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Supplemental Unemployment Benefits and Public Policy in Ohio

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SINCE JUNE, 1955, a number of labor contracts providing for the so-called guaranteed annual wage have been negotiated and signed. These contracts provide only for the payment of supplemental unemployment benefits (SUB) to certain qualified unemployed workers. Two proposals for revising the Ohio Unemployment Compensation (UC) law to specifically permit the payment of SUB were defeated in 1955.[1] On June 14, the Ohio Senate rejected an amendment which would have allowed claimants to receive SUB in addition to UC. At the November election, the voters defeated an omnibus initiated bill which included a similar provision. On the other hand, legal authorities in several states have held that SUB may be paid under their respective laws.[2] Coming before any SUB payments, these administrative rulings and the expression of Ohio sentiment may not be the final embodiment of public policy in each state. This article examines some of the legal and economic considerations which should influence public policy in Ohio on this issue.

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[1] The Ohio UC Law — OHIO REV. CODE Chapter 4141 — does not contain any language specifically permitting or prohibiting SUB payments.

[2] Favorable rulings were made by the Attorneys-General of Michigan, Connecticut, Massachusetts, Pennsylvania, New Jersey, New York, West Virginia, California, Illinois, Minnesota, Kansas and Washington. In Delaware, Florida, Arkansas, Missouri, District of Columbia, Wisconsin and Kentucky the opinion was rendered by the employment security agency. These opinions are easily found in CCH UNEMP. INS. REP. under the respective states.

The SUB Plans in Brief

Although the terms of the contracts vary, they follow a pattern established at Ford and General Motors.[3] From 3 to 5 cents are paid into trust funds for each hour worked by employees. When the trust funds reach ceiling amounts, the employers' contributions will be suspended.[4] Generally, employees would have to meet the requirements and be drawing UC in their respective states prior to establishing a claim against the trust fund.[5] The supplemental payment from the trust fund could raise a laid-off worker's total unemployment benefits to a maximum of 65 percent of regular weekly take-home pay after all tax deductions. The Ford and General Motors plans permit a claimant to draw up to 65 percent for four weeks, and up to 60 percent for an additional 22 weeks, or until he again finds work or is otherwise disqualified from receiving UC benefits. The can companies permit claimants to draw up to 65 percent of their straight time wage after federal taxes in the form of company supplemental unemployment benefits, UC, and income from jobs outside the company. After the claimant has exhausted his UC, the can companies will then pay a maximum primary benefit of $46.80 (plus $2 for each of not more than four dependents) to a maximum period of 52 weeks.

The Ford and General Motors contracts provide that no benefits will be paid for the first year (until June 1, 1956) and until supplementation is permitted in states in which two-thirds of the bargaining unit are employed by the firm granting the benefits.[6] After June 1, 1956, benefits

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[3] For a general discussion of this subject see Solomon, *The Guaranteed Annual Wage and Other Types of Job Security Plans — An Explanation and Analysis*, 7 WEST. RES. L. REV. 117 (1956).

[4] There is no maximum funding provision in the can company contracts. For additional information on the details of the Ford, Allis Chalmers, American Can and Pittsburgh Plate Glass plans, see E. J. Eberling, *Supplemental Unemployment Payments: A New Development in Collective Bargaining*, EMPLOYMENT SECURITY REVIEW 25 (Jan. 1956).

[5] Benefits may be drawn from the funds established by Pittsburgh Plate Glass Co. and Libbey-Owens-Ford Glass Co., for injury or sickness as well as for layoff. In a similar contract negotiated by the independent Road Machinery Workers Alliance at the Euclid Division of General Motors, a 5-cent hourly contribution is credited to individual accounts. This is to be paid to the worker either upon receipt of state UC benefits, in the form of a supplement, or upon termination for normal or disability retirement, death, or "any other occurrence" which breaks seniority. Another savings-type SUB fund is established under a contract negotiated by the Mechanics Educational Society and Eaton Manufacturing Co.'s Heater Division. Like both the Euclid and glass plans, the Eaton plan offered to this bargaining unit provides individual accounts from which money may be drawn during layoff or when seniority is broken.

