N.J. Unemployment Compensation Commission. Board of Review

CONFERENCE OF APPEAL TRIBUNALS

HELD ON OCTOBER 24, 1939,

THE WAR MEMORIAL BUILDING

TRENTON, NEW JERSEY

FRANKLIN M. RITCHIE, PRESIDING

The following were present:

Augustus S. Dreier
Vincent F. X. Carlsen
Ira L. McDonald
Robert Lynch
Edward Hillcock
George Coughlin
James J. Miller
Frank Williams
Sol Maso
Peter Vredenburgh
Thomas J. Kelly
Morgan E. Thomas
Stephen J. Connelly.
Ruth Dunn

Joseph V. Egan
Frank Fiore
Frederick Krogsen
Charles L. Kapa
William P. Couse
William H. Geraghty
Matthew Krafte
Ira Scharf
Henry M. Grosman
William F. Spengler
Charles H. Rich
Michael J. Shaara
Frederick W. Fort, Jr.
Edwin V. Savidge

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Louis Rothstein
Joseph W. Henry
M. Metz Cohn

Clinton Leslie
William Margolis

(Conference of Appeal Tribunal)
October 24, 1939

We called this meeting today for the purpose of discussing the general situations on the handling of appeals and not so much to tell you anything as to give you a chance to ask any questions on problems which may have come up in the course of your work so far.

The first thing it seems to me for us all to remember is that the Appeals setup is definitely separate from and independent of the Commission. While we are working with the Commission, we are in no way subject to their rulings or bound by anything that they do. The whole purpose of having this Appeals setup is to provide for appeals from the Commission. Where a claimant or an employer is dissatisfied with the action of the Commission they are given an opportunity for a fair hearing on the question.

Naturally if they are to have a chance to appeal from the Commission to the tribunal, the tribunal which hears those appeals must be independent. That is particularly important in questions such as that of coverage of employer, where the Commission has made a ruling. In some cases the Commission has declared that a certain employer is covered and in other cases that he is exempt. Those rulings made by the Commission have all been made ex parte and have not been made as the result of a hearing in which both parties are present.

They get all the facts they can but, nevertheless, when they decide that an employer is subject or not subject, they simply do it on the basis of the information they get from the employer himself. In any case where a claimant comes in and says he wants benefits and believes that he is eligible for them and considers the employer subject, we have to review that decision which has already been made by the Commission. We are not bound by it.

Naturally they have examined very carefully into the situation and in most cases I feel that we should reach a conclusion similar to theirs but we are not bound to do so. Whatever we decide is to be based upon the facts which are presented to us.

I might say that we would consider the Commission's findings in the same way as an ordinary Justice of the Peace would take the word of a traffic policeman. If you get a ticket and go before a Judge, and the policeman says you were going sixty miles an hour and you say you were going thirty miles, in 99 cases out of 100 the Judge would believe the policeman. Nevertheless there would be the testimony.

If the Commission has made a ruling that an employer is subject, we must give careful consideration to that point but the mere fact that they have so ruled is not binding and if the testimony which is presented at the hearing is contrary to that, we are bound to make a contrary ruling.

That results, of course, if we upset the Commission's ruling, in considerable difficulty and confusion within the Commission itself. It means, for instance, if they have ruled that a certain employer is subject and we hold he is not subject, that it may be necessary for the Commission to refund several thousands of dollars to that employer. On the other hand, if they have said that the employer is not subject and we say that he is subject, it may mean they have to go back and collect four years' taxes from that employer, which is a severe blow to him in most cases, because the Commission in the beginning told him he didn't have to pay and now we say he does. Therefore, these questions should be approached very carefully and we should not give any half baked judgments on that, but nevertheless we must decide on the basis of the evidence presented.

It seems to me that wherever a change in the Commission's ruling is contemplated, where it appears that that will be necessary, the case should be sent up with the decision to the Board of Review for the reason that we have made arrangements that in such cases we will call in a counsel from the Commission, Mr. Markavy the Chief Auditor, and Mr. Leslie and various other persons connected with the Commission so as to make sure that all the facts are presented to us. It is not necessary to do that if you feel that you can get the facts and if you feel absolutely certain that you are reaching the correct conclusion, it is all right, but I feel in any cases where we are going to upset the Commission's ruling that they should be notified that we are going to do so so that they will have an opportunity to present any facts to us that they may have had at the time that they made their decision.

