

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL MEETING
Thursday June 23, 2011 – 10:00 A.M.
Department of Workforce Development
Room D203
201 East Washington Avenue
Madison, Wisconsin

Individuals Present:

Management: James Buchen, Susan Haine, Edward Lump, Dan Petersen and Earl Gustafson

Labor: Phil Neuenfeldt, Dennis Penkalski, Patty Yunk and Anthony Rainey

Chair: Dan LaRocque

Department Staff: Craig Barkelar (UI Administrator), Andrea Reid, William Witter, Robert Junceau, Richard Jones, Georgia Maxwell, Tom McHugh, Ramon Natera, Shashank Partha, Pam James, Troy Sterr, Ben Peirce, Janet Sausen, Timara Budack, Lutfi Shahrani, Emily Savard, Jeanne Marcks, Angela Witt, Robin Gallagher

Others Present: State Senator Tim Cullen, Kelley Flury (Aide to Senator Cullen), Rob Kovach (Aide to Senator Frank Lasee), Attorney Steven Evan Gillis (New Franken Fire Department), Norbert Dantine, Jr. (Humboldt Town Chairman), Jonathan Hoechst (Department of Administration), Victor Forberger (Atty. WI UI Clinic), Michelle Rudman (Legislative Audit Bureau), Brian Dake (Wisconsin Independent Businesses), Rich Eggleston, Tracey Schwalbe (LIRC), Bob Andersen (Legal Action of Wisconsin), Ben Nerad (Wisconsin Council on Children and Families).

MINUTES

1. Call to Order and Introductions - Mr. LaRocque calls the meeting to order at 10:05 a.m. and acknowledges Senator Tim Cullen and Rob Kovach of the Office of State Senator Frank Lasee.

2. March 17, 2011 Minutes - Motion (Lump), second (Haine) to approve the minutes of March 17, 2011 minutes, with a correction suggested by Mr. Gustafson (at page 3, paragraph 4, second sentence; delete “is” and insert, “it”), approved 8 - 0 (Buchen not voting).

3. May 19, 2011 Minutes - Motion (Penkalski), second (Petersen) to approve the minutes of May 19, 2011, approved 8 - 0 (Buchen not voting).

4. Reserve Fund Financial Statements - Mr. McHugh refers to the UI Treasurer’s Report Balance Sheet (page 1). Not much has changed since April, when we last talked about the financial statements. The loan balance at the end of May was \$1.26 billion and as of June 22, 2011 the loan balance was a little over \$1.3 million. On Page 2, Receipts, Table 1, Item A, tax receipts year to date are up quite a bit from last year. Taxes credited to employer reserve accounts is \$461,975,124. The portion of the taxes for the solvency (balancing) account is \$203,922,087.

Table 1, page 3: total revenue is at \$665,897,212, up 31% or \$158, 458,004 compared to last year.

By the end of May we typically collect about 62% of what we can expect to receive in a year. If that holds true this year we expect to receive \$1.068 billion , a 25% increase over last year.

Page 2, receipts and disbursements, item B: federal program receipts this year \$431 million, last year \$775 million. Overpayment collections are at \$21 million this year compared with \$15 million last year. Federal Loan receipts \$565 million this year about the same as last year. Item H shows federal loan repayments are at \$701 million, so we have repaid more loans than we have taken. We project our 2011 year-end Trust Fund balance to be about the same as year-end 2010. Item E shows the charges to taxable employers are down from last year. Items F (EUC) and G (EB) show EUC is down significantly from the previous year. EB is up slightly. EB and EUC amounts are federally funded.

Mr. Gustafson asks if revenues have increased because the taxable wage base increased this year. Mr. McHugh explains it was raised in 2009 to \$12,000, and is increased in odd numbered years so it was increased again in 2011 to \$13000 and will increase in 2013 to \$14,000.

Mr. Gustafson asks about revenue increases. Mr. McHugh refers to Table 2 on page 3, which analyses 1st quarter tax reports for the years 2007 through 2011. In 2009 we had a significant decrease in gross wages, 7.4%, compared with the prior year. In 2010 gross wages decreased 4.3% while in 2011 we had a 6.5% increase. However, gross wages remained 3.9% lower in 1st quarter 2011 than in 1st quarter 2007. The taxable payroll shows an increase of 2% from 1st quarter 2007 to 1st quarter 2011. Page 4 Table 3: For 2010, total taxable payrolls are up 1.7% when comparing 2007 and 2010. Gross wages from 2007 through 2010 are down \$3.5 billion or 4.4% while taxable payroll is up 1.7%.