[6] Although the details of many contracts are still being negotiated, the following Ohio

are payable if it has been established that supplementation is approved by competent state authorities. Favorable rulings have been obtained in a sufficient number of states, and payments from the Ford and General Motors trust funds are likely to commence in June, 1956, in those states permitting supplementation.[7] If a state does not act to permit supplementation by June 1, 1957, the contracts provide an alternative method of payment in that state—substitute supplementary benefits. If this alternative plan were to come into effect, a laid-off worker would apply and receive UC for two weeks. In the third week, he would not file a claim for UC but would receive three times the weekly supplemental benefit to which he would be entitled if concurrent supplementation were permitted.

The Ohio UC law provides for a waiting period of one week prior to receiving benefits;[8] therefore the first installment of substitute supplementary benefits would actually be received in the fourth week of unemployment. In the fifth and sixth weeks, the unemployed worker would again draw benefits from the Bureau of Unemployment Compensation (BUC), but nothing from the trust fund. In the seventh week, he would again receive three times his weekly credit from the trust fund but no state benefits. During an extended period of unemployment, this staggering of private and public payments could continue for a total of 35 weeks for an individual eligible for the maximum duration of both UC and SUB benefits.

A claimant may elect to collect UC for three weeks and receive four times the supplemental benefit; hence benefits would be paid for a total of 33 weeks if the individual were eligible for maximum benefits and remained unemployed. Obviously, the total amount of benefits paid to an individual under the three-week or four-week staggered procedure, or if SUB were paid simultaneously, would not always be the same. The amount received would depend upon the option chosen and the duration of the spell of unemployment. The following table contrasts the position of various types of claimants at the end of seven weeks of unemployment.

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firms have announced the earliest dates on which their employees will become eligible for supplementary benefits: American Can Co., October, 1956; DeVilbiss Co., October 1, 1957; Libbey-Owens-Ford and Pittsburgh Plate Glass, September 25, 1956; International Harvester Co., September 1, 1956; Ohio Crankshaft Co., July 1, 1956; Randall Co., October 1, 1957; Trailmobile, Inc., August 1, 1956; White Motor Co., June 15, 1956.

[7] UNITED AUTOMOBILE WORKER, March 1956, p. 2.

[8] OHIO REV. CODE § 4141.29(B).

TABLE — UC AND SUB BENEFITS UNDER ALTERNATIVE METHODS OF PAYMENT (In Dollars)

Week	*Two-week staggered SUB*		*Three-week staggered SUB*		*Simultaneous SUB*		*Ordinary Claimant*
	UC	*SUB*	*UC*	*SUB*	*UC*	*SUB*	*UC*
Waiting	0	0	0	0	0	0	0
2	33	0	33	0	33	25	33
3	33	0	33	0	33	25	33
4	0	75	33	0	33	25	33
5	33	0	0	100	33	25	33
6	33	0	33	0	33	25	33
7	0	75	33	0	33	25	33
Total after 7 weeks	132	150	165	100	198	150	198

Coverage and Potential Coverage in Ohio

It is of course difficult to estimate how many workers are covered by SUB contracts in Ohio. As of March 1, 1956, at least forty Ohio firms had signed SUB contracts covering an estimated 175,000 workers. In addition, some expansion of coverage can be expected. Collective bargaining settlements are usually influenced by a few key agreements. Private pension programs spread very rapidly once the principle was accepted in the steel industry during the winter of 1949-50. There is a similarity between SUB and private pension plans, and some unions have been preparing SUB programs for coming negotiations. Particularly significant will be the negotiations in the steel industry this year.[9]

The additional "SUB bargaining pattern" in Ohio includes about 475,000 workers, distributed roughly as follows: transportation equipment, 30,000; rubber products, 65,000; primary metal industries, 140,000; electrical machinery and supplies, 60,000; fabricated metal products, 45,000; machinery (except electrical), 95,000; and miscellaneous, 40,000. This potential "SUB bargaining pattern" excludes the firms which have already granted such contracts; the soft-goods lines, e.g. textiles and clothes; relatively unorganized industries such as the service trades, retail trade and finance; and the coal and railroad industries, the utilities, and the chemical industry, where little interest is manifested in these programs.

The total number of workers in Ohio that may be covered by SUB is therefore approximately 650,000 or approximately one-fourth of those now covered by UC. Of course, not all of these employees would have the necessary seniority to be covered by the SUB contracts now in existence or those likely to be signed.

[9] The Steelworkers' interest is evident in their own publication, STEEL LABOR, April 1956, pp. 2-3. See also, BUSINESS WEEK, March 10, 1956, pp. 145-6; March 17, 1956, pp. 176-7.

