

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
TEXAS WORKFORCE COMMISSION  
AUSTIN, TEXAS

PUBLIC MEETING            )  
FOR THE TEXAS            )  
WORKFORCE COMMISSION)

COMMISSION MEETING

TUESDAY, FEBRUARY 20, 2007

BE IT REMEMBERED THAT at approximately  
1:00 p.m., Tuesday, the 20th day of February 2007, the  
above-entitled matters came on for hearing at the  
Texas Workforce Commission, TWC Building, 101 East  
15th Street, Room 244, Austin, Texas, before DIANE  
RATH, RON LEHMAN and RONALD G. CONGLETON,  
COMMISSIONERS, and LARRY TEMPLE, EXECUTIVE DIRECTOR,  
of the Texas Workforce Commission; and the following  
proceedings were reported by Janis Simon, a Certified  
Shorthand Reporter of:

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P R O C E E D I N G S

TUESDAY, FEBRUARY 20, 2007

(1:00 p.m.)

AGENDA ITEM NO. 1

CHAIR RATH: Okay. We'll go ahead and come to order, and I think there's one resubmit that you're walking through?

AGENDA ITEM NO. 2

Discussion, Consideration and Possible Action Regarding Whether to Assume Continuing Jurisdiction on Unemployment Compensation Cases, Wage Claim Cases, and/or Tax Liability Cases and Reconsideration of Unemployment Compensation Cases, Wage Claim Cases, and/or Tax Liability Cases, if Any  
The Commission agreed to allow Case No. 899103 to be submitted on a future docket.

AGENDA ITEM NO. 3

Discussion, Consideration and Possible Action Regarding Tax Liability Cases Listed on the Texas Workforce Commission Docket 8

No discussion.

AGENDA ITEM NO. 4

Discussion, Consideration and Possible Action Regarding Higher Level Appeals in Wage Claim Cases Listed on the Texas Workforce Commission

1 Docket 8

2           The Commission considered and took action on  
3 all Wage Claim Cases listed on Docket 8.

4                           AGENDA ITEM NO. 5

5                   Discussion, Consideration and Possible  
6 Action Regarding Higher Level Appeals in Unemployment  
7 Compensation Cases Listed on the Texas Workforce  
8 Commission Docket 8

9           The Commission considered and took  
10 action on all Unemployment Compensation Cases listed  
11 on Docket 8.

12                   (Wage Claim and UI Cases were heard from  
13 1:00 p.m. to 1:21 p.m.)

14                   CHAIR RATH: Okay. It's 1:21. We will  
15 stand in recess until 1:30 and then continue with the  
16 remainder of our agenda.

17                   (Recess: 1:21 p.m. to 1:30 p.m.)

18                   CHAIR RATH: We'll go ahead and come  
19 back to order and continue with our agenda.

20                           AGENDA ITEM NO. 6

21                   CHAIR RATH: Do we have anyone signed up  
22 for public comment?

23                   MR. BALLARD: No, we do not.

24                   CHAIR RATH: Thank you.

25

1 AGENDA ITEM NO. 7

2 CHAIR RATH: And we have no Matching  
3 Funds today.

4 AGENDA ITEM NO. 8

5 CHAIR RATH: And that brings us to  
6 possible action on the adoption of rules relating to  
7 Payday Law, Mr. Riley and Mr. Carnes.

8 MR. RILEY: Good afternoon, Chair Rath,  
9 Commissioners. I'm Steve Riley with the UI Division,  
10 and joining me this afternoon is Doug Carnes, Special  
11 Hearings.

12 On December the 12th you approved  
13 amendments to Chapter 821 of the Texas Administrative  
14 Code relating to the Texas Payday Rules for public  
15 comment. As a reminder, the rules included the  
16 following amendments: To reflect recent revisions to  
17 Agency Form C-8 and to reestablish the form as the  
18 agency's official guideline for determining employee  
19 versus independent contractor status; to allow the  
20 Commission, at its discretion, to consider  
21 comprehensive wage claims from the initial  
22 investigation phase to the wage claim hearing; and to  
23 grant the Commission discretion in allowing a claimant  
24 to amend the original wage claim to add wages that  
25 have been -- have become due.

1                   We received no comments on the proposed  
2 rules. Therefore, your -- for your consideration  
3 today we're presenting the final rules, Chapter 821,  
4 Texas Payday Rules, for adoption.

5                   I'd be happy to answer any questions you  
6 may have.

7                   CHAIR RATH: Thank you.

8                   Are there any questions?

9                   COMM. LEHMAN: No, I have none.

10                  CHAIR RATH: Commissioner?

11                  COMM. CONGLETON: No questions, and I  
12 move that we adopt the amendments to the new section  
13 of Chapter 821 relating to Texas Payday Rules without  
14 change, as previously published for the comment in the  
15 Texas Register.

