

1 TRANSCRIPT OF PROCEEDINGS
2 BEFORE THE
3 TEXAS WORKFORCE COMMISSION
4 AUSTIN, TEXAS

4 PUBLIC MEETING)
5 FOR THE TEXAS)
6 WORKFORCE COMMISSION)

6
7 COMMISSION MEETING

8 TUESDAY, AUGUST 3, 2010

9
10 BE IT REMEMBERED THAT at approximately
11 9:00 a.m., Tuesday, the 3rd day of August 2010, the
12 above-entitled matters came on for hearing at the
13 Texas Workforce Commission, TWC Building, 101 East
14 15th Street, Room 244, Austin, Texas, before TOM
15 PAUKEN, RONALD G. CONGLETON, and ANDRES ALCANTAR,
16 COMMISSIONERS, and LARRY TEMPLE, EXECUTIVE DIRECTOR,
17 of the Texas Workforce Commission; and the following
18 proceedings were reported by Janis Simon, a Certified
19 Shorthand Reporter of:

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

2 TUESDAY, AUGUST 3, 2010

3 (9:00 a.m.)

4 AGENDA ITEM NO. 1

5 CHAIRMAN PAUKEN: All right. The
6 meeting will now be called to order, and I'll turn the
7 meeting over to Commissioner Alcantar to preside over
8 Agendas Items 2 through 5.

9 COMM. ALCANTAR: Thank you, Chairman.
10 Good morning.

11 AGENDA ITEM NO. 2

12 Discussion, Consideration, and Possible
13 Action Regarding Whether to Assume Continuing
14 Jurisdiction on Unemployment Compensation Cases, Wage
15 Claim Cases, and/or Tax Liability Cases and
16 Reconsideration of Unemployment Compensation Cases,
17 Wage Claim Cases, and/or Tax Liability Cases, if Any
18 No discussion.

19 AGENDA ITEM NO. 3

20 Discussion, Consideration, and Possible
21 Action Regarding Tax Liability Cases Listed on the
22 Texas Workforce Commission Docket 31

23 The Commission considered and took
24 action on all Tax Liability Cases listed on Docket 31.

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1 AGENDA ITEM NO. 4

2 Discussion, Consideration, and Possible
3 Action Regarding Higher Level Appeals in Wage Claim
4 Cases listed on the Texas Workforce Commission
5 Docket 31

6 The Commission considered and took
7 action on all Wage Claim Cases listed on Docket 31.

8 AGENDA ITEM NO. 5

9 Discussion, Consideration, and Possible
10 Action Regarding Higher Level Appeals in Unemployment
11 Compensation Cases Listed on the Texas Workforce
12 Commission Docket 31.

13 The Commission considered and took action on
14 all Unemployment Compensation Cases listed on Docket
15 31.

16 (The Commission paused, then continued
17 with the remainder of the agenda.)

18 AGENDA ITEM NO. 6

19 CHAIRMAN PAUKEN: Mr. Jones, any public
20 comment?

21 MR. PAUL N. JONES: No public comment,
22 Mr. Chairman.

23 CHAIRMAN PAUKEN: All right.

24 AGENDA ITEM NO. 7

25 CHAIRMAN PAUKEN: No. 7, discussion,

1 consideration, and possible action regarding the
2 acceptance of pledges for Fiscal Year 2011 Child Care
3 Matching Funds.

4 MS. MILLER: (Shaking head)

5 CHAIRMAN PAUKEN: Nothing on that,
6 Ms. Miller? Okay.

7 AGENDA ITEM NO. 8

8 CHAIRMAN PAUKEN: Okay. No. 8,
9 discussion, consideration, and possible action
10 regarding Federal Fiscal Year 2011 Supplemental
11 Nutrition Assistance Program Employment and Training
12 State Plan for submission to the U.S. Department of
13 Labor, Reagan Miller.

14 MS. MILLER: Good morning, Chairman,
15 Commissioners; Reagan Miller with Workforce
16 Development.

17 This morning we are bringing forward for
18 your approval the SNAP E&T State Plan for Fiscal Year
19 2011. There are no significant policy changes from
20 the previous year's state plan. I want to note that
21 Texas continues to be a pledged state. We continue a
22 commitment to serve all ABAWDs with a qualifying work
23 activity, unless they're in a county that's waived for
24 high unemployment.