Supplementation, Costs, and Unemployment Compensation Machinery

Unemployment compensation in Ohio is entirely employer-financed. Contribution (tax) rates are levied against the first $3,000 of each covered worker's wages, and revised annually by the BUC.[10] Each employer's contribution rate is computed by means of a formula with the following components: (1) the balance in the UC Reserve Fund divided by the average of all covered payrolls for the preceding three years — this component is commonly referred to as the "state-wide factor," and (2) the individual employer's contributions (plus interest earnings) minus benefit charges for the past period divided by the individual employer's average covered payroll, for the three years ending on June 30.

A separate account is maintained by the BUC with each employer. Benefits paid to an individual are charged against the accounts of firms which employed the individual during his base period of one year. Such benefits are charged in the inverse chronological order in which the employment of such individual occurred. The maximum amount of benefits which may be charged against an employer's account may not exceed one-half of the wages paid by the employer to the claimant.[11]

The amount of weekly benefits which a claimant receives is based upon the highest quarterly wages received by him during his base period. An individual's base period is the four calendar quarters immediately preceding the first day of his benefit year. A benefit year is the year beginning with the week in which an individual first files a valid application for determination of his benefit rights. The formula by which benefits are computed permits workers who earned $4.62 weekly in the highest quarter of their base year to receive weekly benefits of $10, which is 216.5 per cent of average weekly wages during the high quarter. As high-quarter wages rise, this percentage declines — for instance, workers who earned $63.15 weekly during their high quarter receive $33 in benefits, or 50.7 per cent of average weekly wages. Individuals with dependent children are allowed additional benefits of $3 for each child up to a maximum of two. In April, 1955, 75 per cent of all benefit recipients were receiving the (then) maximum benefit of $30 (exclusive of dependents' benefits).

The first requirement for eligibility is registration each week at an employment office. An individual must be able to work, available for suitable work, and actively seeking such work either in a locality in which

[10] Whether contributions to SUB funds will be taxed has not been resolved. The BUC has the authority to decide the issue. The Attorney-General of West Virginia has ruled that payments into funds established by the glass industry are taxable as wages under the UC law. U.S. BUREAU OF NATIONAL AFFAIRS (BNA) 37 LAB. REL. REP. 309. Text of ruling at 329.

[11] OHIO REV. CODE § 4141.24.

he has earned base period wages or in a locality where such work is normally performed. The individual must be unable to obtain suitable work. He must have been employed by a subject employer in at least 20 weeks within his base period, and he must have served a waiting period of one week before becoming eligible for benefits. Finally, he must not have been disqualified from receiving benefits.[12]

Many non-SUB employers believe that SUB payments might in some way affect the UC Reserve Fund, and hence all contributors through the "statewide factor." It is clearly a difficult task to foresee all of the effects of SUB upon the Reserve Fund. It can safely be said, however, that it is doubtful whether the Fund will be significantly affected.[13]

Ohio's industrial position with respect to some of the states bordering it may create a special problem. The number of interstate claims paid by the Ohio UC Reserve Fund is more than three times the number paid by other states to Ohio residents and approximately nine per cent of the total claims against the Ohio Fund. If SUB claimants were to receive benefits by mail from a private trust fund, they could also receive UC benefits accrued in Ohio by registering with the employment security agencies in other states.[14] SUB claimants would thus be assured of at least sixty percent of Ohio earnings for periods up to 26 weeks.

Although this level of income undoubtedly presents a substantial incentive to seek employment in the high-wage Ohio economy, sixty percent of the claimants' former earnings in Ohio would be close to the level of local wages in many non-industrial areas in other states. However, the importance of this disparity can be over-emphasized. The majority of unemployed workers who leave the area in which they were last employed probably have little seniority. As a result, their SUB payments would probably be of short duration—at least for the first few

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[12] Disqualification may occur because of (1) refusal of suitable employment, with certain exceptions—commonly referred to as the "job test," (2) not actively seeking work, (3) discharged for just cause, (4) voluntary quit, (5) unemployed as a result of a labor dispute, (6) receipt of certain types of remuneration enumerated in the law, (7) obtaining benefits by fraud, (8) unemployment because of commitment to a penal institution and (9) advocating or belonging to a party which advocates overthrow of the government by force. OHIO REV. CODE § 4141.29.

[13] There is a staggering volume of literature on this subject. For a selected list of books, periodical articles and government documents relating to the economic effects of guaranteed wage or employment plans, see U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BIBLIOGRAPHY LS 55-3408 (June 1955).

