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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS WORKFORCE COMMISSION
AUSTIN, TEXAS

PUBLIC MEETING)
FOR THE TEXAS)
WORKFORCE COMMISSION)

COMMISSION MEETING

TUESDAY, JUNE 8, 2010

BE IT REMEMBERED THAT at approximately
9:00 a.m., Tuesday, the 8th day of June 2010, the
above-entitled matters came on for hearing at the
Texas Workforce Commission, TWC Building, 101 East
15th Street, Room 244, Austin, Texas, before TOM
PAUKEN, RONALD G. CONGLETON, and ANDRES ALCANTAR,
COMMISSIONERS, and PAUL N. JONES, GENERAL COUNSEL, of
the Texas Workforce Commission; and the following
proceedings were reported by Janis Simon, a Certified
Shorthand Reporter of:

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1 P R O C E E D I N G S

2 TUESDAY, JUNE 8, 2010

3 (9:00 a.m.)

4 AGENDA ITEM NO. 1

5 CHAIRMAN PAUKEN: Good morning. The
6 meeting will now be called to order, and I'll turn the
7 meeting over to Commissioner Alcantar to preside over
8 that portion of the meeting involving Agenda Items 2
9 through 5.

10 COMM. ALCANTAR: Thank you, Chairman
11 Pauken.

12 Good morning.

13 AGENDA ITEM NO. 2

14 Discussion, Consideration, and Possible
15 Action Regarding Whether to Assume Continuing
16 Jurisdiction on Unemployment Compensation Cases, Wage
17 Claim Cases, and/or Tax Liability Cases and
18 Reconsideration of Unemployment Compensation Cases,
19 Wage Claim Cases, and/or Tax Liability Cases, if Any

20 No discussion.

21 AGENDA ITEM NO. 3

22 Discussion, Consideration, and Possible
23 Action Regarding Tax Liability Cases Listed on the
24 Texas Workforce Commission Dockets 22 and 23

25 The Commission considered and took

1 action on all Tax Liability Cases listed on Dockets 22
2 and 23.

3 AGENDA ITEM NO. 4

4 Discussion, Consideration, and Possible
5 Action Regarding Higher Level Appeals in Wage Claim
6 Cases listed on the Texas Workforce Commission Dockets
7 22 and 23

8 The Commission considered and took
9 action on all Wage Claim Cases listed on Dockets 22
10 and 23.

11 AGENDA ITEM NO. 5

12 Discussion, Consideration, and Possible
13 Action Regarding Higher Level Appeals in Unemployment
14 Compensation Cases Listed on the Texas Workforce
15 Commission Dockets 22 and 23

16 The Commission considered and took action on
17 all Unemployment Compensation Cases listed on Dockets
18 22 and 23.

19 (The Commission paused, then continued
20 with the remainder of the agenda.)

21 AGENDA ITEM NO. 6

22 CHAIRMAN PAUKEN: Okay. Mr. Jones,
23 anything on No. 6?

24 MR. PAUL N. JONES: No, Mr. Chairman, no
25 public comment.

1 AGENDA ITEM NO. 7

2 CHAIRMAN PAUKEN: And I understand
3 there's nothing on No. 7.

4 AGENDA ITEM NO. 8

5 CHAIRMAN PAUKEN: No. 8, discussion,
6 consideration, and possible action regarding Board
7 Contract Year 2011 Local Workforce Development Board
8 Performance Measures and Targets, Adam Leonard.

9 MR. LEONARD: Good morning. Two weeks
10 ago at the public meeting you-all approved us going
11 forward with recommendations for Board Contract Year
12 2011 targets on the WIA Youth measures that we would
13 offer the boards the state targets and give them the
14 opportunity to request an alternate target if they
15 felt one was justified. We did not hear back from any
16 boards indicating that they wanted alternate targets,
17 and so I'm here today to present to you the
18 recommendation that we move forward for Board Contract
19 Year '11 with statewide targets on these three
20 measures for all boards. And I'm happy to answer any
21 questions you may have.

22 CHAIRMAN PAUKEN: Okay. Commissioner
23 Congleton.

24 COMM. CONGLETON: I have no questions,
25 and I move that we approve the Board Contract Year

1 2000 (sic) targets for WIA Youth measures as
2 recommended by staff.

