10-15-1986

Unemployment Insurance Committee Report

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II. UNEMPLOYMENT INSURANCE COMMITTEE REPORT

Judge Paul Wyler

[Resolutions adopted by the Unemployment Insurance Committee do not become policy of NAALJ unless and until accepted by the Board of Governors.]

A. LAWYER REQUIREMENT (adopted by Unemployment Insurance Committee October 1984)

Resolved: As a general policy, the Committee supports the principle that all unemployment insurance hearing officers in the future be lawyers with some trial experience before being appointed (with a suitable grandfather clause).

B. NON-INTERFERENCE RESOLUTION (adopted by Unemployment Insurance Committee October 1984)

Resolved: That Unemployment Insurance hearing officers be free from actual, potential, or perceived interference in the decision or hearing process from any outside source, including their appointing authority, their overall agency, state employees, politicians, etc.

C. WORKING CONDITIONS, SALARY AND TITLE (adopted by Unemployment Insurance Committee October 1984)

Resolved: That the Committee supports improved working conditions, salary and the acquisition of the title of administrative law judge for all Unemployment Insurance hearing officers; and

FURTHER RESOLVED, that the Committee should, if possible, be of assistance to ALJ's/hearing officers in any

1/ Editor's Note: The following resolutions are reprinted as reported by the Committee Chairman. Errors of style and diction, resulting from oral debate on the Committee floor, are largely uncorrected.

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state desiring assistance in improving salary, working conditions, or in obtaining the ALJ title.

D. SEPARATION OF APPEALS AND CLAIMS FUNCTIONS (adopted by Unemployment Insurance Committee October 1984)

Resolved: That the Unemployment Insurance appeals and claims functions in each state should be separate in function or operation.

E. PROPOSED TRAINING AND QUALIFICATION RESOLUTION (adopted by Unemployment Insurance Committee October 1985)

Whereas, hearing officers who preside at Unemployment Compensation appeals are responsible for providing due process through fair, comprehensive, and consistent hearing procedures;

Whereas, since the enactment of the Social Security Act, the Unemployment Compensation appeals proceedings have become more complex;

Whereas, often parties to Unemployment Compensation appeals hearings are represented by legal counsel;

Whereas, courts have imposed detailed and legally technical standards on Unemployment Compensation hearings;

It is resolved that:

(A) All hearing officers/ALJ's must be provided with minimum training in accordance with criteria established by the National Judicial College and/or the USDOL.

(B) Each state has an affirmative responsibility to assure its hearing officers/ALJ's obtain continued training to update changes in procedural and substantive laws.

(C) All hearing officers/ALJ's must have minimum qualifications of training, education, and experience which enables them to understand evidentiary issues, do legal research, and write clear, concise and logical decisions, (a law degree among other credentials meets these minimum requirements).
F. NEED FOR POLICY MAKING APPEALS STAFF IN US DOL (adopted by Unemployment Insurance Committee October 1985)

Whereas, for some period of time United States DOL National Office has had no Appeals staff,

Whereas, Appeals has a different role than the Administration of the Unemployment Insurance System,

Whereas, United States DOL is in the process of hiring a staff to handle Appeals,

Whereas, to effectively advocate for the Appeal's function within the National Office requires some independence from the Unemployment Insurance Administration,

Wherefore, it is resolved that United States DOL shall employ sufficient and qualified Appeal's staff who will advocate for the interests of the State Appeals, within both the National and Regional United States DOL Offices and who shall be supervised by the Director, Office of Unemployment Insurance Services.

G. PROPOSED DUE PROCESS AND PRODUCTIVITY RESOLUTION (adopted by Unemployment Insurance Committee October 1985)

Whereas, the U.S. Department of Labor (USDOL) has established time lapse standards;

Whereas, the Social Security Act requires due process hearings;

Whereas, the states require that unemployment compensation hearings include procedural protections similar to the uniform APA;

Whereas, the USDOL funding mechanism disregards due process;

Whereas, resources should be used most economically to achieve due process;

Whereas, the present mechanism discourages and provides disincentives to efficiency while providing no due process protection;
It is resolved that USDOL may not sanction any state appeals program without first determining whether the existing funding is sufficient to meet due process requirements.

