

# New Jersey Department of Labor & Workforce Development

## Transition Subcommittee Final Report

### Structure of the Department

With a staff of approximately 3,700, the New Jersey Department of Labor and Workforce Development is charged with working to further the development of the state's workforce; providing almost \$3 billion per year in vital income security to workers who are unemployed or unable to work due to illness, accident, or injury; enforcing New Jersey's labor laws and standards; analyzing the state's labor market and demographic information; helping disabled individuals succeed in the workplace; and protecting the health and safety of workers on the job.

**Mission of the Department of Labor & Workforce Development:** *With a commitment to the highest standard of customer service, we will ensure the opportunity for employment at fair wages in a safe environment; enhance the quality of the State's labor force and labor market activities; stimulate economic growth; promote labor management harmony; and administer income support services to unemployed or disabled workers.*

For Fiscal Year 2009-2010, the Department worked with a total budget of approximately \$810,782,000. Of that amount, approximately \$446,754,000 came from federal funding; approximately \$147,029,000 came from State funding; and approximately \$216,999,000 came from other sources. The largest group of the Department's employees, over 2,600 full-time equivalents, are paid through federal funds. Only 486 of the Department's full time staff are paid through State funds. An additional 393 are paid through other non-federal sources and dedicated State trust funds, such as the Temporary Disability Insurance Fund or Social Security, which totals approximately 9% of total salaries, according to the Department.

A relatively small agency compared to some others, the Department nonetheless consists of several agencies and divisions, including:

- |                              |                                |
|------------------------------|--------------------------------|
| -Office of the Commissioner  | -Labor Standards and Safety    |
| -Administration and Finance  | -Legal and Regulatory Services |
| -Disability Services         | -Workers' Compensation         |
| -Income Security             | -Workforce Development         |
| -Labor Planning and Analysis | -Vocational Rehab Services     |

Most of the Department's financial and employee resources fall under the Division of Income Security and the Division of Workforce Development. The Department also has several boards, commissions, and "in-but-not-of" agencies that are affiliated with the Department:

- Civil Service Commission
- State Employment and Training Commission
- State Board of Mediation
- Public Employment Relations Commission
- Minimum Wage Advisory Commission
- Commission on Construction Industry Independent Contractor Reform
- Board of Boiler, Pressure Vessel, and Refrigeration Rules
- Crane Operators License Advisory Board
- New Jersey Employer Council
- Employment Security Council
- State Independent Living Council
- NJ State Industrial Safety Committee
- Public Employees Occupational Safety and Health Advisory Board
- Public Employees Occupational Safety and Health Review Commission
- Vocational Rehabilitation Services Advisory Council

- Worker's Compensation Advisory Council
- Public Employment Relations Appeal Board
- State Employment and Training Commission
- Council for Adult Literacy Education Services
- Council on Gender Parity in Labor and Education
- New Jersey State Employees Awards Committee

The Department administers several of the most important programs in State government that affect the daily lives of those in the workforce, such as the Workers' Compensation Program, the Unemployment Insurance Program, the Temporary Disability Program, Family Leave Insurance, wage and hour compliance, prevailing wage, the various One Stop Programs, and Social Security disability claims filed by New Jersey residents.

### Constituencies

The Department's constituencies include all workers in the public and private sectors, job seekers, unemployed workers, unemployed disabled workers, applicants for job skills training, all employers, professional organizations, labor organizations and trade groups, students, youth, educational providers, community rehabilitation programs, centers for independent living, community and faith based organizations, employer representatives, private employment agencies, state and local partner agencies and organizations, economic developers and planners, federal agencies, elected officials, safety and health officials and professionals, insurance and medical providers, and data users.

### Existing Performance Metrics and Most Recent Reports

The Department issues various reports as required by state statute. Most recent reports include:

- The Department produces an annual report to the Governor and the Legislature on the Project Labor Agreement Act, (N.J.S.A. 52:38-6). The most recent report available, which was released in June 2009, covers activity through 2007.
- The Department publishes an annual statistical review (N.J.S.A. 34:1A-3). The most recent report, released in September 2008, covers activity through year 2007.
- In 2008, the Department released a report titled, *Impact of a Prior Criminal Conviction on Private Employment Opportunities in New Jersey*. The report was required pursuant to N.J.S.A. 2A:168-14.
- The Minimum Wage Advisory Commission released a report in December 2008 (N.J.S.A. 34:11-56a4.8).
- The Public Employee Relations Commission (PERC) released a "Report to the Governor and the Legislature Under the Employees Contract Resolution and Equity Act" in 2008 (N.J.S.A. 34:13A-31 *et seq.*).
- Also in 2008, PERC published a report titled, "Effects on Negotiations and Settlement" (N.J.S.A. 34:13A-38).
- A January 2008 report from PERC was titled, "Biennial Report on the Police and Fire Public Interest Arbitration Reform Act" (N.J.S.A. 34:13A-16.4).
- In September 2009, the Department released a statement that the Paid Family Leave program had approved 5,000 applications for benefits during the first few months since benefits were available.

In addition to the above reports, the sub-committee has requested and obtained additional metrics from the Department in the following areas, which can be provided upon request:

- The New Jersey Department of Labor & Workforce Development PY2008 Workforce Programs Objectives and Goals Summary;
- Unemployment Insurance (UI) Core Measures;
- UI Tax Employer Accounts Programs;
- Social Security Disability Determination Services – Core Functions Metrics;
- Temporary Disability Insurance (TDI) – Core Functions Metrics;
- Division of Vocational Rehabilitation Services – Core Functions Metrics;
- Division of Labor Planning and Analysis and Bureau of Labor Statistics Performance Metrics;
- Division of Wage and Hour Compliance – Metrics Report;
- Division of Public Safety and Occupational Health – Metrics Report;
- Department of Labor & Workforce Development Overall Management Performance Metrics (currently awaiting response from the Department).

