

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 East Washington Avenue, GEF-1 Room F305
Madison, Wisconsin

June 20, 2013

The meeting was preceded by public notice as required under s. 19.84, Stats.

Members Present: Janell Knutson (Chair), Michael Gotzler, Earl Gustafson, Edward Lump, Scott Manley, James LaCourt, Mark Reihl, Terrance McGowan, Phil Neuenfeldt

Department Staff: John Fandrich (Executive Assistant), Connie Schulze (Legislative Liaison), Bob Rodriguez (UI Administrator), Ben Peirce (Deputy UI Administrator) Scott Sussman, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Robert Usarek, Jill Moksouphanh, Lutfi Shahrani, Amy Banicki, Bill Brueggeman, Emily Savard, Mike Myszewski, Diane King, Karen Schultz, and Robin Gallagher.

State Legislators and Legislative Staff Present: Representative Paul Tittl (25th Assembly District), Stephen Hall (Representative Tittl's Office), BJ Dernbach (Representative Dan Knodl's Office), Lonna Mrouney (Representative Loudenbeck's Office), Craig Summerfield (Representative Vos' Office)

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council ("Council") meeting to order at approximately 10:05 a.m. in accordance with Wisconsin's open meetings law. Council members introduced themselves and Representative Tittl and legislative aides were acknowledged.

2. Approval of Minutes

Motion

Motion by Mr. Neuenfeldt, second by Mr. Gotzler to approve the May 2, 2013 Council minutes without corrections. Motion carried unanimously.

3. Remarks from John Fandrich, DWD Executive Assistant

Ms. Knutson introduced John Fandrich, DWD's Executive Assistant. Mr. Fandrich has worked on a variety of management and labor issues in the private and public sector, and most recently served in the Department of Transportation as the Economic Development Director. Regulatory reforms and DWD play a critical role in the Governor's agenda to move the state's economy forward. Mr. Fandrich expressed his gratitude for the Council's thoughtfulness and expertise

which adds a tremendous value to the unemployment insurance (UI) system. Mr. Fandrich will be attending Council meetings on Secretary Newson's behalf and looks forward to working with the Council and moving UI program forward.

4. Council Discussion of Correspondence by Representative Tittl, May 10, 2013, Related to Eligibility of Certain Employees who are Affected by Labor Disputes for Unemployment Insurance Benefits.

Representative Tittl was introduced and asked the Council for feedback on Assembly Bill 229 that would permit an employee to receive UI benefits while a labor dispute is in active progress if the employee is otherwise eligible to receive benefits and the employee is not participating in the dispute.

This legislation was drafted in response to the strike at Manitowoc Crane in which approximately 150 employees and members of the boilermakers union were laid off in response to a work stoppage caused by the strike of the machinists union. Due to provisions of current law, the members of the boilermakers union, laid off as a result of the strike were ineligible for UI benefits.

Representative Tittl indicated that Governor Walker was in support of the legislation as it was introduced in the past and he will be meeting with Representative Knodl next week. Hearings on this legislation are expected to begin in late summer or fall, and overall, there has been bi-partisan support on the bill.

The current law has been in place since the 1930's and was designed to assure the neutrality of the state in employment disputes, and the concept that being unemployed and not receiving benefits would put pressure on the strikers to return to work. When the law was written, the majority of states within the nation had similar language within their laws. Wisconsin is only one of four states that have not amended its law to be consistent with the proposed legislation.

Labor members of the Council stated AB 229 would clarify the law and remove the stress on workers who are laid off as a result of a strike even though the union in which they were a member was not on strike. There have been instances in the past where a layoff has occurred and some employees received benefits, while others did not. Labor members stated they were in support of this legislation as it is clearly a worker issue and very humane bill.

Mr. Manley stated his organization has not supported this legislation in the past, and going forward will continue to oppose it for a variety of reasons. Although the proposal is well-intended and appreciated, from the employer's perspective paying workers involved in a labor dispute is objectionable. In situations where there is more than one bargaining unit or union on strike, being able to differentiate between who is on strike from one day to the next for the duration of the labor dispute is difficult. Mr. Manley offered to speak with Representative Tittl in greater length on this subject.

Mr. Gustafson asked the department for a one-page summary of cases that involved the striking of a union that resulted in layoffs, and the determination made on who did or did not receive

benefits. Ms. Knutson stated a summary will be put together and further discussions on this issue will be part of the next Council's meeting agenda.

5. Report on Unemployment Insurance Reserve Fund and LAB Audit Report

Mr. McHugh updated the Council on the Unemployment Insurance Trust Fund and the report conducted by the Legislative Audit Bureau (LAB) with respect to the unemployment reserve fund.

At the request of the department, LAB audited the financial statements of the Unemployment Reserve Fund, which accounts for the regular UI benefits paid to claimants that is funded through taxes paid by employers. The audit for the fiscal years ending on June 30, 2012 and June 30, 2011 did not require any adjustments to the financial statements. LAB did not identify any department errors that met the thresholds for proposing adjustments.

As of May 31, 2013, the financial statement showed tax receipts decreased by \$36.7 million (5%) from last year due to lower employer tax rates. Approximately 60 percent of tax receipts are received in the first quarter by employers. In 2010, 2011, and 2012 employer tax rates were higher due to benefit charges, which resulted in more money paid into the Trust Fund. There was a decrease in tax receipts even though the taxable wage base increased to \$14,000, taxable payroll increased 4.2% and more employers made payments within the first quarter of 2013.