In connection with that, we have several problems which have arisen and I have asked Mr. Leslie to come down here and talk to you about some of the things he has found in his experience in the Benefit Bureau and I am going to ask him at this time to take up with you any questions of that sort and I know if you have any questions you want to ask, he will be glad to answer them.

MR. LESLIE:

Mr. Ritchie has already brought out one of the important difficulties we have had in connection with decisions of the Appeal Tribunals and the Board of Review which upset previous decisions of the Commission like the change from a subject to an exempt status or vice versus as the result of testimony taken at an appeal hearing. He pointed out the effect that may have on the Commission or the employer; the Commission may have to refund contributions collected,

or the employer may have to pay contributions for a period of three or four years or eventually for a period of much longer than that.

He didn't emphasize something that is even more important from our point of view, because that is much harder to control and that is those cases where we have paid benefits on the basis of wage records filed by a subject employer according to our determination and which now appear to be invalid because the Appeal Tribunal or the Board of Review had decided the employer was exempt. These wage reports may have been filed and we have received claims from a number of claimants and we don't know who they are by this time, we passed them through and then one particular claimant files a claim and because of the testimony brought out at a particular hearing, as the result of an appeal, the Appeal Tribunal may decide that the employer is exempt. That decision may apply retroactively to that employer's status and therefore all these claimants may not be eligible for benefits, but we have no way of checking to find out who they are.

In the same way, claimants may have applied for benefits and were denied benefits because the employer was considered exempt. Finally Claimant No. 25 comes along and gives us testimony never produced before, on which basis the Board of Review or the Appeal Tribunal decides the employer is subject. That particular claimant may get benefits but the other twenty-four have been denied benefits because we considered they worked for an exempt employer. As a matter of justice we should go back and try to adjust that matter but sometimes we are unable to do it.

Of course, when the Board of Review or the Appeal Tribunal actually do come to a case and make a decision which is a just decision that a certain employer is subject or exempt, there is no reason why that decision should not be followed by us. However you should try to avoid the upsetting of those decisions until you are absolutely sure you are right.

Another thing is that we have had a great deal of trouble on getting affidavits. I don't think it is necessary to go to all that trouble. You have been calling them appeals. Under the procedure that has been followed up to this time, when a claimant filed a claim alleging employment with certain employers, the claim is sent to the Wage Record Section where they draw up a wage transcript, based on wages on file. In many instances...

MR. RITCHIE:

If any of these technical terms are not familiar to you, such as wage transcript or any of those things, I think this is the time to interrupt and I think Mr. Leslie will be glad to explain them to you, if you do.

MR. LESLIE:

The claimant files a claim and he alleges employment with certain employers, the first thing we do is to send that claim to the Wage Record Section where they go to the wage record cards and pull the cards filed under that Social Security number. Those cards are put into a machine and a transcript is run showing all of the wages that he alleges he earned from all the different employers if they were subject. However, if he alleges employment with the John Doe Manufacturing Company which was not a subject employer that employer will not have reported wages, no card would be made out and it will not appear on the transcript. All the wages earned with a

subject employer should appear on the transcript.

Now when the transcript is run, it is returned to the Benefit Bureau where we compute the amount of benefits. The benefits are then finally issued. The claimant is eligible for benefits if he had $150 or $500 - at least $80 or more. When he receives his benefit allowance, he may say that that is not what he expected to get. He looks over the transcript and says, "Why $350? I earned $480. They have not included all the wages I earned with the so and so Company." At that time a request for review is filed. In many instances where we show a man had $900 in earnings and he knew he earned $1,200, we may never have any trouble because he realizes the employer was not subject. In other cases he does not realize that the employer was not subject or doesn't believe he was not subject or perhaps he doesn't understand that those extra wages not on the transcript were earned in non-covered employment and that is why they were not included. However, he might know that the wages were earned in covered employment and not included.

When we get that request for review, we again check on every employer reported by the claimant, first to see if the employer is registered as a subject employer. If he is, then we know our only problem is to find out why the employer didn't file all the wages of his employee, which he says he earned.

In some cases the employer may have had this man working on a commission basis. Maybe he was on a salary basis for a while and then a commission basis and then a salary basis again. Perhaps he had the idea that while the employee was on the commission basis he did not have to report what he earned. We explain that he should have reported and he says, "All right," and the matter is adjusted.