## Listing of All Recently Canceled, Deferred, or Concluded Initiatives, Projects, Programs and Other Issues

- The Department had a \$40 million contract with Accenture to administer the “New Jersey State Unemployment Compensation Claimant and Employer Service System” (NJ SUCCESS), which would update and overhaul the outdated UI function in the Department. From what the sub-committee was told, Accenture did not understand the magnitude of this project and could not perform the needed functions for the initial quoted price. To date, half of the project is complete and a portion of the results can be utilized by the Department. An agreement was worked out between Accenture and the Department to terminate the project “for convenience.” As a result, approximately \$20 million has been expended for the project and approximately \$3 million in payments are currently being withheld by the Department. The Department recommended no further money be paid to the firm.
- A contract to provide certified shorthand court reporting for the Workers Compensation Courts expired December 2009. Bid proposals have been received and are currently being evaluated. According to the Department, there is no cost to the Department for the contract, as vendors provide rebates on documents requested.
- A contract to provide banking services to process UI and TDI funds will expire in November 2010. Bid proposals have been received and are currently being evaluated. The Department claims that there is no cost to the state, as the funding is federal.
- It is important to note that the Workforce New Jersey Program has several “special initiative contracts” that will expire in 2010 and 2011. The total dollar value of those contracts exceeds \$15 million. Each contract has specific deliverables and measurable goals. They are each paid by varying sources – either federal funds, dedicated grants, or general Department funds. Although there are a number of programs the Subcommittee learned about, it seems the underlying public policy expends large financial investments to assist a small number of taxpayers. Some examples of special initiative contracts that have been awarded include:
  - The AFL-CIO has a \$398,000 contract to coordinate and implement statewide assistance programs for dislocated workers (expires 06/30/2010)
  - The Center for Applied Linguistics has a \$123,180 contract to provide professional development to ESL administrators (expires 06/30/2010).
  - Opportunities for All has a \$225,000 contract to provide job coaching and mentoring services to inmates returning to the City of Trenton (expires 06/30/2010).
  - Volunteers of America has a \$112,500 contract to provide job coaching and mentoring services to inmates returning to the City of Camden (expires 06/30/2010).
  - Community Planning and Advocacy Council has a \$125,000 contract to support the Camden Comprehensive Center for Fathers Program (expires 06/30/2010).
  - The New Jersey Department of Corrections has a \$309,990 contract to operate eight Workforce Learning Links with the correctional system (expires 12/30/2009).
- On October 8, 2009, the Civil Service Commission received a letter from the US Department of Justice Civil Rights Division stating that as a result of their investigation into the practices used to test and promote police officers to the rank of Sergeant, they intended to file a complaint that the Civil Service Commission has been engaged in a pattern or practice of discrimination against African Americans and Hispanics with respect to the selection (testing) process. In order to avoid litigation, the USDOJ has offered the State the opportunity to settle the matter by entering into a consent decree. The Civil Service Commission, in conjunction with the NJAG’s office, has retained the services of an expert witness (EB Jacobs). The Commission has set funds aside for this possible expense. The suit was filed on January 7, 2010.

### **Statistical Budget and Finance Information from the Department's Perspective Outlining Known Shortfalls or Surpluses**

The Second Injury Fund has been experiencing cash flow problems due primarily to fund diversions in 2003 and 2004 and a legislative change in 2000 that changed a key accounting formula. According to the Department, the situation can be remedied through legislative changes that would remove a requirement that diverted funds be added back into the funding formula. It is unclear whether the change would result in added costs to insurers.

The Temporary Disability Fund is supported by wage taxes paid by workers and their employers. Although the fund is now solvent, a \$75 million diversion from the fund, which was included in the FY 2010 budget, could cause cash flow problems in 2011.

The Unemployment Insurance Trust Fund is currently facing a \$3.6 billion debt, according to the Department. The two main factors for the deficit are (1) \$4.6 billion that was diverted from the fund from 1993 to 2006 and (2) a recessed economy with record high unemployment. Were it not for the diversions, the fund would be solvent. The state had to borrow \$790 million from the federal government, and borrowing will likely continue into the foreseeable future. As a result, the tax paid by employers will increase significantly in July 2010. Although federal legislation allowed for interest payments on the loans to be waived through December 2010, interest will become payable in September 2011 at a rate of 4.64%. State law allows that cost either to be passed onto employers or paid by the state through its own resources.

### **Copies of FY09 and FY10 OLS Budget Analyses with Responses Including any Appropriate Updates Past June 30, 2009**

A hard copy of this information can be provided upon request.

### **Organizational Chart and Employee Lists**

A hard copy of this information can be provided upon request.

### **Business Activity Including the Number of Transactions Occurring with Data on Monthly/Seasonal Activity or Performance**

Due to the recessed economy, the Unemployment Insurance Program saw exceptionally high claim processing and benefit payments in 2008 and into 2009. Traditionally, UI operations process slightly over 400,000 claims and pay out \$2 billion in benefit payments per year. In 2008, processed claims surpassed 630,000 (an increase of approximately 55% from baseline numbers). Projections for 2009 call for claims to exceed 810,000. Not accounting for the latest federal extension of UI benefits, the Department calculates that approximately 35,903 claimants exhausted their benefits in September 2009. After September 2009, it is estimated that approximately 15,000 per month would exhaust their benefits.

Governor Corzine's furlough program did not exempt employees in the Unemployment Insurance Division, even though this Division is 100% federally funded. As a result, the Division had fewer employees processing an unusually large amount of claims. In a letter from the federal Department of Labor (USDOL) to the Department in October 2009, the USDOL noted that New Jersey has been underperforming on Federal timeliness standards for issuing first payments, nonmonetary determinations, and lower authority appeals. The letter explains that for the quarter ending June 30, 2009, New Jersey issued less than 10 percent of lower authority UI appeal decisions within 30 days and less than 13 percent within 45 days. The USDOL standard requires 60 percent of lower authority appeals be issued within 30 days and 80 percent within 45 days.

The Board of Review adjudicates unemployment claims and is the highest level of appeal available at the Department level. Due to the recessed economy, the Board is faced with an unprecedented backlog of cases. The Department estimates that a reasonable backlog is 400-500 cases. Most recent estimates show the current backlog to be 2,300 open cases. Historically, the Board could turn around a case in 30-45 days. However, decisions are now taking upward to five months. The Department blames the delay largely on a "persistent staffing shortage"

coupled with an unemployment rate over 10%. The Appeal Tribunal, the level of appeal just below the Board of Review, has a backlog of 11,000 claims, despite recently increased staffing levels.

The workload of the Temporary Disability and Family Leave Insurance Program recently increased due to the addition of the Paid Family Leave Program (PFL). Perhaps not coincidentally, 12% of the division's staff retired through the early retirement incentive that was offered in 2008. Additional staff was not authorized thereafter. The Department said that the PFL increased claim, call, and mail volume by 33%.

In Fiscal Year 2009, the Division of Disability Services (DDS) received 57,213 initial claims for benefits and processed 55,297 claims. It is projected that the DDS will receive 60,000 new initial claims in Fiscal Year 2010.

Chairwoman DiLorenzo received a letter in December 2009 from the Social Security Administration (SSA) concerning the DDS, which makes disability determinations for New Jersey residents on behalf of the federal government. The letter expresses the SSA's concern that the furlough plan is having an adverse effect on claims processing. The SSA points out that average claims processing in July 2009 was 91.2 days. At present, claims are taking 94.8 days. The SSA attributes the slower processing time to the furlough program. The SSA calculates that two more mandated furlough days (November 27, 2009, and February 12, 2009) will cause initial claim processing time to exceed 100 days. Even greater delays will result from the eight self-directed furlough days.

#### **Operating Information Including Locations, Owned or Leased Space, Number of Offices, Square Feet Used or Vacant**

The Department provided Chairwoman DiLorenzo with a list of all buildings and facilities leased by the Department. The list shows the square footage of each facility and the annual cost broken down by location. In total, there are 60 facilities leased by the Department, costing a total of approximately \$25 million. Approximately 5% of the rented office space is not being utilized, according to the Department. All leases are negotiated by the New Jersey Department of Treasury. Parking is not guaranteed for employees and is not provided for "customers" (taxpayers). A copy of the Department's facility space can be provided upon request.