Financial Statement highlights include:

- As of June 17, 2013, the Trust Fund Federal Loan balance decreased \$385.5 million from June 17, 2012 to a total of \$520.8 million.
- As of June 17, 2013, federal interest accrued totals \$15.6 million. The projected interest payment on September 30, 2013 is \$19 million, with interest assessed at 2.58% for 2013.
- Federal Unemployment Tax Act (FUTA) credit receipts applied to Wisconsin's loan balance equal \$93.8 million. This represents an increase from \$44.9 million in 2012.
- Tax receipts decreased by \$36.7 million or 5%, to \$694.8 million (excludes taxes as a result of the FUTA tax credit reduction).
- Regular UI benefits paid to claimants decreased \$36.5 million or 7.9%, to \$423.2 million.

6. Preview of DWD Misclassification Website.

Mr. Myszewski and Ms. King updated the Council on the department's misclassification website. This site will be beneficial to both employees and employers to assist in the determination if a worker is considered an employee or independent contractor.

The website links users to four separate sets of laws that relate to misclassification and cover Unemployment Insurance, Worker's Compensation, Labor Standards, and Civil Rights. Worker classification is important to employers because the correct classification determines whether the employer has legal obligations for UI, worker's compensation, wage payments, work hours, record keeping and civil rights protections.

Each link within the website contains a step-by-step test that aids in the determination process and provides employers with case law and real case examples to help them further evaluate whether workers should be classified as independent contractors or employees. The website is for assistance only in the determination process for the employer and the ultimate classification is subject to review and determination by the department.

An educational flier has been created which will be available to the public and distributed to employers. The website is set to be unveiled mid-July, at which time the Council will be sent a direct link.

7. Review of proposal from Wisconsin Association of Staffing Services.

At the last Council meeting, the department provided the Council an analysis and research on the Wisconsin Association of Staffing Services (“WASS”) correspondence related to lowering UI tax rates and increasing the taxable wage base. Discussion was tabled until today’s meeting.

The WASS proposal raises some significant system-wide financing issues within the UI system. Mr. Lump suggested that the Council explore a broader tax reform package given the passage of many legislative proposals that were supported and opposed by the Council. Ms. Knutson suggested establishing a work group with a few members of labor and management, and department staff to discuss the tax wage base and other issues surrounding Trust Fund financing and solvency.

Motion

Motion by Mr. Neuenfeldt, second by Mr. Manley to formulate a subcommittee to study the trust fund with Mr. Reihl representing the labor side and Mr. Manley representing the Management side. Motion carried unanimously.

8. Department update:

Ms. Knutson updated the Council on the following:

Work Share Program – On May 17, Governor Walker signed Wisconsin’s work-share bill. The law was then sent to the U.S. Department of Labor (DOL) on May 20th for approval, which is required by law. When the Middle Class Tax Relief Act was implemented, DOL has the authority to accept standard provisions in the short-term compensation law, and optional provisions; however, there are no rules or guidelines in place regarding optional provisions. DOL stated a potential issue exists regarding a non-standard provision in Wisconsin’s work-share law. The non-standard provision is that an affected unit of an employer may only participate in the program six months within a five year period. The department needs formal approval from DOL in order for employers in the state who participate in work-share to be reimbursed and to receive the grant money to implement and market the program. The work-share program is scheduled to be effective beginning June 30, 2013, but the department can request an extension from the Wisconsin Legislature Joint Finance Committee to delay implementation until the end of 2013.

Budget Bill Provisions – A summary analysis of the budget bill provisions was provided to the Council. Mr. Reihl requested information on other state laws as they relate to misconduct and substantial fault. The department will provide training to the adjudication staff and the Administrative Law Judges (“ALJs”) regarding the new misconduct and substantial fault standard. The Bureau of Legal Affairs conference is scheduled in October which all ALJs are required to attend, and training will be provided on the new UI law provisions.

Senate Bill 200 (SB 200) – Senate Bill 200 contains 22 proposed law changes that passed the legislature and is now awaiting the Governor’s signature. The majority of changes were agreed to by the Council and only minor changes were made from the original proposed legislative language. Technical changes from last legislative session and the department’s unemployment-to-employment (U2E) proposal which was approved by the Council, were included in SB 200.

9. Council Protocol and Procedures.

At the last meeting an issue arose regarding voting and procedures. In reviewing past Council minutes, department staff found two instances in the past 17 years in which a roll call vote was conducted at the Council meetings, and both were concluded to document the vote of a Council member that appeared by telephone. Wis. Stats. §. 19.88 allows the option of a roll call vote but proceeding forward the Council may want to consider circumstances under which the members may request a roll call vote.

10. Future Meetings and Agenda Items.

Council meetings are typically scheduled the third Thursday of each month. There is no expected legislative activity scheduled for July and August, and the Council requested that unless an issue arises, no meeting will be held until September. There are administrative rules that may need the Council’s input and approval, which could be held by telephone conference calls.

Motion

Motion by Mr. Gotzler, second by Mr. Neuenfeldt to hold the next regular Council meeting in September. Motion carried unanimously.

11. Other Business

An updated summary of the UI provisions that went into budget bill and SB 200 will be distributed to Council members within the next two weeks.

12. Adjourn

Moved by Mr. Neuenfeldt, second by Mr. Manley to adjourn at 11:42 a.m. Motion carried unanimously.