

*Nassau County  
Office of the Comptroller*

*Field Audit Bureau*



Limited Review  
Civil Service Commission  
Administration of Unemployment Claims

FA02-03

**HOWARD S. WEITZMAN**  
*Comptroller*

August 20, 2002

## Executive Summary

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### **Background**

The Civil Service Commission responds on behalf of the county to claims for unemployment-insurance benefits by former employees. New York State Labor Law governs the granting of unemployment-insurance benefits. Nassau County is self-insured for unemployment insurance and pays the state on a quarterly basis.

The Comptroller's Office initially began its review of the Commission's unemployment-insurance-benefit responsibilities to determine whether the Commission's procedures insured that former county employees receiving unemployment-insurance and retirement benefits had their unemployment-insurance benefits appropriately reduced in accordance with the State Labor Law. For the period examined, the review did not reveal any instances where former Nassau County employees were receiving pensions and unemployment-insurance benefits without the reduction being applied. However, there are no procedures in place to prevent this from occurring.

### **Scope and Methodology**

The review evaluated the adequacy of the current procedures used by the Commission in responding to unemployment-insurance claims filed by former employees. The auditors interviewed Civil Service Commission employees; examined documents related to unemployment-insurance-benefit claims; and reviewed relevant New York State laws. The review covered the procedures in place during 2002.

### **Major Findings**

The administrative process is time-consuming and dependent on many manual steps. In addition, due to a weakness in the Commission's procedures, a claimant could potentially receive both unemployment-insurance and pension benefits because the Commission does not check to see that (1) all credits due to the county are received and (2) that the claimant's unemployment benefits were reduced accordingly.

**Commission Response:** This is an accurate and true statement. Since employees may retire at any time, we would be unaware if they retired after separation.

Under state law, employees in "non-tenured policymaking or advisory position[s]" are ineligible for unemployment benefits. Nevertheless, some senior county officials from the prior administration have been granted unemployment-insurance benefits by the New York State Department of Labor. The report found that the Department of Labor had not accepted the Commission's general descriptions of former senior officials' positions as demonstration of their policymaking role. Instead, the Labor Department required more detailed job descriptions, which the Commission was unable to secure.

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## Introduction

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### **Background**

A review of the Civil Service Commission's responsibilities associated with unemployment-insurance benefits was initiated to determine whether the Commission had procedures in place to insure that former county employees collecting unemployment-insurance and retirement benefits concurrently had their unemployment-insurance benefits reduced in accordance with the State Labor Law. The reduction is based upon the pension amount received and the source of the funding of the pension. The review did not find any evidence that former Nassau County employees were receiving pensions and unemployment-insurance benefits without the required reduction being applied. However, there are no procedures in place to prevent this occurrence. Therefore, the possibility exists that a claimant could receive a pension and full unemployment-insurance benefits, without any applicable reduction.

New York State Labor Law governs the granting of unemployment-insurance benefits. The New York State Department of Labor ("DOL") sends the Civil Service Commission a "Notice of Entitlement Form" (LO 400) when a former employee files a claim for unemployment-insurance benefits. When the Civil Service Commission receives this form, it has 30 days to decide whether to contest the claim. If a claim is contested, DOL renders a decision within 10 days. Both the claimant and the county have a right to appeal the decision. The county pays the state quarterly for unemployment-insurance benefits after receipt of an invoice from DOL.