16                  COMM. LEHMAN: Second.

17                  CHAIR RATH: And I agree. Thank you  
18 very much. Appreciate it. So, the rules are hereby  
19 adopted.

20                                 AGENDA ITEM NO. 9

21                  CHAIR RATH: And that brings us to  
22 possible action on a modification to the WIA State  
23 Plan, Ms. Miller.

24                  MS. MILLER: Good afternoon, Chair Rath,  
25 Commissioners.

1                   This afternoon for your consideration is  
2 the Plan Modification for Texas's Strategic Workforce  
3 Plan for WIA and Wagner-Peyser. As you'll recall, we  
4 published this State Plan twice for public comments.  
5 We did receive a lot of input on the draft plan.

6                   Many of the commenters were supportive  
7 of the plan, particularly our regional planning  
8 efforts and the continued development of a  
9 market-driven workforce system. And as we  
10 anticipated, we did receive many comments on the  
11 proposed changes regarding the basic labor exchange  
12 and the ES Service delivery model. Many of the  
13 commenters were from Workforce Centers, current ES  
14 staff, that expressed concern about the proposed  
15 model, which would allocate a portion of these funds  
16 to the Local Workforce Development Areas and would  
17 utilize Work In Texas as our basic labor exchange in  
18 compliance with the federal regulations.

19                   In our responses to the comments we do  
20 note that we would continue to have staff available,  
21 albeit local contractor staff, that would continue to  
22 be there to assist employers and job seekers with any  
23 staff-assisted services that they might need. So, we  
24 hope that we've addressed some of the concerns that  
25 they expressed in our responses.

1                   And with that, I'd be happy to answer  
2 any questions.

3                   CHAIR RATH: Thank you. I appreciate  
4 the work that y'all did in preparing it and  
5 particularly in the responses we gave to the comments.

6                   And I -- I found it helpful to reflect  
7 back upon the history of this agency, when we were  
8 first formed and the first four programs that we  
9 transitioned to local boards and, subsequently, with  
10 the additional three that we later transitioned. And  
11 in every one of those instances, the valuable  
12 contributions by -- those individuals that were  
13 formally our staff were recognized at the local level.  
14 The majority of those individuals were hired due to  
15 their superb knowledge and experience.

16                   And we saw that, as that transition year  
17 progressed on every single program, the performance  
18 improved and was better. And I think we have all  
19 learned, both at the state level and the local level,  
20 on -- on how to effectively manage transitions and on  
21 what the expectations are for performance. So, I see  
22 no reason to think that Wagner-Peyser ES would be  
23 different from any other program, and I think we would  
24 benefit from seeing the full integration of those  
25 services into the services provided at the local level

1 and that our current staff would not have any  
2 particularly different disposition or experience, if  
3 we're able to transition that program.

4           COMM. LEHMAN: I have no questions. I,  
5 too, would echo the performance improvement, and I  
6 also believe that minimizing the stovepipes has always  
7 served us better. So, I'm in favor of going forward  
8 with this.

9           COMM. CONGLETON: And I vote "no." I do  
10 not approve of the account of -- on account of the ES  
11 provisions. Our interpretation of DOL regulations is  
12 a little too slick and -- as far as I'm concerned.  
13 Those straightforward regulations clearly require  
14 merit-system employees.

15           We go to an awful lot of trouble arguing  
16 that the words don't mean what they say, but I think  
17 that it's a reasonable argument. We would not  
18 write -- we do not write the law on this, and we ought  
19 to be waiting on the people that do. DOL has proposed  
20 changes to those regulations, but Congress has now  
21 prevented them from doing so until WIA is  
22 reauthorized.

23           We would be wise, both from a legal and  
24 policy standpoint to wait for Congress and DOL to  
25 speak on this issue. I think there is more -- that's

1 more the conservative approach.

2 CHAIR RATH: Thank you.

3 Is there a motion on the WIA State Plan?

4 COMM. LEHMAN: So made; approval --  
5 recommend approval.

6 COMM. CONGLETON: I vote "no."

7 CHAIR RATH: And I agree. So, you have  
8 a two-to-one vote on the approval of the WIA State  
9 Plan.

10 MS. MILLER: Thank you.

11 CHAIR RATH: Thank you. Can I ask --  
12 request -- could we have a final -- could you just  
13 circulate to our offices the final copy, because I  
14 know the last copy I have there was still a little  
15 wordsmithing being done?

16 MS. MILLER: Yes, we will.

17 CHAIR RATH: Thank you. Do you also  
18 need us to authorize any technical amendments if y'all  
19 find something in the document before submission?