[14] Many of the contracts provide that a claimant shall report both to the state agency and to an office designated by the company. However, the American Motors Company appears to be developing a "one-stop" plan in which the claimant will report only to the state agency. See 37 LAB. REL. REP. 429.

years of the plan.[15] Moreover, skilled workers would in many cases be disqualified from drawing benefits in a non-industrial area.

Contracts negotiated in the future may place upon the employer liability for part of all of the state unemployment compensation benefits of employees who are not eligible or who are disqualified.[16] These provisions, if negotiated, will create a real problem for the firm — whether to meet the added cost out of the SUB fund or to contest the BUC's denial of benefits and attempt to obtain a reversal of the decision. A firm enjoying the minimum tax rate might prefer to pay idle employees out of its own fund, rather than risk an increase in its tax rate. On the other hand, it has been frequently suggested that a firm paying close to the maximum rate may actually side with its employees in trying to obtain benefits from the state.

Employer attitudes and activities are suggested by the widely differing disqualification rates among employment offices. In the first nine months of 1952, for example, Dayton had 84.6 disqualifications per 1000 claimant-contacts; Cleveland had only 32.4; and Toledo, 23.6.[17] The variation could be accentuated if employers in some areas were to establish a privately administered eligibility board with power to grant or deny SUB. Mr. William Papier of the Ohio BUC has observed, in this connection:[18]

> Will practices tend to vary, for example, between cities . . . ? If the predominant employers in one city are . . . [plants with SUB contracts], will local UC practices differ widely from those in another local area with [non-SUB employers?] . . .
>
> Would practices vary within the same city, [between SUB-claimants and non-SUB claimaints?] For example, all claimants have to be available for other work. Would decisions relative to availability, suitable work, and so on tend to be different? . . . It could easily develop that legislation, practice, or both would create dual patterns — . . . [one for SUB workers and one for non-SUB workers, one for SUB employers and one for non-SUB employers.]

The possible consequences of SUB result more from contracts which

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[15] Accrual of "credit units" (entitlement to SUB) is slower for workers with less than ten years' seniority under the Ford and General Motors contracts. Credit units may also be cancelled depending on the amount of the fund and worker seniority.

[16] This would not be the same as paying SUB to employees who have exhausted their benefit rights under the state system, as provided in the Allis-Chalmers and can company contracts.

[17] DIVISION OF RESEARCH AND STATISTICS, OHIO BUREAU OF UNEMPLOYMENT COMPENSATION, Analysis 347, October 28, 1952. These rates are of course affected by the other factors, such as the size of the community and degree of industrialization, which could determine the availability of alternative jobs and the composition of the labor force.

[18] William Papier, *Guaranteed Annual Wage Proposals: Their Implications for Unemployment Compensation,* 8 IND. & LAB. REL. REV. 265, 273 (1955).

could be negotiated in the future than from those currently in effect. Unions will undoubtedly press for more liberal eligibility standards than provided in the law. Administrative safeguards in applying eligibility tests may be sufficient to prevent any noticeable increase in abuses of unemployment compensation. However, the requisite cross-checking between the private administrators and the BUC will make for a more cumbersome system and higher costs.

An Adminsitrative Ruling

Payments under some of the contracts would not require the approval of the Administrator of the BUC. Others, particularly the Ford and General Motors contracts, require BUC approval of concurrent supplementary payments. If the BUC were to rule against concurrent benefits, a separate ruling on substitute supplementary benefits probably would be necessary.[19]

Research into applicable law reveals few and conflicting precedents on which the Administrator might base a ruling.[20] However, the many favorable rulings by the Attorneys-General of other states may serve as some precedent in Ohio. Undoubtedly, the framers of the law never contemplated supplementation. The decision — whether to permit or reject concurrent supplementation — may be appealed to the courts. A ruling against supplementation can easily be appealed by a worker, but opponents of a favorable ruling may find it difficult to discover grounds for an appeal.

A worker denied UC might go to court on the ground that his payment cannot be considered remuneration from his employer.[21] This appeal would be based on the fact that SUB was paid from a fund to which both employer and employee had renounced any claim. The worker could also appeal, relying on the code which permits[22] ". . . employees individually or collectively to agree to make contributions for the purpose of se-

[19] The Ohio BUC Administration ruled in mid-May against concurrent supplementation. The text of the opinion is available at CCH UNEMP. INS. REP. (Ohio) ¶ 8529. The Indiana Attorney-General has also ruled against supplementation. *Id.* (Ind.) ¶ 8223.