In response to question by Ms. Haine, Table 4 shows fraud overpayments established as a percentage of benefits paid was .62% for 2001-2003 and .77% for 2008-2010. Percentages for all overpayments for those time periods were 2.26% and 2.39%, respectively. Nonfraud overpayments were very similar, 1.64% and 1.61% respectively.

Mr. Buchen asks about estimated benefits, employer and non charge for 2011. Mr. McHugh indicates tax revenues will projected to about equal benefit expenditures for 2011. Mr. Neuenfeldt asks if the deficit will stay the same at year end 2011 as year end 2010. Mr. McHugh indicates that is correct, roughly \$1.3 billion or so. Mr. Gustafson asks about the reliability of the estimates. Mr. McHugh explains these are short term projections and if the economy stays the same we should break even this year and possibly end up little ahead next year.

5. New Franken Fire Department

Steven Gilles, attorney for the New Franken Fire Department and Norbert Dantine, Jr. the Humboldt Town Chairman and Secretary-Treasurer of the New Franken Fire Department address the Council. The New Franken Fire Department serves the towns of Humboldt, Scott and Green Bay.

Mr. LaRocque explains the NFFD and the department have exchanged correspondence. Consequently, issues related to employer contributions and charging (reimbursing) have been resolved. Remaining is a narrow benefits issue related to reduction of benefits for wages earned while claiming benefits. Under the statute, wages earned generally reduce benefits, but for services

performed as a “volunteer” firefighter are treated, in effect, as not earned and are not used to reduce benefits when a benefit claim is filed. There were two individuals working for NFFD whose benefits were reduced as a result of wages earned for services performed for NFFD. The department regarded those earnings as appropriate for reduction of benefits because it viewed the services as other than volunteer firefighting.

In recent years, the Council addressed the issue of wages paid for work as a volunteer firefighter, volunteer emergency medical technician and volunteer first responder. The department treats those wages differently than pay for services performed in other work, for example as fire chief. So, the issue is wages how do we separate the wages that are to be exempt from the benefit reduction from other wages.

Ms. Haine asks when these individuals are paid do they receive a W-2 or are they paid as independent contractors with 1099’s. Mr. Dantine indicates they receive a W-2 and are typically paid once a year for on-call services and they typically earn small amounts. Mr. Gilles adds that there are regular meetings and training requirements to be a firefighter and they are paid for that as well, up to 120 to 150 hours of training on their own time. Ms. Yunk asks whether it is correct that this is a question of what constitutes wages as a volunteer firefighter. Mr. LaRocque indicates that is essentially correct.

Mr. Gilles says the plain language of the statute refers to “any amount” earned as a volunteer firefighter. That statute does not say “firefighter” services but says “volunteer firefighters.” One of the things that are different for volunteer workers as compared to other workplaces is that there are workers to do certain tasks, such as filling in holes on a high school football field can only be filled in by workers that work for Buildings and Grounds. In volunteer work, Gilles says, everybody has to pitch in on everything.

Mr. Gilles points out that one of the problems is that in the department’s administration (Disputed Claims Manual) there is a distinction between volunteer services and other services provided. Mr. Gilles asks, is a firefighter just a person that holds the hose to put water on the fire a volunteer for purposes of the statute or is the person that checks the hose also a volunteer firefighter? Is the fire chief that manages those fighting the fire not a volunteer firefighter? He further explains that the fire company’s position is that the department’s interpretation is not consistent with the statute. Mr. Gilles and NFFD contend that parsing out the duties that are not fighting the fire is not consistent with the statute. Mr. Gilles would advocate that one who is volunteer firefighter is exempt for virtually all services performed for the fire company.

Mr. Buchen states that the statute reflects what the Council wanted and considered after lengthy discussion. The Council agreed that what we wanted was a statute that considered volunteers those that get nominal reimbursement and kept them out of the system, but continued to include in the system an individual who, for example, maintains the truck or answers the phone and works 20 hours a week. The Council wanted a law that made that distinction. That was our intent. If a statute or an administrative rule, which the Council reviews as well, is unclear, we are likely going to try to change it to make it clear. Mr. Gilles says this could be a legislative issue. Mr. Buchen points out that the Council recommends to the legislature any changes to the law and made its intent to distinguish the services. The Council decided not that the distinction was to separate out those who are clearly never firefighters, but rather that those firefighters that cross the line into employment should be covered and others that are just volunteering or on call should not. The volunteer

firefighter is not the guy that comes there from 6 until noon or midnight until 6 to have somebody at the station to man the phones or some other task. Those people we intended to be treated as employees and we will clarify that distinction if that is necessary.

