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Pennsylvania Law Changes Unemployment Eligibility and Benefits Calculations

A law amending the Pennsylvania unemployment compensation law was signed into law by Governor Corbett on June 12, 2012. This law, referred to as Senate Bill 1310, was supposedly designed primarily to (1) pay back Pennsylvania's debt to the federal government for UC benefits that had already been paid out, and (2) restore the state's unemployment compensation fund to solvency by 2019. However, the law accomplishes those goals by drastically changing UC benefits in several ways that could be of major significance to your Local Union and its members.

There are three basic changes in the amended law to the way that benefits are currently paid. These are:

1. The maximum weekly benefits (currently set at $573/week) are fixed through 2019. There will not be any increase in the UC benefits during that time. In addition, the benefits cannot increase in the following four years at a rate greater than 8% per year.

2. The threshold for partial benefits is reduced from 40% to 30%. This means that if an individual has a partial weekly claim the UC benefits are reduced once the individual's earnings in that week reach 30% of the individual's average weekly wage. Previously the individual did not see a reduction until the individual had earned at least 40% of the individual's average weekly wage. By way of example, if the individual has an average weekly wage of $100 and the individual earns more than $30 in that week, the benefit will go from a full benefit to a partial benefit. In the past that threshold would not have been met until the individual exceeded $40 in earnings.

3. In order for an individual to be eligible for benefits, the individual cannot have a high quarter in excess of 50.5% of the total annual earnings. If for instance the individual earns 55% of the total annual income in one quarter, then the individual cannot qualify for any UC benefits. This change is likely to fall hardest on employees engaged in seasonal or fluctuating work cycles, and this could be a very significant change for your members employed in those industries.

It seems obvious that the legislative plan for repaying the debt to the federal government and getting the state fund to solvency was to place that burden squarely on the shoulders of the out-of-work employees for whom the benefits were intended. The law reduces certain payroll taxes on employers. At the same time, the changes to eligibility described above will generate savings for the Commonwealth (meaning people will be seeing reduced or no benefits as the result of these changes). All of this is achieved by paying out lesser benefits through the various changes described above.

The total number of weeks of benefits remains at twenty-six. There were two Pennsylvania programs for extended benefits that will not be available any more. Those programs, the Extended Benefits ("EB") and High Unemployment Period Extended Benefits ("HUPEB") are triggered when the Pennsylvania unemployment rate exceeds a certain number, but that number was not reached this year so the benefits do not take effect in the upcoming fiscal year. There is a federal extension program (Federal "Emergency Unemployment Compensation" or "EUC") that is not affected by that situation.

Federal Law Prohibits the Use of Employer Funds and Assets by Candidates for Union Office

The Labor-Management Reporting and Disclosure Act, the 1959 federal law that was passed to regulate the internal operation of labor organizations, sets forth (among other matters) requirements and rules for the conduct of union elections. Section 401 of the LMRDA [Title 29 U.S.C. §481] sets forth requirements for terms of office and also sets forth election procedures for union elections. This section applies to union elections at the international, intermediate and local levels. Section 401(g) prohibits the use of union funds and employer "moneys" by or on behalf of any candidates for union office. That subsection reads as follows:

LMRDA - TITLE IV - ELECTIONS
Terms of Office; Election Procedures
(29 U.S.C. 481)

Section 401:

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to

> *promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.*

The U. S. Department of Labor interprets the phrase "employer moneys" to apply to anything of value from an employer, including money, gifts or sponsorship. This extends to using the corporate logo of an employer on campaign literature (regardless of whether the employer has any type of relationship with the union). In other words, a candidate for local union office is prohibited from using anything that could be considered an asset of an employer, such as a corporate logo or name. In addition, whereas various other violations of Section 401 will only constitute grounds for overturning an election on a showing that the violation affected the outcome, violations under Section 401(g) are considered so serious that the DOL will overturn an election *without* any showing that the violation affected the outcome.

Filing a Grievance to Challenge an Employer's Appeal of an Arbitration Award

Whenever an arbitration award is issued under a grievance/arbitration procedure that provides that the award is 'final and binding', does an employer commit a grievable violation by appealing that award into court? The answer may well be yes, and the Local Union may be able to recover its attorneys' fees and costs in defending the appeal by filing a separate grievance.

Recently, an IBEW Local Union challenged a decision by the City of Cleveland to appeal an arbitration award that required the City to reinstate a discharged employee. The original arbitration award was issued in March 2008. The City appealed the decision into the Ohio state courts and lost before a trial court and an intermediate appellate court. The City then announced it intended to comply with the award, but instituted additional delays in forcing the grievant to go through a fitness-for-duty evaluation and other measures. In addition, the grievant eventually sued both the City and the Union, and the Union successfully defended that action. The union filed its grievance shortly after the City filed its original appeal, but the parties agreed that the grievance would not be heard until after the City exhausted its appeals.

The union's grievance alleged that the City violated the final-and-binding language of the collective bargaining agreement by filing an appeal that was eventually determined to be without merit. The union argued that the City's refusal to comply with the final-and-binding language of the agreement ultimately cost the union the sum of $181,693 in attorneys' fees and costs, and the union requested a remedy directing the City to pay that amount to the union.

Arbitrator Jonathan I. Klein agreed with the union and sustained the grievance. Arbitrator Klein ordered the City to pay the sum of $181,693 to the union to compensate the union for the City's conduct in violation of the final-and-binding language of the agreement.

This decision illustrates a possible avenue to dissuade employers from appealing unfavorable arbitration decisions. The frequency of appeals, particularly in the private sector,

appears to have declined. This is most likely due to the extraordinarily limited scope of review that federal courts must apply when reviewing an arbitration decision. However, in the case where an appeal is filed, a Local Union is forced to expend money to defend the arbitration decision. Moreover, it is extremely unlikely that the federal court will ever find the appeal to be so frivolous as to justify awarding attorneys' fees. The Local Union may have a much more successful approach filing a separate grievance and asking an arbitrator to find that the employer violated the final-and-binding language of the parties' collective bargaining agreement.

RESPECTFULLY SUBMITTED,

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