[20] *Effect of Receiving Supplemental Unemployment Benefits on Eligibility for State Benefits*, 69 HARV. L. REV. 362 (1955); U.S. BUREAU OF NATIONAL AFFAIRS (BNA), *Guaranteed Annual Wage*, Washington, 1955, pp. 92-96.

[21] The following argument assumes that the Administrator had reduced the claimant's benefits by the amount of the SUB payment, less $2, under OHIO REV. CODE § 4141.30(C): "Benefits are payable to each partially unemployed individual otherwise eligible on account of each week of involuntary partial unemployment after the specified waiting period in an amount equal to his weekly benefit amount less that part of the remuneration payable to him with respect to such week which is in excess of two dollars increased to the next higher even multiple of one dollar."

[22] OHIO REV. CODE § 4141.36.

curing benefits in addition to those provided by Sections 4141.01 to 4141.46, inclusive, of the Revised Code." This provision, coupled with a BUC ruling that permits veterans to claim unemployment benefits (UCV) from the federal government[23] and full state benefits, has established the precedent that a claimant can receive two distinct payments for involuntary unemployment in the same week. The aggrieved worker would then ask: "If the federal government can supplement state unemployment compensation checks on the basis of prior military service, and if employees can do so on their initiative, why cannot their employer do the same by establishing an autonomous trust fund?"

Any employer affected by a favorable decision could bring a taxpayer's suit against the Administrator. However, an employer who has negotiated an SUB program is not likely to challenge a ruling that allows him to put his program into effect. Any other employer would not be notified regarding charges against his account for UC benefits until such charges have been made. Because at least one year of seniority is requird for participation in all of the private SUB programs negotiated to date, benefits would not be charged to the account of a non-SUB employer in connection with a UC claim involving SUB except under rather unusual circumstances.[24]

Even after establishing a financial interest through a charge-back of benefits to his account, the non-SUB employer would have legal difficulties. In *Willys-Overland v. Jones*,[25] the Ohio Supreme Court denied a petition to prohibit the BUC from paying a new schedule of benefits authorized by the General Assembly, to an individual who had been unemployed before the effective date of the law. Although the petitioner's account would be affected, the court held that he had an adequate remedy under the existing appeals sections of the law.[26]

In *Geyer v. Collopy*,[27] a petition for a writ of prohibition was denied because the petitioner could not show that his contribution rate was affected by the Administrator's decision. The court declared:

> It would appear that the interest of the relator is solely in the possible increase of contribution rates to the general state fund. His merit rating cannot be affected because he has no employee-claimants whose unemployment compensation payments may be affected or changed by the legis-

[23] The ruling on UCV has not been tested in the courts.

[24] Seniority provisions in some union contracts, for example, UAW and the Ford Motor Co., do permit breaks in service for certain reasons, but it might take a considerable period of time for a case to arise from which a valid appeal could be made through the channels prescribed by law.

[25] 146 Ohio St. 388, 66 N.E.2d 115 (1946).

[26] OHIO REV. CODE §§ 4141.26 and 4141.28.

[27] 152 Ohio St. 485, 90 N.E.2d 370 (1950).

> lative amendment. In the opinion of this court the statute has made ample provisions for hearings before the administrative branches of the bureau in fixing contribution rates and ample provisions for appeals therefrom. Considering all of the allegations of the petition, this court is of the opinion that the relator has an adequate remedy at law, as a result of which the remedy of probition will not lie.[28]

Although there was a vigorous dissent in the latter case,[29] the inference which may be drawn from these decisions is that the court will not prohibit the payment of full state benefits to an SUB claimant if the BUC permits them. At a later date an employer may appeal an actual increase in rates established by the BUC. At any time in which the "statewide factor" were to affect contribution rates, it would seem that any covered employer in Ohio could appeal against his new rate determination. He would allege that depletion of the state fund due to failure to deduct SUB from benefits had affected his contribution rate. As the extra amount was paid to numerous claimants because of obligations incurred by other employers, he would allege that he has no adequate remedy under existing law and must therefore appeal directly to the courts.

The Administrator's defense would probably be to question whether SUB was the determining factor in depleting the fund sufficiently to bring the "statewide factor" into play. The fund is affected by numerous factors, including the volume of covered employment and the size and duration of compensable claims. It would be a formidable statistical task to prove that any general rate change was attributable to SUB.

