 7, noes 0. To closed session at 10:20 a.m.

Return from closed session at 11:47 a.m.

7. Council Action following closed session:

Mr. Buchen indicated that following extended discussion and negotiation on various issues such as the proposal for benefits for non-striking workers affected by job actions, extended training, and work rule violation provision, the labor and management sides of the Council appear unable to reach agreement with 7 votes. He advised that the Council is probably done with its work on those issues for this legislative session, but that these issues are important to labor and management and are likely to be part of a proposal that will be negotiated next session. Mr. Buchen added that at this stage in the legislative cycle, the Council is done with the issues, but expects to work on them for the next bill in the legislature.

Mr. Neuenfeldt indicated concurrence with Mr. Buchen's statement.

8. Correspondence:

Mr. LaRocque advised that he had received a letter from Senator Jim Holperin regarding earnings of a town elected official and its effect in reducing unemployment insurance benefits received when the official's primary employment was lost. Mr. LaRocque has written to Senator Holperin to let him know that the letter would be delivered to the Council for its consideration. Mr. LaRocque indicated the issue Senator Holperin raised is essentially the issue the Council has previously considered related to volunteer firefighters.

Mr. LaRocque noted that the packet distributed at the meeting included a summary of the federal law changes prepared by Attorney Scott Sussman, which was requested by Mr. Lump.

Mr. Gustafson inquired whether other Council members and the department had received a letter from a claimant describing the difficulties he has had related to an overpayment. Other members of the Council and Mr. LaRocque indicated they, too, had received the same letter. Mr. LaRocque advised the claimant will receive a formal letter from the department addressing the issues he raised.

9. Future Meetings: No future meeting was scheduled. Mr. Buchen suggested that the Council should begin thinking about scheduling public hearings, possibly in the late spring or summer.

10. Other Business: No additional business. Motion to Adjourn (Neuenfeldt), second (Buchen). The meeting adjourned at approximately 11:55 a.m.