### **Organization and Staffing**

**Background:** During the past eight years in particular, the Department has suffered from a perception, whether valid or not, that Department culture tends to favor the State's workers and organized labor at the expense of employers, the business community, and overall economic growth. The Department also suffers from a perception that staff is on a quest to punish employers simply to raise revenue. While monies raised by fees, fines, and penalties can be a significant source of income, monetary punishment can have the undesired effect of causing a business either to cease or leave the state. The Department has other opportunities to secure funding through various federal grants that will not hurt economic growth.

**Overall Recommendation:** A thorough review of the Department's operations and staffing must be completed with an eye toward making bold changes in the Department's culture. Specific recommendations follow:

- 1) **Perception:** Negative perceptions about the Department must be changed. Recommendations to that end include:
  - a. Change the name of the Department to the New Jersey Department of Business and Employment; New Jersey Department of Workforce and Employment; New Jersey Department of the Workforce; or, the New Jersey Department of Workforce Development. The current name suggests a bias toward organized labor, and a change in the name will help the Department more closely align with all stakeholders.

- b. Policies must be refined to ensure evenhandedness and neutrality between employers and labor. Anti-employer policies should be reviewed and revised where appropriate.
  - c. Certain areas of the Department should be classified "economic development" areas, which will have a high priority in daily operations. The Department should be viewed as a key element of an economic development strategy. Perhaps the department could be divided so that the federally funded areas are run as standalone bureaus. The sections related to workforce development/economic development and workplace standards could then be fully funded by legislative act.
  - d. All staff, Investigators in particular, must be cross trained to perform multiple tasks and must receive customer service training to improve the client experience. Under current conditions, each agency conducts its own audits, meaning that employers could be subject to multiple visits by different inspectors. Cross training would result in employers seeing one comprehensive inspection rather than three or four. In addition to cost efficiency for the Department, employers would not feel they are being persecuted by the government and not waste time showing the same documents several times to different employees of the Department.
  - e. Communication must be improved by and between the various agencies within the Department.
  - f. The Commissioner reportedly has a staff level driver and a State Trooper assigned to him. Both of those positions should be reassigned.
- 2) **Culture:** The Governor must establish the Department's culture and policy direction and the Commissioner and Department staff must follow his lead. The appropriate team of people must be placed into positions to ensure that messages are reflected and mission objectives are accomplished. An attitude of "*that is how we've always done it*" is counterproductive to moving the Department to the next higher level of service.
  - 3) **Performance and Staffing:** All federally funded employees in the Department should be exempt from mandated furloughs. The federal government has indicated that some federally funded programs (e.g. Unemployment Insurance and SSI Disability) are not performing at minimum standards. If the problem is not addressed, the state runs the risk of losing considerable federal funding. While the Department should consider reducing staffing costs where appropriate, critical positions that were lost through the early retirement program must be replaced.
  - 4) **Commissioner:** Whoever is chosen Commissioner must have certain attributes. A candidate must: understand the Department well enough to administer daily operations; understand the dynamic between employers and labor; have solid managerial skills almost entrepreneurial in nature; should have no connection to organized labor; have the skills necessary to improve employee morale; be able to advocate for the Department and articulate accomplishments; have a background in business; have a working knowledge of what occupations are growing and which need attention.
  - 5) **Federal Opportunities:** In order to improve efficiency and save costs, the Department should dedicate a team to identify opportunities for federal discretionary funding, file the necessary applications, and track their progress to ensure success. For example, new federal Workforce Investment Title II grants are available, the applications for which must be submitted in April 2010 for award on July 1. Recently, the Department contracted with Rutgers University to file a grant application and charged taxpayers \$23,000 for their services.
  - 6) **Facilities:** The Department utilizes 60 buildings statewide at a total cost exceeding \$25 million. The Department should conduct a review of each lease to determine how much cost savings might result from a consolidation of operations.
  - 7) **Pending Litigation:** There is pending litigation involving the Department filed in Federal, State Courts and Administrative Agencies. The cases have been assigned mostly to the Attorney General's office, and should be discussed in further detail with counsel so as to ascertain status of each matter and appropriate litigation strategy.

## Overview of Departmental Trust Funds and Solvency Issues

### Background:

The majority of the Department's activities are either federally funded or supported through dedicated trust funds, such as the Unemployment Insurance (UI) Fund, the Second Injury Fund, the State Disability Benefits Fund (otherwise known as the Temporary Disability Insurance (TDI) Fund), the Workforce Development Partnership Fund, and the Unemployment Compensation Auxiliary Fund. These funds serve as the funding source for benefits that are paid to workers in need and are generated through employer and employee payroll deductions. From 1992 to 2009, *twenty laws* were enacted which diverted a total of \$5.359 billion in resources from various funds for other uses. As a result, several of these trust funds are currently experiencing cash flow problems.

### Overall recommendation:

Money can no longer be diverted from any of the dedicated trust funds in the Department for other purposes. The Subcommittee feels strongly that if left alone most of these trust funds would be solvent. The Department agreed that if used for their intended purpose, the payroll deductions for each dedicated trust would be enough to keep each fund healthy. To that end, the Subcommittee supports **ACR-134 (Burzichelli, Albano, DeCroce, Biondi) / SCR-60 (Sweeney, T. Kean)**, which proposes a constitutional amendment requiring contributions collected from assessments on wages to be used for employee benefits and prohibiting use of the contributions for any other purpose. This bill is currently awaiting signage into law by Governor Corzine.

- All federally funded employees in the Department should be exempt from mandated furloughs. The federal government has indicated that some of our federally funded programs (the unemployment insurance program, for example) are not performing at minimum standards. If the problem is not addressed, the state runs the risk of losing considerable federal funding.
- Ensure the Unemployment Insurance and SSI Disability programs meet respective federal metrics relating to claims.

## Unemployment Insurance (UI) Fund

### Background:

Unemployment insurance was created in 1935 as part of the Federal Social Security Act solely to pay partial wages to workers who lose their jobs. The program is intended to build up funds during economic expansions so they are available to pay unemployed workers during economic downturns. Unemployment insurance has been a successful partnership between the federal and state governments. The program is based on federal law and administered by each state government under state law. Unemployment benefits are financed with payroll taxes paid by employers and, in New Jersey and two other states, by a *much smaller payroll tax on employees*. In 1993, New Jersey diverted its first funds from the UI fund, taking \$600 million to pay for charity care. In subsequent years additional diversions were taken:

- 1994: \$500 million
- 1995: \$500 million
- 1996: \$330 million
- 1997: \$330 million
- 1998: \$288 million
- 1999: \$233.9 million
- 2000: \$178.6 million
- 2001: \$94.9 million
- Total Diversions: \$4.6 billion

While making these diversions, the Legislature also lowered the threshold for triggering a payroll tax increase and reduced UI taxes paid by employees. These actions reduced the Fund's income considerably. Last year, Governor Corzine deposited \$260 million back into the UI Fund to offset the tax increase on employers. This was the first time money had been put back in the fund since the diversions began.