20 MS. MILLER: It never hurts.

21 COMM. LEHMAN: (Laughter) Let's --  
22 I'll -- I'll amend my motion to include that.

23 CHAIR RATH: Thank you, and I also agree  
24 that y'all have permission to do that.

25 MS. MILLER: Thank you.

1 CHAIR RATH: Thank you.

2 AGENDA ITEM NO. 10

3 CHAIR RATH: Okay. That brings us to  
4 Workforce Nominees, and we have before us today  
5 appointments from West Central, North East and Dallas.  
6 Are there any questions, or is there a motion?

7 COMM. LEHMAN: I have no questions.

8 I'll enter a motion to approve the nominees.

9 COMM. CONGLETON: Second.

10 CHAIR RATH: And I agree.

11 And I just want to welcome Mr. Arbuckle  
12 to Dallas. I was very pleased to see him. Many  
13 people remember him as being Chair Elect in El Paso  
14 before he was transferred by AT&T to Dallas, and so I  
15 look forward to our system continuing to benefit from  
16 his expertise again.

17 AGENDA ITEM NOS. 11 & 12

18 CHAIR RATH: Anything, Mr. Lewis, that  
19 you have on 11 and 12, both legislative proposal or  
20 state and federal issues?

21 MR. LEWIS: Good morning, Chair Rath,  
22 Commissioners; Jesse Lewis, External Relations. I  
23 have a quick update for you.

24 The -- the House and the Senate stand in  
25 recess -- the Federal House and Senate, that is -- for

1 the Presidents' Day recess through February 26.  
2 Before leaving town, the Senate did pass the  
3 continuing resolution that would fund government  
4 operations through the end of this fiscal year. The  
5 Workforce-funded programs remain at -- at the previous  
6 years' levels.

7 I also wanted to mention that last week  
8 the House Appropriations General Government  
9 Subcommittee met to make recommendations on what they  
10 would bring before the full committee. One of those  
11 things that was recommended was the Skills exceptional  
12 item. The two other exceptional items were put on the  
13 Wish List.

14 And also we have the Senate Finance  
15 Committee work group coming up on Thursday. They  
16 won't -- won't be taking public testimony, but we'll  
17 be -- we will have people there in case there are  
18 questions of the agency. And we also have, before the  
19 Economic Development Committee tomorrow, legislation  
20 that affects us that would change the split between  
21 the Enterprise Fund and the Skills Development Fund  
22 from -- actually keep it at the current 6733.

23 With that, I'll be glad to answer any  
24 questions.

25 CHAIR RATH: Any questions for

1 Mr. Lewis?

2 COMM. LEHMAN: (Shaking head)

3 COMM. CONGLETON: No questions.

4 CHAIR RATH: Very good. Thank you.

5 MR. LEWIS: Thank you.

6 AGENDA ITEM NO. 13

7 CHAIR RATH: I don't think we have  
8 anything on the Appropriations Request.

9 MR. TOWNSEND: (Shaking head)

10 AGENDA ITEM NO. 14

11 CHAIR RATH: And anything on Katrina and  
12 Rita? Nothing.

13 AGENDA ITEM NO. 15

14 CHAIR RATH: State Data Center,  
15 Mr. Crump.

16 MR. CRUMP: Good afternoon, Chair Rath,  
17 Commissioners. For the record, Gene Crump, Deputy  
18 Executive Director.

19 Commissioners, late yesterday afternoon  
20 we received revised cost estimates from the Department  
21 of Information Resources on the what date -- the State  
22 Data Center contract would cost TWC. DIR's revised  
23 estimate lowers the FY '07 contract cost to TWC from  
24 the initial estimate provided of 8.4 million to 7.5  
25 million, which represents a cost reduction of \$900,000

1 for the five months in '07.

2                   Their revised estimate for the '08/'09  
3 biennium cost to TWC from the initial estimate dropped  
4 from 34.2 to 30.8 million, which is a reduction of 3.4  
5 million to us. The current process is is we have to  
6 submit to DIR, by close of business today, what we  
7 believe to be, if you will, the delta between the cost  
8 and what we have budgeted. DIR's estimate in their  
9 revised cost estimate was it would be an impact -- a  
10 negative impact to TWC of a half a million dollars,  
11 and we agree with that estimate. And that will be  
12 submitted today.

13                   Additionally, we're required to submit  
14 to DIR, by close of business Friday, a review of the  
15 '08/'09 dollars. Staff is reviewing those right now.  
16 There will be a summary review at the senior staff  
17 level on Thursday, and I can provide the Commissioners  
18 an update via e-mail after that meeting. If you look  
19 at the numbers just tentatively, I think we're  
20 somewhere in the range of between 1 to 2 million  
21 dollars on '08/'09. Again, I don't have those figures  
22 right now.