25 And as a pledged state, we will receive

1 additional federal funds. We usually receive those in
2 late November or early December. As a reminder this
3 year, we receive close to \$7 million for this
4 commitment. With that, we're asking for your approval
5 with the ability to make any technical, nonsubstantive
6 corrections to the plan and submit it to the U.S.
7 Department of Agriculture.

8 CHAIRMAN PAUKEN: Okay. Commissioner
9 Congleton.

10 COMM. CONGLETON: No questions, and I
11 move we approve the Supplemental Nutrition Assistance
12 Program Employment and Training State Plan for Fiscal
13 Year 2011 for submission to the U.S. Department of
14 Agriculture.

15 COMM. ALCANTAR: I would agree.

16 CHAIRMAN PAUKEN: Okay. It's unanimous.

17 MS. MILLER: Thank you.

18 CHAIRMAN PAUKEN: Thank you, Ms. Miller.

19 AGENDA ITEM NO. 9

20 CHAIRMAN PAUKEN: Issue 9, discussion,
21 consideration, and possible action regarding adoption
22 of Emergency Rules relating to the coordination of
23 Emergency Unemployment Compensation with Regular
24 Compensation, 40 TAC Chapter 815, Subchapter B,
25 Mr. Riley. I'm glad we've got somebody here who

1 understands it. This is so complicated. I'm having a
2 real hard time getting my arms around some of the
3 issues involved here, but please proceed ahead.

4 MR. RILEY: Good morning, Mr. Chairman,
5 Commissioners. I'm Steve Riley with the UI Division.

6 For your consideration this morning, staff
7 is presenting an emergency amendment to TWC Rules
8 Chapter 815 Unemployment Insurance. This Emergency
9 Rule is required by the Federal Unemployment
10 Compensation Extension Act of 2010, Public Law
11 111-205. Public Law 111-205 passed by Congress and
12 signed into law on July the 22nd, 2010 does the
13 following four things:

14 First, it extends the eligibility for
15 Emergency Unemployment Compensation until November 27,
16 2010 and phases out payment of benefits under EUC
17 through the benefit week ending April 30th, 2011.

18 Secondly, it ends the eligibility for the
19 \$25 per day federal additional compensation for claims
20 dated May 23rd, 2010 or earlier and phases out payment
21 of the additional compensation through the benefit
22 week ending December 22nd, 2010.

23 Third, it extends the hundred percent
24 federal funded -- funding of state extended benefits,
25 the benefit week ending December 4, 2010; and, fourth,

1 includes a provision requiring states to coordinate
2 the order of payment of EUC and regular benefits if
3 the claimant qualifies for a new benefit year after
4 July 22nd, 2010 and the new weekly benefit amount is
5 \$100 or 25 percent less than the weekly benefit amount
6 of the prior benefit year.

7 DOL has termed this provision the Benefit
8 Year Fix. As of Friday, we have identified 38
9 claimants who have qualified for this Benefit Year
10 Fix. Their EUC average weekly benefit amount is \$280,
11 and their average weekly benefit amount under a new
12 regular claim would be \$154, a benefit reduction of
13 approximately 45 percent.

14 Under the law, states have four options to
15 implement this coordination:

16 Option A allows a state to establish a new
17 benefit year for the -- for the claim but the first
18 payment of regular state benefits under that benefit
19 year until the claimant has exhausted his or her EUC
20 entitlement.

21 Option B allows a state to establish to
22 defer establishing a new benefit year but locks the
23 base period wages to the point the claimant became --
24 became eligible for the new benefit year. TWC's
25 Office of General Counsel has advised that Option B

1 would not be permitted under our state law.

2 Option C allows a state to establish a new
3 benefit year and begin payment of regular state
4 unemployment compensation at the lower weekly benefit
5 amount. At the same time the state would continue
6 paying the claimant EUC benefits, an amount sufficient
7 to bring the newly weekly benefit amount up to the old
8 weekly benefit amount.

9 Option D provides that the claimant chooses
10 whether he or she would continue on EUC at the higher
11 weekly benefit amount or start receiving regular state
12 benefits.

13 Staff evaluated the options to determine
14 whether they were consistent with our state law, to
15 what extent they benefit or harm the claimant and the
16 state's UI Trust Fund and the agency's ability to
17 implement. As I mentioned earlier, Option B would not
18 allow -- would not be allowed under our state law.

19 Option C would immediately draw benefits
20 from the Trust Fund. It would require TWC
21 simultaneously to pay two claims. It would be
22 extremely time consuming and expensive to modify the
23 benefits system, and it would be a difficult process
24 to explain to claimants.