Mr. LaRocque says the issue as a result of the discussion was that the department acknowledged that it needed to remove two sentences from the disputed claims manual and apportion services and allocate wages earned for fighting a fire. The department now considers how close the services were to the firefighting function. Not all services by one who happens to have been a volunteer firefighter are to be treated as “volunteer.” Mr. LaRocque points out that Mr. Gilles’s last proposal for re-writing the department’s Disputed Claims Manual suggests we should consider all the services in furtherance of the fire company be considered as though they were performed by a volunteer firefighter.

Mr. Gilles says the redraft he has submitted is an attempt to establish a clear enough nexus to define when amounts paid should be treated as wages. It is a question of how can we better instruct the claimants and those that administer the fire department what they are expected to report and when is there an exception. The second point of the draft, Mr. Gilles explains, addresses Mr. Buchen’s point. Mr. Gilles says the cost per capita for the NFFD is about six times less than the Green Bay City Fire Department, which should tell you it is a volunteer fire company. Under the Fair Labor Standards Act there is a bright line test set at 20% of the wages of a full time fire fighter.

Mr. Buchen asks how many of the folks that work for the department work more than 20 hours a week. None, Mr. Gilles says. Mr. Dantine says it is cumbersome for the state to oversee volunteer fire companies and an exemption would be easier for all of us. Mr. LaRocque explains the problem with a proposal for exemption based on that distinction or a numerical standard that is not yet in the statute is how to distinguish between the NFFD and the City of Madison Fire Department and where to draw the line. Mr. Neuenfeldt indicates it sounds like a work in progress.

Mr. Gilles explains that benefit reductions discourage volunteers.

Mr. LaRocque says the department will talk further with NFFD and explain the manual what the department expects Mr. Gilles’ client to report and then if Mr. Gilles decides there still is need for a law change it can be referred to the Council. The department will continue to work with NFFD on the issue and report back to the Council.

Mr. Dantine thanks the Council for the opportunity to talk about these issues.

6. Governor’s April 25 Letter Regarding Benefit Waiting Period; and 7. Amend Triggers for Extended Benefits

Items 6 and 7 have been on the agenda and were discussed previously. Mr. LaRocque points out that the department technical advice document describing the extended benefit trigger that was presented to the Council has been revised.

Ms. Yunk says the proposal for legislation to establish the extended benefit trigger came up in February when she made a motion that the Council move forward because this was positive for the citizens of this state. She also points out that the sentiment at that time expressed by Mr. Buchen

was that you were not ready to move forward. Ms. Yunk believes we are now ready to move forward; we have had a delay that may or may not have adversely affected people within the state; that this is a significant amount of money for people out of work; and that we should not tie up this proposal with other issues. We have had discussions about this without taking up the other issues. I think we should move this forward and put the other issues on the side until we have a more comprehensive proposal we can consider.

Mr. Buchen explains that it has now gotten quite complicated by virtue of the provisions that have been added to the budget and that the Council would like to talk among ourselves about all of it and then get back together shortly. Mr. LaRocque asks if there is an interest in closed session at this time.

Mr. Buchen points out that he along with Phil Neuenfeldt have sent a letter to the Governor (dated June 21, 2011 concerning the budget provisions) that is in the packet. Ms. Yunk says she thought that the letter was excellent and spoke to the integrity of the process. Mr. Neuenfeldt indicates that he and Mr. Buchen collegially talked about it. Ms. Yunk says we came out of it looking better. Mr. Buchen points out that the letter does not state that he and Mr. Neuenfeldt were (in taking the position in the letter) representing the Council.

Ms. Yunk makes a motion that the Council collectively supports the letter sent to the Governor by Mr. Buchen and Mr. Neuenfeldt and is part of the permanent record. Mr. Petersen indicates he seconds the motion.

Mr. Lump suggests that we table Ms. Yunk's motion until after closed session. Mr. Petersen points out that the letter deals more with the operation of the Council than the specific law (change) and that is an important fact; that if the Council is going to exist we have got to be the ones negotiating these things and making the suggestions and not have them pop up in various other bills in the legislature; that he supports the fact that Phil and James sent out the letter advising the legislature of the status of the Council in opposing this particular law change. Mr. Neuenfeldt indicates it is important that the Council support the letter and that the members of the Council also be comfortable expressing support for the letter; and will not object to temporarily tabling the motion. Mr. LaRocque indicates the motion will be tabled.