Unemployment-insurance benefits are payable to claimants who separate from an employer with certain exceptions. No benefits shall be paid to any claimant who is not capable of work or who is not ready, willing, and able to work in his/her usual employment or in any other employment for which he/she is reasonably fitted by training and experience.<sup>1</sup> A claimant is not eligible for unemployment-insurance benefits if he/she (1) voluntarily separated; (2) refused employment without good cause; (3) was terminated for misconduct; or (4) has been convicted of a felony criminal act in connection to his/her employment.<sup>2</sup> In addition to these noted exceptions, there are additional exceptions for municipal employees. The following municipal employees are not eligible to receive unemployment-insurance benefits: (1) elected officials; (2) a member of a legislative body or of the judiciary; (3) a person in a major non-tenured policymaking or advisory position; and (4) a person in a policymaking or advisory position, the duties of which ordinarily do not require more than eight hours per week to perform.<sup>3</sup>

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<sup>1</sup> NYS Labor Law §591

<sup>2</sup> NYS Labor Law §593

<sup>3</sup> NYS Labor Law §565

## Introduction (continued)

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The Civil Service Commission became responsible for responding to unemployment-insurance-benefit claims apparently by default, primarily because of its other responsibilities concerning employment status. At one time the responsibility for responding to unemployment-insurance claims was transferred to the County Attorney's office, but it was apparently transferred back to the Civil Service Commission.

During 2001, the total cost to Nassau County to pay unemployment benefits was \$410,000, of which \$122,000 related to former Nassau University Medical Center (NUMC) employees. Costs during the first two quarters of 2002 increased significantly (\$1,598,000) because of terminations resulting from the change in the county administration and staff reductions that occurred at NUMC. Of this amount, \$908,000 is NUMC's responsibility. NUMC did not obtain its own Employer Registration Number from DOL until recently. The Comptroller's Office has notified the Civil Service Commission to stop forwarding NUMC claims to the county for payment.

### **Objectives of Review**

The objectives of this review were to (1) determine whether the procedures in place to monitor benefit eligibility are adequate and efficient and (2) that the accounting of costs and credits for unemployment-insurance benefits is complete.

### **Scope and Methodology**

The review consisted of examining the step-by-step methods used by the Civil Service Commission to respond to unemployment-insurance-benefit claims. This was accomplished by obtaining detailed explanations from Civil Service Commission employees. In addition, relevant documents and laws were reviewed.

### **Discussion of Review Results with the Civil Service Commission**

A draft copy of this report was sent to the Civil Service Commission and the Department of Human Resources. Their responses are incorporated in the report.

## Findings and Recommendations

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### **Unemployment-Insurance-Benefit Process**

#### **Audit Finding (1)**

The procedures in place at the Civil Service Commission to respond to unemployment-benefit claims by former county employees involve time-consuming and inefficient manual recording and data entry steps.

The determination whether a claim should be contested is based on information listed in the county's payroll system, Nassau Unified Human Resource System (NUHRS). The Human Resource Department indicates in an individual's NUHRS profile whether the individual is retiring or has been terminated from county service. If the employee was terminated, the Civil Service Commission contacts the employee's department to find out the circumstances. The department that employed a claimant is not automatically informed when a claim is filed. Instead, the Civil Service Commission only contacts a department when a question arises as to the employee's eligibility for unemployment benefits. After the Commission decides whether a claim should be contested, the relevant information is manually entered into a computer system. The information entered is checked with the quarterly invoice sent by the DOL to ensure that the county is not billed for claimants for whom they did not receive a notice of entitlement.

#### **Recommendation**

Automation of the entire process would allow departments to be automatically informed when a former employee files a claim. This would ensure that all relevant information would be obtained to aid in the decision as to whether to contest a claim. Automation would also include electronically filing contests to claims with the DOL. The automation of the process would eliminate manual steps and data entry, and increase efficiency. The Civil Service Commission should investigate whether the DOL can electronically transfer the Notice of Entitlement (Form LO 400) to the county.

The Department of Human Resources should conduct exit interviews, during which employees would be informed as to whether the county would contest any claims they might file for unemployment benefits based on the information then available. The decision whether to contest an unemployment-insurance claim should be documented and forwarded to the Civil Service Commission.

#### **Commission Response**

According to the Department of Labor, it does not have electronic processing at this time. All entries must be done manually. By allowing the individual agencies to receive and respond to the unemployment request, they will not only be notified of a claimant's request for unemployment benefits, they

## Findings and Recommendations (continued)

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will also be part of the decision making process. Upon receipt and completion of LO-400, a copy should be faxed to this agency for processing into the system.

