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NJL 974.90 L123, 1970d c. 2
State participation in wage collections
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State Participation
In
Wage Collections,

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State intervention in the collection of employee's wages is not a new concept; there having been legislative enactments since the mid-eighteen hundreds. However, the most important piece of legislation insofar as collection is concerned dates back to 1934,¹ which was before enactment of the minimum wage law of 1966.²

The first such instance of State participation occurred in 1935, concerning a claim for wages in the amount of \$5.00, representing two (2) days' pay @ \$2.50 per day for fifteen (15) hours a day from 5:30 a.m. till 8:00 p.m.; giving a weekly wage of \$15.00. The claimant canvassed and sold bakery goods. Happily, the claim was honored; the \$5.00 being paid to the New Jersey Department of Labor; Wage Collection Division, which paid the claimant in turn by check #1. on the same amount, all of which was acknowledged by complainant on the back of the Summons & Complaint issued under the Department of Labor, State of New Jersey.³

- #1. Cf. L of 1934, Chap. 91, Sec. 1, et seq.
- #2. Cf. L of 1966, Chap. 113, as amended by L of 1967; Chap. 89, L of 1968; Chap. 19, and L of 1969, Chap. 308, among other things.

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The Commissioner of Labor & Industry obviously has jurisdiction over a vast number of activities,⁴ and the Wage Collection Court, although considerably down the ladder, being a division of the Wage & Hour Bureau, is in direct descendancy from the Director of the latter Bureau; thus a very important arm of the Bureau.^{5.}

It is persuasively clear to writer that the concept of State intervention in wage collections has tremendous sociological value; it being very unlikely that many persons are aware of the anti-social features coming to light prior to a time when the wage claim may reach the stage of requiring attention of the Wage Collection Court...⁶
Factors for instance, of non-payment of wages via bad check; non-payment of overtime;⁷ employment of youth in hazardous occupations,⁸ or at less than minimum wages; or the tardy payment of wages at other

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- #4. Other agencies are an Administrative Bureau; Bureau of Engineering & Safety; a Mechanics Inspection Bureau; Migrant Labor Bureau; Bureau of Statistics & Research; the Wage & Hour Bureau; Rehabilitation Commission; and Employment Security.
 - #5. Cf. Chart; Report on the Dept. of Labor & Ind., Commission on Efficiency & Economy in State Gov.. '68, N.J. State Library, Trenton, N.J. 874.90
 - #6. The giving of a bad check not only is in contrvention of the law but violates Sec. 34:11-4.2 concerning Time & Mode of Payment; Paydays
 - #7. Statutory provisions concerning overtime are in Chap. 113, Laws of '66, and Regulations No 3. Regulation No 4 exempts certain persons from overtime.
 - #8. Cf Pamphlet Laws 1940; c. 153, Sec. 17., ad appropriate Regulations.

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than at regularly established times. These are but a few of illegal features found in the course of processing claims for wages. Obviously, then, the Wage Collection Court is an important force in enforcement techniques of the Bureau; the Court not ruling on such violations but submitting them to the proper personnel of the Bureau for appropriate action with the possible assistance of a Deputy-
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attorney general.

The mere possibility of collection of unpaid wages acts as an incentive to these persons to make known any improper labor practices otherwise untold. The Commission on Efficiency & Economy in State Government, just mentioned above, pointed-out very aptly
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the advantage of direct collections of back wages, saying:

The bureau's present policy employs direct collection of back wages due from employees and subsequent payment to employees by the State... No payments are made until 10 to 30 days after receipt of the employer's check, as a means of ensuring that payments will not be made against a worthless check. The intent of payment by the State is to make sure that employees get their money. Yet there is no legal prohibition against direct payments by employers (30% of employers made direct payments in fiscal year 1966), and no failure to make payments under that procedure were reported

#9. Cf. Sec. 34:11-4.2

#10. Cf. Report on the Dept. of Labor & Industry., Supra, pp.88-91

#11 Cf. Above Report, supra, p. 95.

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A further social-economic advantage in having a Wage Collection Court, not generally mentioned in assaying the Court's function, even in the computation of costs of administration, is the money saved by not having such small claims take-up the attention of courts of greater jurisdiction where overloading is frequent. In this regard, it is noteworthy that very few awards go into appeal as they might were action taken under Statute.

Variations in claims for wages such as in the first wage collection Hearing in 1935, mentioned at the beginning of this paper, illustrate not only the multitude of recent changes in labor legislation, but the part played by the Wage Collection Court in enforcement.