Under an unusual set of circumstances, a non-SUB employer might be able to demonstrate an increased charge because of SUB. The circumstances are: (1) A former employee has "sandwiched" employment with a non-SUB firm between periods of employment with an SUB employer; (2) this employee had filed a valid claim against the SUB employer; (3) the employment record with this firm fell in the claimant's base period; (4) a valid continued claim was filed each week by the claimant until he had been paid the total amount of benefits chargeable to the SUB firm; (5) benefits paid to this employee were then charged back to the non-SUB employer; (6) if the SUB had been deducted, the amount charged against the second firm's account would be less than the maximum amount.[30] A protest could then be filed with the BUC.

The protesting employer would complain that because SUB had not

[28] *Id.* at 489, 90 N.E.2d at 373.

[29] *Id.* at 490, 90 N.E.2d at 373.

[30] Otherwise, a larger sum would not be charged against the non-SUB firm's account because of the Administrator's decision to permit concurrent supplementation, since the maximum charge is one-half of the wages paid by the employer to the claimant.

been deducted from benefits while they were being charged against the account of the SUB employer, an illegal charge was later made against his (the non-SUB employer's) account.[31] In replying to this protest, the Administrator might set forth the reasons why he believed SUB not to be remuneration, hence not deductible. This determination by the Administrator that SUB was not remuneration could be appealed to a court of common pleas.

The likelihood of a case developing under these limitations is questionable. In addition, the non-SUB employer would probably not be aware of the other base-period employer whose account had previously been charged. Many years might elapse before employers would uncover a case which might be appealed.

Legislative Action

An administrative ruling will undoubtedly be made. Nevertheless, the General Assembly may prefer to act, when it convenes in January, 1957, for a variety of reasons. An administrative ruling will not be binding on the courts. In addition, there have been widely publicized reports that SUB will be blocked by litigation. Obviously, some expression of legislative intent is desirable to remove the uncertainty over the status of SUB.

The alternatives facing the General Assembly are perhaps five in number: (1) To do nothing — thus permitting either concurrent or substitute benefits, depending on administrative rulings and possible appeals to the courts; (2) to prevent any supplementation of unemployment compensation; (3) to permit all claimants to receive a certain percent of average high-quarter weekly earnings, in the form of SUB and unemployment compensation; (4) to authorize the BUC to pay supplements and bill the employer; (5) to exempt SUB payments from the definition of remuneration.

The consequences of a ruling by the Administrator in favor of concurrent supplementation have been discussed. If the General Assembly takes no action, and the Administrator rules against concurrent supplementation, substitute supplementary benefits may be paid in Ohio beginning June 1, 1957. Only an administrative ruling prohibiting these payments or an adverse court decision in Ohio, or the reversal of legal opinions already rendered in other states,[32] could then upset the payment

[31] The appeal to the Administrator and the courts could be made (1) at the time of the charge-back and (2) at the time of a new rate determination — assuming that the extra charge had affected the non-SUB employer's contribution rate.

[32] The Ford and General Motors contracts state: ". . . or if any such ruling . . . shall be repealed or revoked after June 1, 1957, with the effect that the rulings and amendments that continue in effect are in states in which (in the aggregate) less than

of these benefits in Ohio. Legislative inactivity could therefore result in either concurrent supplementation, or the adoption of the substitute plan, for an indefinite period, or the prevention of both.

In adopting the first alternative, the General Assembly would be refusing to take a position on an important policy matter and permitting the courts to rule on the basis of a statute written without any thought given to the issue. In addition, the controversy could continue in the courts for many years without any final decision on the numerous complexities presented. This alternative would appear to have little attraction for either the proponents or opponents of supplementation.

To specifically prevent any payment of supplemental benefits, the General Assembly would have to amend the code. First, it would have to require that SUB be deducted from UC benefits. This amendment may not specifically prevent the payment of substitute unemployment benefits. To block these payments, additional language providing for the allocation of the lump-sum payment to each week of unemployment would be necessary. These amendments would probably stop any payments to Ohio employees of several million dollars which have been accruing in various SUB funds.[33]

The proposal to permit supplementation but to limit the percentage of combined UC and SUB payments is the third alternative.[34] The justification for limiting the combined benefits is based largely on the ground that the state has a direct interest in the payments which an unemployed worker receives.[35] As the percentage approaches the worker's regular take-home pay, it is argued that the incentive to seek new employment diminishes. To accomplish the third alternative, the following provision

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two-thirds (2/3) of the employees . . . , all obligations of the Company under the Plan shall cease and the Plan thereupon shall terminate. . . ." See Ford agreement, Article IX, Sec. 5C, General Motors agreement, Article IX, Sec. 5C.