In other cases, the employer is out of business or the employee may have earned wages with a covered employer but we have never been able to get any wage records from that employer and maybe he goes out of business before we are able to catch up with him. In other cases, the employer may have filed inadequate wage records.

In those cases there is no solution for us but to assume that the man actually did work for that employer. We have no wage record and we get an affidavit of the wages. That is why those come to you. In this case there is no situation where they come up before any Appeal Tribunal or Board of Review before any determination is made at all. Here the employers listed are obviously subject employers but there is no wage record for that particular man. We try to communicate with the employer to get a wage record and if we are not successful, we must ask for an affidavit.

You are not confined to considering what we ask about. We ask you for the wage record in the first and second quarters of 1938 with the so and so company. Well you get that for us but then you go on to get information about three other companies which the man mentions but we have already determined on that and while the facts that you may determine at the hearing may be exactly the same in general as we have already determined, they may vary slightly in that there might be a ten or fifteen dollar difference between the wages which he said he earned and the amount which we actually found he earned from our previous investigation. Our previous investigation may be based on a field auditor's report while your information may be based on the man's memory. The facts that we have are more likely to be correct than yours but we are bound by your decision.

Under the new arrangement instead of calling that an appeal, we will merely call it a request for information and actually

you will give us only the information we ask for. If we want the wages earned with the John Doe Manufacturing Company for the second and third quarter, all you have to give us is the wage record for that time and you don't have to look into anything else. If you do get some additional information which you wish to put in the report, it does not bind us or tie us up.

MR. RITCHIE:

At the present time every case which comes up is an Appeal. When a case is appealed that gives the Appeal Tribunal or the Board of Review, whichever is taking the case, jurisdiction of the entire case. We have to determine that case from the beginning for eligibility, coverage of the employer, wage records for the entire base year - every question which is presented. Now if you take a case as an appeal, you must follow that procedure.

In order to save ourselves a lot of trouble and in order to get the Benefits Bureau just what they want, we have agreed that we will take certain cases not as an appeal but simply act as agents for the Benefit Bureau. They will send us a request for what they want and say "please get certain information" and we will get the information under oath but we will not be acting as independent tribunals. We will be acting as agents for the Benefits Bureau and will get their information and return it to them and the claimant will still have the right to appeal because we simply furnished information on which the Benefits Bureau makes the determination. The claimant may still appeal and the case may come back to us as an appeal in which event you will make an entirely new determination.

MR. LESLIE:

The advantage of that arrangement is that we are not bound to follow the information other than what we requested as it is only information secured for us, and if the information obtained

conflicts with what we have in some minor detail, we are not tied up. We will be able to take what we want and go ahead whereas if you give us an appeal decision, we are bound by it. It may be fundamentally incorrect, but we must be bound by it if it is an appeal. This new procedure will enable us to clear cases more rapidly and the claimant will still have the right to appeal.

That really is the only part of the appeal procedure that I have any right to speak on. However, another thing I would like to say is that we have had some trouble with either the Appeal Tribunal or Board of Review decisions, aside from labor dispute cases, and those are situations where we have questioned the decision rendered. Of course we are going to go right on doing that if we think it is wrong. You have the right to make a decision, but if it doesn't seem just right, we can question it.

MR. RITCHIE:

In connection with that, if we make a decision the Benefits Bureau is naturally bound by the decision since it is an appeal from the Commission and we decide that appeal. The Board of Review has always followed the policy of whenever the Benefits Bureau is not satisfied with its decision of reopening the case. We have the right to reopen any case, letting them come in and present further testimony, further argument, or anything they want, and then still acting on our own judgment, make another decision, either affirming or setting aside our previous decision. We feel that they have every right and every opportunity to present whatever they may wish but we still are going to make our own decision. That is up to you as members of Appeal as to whether you want to do that or not. If you make a determination, the Commission is bound by it. If you think it should be reopened, you can do so, but you are not bound to do it.

Are there any questions or problems that you would like to ask?

MR. SHAARA:

I have noticed that a man in making out his claim might at one time or another leave out an employer until it comes before the Appeal Tribunal. Now when you say you want certain information, I presume from that that you want the information that you write in for on request. Suppose that man had originally worked for a subject employer and didn't put it down on his original claim - is that man to be deprived of just benefits because he didn't have that information on his first or initial claim?