Motion (Yunk), second (Buchen) to meet in closed session pursuant to section 19.35 of the Wisconsin Statutes for the purposes of considering and discussing changes to Wisconsin's unemployment law in general, approved 9 - 0. At 10:55 a.m. the Council is meeting in closed session.

At 12:55 p.m. the Council reconvenes in open session. All nine members present earlier are present again.

Motion by Ms. Yunk, second (Buchen) that the Council concur with the letter dated June 21, 2011 sent by Mr. Buchen and Mr. Neuenfeldt to the Governor, approved 9 - 0.

Mr. Neuenfeldt indicates there was a motion made in February by Ms. Yunk. Ms. Yunk presents a motion to amend the law as necessary to amend the triggers for extended benefits as outlined in the department's technical advice document dated May 9, 2011. Mr. LaRocque explains that the May 9 version of the document contains a choice. On the one hand, the proposed extended benefits

trigger if enacted will cause extended benefits to continue until the week ending December 10, 2011 (as indicated on page 4 of the May 9 document, Amend Triggers for Extended Benefits - Analysis). As an alternative to that formulation as explained at top of page 5 of the document, the trigger would potentially continue past December 10, 2011 as long as there is 100% funding for extended benefits and as long as there is also federal authorization for the proposed trigger. It is possible the federal government could extend benefits, funding and the trigger into 2012. So, this alternate formulation allows the trigger to remain in place if the conditions are satisfied.

Mr. Rainey asks and Mr. LaRocque agrees that this puts in a three-year look-back trigger and it could still trigger off based on a decrease in the rate of unemployment. Mr. Neuenfeldt points out and Mr. Buchen agrees that this is a condition of the unemployment rate and not a decision point.

Mr. Neuenfeldt and Mr. Buchen suggest the motion include the second option, the automatic option is the better option.

Mr. Buchen explains there had been concern about employers indicating individuals were turning down offers of work. That is not something that is allowed under current law and so we were hoping the department would provide a phone number employers could call to report such activity. In addition, we recognize that things have changed during the course of this year and while we were looking at what seemed to be a pretty good upswing in the economy in February, it now appears to be faltering a bit. For that reason, we have decided that this proposal makes sense at this time. Ms. Reid indicates there is a phone line available and employers should contact the department when a claimant refuses work [1-800-247-1744].

Mr. Neuenfeldt points out there is a need for general education for employers, that there are conditions where a claimant can legally decline work, so this needs to be included as well in any education effort. Mr. Gustafson indicates it goes without saying that all of us are supportive of the system and the benefits it provides to the public but we want to make sure that the law is followed and that illegal action has consequences.

Motion (Yunk), second (Gustafson and Petersen) for adoption of the legislation outlined in the Amend the Triggers for Extended Benefits – Analysis dated May 9, 2011, with the second of the two alternatives, which is at page 5 of the document. Motion is approved 9 – 0.

Mr. Penkalski asks and Mr. LaRocque confirms that benefit payments will be retroactive to April 16, 2011 for those eligible since then. Mr. Lump asks and Mr. LaRocque confirms that this proposal requires state legislative action in order for the trigger to become effective.

8. Eligibility Penalty for Failed Drug Test; and 9. Correspondence

Mr. Gustafson asks for a brief written summary of the recently enacted law regarding drug test disqualification for unemployment. Mr. LaRocque calls attention to a memo dated June 9, 2011 and included in the packet in response to a motion before the Joint Finance Committee. Some things that seem to have been intended by the breadth of the motion are not permitted by federal law. As stated in the memo, the scope and effect of the proposal that was permitted by federal law was the concept of a job refusal when an unemployment benefit claimant either refuses or fails a drug test in connection with a job application or potential job offer. Under the proposal if someone applies for work and either refuses to take a drug test or tests positive for an illegal drug, that

person can be disqualified for benefits. Mr. Buchen points out that the proposal discourages individuals from looking for work. Mr. Neuenfeldt says there may be legal problems with the eligibility penalty.

10. Future Meetings

We have agreed to meet the third Thursday each month. Regarding the July 21, 2011 meeting, Mr. Buchen and Mr. Lump are not available that day. A July meeting will be scheduled later.

11. Other Business

Motion to adjourn (Buchen), second (Neuenfeldt), adopted 9 - 0. Meeting is adjourned at 1:15 p.m.