

**UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEETING**  
**Thursday September 1, 2011 – 9:30 A.M.**  
**Department of Workforce Development**  
**Room F305**  
**201 East Washington Avenue**  
**Madison, Wisconsin**

**Individuals Present:**

**Management:** James Buchen, Earl Gustafson, Edward Lump and Michael Gotzler

**Labor:** Phil Neuenfeldt, Patty Yunk, Sally Feistel and Terrance McGowan

**Chair:** Daniel LaRocque

Department Staff: Craig Barkelar (Unemployment Insurance Division Administrator), Andrea Reid (Unemployment Insurance Division Deputy Administrator), Tom McHugh (Unemployment Insurance Reserve Fund Treasurer, and Director, Unemployment Insurance Bureau of Tax and Accounting), Lutfi Shahrani (Director, Unemployment Insurance Bureau of Benefits), Connie Schulze (Department of Workforce Development Legislative Advisor), William Witter, Robert Junceau, Susan Blesener, Scott Sussman, David Lange, Ramon Natera, Shashank Partha, Pam James, Ben Peirce, Timara Budach, Janet Sausen, Amy Banicki, Jason Schunk, Emily Savard, Bill Brueggeman, Angela Witt, Robin Gallagher

Others Present: Assembly Representative Joan Ballweg, Assembly Representative Tom Larson, Andrew Hanus, (representing the Office of State Senator Mary Lazich), Dee Pettack (Legislative Aide to Representative Joan Ballweg), Becky Kikkert, (Governor's Office), Rebecca Hogan (Wisconsin Manufacturers & Commerce), Bob Andersen (Legal Action of Wisconsin), Victor Forberger (Attorney. Wisconsin UI Clinic), Brian Dake (Wisconsin Independent Businesses, Inc.)

**1. Call to Order and Introductions** - Mr. LaRocque calls the meeting to order at 9:50 a.m. Mr. LaRocque acknowledges the presence of Assembly Representative Joan Ballweg, Chair of the Assembly Labor Committee and Assembly Representative Tom Larson; and introduces two new members of the Bureau of Legal Affairs legal team, attorneys Susan Blesener and Scott Sussman.

**2. August 24, 2011 Minutes** – Motion (Yunk), second (Lump) to approve the minutes of August 24, 2011, approved 7 ayes, 0 noes.

**3. Representative Tom Larson**

Assembly Representative Tom Larson is here today to learn and possibly make a suggestion. I was going through your minutes here and I agree 100% with what State Senator Pam Galloway presented at a recent meeting of this Council. I am an electrical contractor and have experienced many of the same things.

Representative Larson presents a suggested law change. It may be a federal issue. It concerns benefit extensions. With these extensions we have developed a cliff. People haven't gotten off the

unemployment lines. There are so many people on unemployment; we can't let these people fall off a cliff when their benefits end. It's just too devastating. So, I propose that we put a taper on those extensions so that every week the unemployment payment drops just a little bit. That will apply some pressure along the way to find a job. They may not find a job that pays \$25 an hour but will accept a \$10 per hour job. This would eliminate this cliff, reduce the number of claimants, and save some money along the way.

Mr. McGowan asks whether the claimant would receive the same amount of money in their benefit year. Mr. Larson says no, it would be reduced.

Ms. Yunk says she feels morally compelled to say two things. First of all, we don't have unemployment lines. We have people who are out of work and on unemployment. And, I will respond to what I perceive to be an attitude you are reflecting here that people are choosing not to get jobs, which I strenuously disagree with.

Mr. Buchen indicates that he is hearing something very different. Almost every day he hears from employers saying claimants are declining work in order to remain on unemployment. That is grounds for suspending unemployment benefits and employers need to report that. This is happening even though when you look at the benefit rate you do not have to earn that much to make more than the benefit rate. Mr. Buchen hears this so often he does not believe people are lying about it. Mr. Lump indicates he has received a number of similar phone calls and received a call on Wednesday from a restaurant owner asking whether this issue has been raised. Mr. Lump indicated while he did not have any poll or systematic survey showing the extent to which this occurs, it certainly is happening and the question is, is there something to be done about it. Mr. Gustafson, indicates the question we are addressing is for those individuals that need support from social programs in this economy, what part does unemployment play. He asks where the dollars come from. Do they come from the UI program or do they come from other social support programs. I realize all of those dollars are collected as taxes one way or the other. On the other hand, at what point should we determine that monies be taken from the UI bucket as opposed to the bucket of some other social support program. Unfortunately, I do not have any answers but I think that is a policy decision that society needs to think about, for what its worth.