MR. LESLIE:

No. Suppose a man puts down only one employer. In many instances the claimant just puts one employer down whereas he may have worked for four or five or six. I have a case which has come up before us where a man gives us a list of seventeen employers and I think only one is registered, and yet there was no guarantee that that man was not entitled to benefits. The man was a carpenter and he had worked for a series of sub-contractors who had been working for general contractors. That man's case has been hanging around since January and I think we have allowed him benefits twice. We had field audits made on those people. When you start a field audit on the subcontractors, that leads to general contractors, and you start another series of investigations where you might find that the man gave the wrong name of the employer. He may have given the name as Pete so and so when the name should be the so and so company.

Now my answer to your question is that the mere fact that a man puts one or two names of the employers and leaves out

another name does not make any difference, in the final analysis because if the employer was subject and has reported, we will get it on the wage record. If the employer was not subject and didn't report, we wouldn't get any report of these earnings. We will issue a determination of eligibility and allowance based on what we find. A man can then file his request for review and on the request for review specify that he worked for these employers. If he sees that his wage transcript does not show all the wages that he earned, the Claims Examiner in the Local Office sees whether or not he worked for anyone else. He may say, "Here are the wages for the employers you gave and here are the wages for another employer you gave - now who else did you work for?"

MR. RITCHIE:

I think Mike's question was directed to the new procedure. He means if you request a wage record on John Jones, is there any harm in turning in a wage record on William Smith. I would say no. Turn in anything you get and they will use it as they see fit. If the claimant is not satisfied, he will appeal and if it is appealed, then you will make a complete decision. In every case where there is an appeal, you go into every employer.

MR. SHAARA:

The reason I asked that was that he stated two things that they do in the wage records. First you have the subject employer who has a wage record and second you have the nonsubject who have no wage record. Now don't you also have a subject employer who is delinquent in his wage record?

MR. LESLIE:

If he is subject we know he is delinquent.

MR. SHAARA:

You have no wage record if he is delinquent.

MR. LESLIE:

Those are the cases which we send to you for an affidavit. We know the employer is subject and know he is delinquent. Every affidavit we ask for is on a subject employer. There may be cases where the employee gave the name of an employing unit which our records show as exempt, but which is really subject. In that case we start a field investigation and that field investigation is completed or going on when we send through for an affidavit. We don't usually send for an affidavit until we are through with everything else. There is a further situation where the employer is never mentioned by the claimant and the case comes before the Appeal Tribunal. We ask for information on a certain employer, and now the claimant brings up this new employer. Under the old procedure that is where you may get into difficulty, for on the appeal we must accept your determination. According to the claimant's story he worked for this employer for six months and he knew the employer had twenty people working there all the time and even has witnesses to corroborate that fact.

According to the testimony that employer is subject and we have no record of him or we have not held him subject. When we get that information from you, we not only have to take into consideration the wage record for that man but if that employer was subject, we had better get wage records for him. We start an investigation. The field auditor makes the investigation and submits his report and it is decided that the employer is not subject. Now based on the testimony given by the claimant at the hearing and on the basis of the other information obtained, the Appeal Tribunal held that the employer or employing unit was subject, and the decision

that he was not subject must be recanted. Under the new system we are not bound by the information you may give us. We can use our own judgment and we can refuse even to accept the affidavit, but the man will still have the right to appeal, but it will eliminate possibly 75 or 80 per cent of all the appeal cases. It will get the information we want and it will save time and everybody will be satisfied.

MR. RITCHIE:

There will be two different procedures. Appeals will be handled the same as they are now. If they request information, we will get it and if we can get more, it will be all right. We can send it into them. It will be a report of information. They are asking us to do something and we will do it to help them out.

COLONEL KROESEN:

Will that come before the Appeal Tribunal or before the Examiners.

MR. RITCHIE:

Probably in some cases it will be before the other two because there may be contested points. Even if it is only information we are desiring, it is important to have the three-man tribunal sitting.

MR. SHAARA:

Do you make that in the form of a request and do we send it to you?

MR. RITCHIE:

You send it to the Benefit Bureau.

MR. SHAARA:

And we will send to Mr. Fry the names of the cases so that the three man board may sit?

MR. RITCHIE:

Yes.

MR. SHAARA.

That will eliminate just the Appeal Examiner sitting whenever we take an affidavit?

MR. RITCHIE:

No. We may or may not use a three man tribunal. It depends on the nature of the case. It is up to the Appeals Examiner to advise Mr. Fry if he thinks it is an important case and he will request a three man board but if he thinks it is a matter of taking somebody's word, he won't need a three man tribunal.