3 COMM. ALCANTAR: And I would second.

4 CHAIRMAN PAUKEN: Okay. It's unanimous.

5 Oh, your -- can you turn that on?

6 COMM. CONGLETON: Oh, sorry.

7 CHAIRMAN PAUKEN: Okay.

8 AGENDA ITEM NO. 9

9 CHAIRMAN PAUKEN: No. 9, discussion,
10 consideration, and possible action regarding
11 publication for public comment of proposed amendments
12 to the Texas Payday Rules (40 TAC Chapter 821,
13 Subchapters A, B, and C), Jerry Ramos and Diane
14 Parker. It's obviously not Diane Parker.

15 (Laughter)

16 CHAIRMAN PAUKEN: Mr. Ramos.

17 MR. CARNES: We're glad you noticed.

18 (Laughter)

19 MR. CARNES: Good morning,
20 Commissioners; Douglas Carnes, Special Hearings. I'm
21 here with Jerry Ramos of the Labor Law Unit and are
22 here to present for your consideration rules regarding
23 the Texas Payday Law. And pursuant to our amended
24 rule review process, staff has reviewed the current
25 rules and is proposing the following amendments to

1 clarify definitions of government entities, severance
2 pay and fringe benefits under the Texas Payday Law;
3 specify that commissions and bonuses and treated the
4 same under the rules and clarify the treatment of wage
5 advances; conform to legislative changes in the Payday
6 Law by allowing wage claims to be filed by fax and
7 allowing valid filing of photocopies of wage claims;
8 provide for the authority to void a preliminary wage
9 determination order when an erroneously named
10 non-liable entity is ordered to pay wages; and to
11 clarify the procedure for claimants to withdraw wage
12 claims.

13 The proposed rules have been provided to
14 each of your offices and your staffs have been briefed
15 on the proposed amendments. At this time I'd like to
16 pass out a slight change.

17 COMM. CONGLETON: Is this the change
18 here?

19 MR. CARNES: Yes. This will replace
20 what's in your notebook for the options. We had a
21 very small wording change.

22 CHAIRMAN PAUKEN: Where are the changes,
23 Mr. Carnes, from what's in our book?

24 MR. CARNES: The change was essentially
25 removing the word "accrued" from the definition of

1 payable vacation pay. The thinking was that the word
2 "accrued" already indicated that something was due and
3 payable, and that's what we were trying to define
4 is -- between something that's due and payable. So,
5 it seemed like it was redundant or confusing. So,
6 wherever the word "accrued" appeared in those
7 definitions, it was just removed.

8 CHAIRMAN PAUKEN: Where?

9 MR. CARNES: For example, on Page 2,
10 Line 16 --

11 CHAIRMAN PAUKEN: Oh, okay, because I
12 saw "accrued" on Option 1 on Page 1, Line 11 --

13 MR. CARNES: Right. It was actually an
14 appropriate use of the word in the -- in the preamble
15 there.

16 CHAIRMAN PAUKEN: Okay. All right. But
17 it's taken out in 16 on "Fringe Benefits"?

18 MR. CARNES: Right. And essentially
19 we're trying to determine -- trying to define is when
20 is something accrued, meaning due to be paid.

21 COMM. CONGLETON: Accrued is due to be
22 paid. Vacation is normally accrued.

23 MR. CARNES: Right.

24 COMM. CONGLETON: But you're taking
25 "accrued" out, and you're going to replace that with

1 nothing?

2 MR. CARNES: Right, because the options
3 that we're voting on are going to define what the
4 Commission sees to be as accrued and payable.

5 COMM. CONGLETON: The employer's policy
6 will dictate whether they say vacation is payable or
7 not payable upon discharge or separation?

8 MR. CARNES: Right. The two options
9 that we're providing are specifically on that point.
10 The two options regard the treatment of vacation pay
11 at separation from employment, and this is as
12 requested at the time we presented the policy concept.