Mr. Neuenfeldt says we have heard the last couple of meetings from employers who have talked about things from their perspective. We heard last time from a very narrow perspective about particular situations. But, if we are going to have a public hearing we should invite the public to talk about the pros and cons of the program and include those who are unemployed so they can talk about how they live on \$363 per week or less than \$10 per hour. Given the number of foreclosures, the number of bankruptcies, these are all life choices that people are making in this economy I am not sure what we are doing here. If we are going to have a public hearing I would like to hear from both sides. As far as I know, the input I am getting is entirely different from what I have heard the last couple of days. People are unemployed, people can't find work, people can't get interviews, and if you're unemployed, some employers won't hire you and choose instead to hire only people who are working and/or have not been on unemployment. I think there are a lot of different perceptions here and with what is going on in the economy a choice not to work is inconsistent with everything we are seeing going on as shown by economic indicators and in our society. And, with all due respect to our employer community there are many good employers but there are some employers that make an offer to claimants that put people in a situation where they may lose their home if they don't accept an \$8.00 per hour job. If an employer offers a claimant

part time work paying \$8 per hour and the claimant says no, I can't accept that job because I have to maintain my home or my family is that that persons fault? Or, is the system bad because of that? A better discussion than this would be how we can create family supporting jobs rather than how do we cut unemployment benefits more. I think there are a lot of unique and different perceptions. So, if we are going to hold a public hearing we should get all perspectives.

Mr. Larson says the purpose of the unemployment insurance program to provide a safety net for support and suggests there should be some sort of partial payment to make up for the difference. Mr. Neuenfeldt points out that labor has suggested that in the past but management has rejected the idea. Mr. Buchen points out partial benefits are available if a claimant works part time.

Mr. LaRocque says it is not hard to reconcile on the one hand the view that people are trying to find jobs and some people are turning down jobs they perhaps ought to have taken. He also explains that the public hearing concept is something the UIAC has engaged in during prior years. Last year we took one step that was a little different, and that was to solicit comments through a web site. We did receive over 100 emails from claimants who expressed their views about the unemployment program. So, we have had input from employee interests. We made it part of our record. Mr. LaRocque indicates further that the Council does conduct hearings from time to time and has always welcomed legislators and their constituents to testify at Council meetings and to offer proposal for the Council's consideration. Mr. LaRocque points out that extended benefits programs and how benefits are paid out are determined by federal law.

Mr. Gustafson, in response to Mr. Neuenfeldt, and not to disagree but to point out that unemployment was intended to replace a portion of your income and was not meant to be used for people to live on. Unfortunately, the extended high unemployment rate adjusts the model. Mr. Neuenfeldt says he understands that but that underlines his point that people are trying to get off of unemployment.

### **3. Unemployment Law Change Proposals**

Motion (Buchen), second (Yunk) to meet in closed session pursuant to section 19.85(1)(ee) of the Wisconsin statutes for purpose of discussing possible changes to Chapter 108, the Unemployment Insurance law and rules. Ayes 8, noes, 0. At 10:05 a.m. The Council is in closed session.

Mr.LaRocque announces at 11:42 a.m. that the Council is back in open session and that proposals are available from both sides.

Mr. Neuenfeldt describes the labor proposals and indicates that employee representatives propose to repeal the drug testing law passed as part of the budget bill that the Council had agreed at a previous meeting not to support. Mr. McGowan explains that at the bargaining table he has always supported a fair way to keep drugs and alcohol off the work site. The people he represents believe in work site safety and that there is no place at the work site for drug or alcohol abuse. Good people make mistakes. Our people get laid off either because they are between jobs or because of the weather and we run a referral hall where we place workers and try to get them back to work. We are contacted by an employer that asks for a worker with particular qualifications. Most of our agreements have a pre-hire drug test that is mandated. Most collective bargaining agreements today require such a test. In the past, when a person fails the drug test, the employer may decline to hire the individual. They tell us the job did not work out. Frequently, the employer does not share

with us the drug test results and does not wish to. They don't want to get involved in it. Mr. McGowan concludes people make mistakes and he does not think hanging this additional anchor around their neck and requiring the employers to report test results to the state is something employers are comfortable with. Ms. Feistel expresses concern about the cost to smaller employers of administering drug tests for applicants. Ms. Yunk cites federal requirements for commercial drivers are very detailed and points out that requirements are strict not only as it relates to the administration of the test and the reliability of the test results and the handling of the sample but also concerning how those records are maintained. The recently enacted drug test legislation does not address the maintenance, cost or confidentiality of records maintained by the state or the employer. Ms. Yunk also notes that there is no provision in the law that would allow the employee to call in a second opinion.

Mr. Neuenfeldt explains that labor also has questions concerning the timing of eligibility determinations. However, those questions have been answered by the department explaining its administrative handling of the issue. Mr. Neuenfeldt thanks Mr. LaRocque for facilitating that explanation. Mr. Neuenfeldt explains to Mr. Gustafson that the item is on the list but since the last meeting labor has gotten the clarification it wanted.

