

August

JUL 13 1977
L 77 - 433

Director of Research
Director of Unemployment and Sickness Insurance

General Counsel

Determination of inception or ending of a "period of high unemployment"

This is in response to a memorandum from the Director of Research dated June 1, 1977, in which an opinion was requested as to whether an estimated rate of railroad unemployment for any given month may be used in making a determination that a "period of high unemployment" under section 2(h)(2) of the Railroad Unemployment Insurance Act has commenced or has ceased.

As you know, section 2(h)(2) of the Railroad Unemployment Insurance Act provides:

"* * * a 'period of high unemployment' shall begin with the twentieth day after * * * a period of three consecutive calendar months in which, for each month included in such period, the rate of railroad unemployment (seasonally adjusted) equalled or exceeded the lowest applicable unemployment rate specified for the national 'on' indicator in section 203(d) of Public Law 91-373, as amended, and shall end with the twentieth day after * * * a period of three consecutive calendar months, in which, for each month included in such period, the rate of railroad unemployment (seasonally adjusted) was less than the lowest applicable unemployment rate specified for the national 'off' indicator in section 203(d) of Public Law 91-373, as amended."

In addition, section 2(h)(3) of the Railroad Unemployment Insurance Act provides for the computation of the "rate of railroad unemployment." Section 2(h)(4) provides that a determination that a period of high unemployment is beginning or ending is to be published in the Federal Register.

In the memorandum, the Director of Research stated that the Bureau of Research will compute, by the twentieth day of each month, a seasonally adjusted rate of railroad unemployment applicable to the last completed month. Because of a time lag in gathering various data, this rate of unemployment will initially be an estimated rate which may be subject to revision as more data is received. The Director of Research specifically inquired as to whether he may make a final determination as to when a period of high unemployment has commenced or has ceased based upon such an estimated rate of unemployment.

**Director of Research
Director of Unemployment and Sickness Insurance**

As noted in the memorandum, the statute itself is silent on this point. Section 2(h)(2) of the Act designates when a period of high unemployment begins or ends, but does not place any time limitation on when this determination must be made. The statute does not mandate that a determination be made precisely on the twentieth day after three consecutive months of an "on" or "off" indicator that a period of high unemployment has begun or ceased. Furthermore, section 2(h)(4) of the Railroad Unemployment Insurance Act states:

"Determinations under this subsection shall be made by the Board in accordance with regulations prescribed by it. When a determination has been made that a 'period of high unemployment' is beginning or ending, the Board shall cause notice of such determination to be published in the Federal Register. * * *

This language merely requires that as soon as a determination has been made with regard to the beginning or ending of a period of high unemployment there should be a publication in the Federal Register to that effect. Publication of a final determination in the Federal Register on the twentieth day would, of course, be impossible without the use of some estimation procedure. However, since the statute does not specifically provide for use of an estimated rate of unemployment in making determinations under section 2(h)(2), I am of the opinion that determinations under that section must ultimately be based on the actual rate of railroad unemployment (seasonally adjusted) rather than on an estimated rate.

In light of the above I am of the opinion that if it appears on the basis of the available information that a period of high unemployment under section 2(h)(2) will begin, a preliminary publication to that effect in the Federal Register would be desirable, and applications may be taken for those who would be eligible for extended benefits. However, this publication should state that the determination is based upon an estimation and is subject to revision upon receipt of final data. The publication should further state that no extended benefits will be paid until a determination made on complete data shows that a period of high unemployment has actually begun. When all the data has been received, a subsequent publication of the final determination should be made in the Federal Register. If the final determination corresponds to the preliminary estimate, the period should be considered as having begun with the twentieth day of the appropriate month as indicated in the statute, and accumulated applications should be processed.

When it appears that under section 2(h)(2) a period of high unemployment is ending, a preliminary publication to that effect in the Federal Register would also be desirable. The publication should state that such

**Director of Research
Director of Unemployment and Sickness Insurance**

a determination is based upon an estimation and that it may be revised upon receipt of final data. This publication should further state that payment of extended benefits shall cease, effective with the twentieth day of the appropriate month, but will be resumed again effective as of the date of their termination should a determination based on final data be made that a period of high unemployment has not, in fact, ended. Applications should be received and held during the interim, and a final determination and publication should be made after all the data has been received.

**Dale G. Zimmerman
General Counsel**

cc: Chief Executive Officer

TWS:das