### **Current State of the UI Fund:**

At present, the UI fund is *functionally dry* as a result of years of raids on the fund and the effects of the national recession on the State's unemployment rate. Once the fund balance drops below a specified level, an automatic tax increase on employers commences to rejuvenate the fund. This tax increase is not a result of businesses and employees not paying enough into the fund; it is because the state has diverted this money year after year over the objections and cautions voiced by the business community. It is estimated that the tax increase on employers will be approximately \$1.6 billion next year, ironically affecting the employers with the lowest turnover rate the most. New Jersey is currently borrowing money from the federal government to pay out benefits, as are 25 other states in the United States. New Jersey has borrowed approximately \$790 million from the federal government and expects it to top out at \$1 billion by next year. This money must be repaid to the federal government, which will start to accumulate interest as of January 2011.

### **Recommendations:**

There are limited solution options short of infusing the UI Fund with more money to offset the automatic tax increase on employers. The Subcommittee recommends:

- Stop diverting money from the UI Fund for other causes.
- Lobby the federal government to forgive the \$790 million loan (expected to top out at \$1 billion by fiscal year's end).
- Lobby the federal government to pass a federal stimulus package designed specifically for states that have been unable to meet their UI responsibility due to the current economic conditions.
- Options that would require legislative approval:
  - Raise the benefit qualification level for UI.
  - Restructure the benefit calculation to make it more evenly spread, so the majority of the burden does not fall unfairly on the employer.

## **Second Injury Fund (SIF)**

### **Background:**

The Second Injury Fund was created in 1923 for the purpose of making benefit payments to workers already partially disabled who subsequently experience a work related injury which together render them totally disabled. The concept behind the Second Injury Fund was to encourage employers to hire disabled workers by limiting, in the case of further injury, their liability for compensation payments to amounts only applicable to the latest injury. Payments from the SIF commence at the conclusion of the payment of benefits from the employer or the insurance carrier and continue until the death of the beneficiary or gainful employment.

### **Current State of SIF:**

The SIF has been experiencing cash flow problems recently due to diversions from the fund in 2003 and 2004 and also as a result of legislative changes made in 2000 and 2003. Prior to 2000, the assessment against employers and insurance companies that finance the Division of Workers Compensation was determined by estimating the costs incurred to run all programs (including benefits) and multiplying that by 150%. In 2000, this was changed to 125% of estimated benefits and 100% of estimated administrative costs. These changes initially did not cause any significant cash flow issues; however, when the State began diverting money the combination of these factors resulted in an insufficient amount of cash being collected through assessments.

**Solutions:**

Due to the legislative changes to the assessment calculations, the fund will never be able to restore solvency. The only solution requires legislative approval to phase out the \$40 million “add back” and adjust the \$5 million fund balance cap to a percentage of the prior years’ benefit payments. The only other option would be to find a supplemental appropriation to replenish the diverted money from FY2010.

### Temporary Disability Fund

**Background:**

New Jersey is one of only five states that provides compulsory temporary disability insurance for workers, which is paid out of the Temporary Disability Fund. Cash benefits are payable when a person cannot work because of sickness or injury not caused by their job. The Temporary Disability Fund is supported by contributions from workers and from employers through payroll deductions.

**Current State of the Temporary Disability Fund:**

Currently, the fund has a positive cash balance. However, because of a \$75 million diversion included in the FY2010 State Budget, this fund may experience cash flow problems in 2011.

**Solutions:**

If that does happen, the State will have to advance a non-interest, short term loan to the fund in order to enable New Jersey to continue to meet their benefit payment obligations. Or, find a supplemental appropriation to replenish the diverted money from FY2010.

### Workforce Development Partnership Fund

**Current State of the Workforce Development Partnership Fund:**

FY2010 State budget diverted \$15 million from this fund to plug the unexpected FY2009 shortfall.

### Unemployment Compensation Auxiliary Fund

**Current State of the Unemployment Compensation Auxiliary Fund:**

The FY2010 State budget appropriates \$28 million from this fund to support various budget items in the Department’s budget. Current collections to this fund are falling under projections and there may not be enough to cover the full \$28 million appropriation.

### Workers’ Compensation

**Background:** New Jersey’s Workers’ Compensation system is widely considered to be a bright spot in the Department. The system is stable and effective – one that provides injured workers with prompt, quality medical care while maintaining reasonable controls to help contain the insurance costs borne by employers. This balance is critical and has made Workers’ Compensation one of the few areas where New Jersey’s “cost of doing business” compares favorably with many other states, including both Pennsylvania and Delaware – even for small businesses. As recently as last year, a series of legislative hearings on this system broadly affirmed that it continues to work well in meeting the needs of both workers and employers. The handful of changes that came out of this review were properly characterized by legislative sponsors and Governor Corzine as making a good system even better.

One of the most important components of New Jersey’s system involves the direction of medical care. In New Jersey, the employer and their insurer – not the employee – control the direction of care. This has two main advantages. First, and most importantly, it encourages referral to those medical providers best suited to diagnose a work-related injury and develop an appropriate care and return-to-work plan. This assures that quality medical care for injured workers is paramount to both the employer and the insurer. Second, it allows for improved cost containment through the establishment of managed care arrangements between insurers and medical providers. This “employer control” approach has served

New Jersey well and is essential to the balance discussed above. In several states that have switched to an employee choice approach, medical costs have increased by 10-15% without any apparent benefit in outcomes. Administered pricing under the direction of the Compensation Rating and Inspection Bureau (CRIB) is another feature that has served New Jersey's system well. Workers' Compensation rates are established by CRIB based upon actual loss experience as reported by all WC insurance carriers. The result is a stable, actuarial based rate structure that, while subject to annual approval by the Governor, has historically been free of political tinkering. Looking ahead, it is essential that policymakers continue to keep the balance of New Jersey's Workers' Compensation System in mind as they are asked to consider proposals to either expand benefits or alter the manner in which they are provided. The benefits proposed, however laudable, must continue to be weighed against the increased cost to New Jersey employers.

**Recommendations to Consider:**

**Oppose A-5181 (Egan, Evans) / S-639 (Sarlo, Gill):** Increases workers' compensation for loss of hand or foot.

**Impact:** \$20 - \$25 million in increased costs to the system.

**Oppose A-2846 (Greenstein, DeAngelo) / S-785 (Sweeney, Madden):** Extends supplemental disability and dependent benefits for post-1979 claims.

**Impact:** These added benefits would be paid entirely by employers through an increased surcharge in their Workers' Compensation policy. An analysis by the Office of Special Compensation Funds within the Department of Labor and Workforce Development projects the annual cost to New Jersey employers at \$125 million with the potential to be significantly higher if this law change caused New Jersey to lose its "reverse offset" benefit from the Social Security Administration.