13 Option 1 provides that the accumulated
14 vacation time is not payable at separation, unless the
15 employer's written agreement or policy specifically
16 provides for payment at separation, and that is the
17 current situation, the status quo. Option 2 would
18 reverse that presumption and provide that vacation
19 time would be payable at separation from employment,
20 except where the employer's written agreement or
21 policy specifically says it's not payable at
22 separation.

23 CHAIRMAN PAUKEN: So, Option 1 reflects
24 the current policy?

25 MR. CARNES: Right. And this only

1 applies to vacation pay, not to sick pay. We're
2 leaving that as the status quo, is our -- is our
3 proposal.

4 CHAIRMAN PAUKEN: Okay.

5 MR. CARNES: So, at this time we would
6 be glad to answer any questions that you have with
7 regard to the two options.

8 CHAIRMAN PAUKEN: Well, I'm -- I'm
9 pretty clear on my view. I favor Option 1. So, I
10 don't have any questions.

11 Commissioner Alcantar.

12 COMM. ALCANTAR: I like Option 1.

13 COMM. CONGLETON: Well, I like Option 2.
14 I won't vote for Option 1, because that gives a -- the
15 employer the option of just saying, "I'm not going to
16 pay you any vacation," even though the -- the vacation
17 is earned. That's ridiculous --

18 CHAIRMAN PAUKEN: Well --

19 COMM. CONGLETON: -- and just another
20 nail in the coffin.

21 CHAIRMAN PAUKEN: Yeah, but it's a --
22 it's the current policy. As long as there's a written
23 agreement, I mean, a written policy --

24 COMM. CONGLETON: If there's a written
25 policy, then Option 2 should be sufficient. If the

1 policy doesn't say you don't get it --

2 CHAIRMAN PAUKEN: No, if you -- if
3 you -- if -- you're -- you're -- you're putting a
4 presumptuous -- a presumption -- and I understand your
5 position against the employer in this case. I -- I
6 think we just ought to stay with what we have
7 currently.

8 So, I would entertain a motion from
9 Commissioner Alcantar.

10 COMM. ALCANTAR: I move that we have
11 staff -- what are we -- what are we giving you
12 authority to do? To publish these --

13 (Simultaneous discussion)

14 MR. CARNES: -- just on the options,
15 which -- which option do you -- would you approve.

16 COMM. ALCANTAR: Okay. Move that we go
17 with Option 1 --

18 CHAIRMAN PAUKEN: And I'll --

19 COMM. ALCANTAR: -- the staff
20 recommendation option.

21 CHAIRMAN PAUKEN: -- second that and
22 support that.

23 And note for the record that Commissioner
24 Congleton dissents and supports Option 2.

25 MR. CARNES: Thank you. And then did

1 you have any questions about the rest of the proposed
2 rules at this time?

3 COMM. ALCANTAR: I have no questions.

4 CHAIRMAN PAUKEN: No questions.

5 COMM. CONGLETON: No questions.

6 MR. CARNES: Then, at this time, we
7 would ask for Commission approval for these proposed
8 rules to be published in the Texas Register.

9 CHAIRMAN PAUKEN: Okay. Is there a
10 motion, Commissioner Alcantar?

11 COMM. ALCANTAR: I move that we have
12 staff post these for -- the proposed rules on Texas
13 Payday for publication.

14 CHAIRMAN PAUKEN: And I second.

15 COMM. CONGLETON: And Commissioner
16 Congleton maintains his dissent?

17 COMM. CONGLETON: Correct.

18 CHAIRMAN PAUKEN: Okay.

19 All right. Thank you.

20 MR. CARNES: Thank y'all very much.

21 AGENDA ITEM NO. 10

22 CHAIRMAN PAUKEN: Okay. No. 10,
23 discussion, consideration, and possible action
24 regarding Apprenticeship Training Program funding for
25 Fiscal Year 2011, Clint Winters.

1 MR. WINTERS: Good morning,

2 Mr. Chairman, Commissioners --

3 CHAIRMAN PAUKEN: Is your mike on?

4 MR. WINTERS: Good morning,

5 Mr. Chairman, Commissioners. For the record, my name

6 is Clint Winters. I work in Workforce Business

7 Services.

8 The Texas Education Code requires that the

9 Workforce Commission adopt forms, formulas, and

10 administrative procedures for distributing available

11 funds to apprenticeship training programs. TWC's

12 Apprenticeship Training Program rules require TWC to

13 provide, after getting recommendations from The

14 Workforce Investment Council, public notice of the

15 amount of funds that will be available to support

16 apprenticeship training programs.