Mr. Neuenfeldt explains that another labor proposal is to sunset the one week waiting period law that was adopted as part of the budget. Ms. Feistel says she negotiates a lot of contracts and in difficult times not having the one week waiting period will discourage the parties from working together. She explains that when there is a layoff she works creatively with employers to give the companies some relief from the terms of their labor agreement and she finds the elimination of the one week waiting period will make it more difficult to find creative ways to do things. She suggests that when the fund becomes solvent or when unemployment rate reaches a certain level that the law sunset. She also mentions that the legislature is doing some things differently than they have been done for the past seventy-five years and adoption of a sunset provision would send a message from the Council to the legislature that these proposals should be coming from the Council. Ms. Yunk says there is another issue with the continuity and consistency with which we are approaching unemployment. On the one hand, we have added extensions upon extensions and yet we say to people on the front end, we are going to make you wait a week. It's not as if we are seeing at this point patterns that are cyclical, which is I think in the past is what we have considered. Instead, what we are seeing is long term unemployment with a series of extensions. To say now we are going to let you start out in the hole for a week so that you are facing further economic issues that affect the well being of the family such as paying for food, or a mortgage or a utility bill does not seem right. There is an economic consequence that affects Wisconsin's economy and it does appear the proposal to eliminate the one week waiting period is a punitive rather than corrective measure.

Mr. Neuenfeldt indicates it is not clear to him if the legislature is looking for the Council to include in its legislation the Honadel proposal. Mr. Buchen says there is an impact on Chapter 108, but it is mostly a program that does not affect unemployment. It may need a little bit more work but conceptually it is something management can support. Mr. Neuenfeldt says labor did have some questions, how does it work or interact with the vocational technical system and other programs geared around training and placing workers in jobs, but conceptually it makes some sense.

Mr. Neuenfeldt explains that as far as overpayment of extended benefits and compliance with the federal requirements, labor has had discussions and fact finding with the department and are "OK"

with the way that has worked out and the explanation Mr. LaRocque provided to us and so this is not a proposal for consideration at this time.

The proposals that the department made, all four of them, labor supports. Labor also reserves the right to modify their proposals as we move forward. Since the last meeting we have been getting input that suggests Wisconsin is paying less for unemployment compared to other states around us. Mr. Neuenfeldt asks for a chart that shows how we compare to other states. Mr. LaRocque agrees to provide that information.

Mr. Barkelar indicates that it was his understanding from talking with the DWD Executive Assistant that Representative Honadel was hoping the Council would get involved in supporting his legislative proposal.

James Buchen introduces the management proposals. The first proposal responds to the concept that through no fault of their own, an individual who is out of work should receive unemployment benefits for a period of time or until he or she can return to work. This responds to the situation where a person who is unwilling to do the job, chooses not to follow the work rules and makes a choice to get themselves discharged. To the extent that a person would knowingly violate a reasonable work rule and that person is discharged, that would be grounds for denying unemployment benefits. Mr. Neuenfeldt asks how is this different from the current statute. People have work rules, labor contracts and other working conditions. Mr. Buchen says these are part of the work rules. Mr. Neuenstadt points out there are judgments made by the employer and then the person affected reacts to whether that decision was fair or not fair. This seems to speak to the system as it is now. Mr. Buchen explains the system operates when a person doesn't follow work rules based on warnings given. This would allow for discharge where there is a knowing violation but not where an individual is incapable of doing the job. Knowingly violating work rules would include, if you are saying, I know I am supposed to be courteous, but you aren't and are rude to a customer, that would result in benefits being denied. Ms. Yunk asks how the proposal is different from what we have now. Mr. Buchen indicates the misconduct standard is a very high standard. Mr. LaRocque briefly explains the misconduct standard and that the proposal would disqualify some people that would not otherwise be disqualified under the misconduct standard.

Mr. Buchen explains proposal number 2, as clarifying circumstances under which partial benefits are allowed. He indicates, we have a system now when a claimant is not working full time, you have to explain what additional hours count towards a determination of whether the claimant is considered working full time. This makes clear in complicated settings that exist in the statute that a claimant is considered to have worked full time, was offered full time hours but not taken, or was compensated for full time work, defined as 32 hours in a particular week.