**Oppose S-1982 (Sweeney):** Establishes an ombudsman for injured workers in, but not of, the Department of Labor and Workforce Development.

**Impact:** This would create an entirely new department within the State government with its incumbent salary and administrative costs. This would also duplicate many of the responsibilities now handled effectively by the Division of Workers' Compensation.

### Wage and Hour

**Background:** The Wage and Hour Division is perceived by employers as oppressive. Employers lament that Investigators are inconsistent and can be unreliable. The Division assesses large fines against employers and does so in a heavy-handed manner.

**Overall Recommendation:** Comprehensive training of personnel and a thorough review of the various rules, regulations, and enforcement techniques needs to be accomplished. Specific recommendations follow:

- 1) **Red Tape:** Wage and hour regulations need to be revisited since they are largely not consistent with analogous federal regulations. In order to avoid ambiguity and compliance issues, state regulations should mirror federal regulations with little variance where appropriate. In general, both Delaware and Pennsylvania's labor regulations mirror the federal regulations. Such disparity between other states and New Jersey puts our state at a competitive disadvantage. A prime example of the problem is the New Jersey prevailing wage laws and regulations, which go far above and beyond what other states require.
  - a. Another example can be found with the problem of rounding off of employee time and proper payment to employees for required work, otherwise known as time clock rounding. There is a "rounding" policy as defined in the Fair Labor Standards Act as well as enforcement policies in the U.S. Department of Labor – neither of which the New Jersey Department of Labor & Workforce Development chooses to accept. Federal labor law provides that rounding workers' time, even if occasionally to the employee's disadvantage, is permitted – provided that the method used by the employer over a period of time will not

result in a failure to compensate workers for all time actually worked. Instead of following federal standards, New Jersey enforces a rounding policy that clearly favors the employee, requiring employers that round off time worked in any increment to round it off in favor of the employee. This policy is not consistent with federal regulations and exemplifies the anti-employer sentiment in the Department.

- 2) **Fees and Fines and Enforcement:** The fines and fees schedule needs to be reviewed and revised. The total amount of fees and fines against employers has increased during the past eight years, which has fueled the Department's anti-employer perception. From FY 2000 to FY 2009, total fines and penalties that were levied increased an astonishing 275%, while CPI growth during that same period equaled 25%. While penalties should be enforced against employers who violate the rules, the total amount should not be so high as to devastate a first time offender out of business. Employers now have little opportunity to remedy an audit finding prior to the assessment of fines and penalties. This "guilty until proven innocent" mentality is unfairly biased against employers and works against the Department's image. A form used by Investigators was recently revised to include a check box where an Investigator may mark that the employer was "uncooperative or evasive" during an audit. Although the decision to check the box is subjective and based on no criteria, the employer is nonetheless subject to a monetary penalty if the box is checked.
- 3) **Independent Contractors:** Better guidelines are needed with respect to employee and independent contractor classification. New Jersey has some of the most Draconian laws in the nation related to employee misclassification. For example, a construction industry employer who knowingly misclassifies an employee as an independent contractor faces criminal charges and could potentially be sentenced to a term in incarceration – for what could have been a simple clerical error. An Advisory Commission appointed by Governor Corzine in January 2008 to study the issue made recommendations that did not address the core problem.
- 4) **Ombudsman:** The Department should create an ombudsman for the business community to help employers navigate through the state's regulatory environment. Such a function is especially needed in the Wage and Hour Division. If the cost of creating a new position is problematic, the Department could instead create a voluntary employer/department council, composed largely of employers, to would work with other businesses to resolve problems.
- 5) **Record Keeping:** Technology should be upgraded to improve record keeping within the Department, particular in the Wage and Hour Division. Some employers complain that Investigators cite for violations that were previously rectified in prior audits. Less than desirable Divisional record keeping is generally the cause for the Investigator's oversight.
- 6) **Guidelines for Investigators:** Guidelines and procedures for the Division must be reviewed and revamped. Stakeholders have complained about inconsistencies in the enforcement of many laws. A new procedure manual should be adopted, regularly updated, and used for all DOL investigations, particularly in the Wage and Hour Division. The manual should be similar to the USDOL's Field Operations Manual that is used by federal investigators. The manual should be available online so that both employers and employees can be aware of the standards. All affected employees should be trained on the manual's provisions.
- 7) **Prevailing Wage:** The law needs to be changed. Public works projects subject to prevailing wage requirements are those funded in whole or in part with the funds of a public body. Contracts awarded directly by municipal government must be valued at \$14,187 or more to be covered by the requirement. For all other public entities, including municipal utility authorities and boards of education, the threshold is \$2,000. Those thresholds are artificially low and must be raised, which will require legislation. Particularly with prevailing wage, audit requests should be placed in queue for field verification based upon empirical evidence supplied coupled by a randomness factor for selection. A considerable number of audits now are initiated at the request of certain outside groups. In other words, unsubstantiated claims should be reviewed after those that are provided with evidence. This will in effect, stop the "witch hunts" that many employers have complained about and provide more time for field Inspectors to do quality work and maintain departmental revenue.

## Workforce Development & Economic Development Strategy

**Background:** New Jersey provides extensive support for a wide range of workforce development programs. The three main components of workforce development programs in the Department of Labor and Workforce Development are:

- State programs funded by unemployment insurance (UI) payroll tax revenues redirected into the Workforce Development Partnership Fund and the Supplemental Workforce Fund for Basic Skills:
  - a. The Workforce Development Partnership Fund: Total FY2010 Revenue - \$98.1 million
  - b. The Supplemental Workforce Fund for Basic Skills: Total FY2010 Revenue - \$27 million
- Programs funded by the federal Workforce Investment Act (WIA), including programs for adult training, displaced workers, and youth:
  - a. WIA funding for FY2010: \$76.6 million
- State and federal programs to facilitate transitions from welfare to work, comprised of the State Work First New Jersey (WFNJ) program and the federal Temporary Assistance for Needy Families (TANF) program.
  - a. WFNJ/TANF funding for FY2009: \$65 million
  - b. Food Stamp/General Assistance Recipient Training for FY2009: \$13.4 million (No numbers were available for FY2010 at this time).

### **Overall recommendation:**

The current market place perception of New Jersey not being business-friendly can be altered if the Department is positioned as an economic development entity, as well as a Department that provides a "safety net" for the citizens of New Jersey. The workforce training money awarded to employers helps retain and attract businesses to New Jersey. Skill enhancement of workers is a key to innovation, value-added propositions and marketplace differentiation for New Jersey's business community. Following are recommendations that support that move to a more "business friendly" State:

1. The Department should be incorporated as a key element of the Economic Development Strategy for New Jersey.
2. Consider changing the name of the Department to more closely align with its customers. This can immediately alter the marketplace and staffs' expectations of the department.
3. The business community needs to be educated on why the workforce training grants are not free money, that companies can get all the training money they want, but that they cannot simply pick the desired training courses randomly. There needs to be a three year company organizational development training plan with metrics, i.e. compensation increases, a career ladder.
4. Currently, workforce training grants are used to attract and retain business, but more money needs to be available. A no-cost method of doing so:
  - a. For a 24 month period, have training grants awarded to all businesses with annual sales greater than \$5 million modified, so the grant covers 80% of the total training cost (not the current 100%). The company would then have to pay 20% out of pocket.
  - b. During that time period, the company would only need to match the training cost via direct labor costs to the company while workers are trained "on the clock" by 40%.
5. Metrics need to be put in place for all companies and organizations who receive an award and all training providers who deliver that training. Said company/organization and training provider must complete, at a minimum, 90% of all training during the one year award period. The metric would also look at the "run rate" of dollars expended three months after the grant has been allocated. The "run rate" should never fall below 30% utilization of training funds and finish the award at a minimum of 90%. If all the metrics are not met, the award is de-obligated.