Having the Department of Personnel (Human Resources) conduct exit interviews, during which the employees are told of their rights and whether the county will contest their claim is a novel recommendation. The only flaw to this is that the Department of Labor makes the final determination. Whereas we may appraise the individual that their claims will be contested the Department of Labor in fact approve said claim.

### **Auditor Response**

The Civil Service Commission should independently automate its processes. In addition, the Commission should request that DOL transmit electronically their quarterly billings to facilitate county review.

### **Department of Human Resources Response**

The Commissioner of Human Resources responded:

“I agree with the concept of exit interviews. I think the exit interview is a great forum for a terminating employee to obtain much information about his/her departure. As I centralize Human Resources and all of its functions, I will certainly put exit interviews on the list of responsibilities for all Human Resources professionals. Unfortunately, this is not something that will happen immediately, but it will happen.”

## Findings and Recommendations (continued)

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### **Effect of Pension Benefit on Unemployment Insurance Benefits**

#### **Audit Finding (2)**

According to New York State Labor Law, an individual's unemployment benefits are to be reduced if the individual is collecting retirement benefits financed in whole or in part by his or her employer. The amount of the reduction is determined by DOL, and is based on the amount of retirement benefits received, and how those benefits are financed. DOL obtains the amount of the claimant's retirement benefits from the State Retirement System. As a result, Nassau County receives the full benefit of a reduction if the claimant is in either retirement Tier I or Tier II, because the retirement benefits for retirees in those tiers are financed entirely by the county. If the claimant is in Tier III or Tier IV, the county receives a reduction in unemployment benefits equivalent to 50% of the prorated weekly retirement benefit.

To ensure that the county receives reductions due to retirement benefits, the Civil Service Commission informs DOL that a claimant is receiving a pension. This information is obtained from NUHRS, which includes a notation as to whether the employee retired. If an employee elects to receive retirement benefits at a later date and not at termination, the Civil Service Commission would not become aware of it, and subsequently, would not file a contest within the time period allowed under the Labor Law. Therefore, it is possible that a claimant could be receiving both unemployment benefits and pension benefits without the county receiving benefit of the reduction that is due.

#### **Recommendation**

The Civil Service Commission should consider establishing procedures to contest, if legally permissible, all claims by claimants over a certain age with a specified number of years of service in the county. This would alleviate the possibility of claimants receiving both a pension and unemployment benefits without Nassau County receiving any reduction due.

#### **Commission Response**

The Department of Labor indicated that we should only notify them that a person is retired when we know. They do not want to be informed that the claimant is eligible unless they have actually retired.

#### **Auditor Response**

The Civil Service Commission should put in place mechanisms to check retirement payments to terminated employees subsequent to the date of termination.

## Findings and Recommendations (continued)

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### **Review of Monitoring by the Civil Service Commission**

#### **Audit Finding (3)**

The Civil Service Commission does not have a system in place that monitors the costs of unemployment benefits for each individual, and it does not match any credits received to the costs charged for that individual. The county may receive credits from DOL, if DOL determines that a claimant was ineligible to receive unemployment benefits after he/she was paid. The Civil Service Commission is not checking to see that the county receives all credits due for these claimants.

#### **Recommendation**

The Civil Service Commission should establish a database tracking system for contested claims. This system should note (1) whether DOL grants or denies the benefit; (2) whether an appeal has been filed; and (3) the result of an appeal. This system should also be able to track the total amount paid on behalf of these claimants, and all credits received for them.

#### **Commission Response**

The tracking of monies paid and credits issued on each claimant is currently available on the following forms. An AB 913 Unemployment Insurance Applicant Status Form – This form must be continually updated since it only allows for 65 entries which generally reflects 65 weeks.