(alternate wording suggested by Wyler)

USDOL may not approve any state appeals program unless the funding thereof is sufficient to meet due process requirements.

H. PROPOSED INDEPENDENCE RESOLUTION (adopted by Unemployment Insurance Committee October 1985)

Whereas, there are at present a number of different mechanisms available to operate an appeals system for unemployment compensation;

Whereas, independence and impartiality require separation from the agency that makes the decision which is being reviewed;

Whereas, without such separation, promotion, salary scale, and discipline may be used against hearing officers/ALJ’s with which the state agency disagrees, and such action would interfere with independence and impartiality;

Whereas, an independent office of hearing officers/ALJ’s offers the greatest degree of independence;

It is resolved the States should be encouraged to create an independent office of appeals similar to that established in New Jersey, Minnesota, and Washington, and which independent office of appeals includes hearing officers/ALJ’s which are protected by Civil Service yet responsible to meet time lapse standards. (Sic - ed.)
I. FUNDING (deferred for further study)

1. Due Process

Any funding for lower and higher appeals must include due process as a factor in the funding.

(a) The present MPU funding structure does not contain the due process requirements of the several states.

(b) Whether a state is a higher or lower MPU state bears no relationship to the due process requirement of that state.

(c) Some high MPU states have stringent due process requirements. The federal habit of reducing high MPU states for budget equalizing may interfere with the ability of such states to fulfill their appeal functions.

2. Efficiency

The system penalizes efficiency. Those states that have high MPU's are cut in the budget allocation. Thus, they must become more efficient. Such efficiencies reduce allocated MPU's in future allocations. This promotes a catch-22 situation. Savings that could be utilized to provide future efficiencies are lost, providing little encouragement to promote efficiencies but rather encourage a responsible program administrator to play number games by balancing the program operation to not reflect real savings because of the funding reductions that will occur.

WHEREAS, until recently, cost model studies were mandated on a 3-year cycle, and there are some states which had no changes warranting such a study; in the interest of economy, BE IT RESOLVED that cost model studies should be done as needed by the states in response to appropriate circumstances and that sufficient funds for such cost model studies be provided.

Substantial efficiency is accomplished by capital intensive applications which should be funded by NPS. Unfortunately, staff involved with NPS funding don't recognize the necessity of funding
the on-going costs of capital intensive applications. There are no mechanisms for amortizing and replacing labor-saving and efficient equipment costs. NPS funds are allocated on a yearly basis without recognition of such on-going costs. MPU's do not take such costs into account. The permission that states have of converting MPU's into NPS for automation, during a cost model cycle, also makes no provisions for those on-going costs.

In 1976, recognition was given that the thrust of cost model would allow states to benefit from efficiencies and also permit them to share in the savings. This has been lost in application. Presently, there is no incentive for efficiency or improvement; to do so amounts to a net loss. As cost model presently works, it is a capitalist cost and socialist profit system. By way of illustration, if a state agency achieves the reduction of 100 MPU earned positions, the state presently loses the related NPS funds for those positions, though the expenditure funded by the NPS may be nondiscretionary. There are also NPS incurred for maintaining and replacing the capital assets which created and perpetuated the savings of those positions.

BE IT RESOLVED that the Department of Labor establish a validation program by which state efficiencies can be measured and that such states not be penalized in forthcoming years for such efficiencies. BE IT FURTHER RESOLVED that recognition be given to on-going costs, maintenance, and replacement of capital intensive applications, and that they be recognized in NPS allocations and, if not there, then in MPU's.

BE IT FURTHER RESOLVED, that nondiscretionary fixed costs be paid on an actual basis and not tied to fluctuations in workload and positions.