17 In March 2010, TWIC made the following three

18 recommendations to the Workforce Commission regarding

19 Fiscal Year '11 funding for apprenticeship training:

20 First, a contact-hour rate not to exceed \$4; second, a

21 5 percent reserve fund for new programs or established

22 programs not currently receiving funds; third, a

23 \$25,000 reserve fund for apprenticeship instructor

24 training.

25 There's good news about apprenticeship. In

1 Fiscal Year '10 TWC exceeded the Legislative Budget
2 Board Apprenticeship Training Performance Measure of
3 3600 individuals served. The final contact-hour rate
4 for '10 is three dollars 64.3 cents (sic), an increase
5 of 80 cents over the Fiscal Year '09 rate. This
6 significant increase can be attributed to T -- TWC's
7 addition of Workforce Investment Act funds.

8 Currently, there's one -- \$1,581,140
9 available under Texas Education Code, Chapter 133 for
10 Apprenticeship Training Programs. Previously, in
11 February 2009, you approved \$2 million in WIA funds
12 for the '10/'11 biennium, a million dollars each year,
13 which makes \$2,581,140 in total funds available for
14 apprenticeship training programs in the coming year,
15 Fiscal '11.

16 Staff makes the following four
17 recommendations: First, a planning estimate of
18 \$2,581,140 in apprenticeship funds for Fiscal '11,
19 contingent on your adoption of the Fiscal Year '11
20 operating budget; second, a contact-hour rate for
21 Fiscal '11 not to exceed \$4; third, a 5 percent
22 reserve of planning estimate funds for new or
23 established apprenticeship -- for new or established
24 apprenticeship programs that did not receive funds
25 previously; fourth, a \$25,000 reserve for

1 apprenticeship instructor training, again, contingent
2 on your adoption of the Fiscal Year '11 budget.

3 CHAIRMAN PAUKEN: Commissioner
4 Congleton.

5 COMM. CONGLETON: Clint, that is good
6 news, and I appreciate the ways you guys have helped
7 Apprenticeship over there. And you've done a really
8 good job.

9 MR. WINTERS: Thank you. Desi Holmes is
10 doing the hard work.

11 COMM. CONGLETON: All of you are doing a
12 lot of good work over there.

13 And I move that we adopt the planning
14 estimate of \$2,581,140 for apprenticeship funds for
15 Fiscal Year 2011, a contact-hour rate not to exceed
16 \$4, a -- a reserve of 5 percent for new -- new or
17 currently unfunded programs, and a \$25,000 reserve for
18 apprenticeship instructor training, contingent upon
19 adoption of the Fiscal Year 2011 operating budget as
20 discussed.

21 COMM. ALCANTAR: And I would second.

22 CHAIRMAN PAUKEN: It's unanimous.

23 Thank you for a good report, Clint.

24 MR. WINTERS: Thank you, Commissioners.

25

1 AGENDA ITEM NO. 11

2 CHAIRMAN PAUKEN: All right. Let's see.
3 Item 11, discussion, consideration, and possible
4 action regarding approval of Local Workforce
5 Development Board nominees, Mr. Fuller.

6 MR. FULLER: Good morning, Chairman
7 Pauken, Commissioner Congleton, Commissioner Alcantar.
8 Today before you we have nominations from East Texas
9 and Upper Rio Grande Workforce Development Boards for
10 your consideration.

11 CHAIRMAN PAUKEN: I'm comfortable with
12 both of the nominees. Is there any discussion, or is
13 there a motion?

14 COMM. CONGLETON: No discussion. I move
15 that we approve the nominees from East Texas and Upper
16 Rio Grande Valley.