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- #12 Cf. Sec. 34:11-58, Revised Statutes of N.J., which authorizes and empowers the Commissioner to "hear any wage claims for wages...where the sum in controversy does not exceed three hundred dollars (\$300.)."
- #13 Cf. Sec. 34:11-63, Wage Collection Act.; also Sec. 34:11-66
- #14 Cf. In 1966, when Chap. 113 was enacted, and through 1968, when amendments were effected to labor laws, there were numerous newspaper articles on changes made and proposed; Nwk. Stab Ledger, Nov. 27, '66 - "Wage tug-of-war to cover overtime"; Nwk Eve. News, Nov. 28, '66 - "Chamber Blasts State Wage Law"; Trenton Eve. Times, Nov. 29, '66 - "overtime changes due in wage law", etc. In N.J. Bus., June 1963, an article was published titled "What Everyone Should know about Minimum Wages, etc." Also, refer to article about Labor Legislation, cited supra, at page 469, in the Book of States. The latter Council is expected to have a new edition coming out in June, '70

The variety in claims for "wages" is without number, each claim being different factually. However, some idea of what each may involve is set-out by way of example with the thought that some of the enforcement problems may be seen:

	<u>Amount Claimed</u>	<u>Period Covered</u>	<u>Complaint</u>
1)	\$65.	1969-'70	Non-payment of Vacation pay

Possible Disposition

The New Jersey Wage & Hour Law defines "wages" as being any moneys due an employee from an employer for services rendered... The Statute does not specifically mention "vacation" pay as being required to be paid by an employer. This means that the complainant must show a policy of so paying this type of remuneration; or, a provision in a Union contract for such, should there be such a contract. See also, Regulation No 2.

	<u>Amount Claimed</u>	<u>Period Covered</u>	<u>Complaint</u>
2).	\$300.	3/5/70 - 3/25/70	Regular time-40 hrs., & overtime.

Possible Disposition

At present, the minimum wage rate in New Jersey for employees covered under the N.J. Wage & Hour Law is \$1.50 per hour. See Sec. 34:11-56a4; Chap. 113, L of N.J., '66. Certain occupations such as domestics in homes, persons under the age of 18, and 'outside salesmen', were exempt from such rates fixed by Statute. In April, 1968, Laws of that year, salesman of motor vehicles, inside or outside, were excluded from coverage in the Wage & Hour Act. Under Chapter 58, L. of N.J., '68. Chapters 113 & 89, L of N.J., were amended to exclude minimum wages and overtime from calculation in summer camps, conferences and retreats operated by non-profit or religious corporations or associations. Overtime and exemptions from same are covered by Regulations 3 & 4. Section 34:11-56a4, sets out what constitutes overtime: "1 and 1/2 times such employee's regular hourly wage for each hour of working time in excess of 40 hours, in any week".

	<u>Amount Claimed</u>	<u>Period Covered</u>	<u>Complaint</u>
3)	\$100.	1969-'70	Holidays

Possible Outcome

Nothing in the laws "require an employer to pay an employee for hours the employee is not required to be at his place of work because of holidays, vacation, lunch hours, illness and similar reasons". See Regulations 2, Chap. 113, L of N.J., '66.

Claimant would have to demonstrate either a special agreement to so pay for such holidays, or a policy of so paying in the past, or a union contract affording such holidays as a union member.

	<u>Amount Claimed</u>	<u>Period Covered</u>	<u>Complaint</u>
4)	\$200.	1970	Employment Agcy. fee

Possible Outcome

Agency fees, in writer's opinion, come within Regulation No 2, above, issued under the L of '66, Chap. 113, wherein it is said that an employer shall not be required to pay an employee for hours an employee is "not required to be at his place of work...and similar reasons". It is, of course, the practice of many firms to pay agency fees usually with the proviso that the employee remain with the firm for a certain period of time, and prove himself satisfactory, etc. The employer, though he is not required to do so, may have so agreed, and it is up to the claimant to so prove that he is within the exception.

	<u>Amount Claimed</u>	<u>Period Covered</u>	<u>Complaint</u>
5)	\$300.	1969-'70	Commissions

Possible Outcome

Commissions fall under the definition of wages, under 34:11-1 of the New Jersey State Wage & Hour Law; Chap. 113, Laws of '66, wherein it is said: "'wages' means any moneys due an employee from an employer for services rendered...including commissions, bonus, and piece work..." There are usually special features of "drawings" vs commissions, and the need for delivery of the subject of the sale. Custom, practice in the particular trade involved, questions of whether there has been a resignation or a discharge, etc. Sec. 34:11-58 requires that the amt. in controversy cannot exceed \$300., as it does here.

<u>Amount Claimed</u>	<u>Period Covered</u>	<u>Complaint</u>
6). \$50.	March - April, '70	Sum withheld from wages by setoff

Possible Disposition

Section 34:11-4.4 forbids the diversion or withholding of any portion of an employee's wages with certain exceptions, such as being required to do so under law-Taxes, for instance; authorized contributions by written agreement or collective bargaining agreement; or payments authorized by agreement such as employee loans under a periodic payment schedule; bond purchases, etc.

Were the sum involved in the example one representing a theft of articles belonging to the employer, then the latter would have to prove that the employee was responsible for their loss.