Mr. Buchen explains proposal number 3, partial week eligibility. Basically setting a standard that if you earn a certain amount of money you can not qualify for partial benefits. The theory is that if you make a certain amount of money you don't need to receive a small adjusted amount in partial benefit payments. If you earn a certain amount of money, you are not eligible in a particular week. The proposal sets that amount so that if you have earned \$500 in a particular week during a time period when you are applying for partial benefits, you will not receive any benefits in that week. Ms. Yunk asks if Mr. Buchen is saying a fair amount of money is \$500. Buchen says yes. We picked that number for purposes of discussion. Mr. Buchen says at some point, you need to ask whether a certain amount of money is enough for unemployment insurance purposes. Ms. Feistel

cites the contrast between a claimant that is a single person versus a single mother with six children. Does the system need to provide adequate benefits under the proposal in that situation? Mr. Buchen points out that this proposal applies only for weeks in which a claimant applies for partial benefits.

Mr. Buchen describes proposal number 4, paying benefits during approved training. We allow 26 weeks while in approved training. Extended training allows a second or an additional 26 weeks of benefits while training. This is costing the system quite a bit of money. We also have a pattern of claimants enrolling to get the additional weeks of benefits, then withdrawing from training. Ms. Feistel asks whether this a TAA program. Mr. Buchen says it is not. Ms. Feistel asks does this disincentify people to go to training. We need electricians but if we remove this benefit does this lead to a situation where instead of staying in training to be an electrician, I take an \$8 per hour job instead. Mr. Buchen says its his understanding that people are waiting out the first 26 weeks, then enrolling. Ms. Feistel asks, if 52 weeks are required for training, are we going to cut them off after 26 weeks. Mr. Neuenstadt points out that this could work against the employer community because for most training programs in the skilled trades there are waiting lists. If you look at most of the waiting lists for demand occupations it can be a semester wait before you get into training. This is something that should be considered.

Mr. Buchen says with all of these proposals the principle at work is that we have a program that is supposed to fill a particular need. And, it may or may not do the job. We are trying to ensure that the programs we have stick to the particular intent of the unemployment insurance program. There may be a program where these needs are to be met, but not this one. Training can be financed other ways. Is unemployment the only way to get support for training. At some point you have to draw the line.

Mr. Buchen explains that the next proposal concerns overpayments. We get a lot of them and this proposal is trying to figure out how to get at that. This is an overpayment that results from a claimant not reporting the fact that they didn't engage in a required work search. The current law requires an intentional misstatement of fact and our view is that it is irrelevant whether they intend to misstate the facts or not, they haven't performed the required search for work and the claimant should have to pay back the benefits they would not have otherwise received without having to prove the act or misstatement was intentional.

Mr. Buchen indicates proposal number 6 is to address the fraud issue. The current system has some limitations. The proposal eliminates the forfeiture statute and establishes a 15% penalty for overpayments in its place. Benefits are suspended until the penalty is repaid and the employer's account is not charged as it is under current law. (Note: The written proposal included a 25% penalty, not a 15% penalty.)

Mr. Buchen explains proposal number 7 is about collecting overpayments. We offset federal tax refunds, something newer that we can do. We have done that where things are intentionally concealed. This expands the offset to other overpayments.

Mr. Buchen indicates management also agrees with the four department proposals. Mr. Neuenfeldt also indicates agreement. Mr. Neuenfeldt then asks for fiscal estimates of the various proposals before the Council. Mr. LaRocque indicates it will be provided.

Mr. Buchen says there is a little torque on our system these days. Mr. McGowan says while in caucus he just wants the Council to know while he understands where management is coming from, there are employers telling workers lets “bank your pay this week, I won’t mess with your unemployment.” We have conspiracies by both sides. Mr. LaRocque points out while we have penalties for collusive behavior to defraud, it is very difficult to prove. Mr. Shahrani explains that when there is collusion, or aiding and abetting, the department rarely gets cooperation from the employer and employee. Usually, the first indication comes from a third party. It is difficult unless you accumulate information or testimony from other workers.

Mr. LaRocque says we have all of the proposals before us. The four department proposals are on one page. Passing them would help with the drafting and he asks the Council to consider what they can.

Mr. Neuenfeldt indicates labor is prepared to vote on four department proposals. Mr. Neuenfeldt asks and Mr. LaRocque reads the four titles. Number 1. Enable additional means of reserve Fund Borrowing, Number 2. Change the redetermination of subject successor tax contribution rates, Number 3. Create a standard for “choice of employer” and establish exception for certain home care providers, Number 4. Create a fund for employer assessments exclusively for federal interest payment and reversion to reserve fund. Motion to approve the four department proposals (Neuenfeldt), second (Buchen), Motion passes 8 ayes 0 noes.

Motion for closed session (Yunk), second (Gotzel), to meet in closed session pursuant to section 19.85(1)(ee) of the Wisconsin statutes for the purpose of discussing changes to Chapter 108, the Unemployment Insurance law and rules. Ayes 8, noes 0. The Council is in closed session.

The meeting adjourned at 3:00 p.m.