17 COMM. ALCANTAR: I would second.

18 CHAIRMAN PAUKEN: It's unanimous.

19 MR. FULLER: Thank you, sir.

20 CHAIRMAN PAUKEN: Thank you, Mr. Fuller.

21 AGENDA ITEM NO. 12

22 CHAIRMAN PAUKEN: There's no report from
23 Mr. McCarty's office this day.

24 AGENDA ITEM NO. 13

25 CHAIRMAN PAUKEN: So, we'll go to 13.

1 Is there a report from the Executive Director's
2 office?

3 MR. PAUL N. JONES: Good morning,
4 Mr. Chairman and Commissioners. We do have one staff
5 report. For the record, Paul Jones, General Counsel.

6 We do have one staff report. Mr. Jerry
7 Ramos will be here to talk about the status of the
8 Labor Law's backlog of wage claims.

9 CHAIRMAN PAUKEN: Okay. Mr. Ramos.

10 MR. RAMOS: Good morning, Commissioners.
11 As you may have already heard, the Labor Law
12 Department has successfully worked down the backlog,
13 and I wanted to take this opportunity to thank your
14 offices for your support with overtime and the
15 additional staff. In addition, I want to thank
16 Commissioner Congleton for his -- and his office for
17 their recommendations for staffing and career ladder
18 promotions.

19 Just to put the backlog into perspective, in
20 February 2009 we had approximately 5700 cases awaiting
21 investigation, of which 3800 were considered backlog
22 cases, and it was taking us approximately 223 days to
23 work a case. As of June 1st, 2010 we have 1340 cases
24 awaiting investigation; we have no backlog, and it is
25 taking us approximately 103 days to work a case.

1 As we move forward, our objectives will be
2 to continue on focusing on decreasing the average
3 number of days to work a case, continue to review our
4 processes to ensure the programs efficiency and
5 effectiveness, continue to maintain optimum staffing
6 levels with opportunities for advancement, continue to
7 develop investigator skill sets through training, and
8 work on developing a wage claim categorization process
9 for claim assignments. This has been a long journey
10 for everyone. And, again, I wanted to thank your
11 offices for your support and your patients as we
12 tackled the backlog and as we move forward in
13 establishing processes to ensure that backlogs don't
14 occur in the future.

15 CHAIRMAN PAUKEN: Okay. Thank you for
16 your good work. I know that was an issue that
17 concerned all the of Commissioners, and you're to be
18 applauded and your staff applauded for all the good
19 work in getting caught up.

20 MR. RAMOS: Thank you, sir.

21 COMM. CONGLETON: Keep up the good work,
22 Jerry.

23 MR. PAUL N. JONES: Mr. Chairman, with
24 that, that's all we have this morning.

25

1 AGENDA ITEM NO. 14

2 CHAIRMAN PAUKEN: Okay. We do -- are
3 going into Executive Session pursuant to Government
4 Code 551.071(1) to discuss contemplated litigation or
5 pending litigation of the following case: City of
6 West U versus Texas Workforce Commission and Rosemarie
7 Valdes.

8 (Executive Session: 10:03 a.m. to
9 10:04 a.m.)

10 CHAIRMAN PAUKEN: Okay. We're back in
11 regular session. Is there a motion?

12 COMM. ALCANTAR: Yes. In the case of
13 the City of West University versus TWC and Valdez, I
14 move that the Commission direct the Office of the AG
15 not to appeal the judgment of the court.

16 CHAIRMAN PAUKEN: I would second that
17 and agree.

18 COMM. CONGLETON: And I agree as well.

19 CHAIRMAN PAUKEN: All right. It's
20 unanimous.

21 AGENDA ITEM NO. 16

22 CHAIRMAN PAUKEN: Is there a motion to
23 adjourn?

24 COMM. ALCANTAR: So made.

25 COMM. CONGLETON: So made.

1 CHAIRMAN PAUKEN: Okay. Second. It's
2 unanimous.

3 (Meeting adjourned: 10:04 a.m.)

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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF TRAVIS)

I, Janis Simon, Certified Shorthand Reporter
in and for the State of Texas, do hereby certify that
the above-mentioned matter occurred as hereinbefore
set out.

I FURTHER CERTIFY THAT the proceedings of
such were reported by me or under my supervision,
later reduced to typewritten form under my supervision
and control and that the foregoing pages are a full,
true, and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 15th day of June 2010.

JANIS SIMON
Certified Shorthand Reporter
CSR No. 7076 - Expires 12/31/11

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