25 That left Option A and D as a viable

1 alternative that could be implemented quickly. Option
2 D requires a claimant to make choices about future
3 eligibility for regular benefits based upon their --
4 their understanding of base period wages and whether
5 those wage credits would still be available to them
6 longer -- the longer they remain on EUC. For example,
7 if a claimant opts to continue on EUC, he or she may
8 lose their entitlement to regular state benefits if
9 they delay filing a regular claim and that delay
10 results in insufficient base period wages to qualify
11 for state benefits.

12 Regarding Trust Fund impact, if a claimant
13 chooses to draw benefits from a new regular claim
14 rather than remain on EUC, there would be an immediate
15 impact to the Trust Fund. Conversely, if a claimant
16 remains on EUC and their benefit wage credits change
17 as new base period wage -- wages are established, the
18 claimant could be eligible for a lower benefit amount
19 or even find themselves no longer eligible for regular
20 benefits at all.

21 Option A ensures that the claimant continues
22 to receive his or her EUC weekly benefit amount while
23 still preserving their entitlement to regular
24 benefits. Regular benefits drawn from the Trust Fund
25 would always be deferred until the claimant had

1 exhausted entitlement to EUC or until April 30th, 2011
2 when EUC is currently projected to end.

3 Taking all of the factors together --
4 claimant impact, Trust Fund outlays, and the agency's
5 ability to implement a solution -- staff believes that
6 Option A is the best policy alternative available to
7 the Commission. Staff recommends that the Commission
8 adopt this Emergency Rule, allow the agency to move
9 forward and address these situations as soon as
10 possible. Because this program will be in place for
11 as long as we are paying EUC, staff will return
12 quickly with a regular rule for your consideration.

13 That concludes my presentation. I'll be
14 happy to answer any questions.

15 CHAIRMAN PAUKEN: Commissioner Alcantar.

16 COMM. ALCANTAR: I have no questions.

17 CHAIRMAN PAUKEN: Commissioner
18 Congleton.

19 COMM. CONGLETON: I have no questions,
20 and I think Option A is the way to go. It's better
21 for -- and less confusing for claimants. It would
22 have less impact on the Trust Fund. It would avoid
23 appeals and complaints from claimants unhappy about
24 their choice, and I would like to thank all of you and
25 your people for the work you put in on this.

1 I believe that Option A is the way to go,
2 and I move that by emergency rulemaking we adopt a new
3 Section 815.29 for Unemployment Insurance Rules in
4 order to coordinate the payment of Emergency
5 Unemployment Compensation with regular benefits as
6 discussed.

7 COMM. ALCANTAR: Yeah, I would second.

8 CHAIRMAN PAUKEN: It's unanimous. Thank
9 you, Mr. Riley, for your good work. It is a very
10 complicated area, and I second Commissioner
11 Congleton's comments.

12 MR. RILEY: Thank you very much.

13 COMM. ALCANTAR: Thank you, Steve.

14 AGENDA ITEM NO. 10

15 CHAIRMAN PAUKEN: Okay. No. 10,
16 discussion, consideration, and possible action
17 regarding approval of Local Workforce Development
18 Board Nominees, Mr. Fuller.

19 MR. FULLER: Good morning, Chairman
20 Pauken, Commissioners, Mr. Temple. Before you today
21 we have nominees from Southeast Texas, Cameron County,
22 Coastal Bend, and Tarrant County.

23 CHAIRMAN PAUKEN: I had previously
24 had -- had some concerns and wanted some things
25 checked out on one of the nominees, but I'm

1 comfortable with all of the nominees myself.

2 Commissioner Congleton.

3 COMM. CONGLETON: I'm comfortable, and
4 if you are comfortable --

5 COMM. ALCANTAR: (Nodding)

6 COMM. CONGLETON: -- I'll move that we
7 approve the board nominees for Southeast Texas,
8 Cameron County, Coastal Bend, and Tarrant County as
9 presented.

10 COMM. ALCANTAR: Yeah, I would second.

11 CHAIRMAN PAUKEN: Okay. It's unanimous.
12 Thank you, Mr. Fuller.

13 MR. FULLER: Thank you.

14 AGENDA ITEM NO. 11

15 CHAIRMAN PAUKEN: Discussion,
16 consideration, and possible action regarding enacted,
17 proposed or considered federal regulations, executive
18 orders or federal or state enacted or proposed
19 legislation. Courtney, I think you're going to take
20 this instead of Mr. McCarty today. All right.