6. Economic impact data should be obtained from the company six months after completion of the training award and gathered from an independent source via a survey, without a charge to the award. This will provide a return on investment calculation for future decision making.
7. Fully utilize the labor market and demographic data within the department to help direct workforce development policy.
8. Evaluate county Workforce Investment Boards (WIBs) as to their ability to provide for greater communication and measurable impacts on uses of funds that drive economic development.
  - a. WIBs are intended to be populated with board members from the business community, reflecting the kinds of businesses and industries that make up the local economy. Over the years, the makeup of county WIBs has changed dramatically, which has weakened the entire workforce system to the point where the business community finds little value in using WIBs. It is imperative that county WIBs shift back to being representative of the business community in order for them to serve their intended purpose.
9. Re-evaluate deliverables, customer service and accountability for all One-Stop Career Centers.
10. Appoint a cross section of business leaders to the State Employment and Training Commission to better reflect the business diversities of our State.
11. Drive better integration between business, labor, education, and higher education (including community colleges) as a way to increase the future talent pool and provide the unemployed with the skills businesses need for today and tomorrow, as part of the Administration's economic development strategy.
  - a. Last year, New Jersey's 19 community colleges enrolled 223,000 students in undergraduate education and another 176,000 students in non-credit workforce training programs. The 223,000 credit enrollment accounts for more than 1/2 of all students attending college in the state. Community colleges provide virtually all of the publicly funded non-credit training in New Jersey.
  - b. The Community colleges not only have the mission to do workforce development they have the location, too. The nineteen colleges have a combined 65 campuses, branch campuses, and extension centers, easily accessible to virtually all residents of this state. These locations represent a capital investment of hundreds of millions of dollars in high quality facilities, purposefully designed for the adult learner.
12. Evaluate the return on investment on a current \$3.5M investment to eight consortia of community based organizations that Project Connect awarded to improve communications between community organizations and the One-Stop Career Centers.
13. Evaluate federal grants that are awarded to New Jersey. Not all money that has been given to the Department has been spent and some money has been reallocated to the general budget fund.
  - a. The Department needs to use more of those dollars to determine how to create job training programs that work towards enhancing the economy and talent pool of workers for jobs that exist today and will be needed tomorrow.
14. The new labor commissioner should look carefully at how existing job training money is being spent. A dialogue with Washington, D.C. should begin immediately. Currently, the USDOL has a large fund for worker retraining. The new commissioner has to develop a very close working relationship with the federal department of labor in order to transform the state's unemployment insurance program into a retraining and reemployment program.

**Other Issues:**

1. None of the dedicated trust fund resources should be diverted from the Department and used for other purposes.

2. A grant proposal has been submitted to the federal government for \$1.7 million to expand DiscoverAbility programs and services. This includes a newly formed partnership with the New Jersey Chamber of Commerce's Business Leadership Network to create and implement a co-branding and marketing strategy as well as strengthening employer communication and feedback loops.
3. Provide for regularly scheduled integration meetings with all department/commission heads to optimize strategy, resources and avoid a "silo mentality." Pending health care reform, federal grant money available from the Departments of Education, Health & Human Services, Labor, Energy and Defense cut across most state departments/commissions. These sessions can be used to optimize the state's share of obtaining this money, which can allow expansion of the state economic development strategy.

## Legislative and Regulatory Issues

**Background:** Over recent years, the legislative and regulatory agenda of the Department has been less than balanced and has focused on a majority of bills that would generally not be considered "business friendly." Interestingly, the overview of legislative and regulatory activity supplied to Chairwoman DiLorenzo from the Department contains a list of bills not supported by the business community, with few exceptions. This reinforces the perception that the Department's culture tends to be anti-employer and should be more evenhanded moving forward.

**Overall Recommendation:** The Department's legislative and regulatory agendas should be unbiased and include bills that will help the employer community, enhance the important social and economic services performed in the Department, and encourage economic development.

### Legislative/Regulatory/EO Recommendations

#### **Limit or cap the amount of punitive damages that can be awarded against employers in New Jersey.**

Currently, New Jersey can award an unlimited amount of punitive damages against employers. Capping the amount of potential damages will aid in countering the common sentiment that New Jersey is willing to place an unlimited amount of resources against those who chose to do business in the state.

#### **Enact a sales tax holiday.**

In 2009, 16 states and the District of Columbia offered successful sales tax holidays during designated time periods in the year to spur consumer spending and encourage business investment in their respective states. There are currently several variations of bills introduced that would provide for a sales tax holiday during certain portions of the year, all of which the Subcommittee supports: **A-1258 (Moriarty, Greenwald); A-3279 (Guscoria); A-3340 (Wagner); S-176 (Bucco); S-177 (Bucco); S-1652 (Madden).**

#### **Executive Order to include unions in pay to play standards.**

In 2008, Governor Corzine issued a series of Executive Orders (117-120), which dealt with the issue of pay-to-play regulations. These EOs should be evaluated to assure unions are held to the same standards as those regulating the private sector.

#### **Charge a filing fee for "unfair practice suits" filed with PERC.**

The intent of this legislation would be to minimize the amount of faulty unfair practice claims that are filed every year. PERC must investigate every claim that is filed regardless of circumstance. As a result, PERC uses their limited resources investigating claims, a portion of which are less than legitimate and result in an unintended misuse of PERC resources and taxpayer dollars.

**Create specific criterion that outlines the role of neutral arbitrators in PERC.**

Currently, the criterion for neutral arbitrators is loosely defined from a variety of previous court decisions. This leads to subjectivity in an arbitrators' role that is not conducive to assuring their neutrality. An irrefutable outline of criteria for neutral arbitrators should be adopted and abided by to assure consistency and neutrality in the negotiation process.

**Create specific criterion for neutral arbitrators to use in deciding public contracts.**

As an extension of the above recommendation, this criterion should include allowing neutral arbitrators to consider a municipality's ability to pay certain increases as a determining factor in the negotiation. The results of other contiguous communities' police and fire negotiations should not be a factor in municipal negotiations moving forward.

**Repeal legislation to remove criminal penalties associated with wage and hour violations in the Department.**

In addition to high fees and fines, criminal penalties include imprisonment for a first, second, and third violation. This penalty structure fuels the anti-employer sentiment in New Jersey and should be scaled back to a more reasonable set of penalty provisions.