Unemployment Insurance Listing – AB 916 lists all payments made to a claimant during the month. It is reflective of the number of days claimant is paid. Schedule of Unemployment Benefits – AB 914 is an ongoing compilation of benefits paid in a particular quarter. Creating a Data Base listing the individuals is a valid suggestion.

## Findings and Recommendations (continued)

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### **Inadequate Job Descriptions**

#### **Audit Finding (4)**

The lack of detailed job descriptions for senior level staff has resulted in a number of senior county officials from the prior administration, including commissioners and other department heads, being granted unemployment-insurance benefits by DOL even though they appear not to be eligible for them under state law. These former employees appear to be ineligible for benefits because their former county employment was in “major non-tenured policymaking or advisory position[s].” In accordance with NYS Labor Law §565.2, they should be excluded from receiving benefits. The Civil Service Commission has been contesting these claims and also is appealing DOL decisions to grant benefits. However, DOL has not accepted the general descriptions of these senior officials’ duties, which were available to the Commission. Instead, DOL requires a detailed description of the specific duties they actually performed. This information was not available to the Commission. As a result, during the period of April 6 through July 5, 2002, twelve high-ranking officials from the former administration received more than \$35,000 in unemployment-insurance benefits. The county is responsible for these amounts unless the appeals are successful.

#### **Recommendation**

The Civil Service Commission should continue to contest and appeal DOL decisions concerning senior non-tenured policy-making or advisory officials of the former administration.

The Comptroller’s Office has brought this issue to the attention of the county attorney and the human resources director. Attention is now being paid to these job descriptions for the senior level staff, while the county attorney is challenging DOL decisions.

**COUNTY OF NASSAU**

**Inter-Departmental Memo**

To: Jacques Jiha, Deputy Comptroller  
Comptroller's Office

From: Executive Director, Civil Service Commission

Date: June 26, 2002

Subject: Limited Review of the Administration of Unemployment Insurance Benefits

Per your request, attached are the Agency's responses to your recommendations.

Should you require additional information, please contact Mr. Howard Silvestri at 572-1890.

  
Karl Kampe



**Commission Response to Executive Summary**

“This is an accurate and true statement. Since employees may retire at any time, we would be unaware if they retired after separation.”

Attachment 1

Per conversation with the Department of Labor at time of Comptroller's interview and per followup call in response to this finding and recommendations, the Department of Labor DOES NOT have electronic processing at this time. All entries must be done manually.

By allowing the individual agencies to receive and respond to the unemployment request, they will not only be notified of a claimant's request for unemployment benefits, they will also be part of the decision making process. Upon receipt and completion of LO-400, a copy should be faxed to this agency for processing in the system.

Having the Department of Personnel conduct exit interviews, during which the employees are told of their rights and whether the county will contest their claim is a novel recommendation. The only flaw to this is that the Department of Labor make the final determination. Whereas we may appraise the individual that their claims will be contested the Department of Labor in fact approve said claim.

Attachment 2

The Department of Labor indicated that we should only notify them that a person is retired when we know. They do not want to be informed that the claimant is eligible unless they have actually retired.

Attachment 3

The tracking of monies and credits issued on each claimant is currently available in the following forms. An AB 913 Unemployment Insurance Applicant Status Form. This form must be continually updated since it only allows for 65 entries which generally reflects 65 weeks.

Unemployment Insurance Listing- AB 916 lists all payments made to a claimant during the month. It is reflective of the number of days claimant is paid. Schedule of Unemployment Benefits-AB 914 is an ongoing compilation of benefits paid in a particular quarter. Creating a Data Base listing the individuals protested is a valid suggestion.

**The Department of Human Resources Response to Audit Finding 1**

“In response to the attached letter regarding unemployment, I agree with the concept of exit interviews. I think the exit interview is a great forum for a terminating employee to obtain much information about his/her departure. As I centralize Human Resources and all of its functions, I will certainly put exit interviews on the list of responsibilities for all Human Resource professionals. Unfortunately, this is not something that will happen immediately, but it will happen.”