23                   CHAIR RATH: I'm sorry, 1 to 2 million  
24 dollars more than what we currently --

25                   MR. CRUMP: Correct.

1 CHAIR RATH: Okay.

2 MR. CRUMP: Correct.

3 The -- the reductions are due to the  
4 staffs' review of the resource volumes, the  
5 consumption of what we would use in terms of mainframe  
6 and server assets.

7 And that kind of completes my review for  
8 the day. Would the Commissioners have any questions  
9 around that or -- or how the process is going overall?

10 CHAIR RATH: Commissioner?

11 COMM. CONGLETON: That's basically about  
12 where we was at the last time, wasn't it?

13 MR. CRUMP: No, sir. The -- actually,  
14 those are significant reductions from the initial  
15 estimates provided, again, 900,000 in '07 and 3.4  
16 million in the '08/'09 biennium. So, they are much  
17 positive -- much more positive to us. We still are in  
18 a deficit position as we speak today.

19 COMM. LEHMAN: I have no questions. I  
20 would make an observation.

21 I -- I believe that this agency, with  
22 your leadership, has stepped up in -- in very  
23 significant, very creative ways to try to make this  
24 pursuit a success. I would caution against trying too  
25 hard to come to a negotiated number in that second --

1 that 1 to 2 million, because I kind of feel like --  
2 my -- my gut tells me that we're being squeezed and  
3 while we might be able to accept somewhat of a  
4 reduction, I don't want to get too aggressive in  
5 accepting too much of a reduction or driving up the  
6 cost too much to us.

7 MR. CRUMP: Yes, sir, completely  
8 understood.

9 MR. TEMPLE: Commissioners, for -- for  
10 those that -- and the Webcast that maybe haven't been  
11 following this, the reason it's coming back more is  
12 because we're probably the most efficient IT shop in  
13 the state, if not the -- the most efficient. And they  
14 can't get to our numbers. They can't run it as cheap  
15 as we can.

16 So, that hasn't been the case overall  
17 for the entire enterprise that they're looking at, but  
18 we're the problem child in that we have a very  
19 efficient IT shop. And it's a hard -- it's hard for  
20 them to get there. In the long range, the projections  
21 are savings, but the stub year, the rest of this year,  
22 and '08/'09 it certainly would cost more than what we  
23 could run it.

24 I did want to be on the record with  
25 that, if that's okay.

1                   COMM. LEHMAN: And that's -- and that's  
2 why my remarks -- when you're more efficient, it's  
3 harder to find a little bit of extra to contribute.

4                   CHAIR RATH: Very good. Thank you.

5                   AGENDA ITEM NO. 16

6                   CHAIR RATH: Mr. Temple, do you have  
7 anything else?

8                   MR. TEMPLE: No, ma'am.

9                   CHAIR RATH: Thank you.

10                  Commissioner Lehman?

11                  COMM. LEHMAN: No.

12                  COMM. CONGLETON: No.

13                  CHAIR RATH: Commissioner?

14                  I have one quick thing, and before going  
15 into Executive Session, and I think many Chairs and  
16 many Executive Directors and Board Staff -- I know,  
17 Commissioner Lehman, you were there, too, on Friday at  
18 the TPERF Conference -- and it was just phenomenal. I  
19 think anyone that was there will say it's probably one  
20 of the best total days of speakers and provocative  
21 ideas and -- and really listening to some of the  
22 interesting things that is occurring in education and  
23 some really exciting commitments by leadership and --  
24 and leaders across the country.

25                  And I wanted to thank so many of the

1 Chairs and Executive Directors that took their time to  
2 attend that meeting, and I do think they probably  
3 benefited from it. And we look forward to, you know,  
4 hearing about any creative initiatives that our Boards  
5 are involved in at the local level that might be  
6 presented in the future or as a result of Friday's  
7 meeting, also.

8 AGENDA ITEM NO. 17

9 CHAIR RATH: Okay. If there's nothing  
10 else, we're going into Executive Session pursuant to  
11 Government Code 551.071(1) concerning contemplated  
12 litigation or the pending litigation of Rachael  
13 Overstreet versus TWC and Methodist Hospitals of  
14 Dallas.

15 (Executive Session: 1:44 p.m. to  
16 2:00 p.m.)

17 CHAIR RATH: Okay. It is two o'clock,  
18 and we'll go back into open session.

19 Commissioners, is there any action that  
20 y'all are interested in taking?

21 COMM. LEHMAN: I have none.

22 COMM. CONGLETON: No further action.

23 CHAIR RATH: And I agree.

24 AGENDA ITEM NO. 19

25 CHAIR RATH: So, we'll take no action,

1 and we will now stand adjourned.

2 (Meeting adjourned: 2:00 p.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, a 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            day of                    2007.

JANIS SIMON  
Certified Shorthand Reporter  
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