**Stop legislating State employee benefits.**

This practice was seen in the recent past during State Budget negotiations. The legislature put State employee benefits into statute, making it much more difficult to amend, scale back, or repeal in the future.

**Remove the language from the next Communications Workers of America (CWA) contract regarding the "Displaced Workers Pool."**

The Displaced Workers Pool (DWP) allows workers who are laid off or displaced due to privatization, outsourcing, or closure of facilities to remain employed by the State for up to four months, with the option of extending it to six months. These State employees will continue to receive their full salary, health and all other contractual benefits, as well as continuing to accrue seniority. Clearly, the DWP was designed to discourage employee layoffs, as savings from layoffs would not be experienced for six months, when accounting for the 45 days advanced notice that must be provided.

**End the satisfactory/unsatisfactory performance appraisal contained in the current CWA contract.**

This antiquated system should be replaced with a more finely calibrated performance appraisal system, which will allow outstanding performers to be identified and rewarded.

**Develop criteria to allow for pay increases for state employees based on the economic health of the state.**

Currently, pay increases are contractually mandated with no performance provisions or accountability attached to them. This system should be changed to more closely mirror the private sector practice, which rewards employees based on work performance, but can be withheld if an organization is in financial distress.

## New Jersey Civil Service Commission

**Organization and Structure:**

- Number of employees: 238 approved FTEs for FY 10
- Size of Budget: \$18,503,000 for FY 10
- Six Sub-units
- Constituents: 190,000 employees, 80% of whom are represented

**Background:** The New Jersey state government's personnel management system is a costly antique that does not serve the public need for the efficient deployment of the state government workforce. It differs markedly from private sector best practices and is at the root of a host of

expensive operational problems. It is a system that improperly categorizes state government employees, fails to provide incentives to spur employee productivity, prevents the efficient allocation of workers to meet public needs, stifles employee career development, does not use contemporary modes of employee recruitment and insufficiently invests in employee training to increase effectiveness.

**Overall recommendation:** Replace current civil service/merit system with a new human resource delivery system that ensures the fundamental integrity of the public employment system and rewards quality and productivity. The new system should include, but not be limited to:

- 1) Reform the state government employee classification system by broad banding titles. Use more generic job descriptions to reduce the number of titles and reduce the number of employee requests for re-classification and desk audits. Update the job descriptions to include computer skills or other technical expertise required to perform the duties of a position. Seniority rights should be protected.
- 2) Eliminate the "rule of three." State agencies should have greater flexibility in hiring decisions and should be able to choose candidates from larger pools of applicants. Further, state agencies should be able to evaluate candidates on: interpersonal skills, teamwork, professionalism, work record quality, skills, experience and core competencies. Review the special rules providing competitive advantages to candidates who are veterans or disabled.
- 3) Outsource all aspects of the candidate qualification process, including testing and experience evaluation, verification of post employment, education attainment, criminal background checks, reference checks, drug and alcohol testing, licensure and other reasonable screening actions.
- 4) Decentralize the hiring and promotion functions to the operating agencies. The budget process should ne used as a check against potential agency abuse.
- 5) Adopt an employee performance evaluation approach that is similar to that used by the provide sector. Agency heads should establish explicit and measurable employee performance goals. Supervisors should be trained to conduct rigorous performance evaluations using measurable criteria. A three tiered approach to performance evaluations should be used: employee, employee's supervisor and employee's supervisor's supervisor.
- 6) Implement an incentive pay approach and tie it to the employee evaluation system.
- 7) End the satisfactory/unsatisfactory performance appraisal contained in the current CWA contract and replace it with a more finely calibrated performance appraisal system. Outstanding performers should be identified and rewarded.
- 8) Undertake a comprehensive review of the State's discipline and dismissal policies.
- 9) Allow local and county governments to opt out of the current system.
- 10) Transfer the current Civil Service Commission and its successor organization to the Department of State (Lt. Governor).
- 11) Reach out to Buck Consultants to review suggested reforms proposed in 2000 and 2003.

#### Major Issues:

- 1) Civil Service Commission holds the responsibility for establishing and implementing time and leave policy relative to the MOA with State Unions on Mandatory Unpaid Furloughs. To effectuate the terms of the MOA, the Commission must promulgate rules to establish a "Paid Leave Bank."
- 2) As of September 8, 2009, almost 19% of the Camden Police Department's sworn personnel were unavailable for duty. Since then, the Civil Service Commission in consultation with the Office of the Governor and NJ Attorney General worked the City of Camden to develop a plan that would lead to the hiring of approximately 75 new officers in the shortest time possible. A final Administrative Action of the Civil Service Commission established the Camden Police Department Pilot Program, commencing on October 21, 2009 and expiring on October 21, 2010.

- 3) In 1977, the USDOJ filed a complaint against the State of New Jersey and 12 of its major cities alleging that there was a pattern or practice of discrimination with respect to entry level and promotion examinations used to select fire department personnel. All parties entered into a Consent Decree in 1980 with the USDOJ, with the major objective of each fire department demonstrating a proportion of protected class members within their uniformed ranks that approximates the composition of the labor market for their respective communities. The Civil Service Commission has scheduled the upcoming examinations.
- 4) At its November 18, 2009 meeting, the Civil Service Commission proposed rule amendments in response to a petition for rulemaking from the NJ State PBA regarding promotional law enforcement and firefighter eligible lists. These amendments address concerns raised about the practice of "List Shopping" by appointing authorities in certain instances where an old list is still available when a new list is issued. The proposed amendment would provide that the old list expires upon the issuance of the new list, but the new list could not be used until it is promulgated (generally one week later). These proposed amendments will be published in the NJ Register on December 21 and comments will be accepted until February 19.
- 5) On October 8, 2009, the Civil Service Commission received a letter from the USDOJ, Civil Rights Division stating that as a result of their investigation into the practices used to test and promote police officers to the rank of Sergeant, they intended to file a complaint that the Civil Service Commission has been engaged in a pattern or practice of discrimination against African Americans and Hispanics with respect to the selection (testing) process. In order to avoid litigation, the USDOJ has offered the State the opportunity to settle the matter by entering into a consent decree. The Civil Service Commission, in conjunction with the NJAG's office, has retained the services of an expert witness (EB Jacobs). The Commission has set funds aside for this possible expense. The suit was filed on January 7, 2010.

### **New Jersey Public Employment Relations Commission (PERC)**

**Mission:** "To foster harmonious public sector labor relations by preventing or promptly resolving labor disputes."

**Total Budget:** \$3.48 million - 95% of PERC's \$3.48 million budget is allocated to salaries (approximately \$3,325,000).