[33] Virginia has enacted legislation to prohibit the payment of SUB. 37 LAB. REL. REP. 328, 429. For specific language, see CCH UNEMP. INS. REP. (Va.) ¶ 4026,

[34] Legislation to limit the percentage of the total combined payment from private and state benefits was introduced in New York and Michigan. The bills also sought to limit SUB payments to $25 per week. In New York, the bill did not pass; the outcome in Michigan was uncertain at the time this article was completed. 37 LAB. REL. REP. 353, 453.

[35] A variant of this proposal has been suggested in Ohio which would permit all claimants to receive a certain percentage of average weekly wages in the form of SUB, part-time earnings, unemployment compensation or any combination of the three. This has generally been advanced in the interest of fairness to individuals not covered by SUB who might take part-time jobs while drawing UC benefits. These workers could not earn more than $2 per week under the present law without losing benefits equal in amount to part-time earnings. At the same time, workers drawing SUB may be able to receive up to —— percent of take-home wages in UC and SUB. This proposal has received practically no consideration.

might be added to Ohio Revised Code section 4141.30, which deals with benefit payments:

> (F) Payments under a supplemental unemployment benefit program financed in whole or in part by an employer and any benefits paid to an unemployed individual according to division B of Section 4141.30 of the Revised Code may not exceed ____ percent of his average weekly wage as computed by dividing the wages earned in the highest quarter of his base period by thirteen. If the combined payment does exceed ____ percent of the average weekly wage, payment to the unemployed individual under division B of Section 4141.30 of the Revised Code shall be reduced by that amount which exceeds ____ percent.

Such a limitation obviously circumscribes the type of contracts which may be negotiated in the future. SUB is a fringe benefit, negotiated and agreed to in free collective bargaining. It allows employers to experiment with a higher level of benefits without committing the state to that level. To place rigid limits on a new and developing social experiment at its inception may be unwise. If the trend toward supplementation of unemployment benefits continues, employers and unions may immediately begin to seek ways to circumvent the limitation, e.g., the savings-type SUB plan and other types of tandem arrangements.

A fourth legislative alternative was suggested by Paul A. Raushenbush, Director of the Wisconsin Unemployment Compensation Department.[36] This proposal would enact legislation which would authorize employers to request the BUC to pay additional benefits. These benefits would be financed by means of higher contributions to the electing employer's account with the BUC. One benefit check would be made out by the BUC to cover both regular and supplemental benefits. This arrangement would enable the state to retain considerable control over the content of the SUB programs. In addition, high-seniority workers would have greater assurances of the solvency of the reserve fund. From the employer's point of view, the reserves required to finance the program might be less than for a separate SUB fund. As a result, more funds would be available for business expansion and investment.

Only those employers whose past experience record indicates that they are in a position to pay the additional cost through special contributions would be eligible. On the other hand, a qualifying employer should not be required to pay in advance the total cost of his election. The electing employer should instead be required to pay some extra contribution rate at the time of, and for a period immediately following, his

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[36] U.S. BUREAU OF NATIONAL AFFAIRS (BNA), *Guaranteed Annual Wage*, Washington, 1955, pp. 97-98. Legislation similar to the Raushenbush proposal was introduced in the Rhode Island legislature. See BNA, 37 LAB. REL. REP. 329; BUSINESS WEEK, Feb. 4, 1956, p. 104.

election. Since the election options would vary in cost, they could easily carry varying price tags.

The options available to qualified employers could deal with both parts of the benefits formula: (a) weekly benefits amounts and (b) weeks of duration. As to weekly benefits amounts, options might simply permit increases by a specified number of dollars or by a specified percentage. As to weeks of duration, several alternatives could also be specified, varying in liberality and in cost. Claimants might be permitted to draw benefits for an additional number of weeks. Alternatively, eligibility for additional weeks' benefits might be geared to seniority. While the possibilities are numerous, a few well-defined options should be clearly specified in the law.