21 MS. YANTIS: Good morning,
22 Commissioners; Courtney Yantis, Governmental
23 Relations.

24 Last week the Senate Appropriations
25 Committee approved Fiscal Year 2011 Appropriations for

1 the Department of Labor, Health and Human Services and
2 Education. The legislation would provide 169.6
3 billion in discretionary funding, a 4 percent increase
4 from the previous fiscal year.

5 Some highlights from the bill that was
6 passed out of committee are as follows:

7 Training and Employment Service, the
8 proposed FY '11 funding is 3.1 billion compared to 2.9
9 billion in FY '10. Included in the 3.1 billion is 185
10 million available to states under the Workforce
11 Innovation Fund.

12 WIA Adult Employment and Training, proposed
13 FY '11 funding of 896.8 million compared to 861.5
14 million in FY '10.

15 For Youth Training, the proposed FY '11
16 budget is 995 million compared to 924 million in FY
17 '10.

18 Dislocated Worker Assistance proposed FY '11
19 funding of 1.24 billion compared to 1.18 billion in FY
20 '10.

21 Dislocated Worker Assistance National
22 Reserve or NEG, 229.1 million made available to the
23 Secretary of Labor for responding to mass layoffs and
24 plant closures, military base closings and natural
25 disasters. It's the same funding level as FY '10.

1 Unemployment Insurance State Operations,
2 proposed funding for FY '11 3.57 billion for state
3 grants, which include 65 million to conduct in-person
4 reemployment and eligibility assessments and
5 Unemployment Insurance and proper payment reviews.

6 Employment Service, proposed FY '11 funding
7 of 703.5 million. It's comparable to FY '10.

8 One-Stop Career Centers and Labor Market
9 Information, proposed FY '11 funding of 68.7 million
10 compared to 63.7 million in FY '10.

11 The House has not filed their version of
12 the -- of this bill at this time. We will be happy to
13 keep you posted. The -- the House and Senate return
14 from the August recess on September 13th. The House
15 recessed in July, and the Senate will recess this
16 Friday, August 6th. I'm available to answer any of
17 your questions.

18 CHAIRMAN PAUKEN: Commission Alcantar.

19 COMM. ALCANTAR: I have no questions.

20 CHAIRMAN PAUKEN: Commissioner
21 Congleton.

22 COMM. CONGLETON: No questions.

23 CHAIRMAN PAUKEN: Thank you, Courtney.

24 MS. YANTIS: Thank you.

25

1 AGENDA ITEM NO. 12

2 CHAIRMAN PAUKEN: Okay. No. 12, do you
3 have anything --

4 MR. TEMPLE: Nothing --

5 CHAIRMAN PAUKEN: -- Mr. Temple?

6 MR. TEMPLE: -- nothing, Commissioners.

7 CHAIRMAN PAUKEN: Okay.

8 AGENDA ITEM NO. 13

9 CHAIRMAN PAUKEN: We're going to go into
10 Executive Session pursuant to Government Code
11 551.071(1) concerning contemplated litigation or the
12 pending litigation of the following case: Diane Ward
13 versus Texas Workforce Commission and Communication
14 Distributors, Inc.

15 (Executive Session: 9:51 a.m. to
16 9:56 a.m.)

17 CHAIRMAN PAUKEN: All right. We're
18 back -- we're back now in open session.

19 Is there any discussion or motion?

20 COMM. CONGLETON: I move that the
21 Commission not appeal the Court's decision in the case
22 of Ward versus TWC and Communication Distributors.

23 CHAIRMAN PAUKEN: Okay.

24 COMM. ALCANTAR: I would second.

25 CHAIRMAN PAUKEN: It's unanimous.

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AGENDA ITEM NO. 15

CHAIRMAN PAUKEN: Is there a motion to

adjourn?

COMM. CONGLETON: So made.

COMM. ALCANTAR: Agree.

(Meeting adjourned: 9:57 a.m.)

1 C E R T I F I C A T E

2 STATE OF TEXAS)
3 COUNTY OF TRAVIS)

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5 I, Janis Simon, Certified Shorthand Reporter
6 in and for the State of Texas, do hereby certify that
7 the above-mentioned matter occurred as hereinbefore
8 set out.9 I FURTHER CERTIFY THAT the proceedings of
10 such were reported by me or under my supervision,
11 later reduced to typewritten form under my supervision
12 and control and that the foregoing pages are a full,
13 true, and correct transcription of the original notes.14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this 9th day of August 2010.

16

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18

19

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