**Background:** The New Jersey Legislature enacted the New Jersey Employer Employee Relations Act in 1968, with the purpose of providing a structure for the management of labor relations matters among public employers and employees. Under the Act, mediation is a process of resolving collective negotiations impasses by having a mediator assist the parties to reach a voluntary settlement. Neutral arbitrators are not selected randomly, but by the parties involved in the negotiations, which is a process we support. Over the years, PERC has enjoyed tremendous power to influence the development of the rights and responsibilities of employers and employees. It is therefore extraordinarily important that the Governor appoint a strong and knowledgeable Chairperson to lead PERC, so that he/she can monitor and guide the development and analysis of labor relations issues that are presented to the Commission. Additionally, appointments of PERC Commissioners should be carefully evaluated so that philosophically the appointees share the same view as the Administration.

PERC's constituency includes approximately 450,000 public employees, 3,000+ bargaining units, and 1,700 public employers. PERC has jurisdiction over the following types of public employers:

- The State of New Jersey
- counties
- municipalities
- local public school districts and charter schools
- public colleges and universities
- autonomous agencies, authorities, boards and commissions, including New Jersey Transit bus and light rail operations.

**Non-covered Employers:**

- New Jersey Transit Rail
- The Port Authority of New York and New Jersey
- The Waterfront Commission of New York Harbor
- The Delaware River Port Authority of Pennsylvania and New Jersey
- The Delaware River and Bay Authority
- The Delaware River Joint Toll Bridge Commission

**Commissioners & Staff:**

The Commission consists of seven members appointed by the Governor, with the advice and consent of the Senate. Of such members, two represent public employers, two represent public employee organizations, and three represent the public including the appointee designated as Chairman. Effective January 1, 2010, former Chairman Lawrence Henderson retired from State government. He was Commission Chairman since December 2003. No new Commission Chairman has been appointed as of January 15, 2010.

In Governor Corzine's final weeks in office, he appointed three new Commissioners to PERC to fill the expired terms of previous Commissioners. New PERC Commissioners include: Adrienne Eaton, Ph.D., Paula Voos, and Sharon Krengel. A nomination to appoint Ira D. Stern was removed from consideration. Currently, there are two Commissioners that remain on PERC, whose terms have expired. One Commissioner's term is still current and does not expire until March 13, 2011.

Commissioner	Position	Term Expires	Replaced
Vacant	Chairman - Public Member	-	Lawrence Henderson
Sharon Krengel	Public Member	January 1, 2012	Kirsten Scheurer Branigan
Adrienne Eaton, Ph.D.	Employee Organization Member	February 10, 2011	Donald J. Buchanan
Patrick V. Colligan	Employee Organization Member	March 13, 2011	
Cheryl G. Fuller	Public Employer Member	February 14, 2009	
Paula Voos	Public Member	September 10, 2012	Pierre D. Joanis
Matthew U. Watkins	Public Employer Member	February 10, 2008	

The agency currently has 32 full time employees (23 professionals / 9 support employees) in four sections:

- Unfair Practice & Representation
- Conciliation & Arbitration
- General Counsel, and
- Administration

In addition to PERC's staff, there are also "ad hoc neutrals" that supplement the agency and are paid a per diem rate.

**Recommendations to Consider:**

**Appointing Strong, Qualified Commissioners to PERC**

Currently, there are three Commissioners that need to be appointed, including the Chairman. It is imperative to appoint a strong and knowledgeable Chairperson to lead PERC, so that he/she can monitor and guide the development and analysis of labor relations issues that are presented to the Commission. Additionally, appointments of PERC Commissioners should be carefully evaluated so that philosophically the appointees share the same view as the administration.

#### **Changes to the interest arbitration statute**

The interest arbitration statute is in need of a major overhaul if the economics of our State, at least at the municipal level, are ever to be taken under control.

#### **Charge a filing fee for "unfair practice suits" filed with PERC.**

The intent of this legislation would be to minimize the amount of faulty unfair practice claims that are filed every year. PERC must investigate every claim that is filed regardless of circumstance. As a result, PERC uses their limited resources investigating claims, a portion of which are less than legitimate and result in an unintended misuse of PERC resources and taxpayer dollars.

#### **Create specific criterion that outlines the role of neutral arbitrators in PERC.**

Currently, the criterion for neutral arbitrators is loosely defined from a variety of previous court decisions. This leads to subjectivity in an arbitrators' role that is not conducive to assuring their neutrality. An irrefutable outline of criteria for neutral arbitrators should be adopted and abided by to assure consistency and neutrality in the negotiation process.

#### **Create specific criterion for neutral arbitrators to use in deciding public contracts.**

As an extension of the above recommendation, this criterion should include allowing neutral arbitrators to consider a municipality's ability to pay certain increases as a determining factor in the negotiation. The results of other contiguous communities' police and fire negotiations should not be a factor in municipal negotiations moving forward.

**Support A-2971 (Schaer, Greenwald, Cryan, Burzichelli) / S-3074 (Stack, Sacco):** Requires certain arbitrators to file financial disclosure statements.

**Oppose A-2972 (Greenwald, Cryan):** Establishes a random selection process for PERC arbitrators.

### **State Negotiations**

It is no secret that New Jersey's dire financial crisis is rooted in the explosive and unsustainable growth of both state and local government. If left unchecked it will shortly bankrupt our state. There may be no greater or more difficult task facing our new Governor than to bring under control this spiraling increase in costs. In that regard, the costs associated with the personnel section of each and every government budget has continued to outpace the natural growth of our state economy, making it impossible for government to continue down this path. Governor-elect Christie will face a potent adversary in his attempt to both reduce the number of state employees and to reduce their benefit and pay package. Public unions have been very effective in thwarting any attempt to rein in these uncontrolled costs. As such, it is recommended that the Governor's Office be established as follows:

1. A strong Director for the Office of Employee Relations who will be the first attempt to bring resolve to this problem;
2. This Director and his/her staff should be supported by very talented outside employment counsel who has a proven track record to accomplish the goal at hand;

3. The Governor should initially refrain from using his popularity and bully pulpit to confront this most difficult task until the timing is right and his support staff has done their job. Then the Governor can use his talent to get the public, the Legislature and the media behind this endeavor. Acting too precipitously could allow the unions to drag out the issues and place the Administration in a position of appearing harsh or anti-union before building its case and gaining wide and bi-partisan support;
4. In New Jersey it would not be advisable to lump all the unions together. We believe most non-public unions and their members will be supportive of reining in the public unions.

Based on the above outline it is important to change the philosophy that state workers have come to see their pay packages as an entitlement, and begin to attempt to instill some of the beliefs the workforce accepts in the private sector, namely that your employer can only pay you based upon meritorious service and the employers' ability to pay. To this end, the Subcommittee is supportive of adopting an employee performance evaluation approach that is similar to that used by the private sector and implementing an incentive pay approach that ties it to the employee evaluation system.

The "ability to pay" theme needs to permeate all of government from the state's negotiations with the CWA, to every local school board that is dealing with teacher contracts or the local government bargaining with police and fire unions. All public unions need to be directed toward the "ability to pay" theme. This will necessitate that the Legislature to stop passing laws that put into place unacceptable obstacles that essentially create benefits that cannot be negotiated away even in times of financial crisis.