A reserve ratio of 8 per cent may be specified as qualifying an employer to select an option. Based on 1954 ratios, 47.2 per cent of employers, with 59.3 per cent of taxable payroll, would thus be qualified. An electing employer would pay an additional contribution of 1.0 percent of average annual payroll for five quarters before special benefits became payable and for seven quarters afterwards.[37] Payment of any special benefits would obviously increase the charges against the employer's account and be reflected in the rate determination for the next year.

If an electing employer's reserve ratio should drop to zero, the special benefit plan for this employer would be terminated. Unless the plan is terminated at this point, the employer's special benefits program could be subsidized from the reserve fund.

An additional feature of this alternative would be a system of special penalty rates to protect high seniority workers. If the electing employer's reserve funds were not supplemented in a period of extraordinarily heavy drain, the special benefits could be cancelled in some cases because of the depletion of reserve funds to pay benefits to low-seniority employees. These special penalty rates would also provide added protection for the UC reserve fund.

A simple exemption of SUB payments from the definition of remuneration is the fifth legislative alternative.[38] This could be achieved by adding the following language to Ohio Revised Code section 4141.01 (H) (2), which defines remuneration:

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[37] An alternative to increasing the contribution rate would be to raise the base above $3000 of earnings per worker. The proposal in Rhode Island would impose a 1 per cent tax on both employers and employees.

[38] Georgia and Maryland have enacted legislation approving SUB payments, CCH UNEMP. INS. REP. (Ga.) ¶ 4072; (Md.) ¶ 4077.

> The amount of any payment to an individual under a plan established by an employer which supplements unemployment compensation benefits of his employees under the terms of a written agreement, contract, trust arrangement, or other instrument.

Few new administrative responsibilities need be placed on the BUC.[39] Employees and unions would be given wide discretion to experiment and develop SUB programs. The specific exemption of SUB income would relieve the BUC of the necessity of investigating the amount and method of payment of SUB, once it had been established that a claimant was a beneficiary of such a plan. It would also prevent SUB from creating eligibility for future UC benefits.

Conclusions

An administrative ruling on so novel and controversial an issue as supplementation of unemployment compensation may not be considered a final and binding expression of public policy in Ohio. A statement of legislative intent would clearly be effective in forestalling extensive litigation and uncertainty. On the other hand, legislative concern with the details of SUB programs will unduly involve the General Assembly in the collective bargaining process. The adoption of each new type of contract would be the occasion for extensive lobbying for amendments to the law to permit the innovation.

To reject supplementation completely could result in the loss of considerable purchasing power during a recession. Some form of supplementation should be permitted because of this potential economic loss to the state. The Raushenbush proposal undoubtedly has merit, but the existence of private trust funds established by a large number of firms makes it rather unlikely that the proposal will receive serious legislative consideration. In addition, the intermingling of private supplements with the reserve fund would invite further intervention by employers in the details of administration.

The choice seems to lie between a limitation on SUB-UC or exemption of SUB from the definition of remuneration (alternatives 3 and 5).

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[39] That all of the problems of the BUC would not be automatically solved is evident in the remarks of Mr. Papier before the Society for Advancement of Management, Columbus, Ohio, January 27, 1956: "There are certain provisions in the contracts . . . under which private payments may be made even though state payments cannot. The duration of private payments, for example, may be longer than for state benefits. It would seem, therefore, that whenever an unemployed worker exhausts his state benefit rights, the private fund administrators would want to know. Or if he received benefits from us in error or fraudulently, we would expect to recover, and perhaps prosecute. But state benefits wrongly paid could also mean private supplements wrongly paid. How would the private trustees know of such cases, except from us?"

A limitation might provide protection against possible abuse of UC by claimants. However, there is little factual basis for preferring any specific percentage as a maximum. If enacted, the limitation would quickly become a target for upward adjustment by interest groups and would unduly involve the General Assembly in collective bargaining negotiations. To exempt SUB earnings from the definition of remuneration permits private experimentation with higher benefit levels, without committing the state system to these levels. If the level of benefits should appear to threaten the fund, remedial action by the General Assembly could doubtless be taken before any significant depletion occurs.

Some thought should be given to the possible impact of privately determined eligibility standards on the UC Reserve Fund. If employers should agree to make up any loss in UC benefits due to ineligibility or disqualification of claimants, there may be some adverse impact on the fund. If such contracts are negotiated, it may be wise to take the precaution of removing the maximum contribution rate for all rated accounts with firms having such contracts.