Some Random Figures

It is abundantly clear from the few examples just given that the role of the Wage Collection Court is far from being a perfunctory one. Besides acting judicially, it plays an important part administratively, as labor legislation increases. Moreover, the claims made in the Wage Collection Court have increased; as is indicated by the random comparisons given below:

<u>Fiscal Year</u>	<u>Monthly Average Caseload</u>	<u>Amount</u>
#15 July 1, '61 to June 30, '62	82	\$7752.00
July 1, '64 to June 30, '65	99	15051.00
July 1, '68 to June 30, '69	110	16094.00
July 1, '69 to May 25, '70 (Above year is incomplete)	130	20997.00

In the fiscal year 1964-'65, there were seven (7) cases appealed to higher courts. In 1968-'69, there were 8 appeals.

#15 These figures do not take into account other statistics such as the number of claims pending otherwise; claims allowed or disallowed; claims paid prior to Hearing; cases of service not made; money collected by awards; claims docketed and number of checks issued; all of which appear in the monthly Reports of the Wage & Hour Bureau.

It should also be noted that claims scheduled for hearing are carried-over from each preceeding month, allowing for "continued", "reserved decision", "service not made", or "not-moved" cases. Thus, each month's figures cannot be considered independently.

Treatment of Wage Collection
In Other States

Many other States have wage-collection laws. #16

In Virginia, for instance, although there is no referee as in New Jersey, to make awards; all complaints are made in writing signifying complainant's permission for the Department of Labor & Industry to investigate. After both employer and employee are contacted to determine the validity of the claim, and it is found that the claim is valid, but the employer still refuses to pay, a warrant is obtained from Court action; in this instance, the local Commonwealth's Attorneys acting as the State's attorneys. #17

#16 Cf. Labor Legislation, 1966-'67, by Sylvia Weissbrodt, appearing at p. 469, The Book of The States, Council of State Governments. It was stated: "There is now a set of 27 laws that grant an administrative agency wage assignment authority."

At that time, the following States were cited as having assignment methods of collection:

Alaska, Arkansas, California, Connecticut, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Indiana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Puerto Rico, Rhode Island, Utah, Virginia, Washington, and Wisconsin.

#17. Cf. The Virginia Wage Act was passed in '68 as a cumulative Supplement to the 1950 Code.

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Among these States, New Hampshire has provisions similar to those in Virginia; #18 via assignment, in the event the employee does not wish to take action as he might do in any legal controversy.

The Illinois Wage Payment Law enacted in 1937, likewise #19 provides for assignment of wage claims.

North Dakota enacted a compiled set of Labor laws taking effect July 1, 1965. #20

The statistics of wage collections in California are of interest: In 1969, the Division (Labor Law Enforcement) processed 39,848 wage claims in a total amount of \$11,360,422. The Division also processed 9,595 complaints for violations of the State Labor Code." This information is contained in a letter from the Senior Deputy Labor Commissioner, Bryan Seale, Division of Law Enforcement, State of California-Human Relations Agency.

#18 Cf. Revised Statutes, annotated, Chap. 275, as Amended, by Laws of '50, '53 & '67. Under this State's enforcement provisions, "The Commissioner shall upon the request of the employee, take an assignment in trust for such wages...and may bring any legal action necessary to collect such claim..." Any court of competent jurisdiction may hear such suit.

#19 Cf. Illinois Revised Statutes, Ch. 48, Par. 30g-30m.

#20 Cf. Chap. 34-14, North Dakota Century Code.

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Observations

The closer the Wage collection features of the New Jersey Labor Laws are examined, the more one is impressed with their great administrative efficiency.

Courts of higher jurisdiction are not concerned with minor details such as the need to act in their judicial capacity to enforce wage awards or judgments. The tendency to allow suits to be brought in regular courts in other jurisdictions was surprising to writer. In New Jersey, the Commissioner, acting through his representative agents, may make a "decision or award where the sum in controversy...does not exceed three hundred dollars (\$300.)." In addition, "such decision or award shall be a judgment when a certified copy is filed with the County Court, Law Division, of the County where defendant resides."^{#21}

In so acting, the Commissioner acts as a Wage-collection forum; an administrative-judicial function, which operates to prevent small claims overburdening courts of higher jurisdictions. Since appeals from such decisions are very seldom, the system works well costwise and administratively.

The additional fact that small claims may be entertained as they are, before the Commissioner, does not preclude the latter, in New Jersey, from seeking action by way of assignment, also,^{#22.} as in other States.

Furthermore, the right to take civil action in a court of competent jurisdiction is not lost either to the wageearner.

#21. Cf. Section 34:11-58, entitled Investigation, Wage Claims; Testimony, Award & Judgment, Wage Collection Act.

#22. Cf. Section 34:11-56a26, Chap. 113, L of '66, as amended.