MR. LESLIE:

As a result of recent discussions in this matter, the Benefits Bureau has realized that in sending these cases to the Appeal Tribunal and to the Board of Review we have been handing them over to a group of men (including one woman) who with the exception of Mr. Ritchie and me have had no experience with our technical procedure in the wage record section.

We are familiar with and know what a registration number means, what a dash number means, what in and out dates are and how to read them, etc. When we have a request for review, we know what certain symbols mean. We have been trying from time to time to consolidate that information all into forms. We have a form showing the chronological history of an investigation conducted up to that point. We are going further than that in the future and are making an effort when we send a case to the Appeal Tribunal to give you a summary of the situation and point out the facts causing us trouble so that before you hold your hearing, you will have a chance to get an idea what it is all about and you will know where you are heading, for when

you start you will be guided by that information and then when you review the other items in the file, you will gradually become acquainted with what it is about.

We are going to try to give you more information than we have been given so that a case may possibly be more understandable. One of the first things we did along that line was to arrange the files in reverse chronological order. Originally we just sent down the file but now we are going to arrange them in the reverse chronological order, which I believe will help.

COLONEL KROESEN:

In wage transcript cases where a decision is rendered by the Appeal Tribunal, and sent to you, if there is some point in it which we have not made clear or some point with which you do not agree, what harm is there in sending that back to us, pointing out that particular thing which you want most, which we may have overlooked.

MR. LESLIE:

Haven't we been doing that?

COLONEL KROESEN:

I have only reopened three cases on the basis of information which came back.

MR. LESLIE:

We sent some back.

MR. SHAARA:

I never had any.

MR. LESLIE:

If Mr. Shaara says he never had any and you had only two or three, maybe the Board of Review has withdrawn them before they went back to you.

Of course if something is obvious, we don't send it back as an appeal. I have reference to a case such as this. A decision is apparently given in connection with employer B where as a matter of fact employer A was the one involved. We are pretty sure of that and the testimony is in connection with employer A. Now we know that in all probability the employer A appeared by what you have down and everything is all right but you addressed your notice to employer B and your decision seems to be made in connection with employer B. Most likely the testimony was turned over to a stenographer to write up and she, being in the habit of writing thename of the last employer as the one involved, put down the last name of the employer. Regardless of whether it is a simple mistake or not, it is wrong and should be corrected. In this case it is easily corrected and we then send out a new notice to the right employer. There is no sense in our appealing that to the Board of Review and have a new hearing.

We have another case where the sentence said that the claimant's name did not appear on the record for the first and second quarters of 1938 but indicated that she had earned $30.72 in the first quarter and $117 in the second quarter of 1938. That didn't make sense but we knew what had happened. Somewhere something had been left out or the examiner, in dictating that decision, had slipped up and said first and second quarters when he meant to say third and fourth. It didn't make sense as it was but yet we knew it was not a serious mistake. All we would do is send it back and have them look it over.

MR. SHAARA.

Was that case sent back to us, by the way?

MR. LESLIE:

I have forgotten. I think in looking that case over I found something else. I don't think it has been sent back yet.

HENRY GROSMAN:

Isn't a good part of your trouble due to the fact that the employer has not filed complete wage records? Couldn't that be eliminated in a measure by having a checkup made on the employer who is registered to see what kind of records are kept?

MR. LESLIE:

I would say that a good part of our trouble is due to incomplete wage records and every employer is supposed to be audited whenever we have any reason to suspect that the wage records are not correct. If an employer is held to be subject, we don't make a field audit if it looks as if he were going to cooperate. There are a lot of employers and if the employer seems to be making reports all right, we concentrate on those who aren't.

Of course there are employers who appear to be making proper reports. Suppose you take a large oil company who is making reports to us. They are perfectly nice reports but he doesn't put certain people on the report for the reason that he doesn't consider them to be in employment but considers them to be independent contractors and therefore not in covered employment.

Take the companies that have branches. They will make reports with respect to certain employees and they will leave other employees off. We almost always find after they make a claim that they should have been reported and we just tell the employer that this man was in covered employment and they usually have a record of his wages and they give it to us.

EDWARD HILLOCK:

You spoke about a case with a carpenter and subcontractors. Don't you feel that a lot of these subcontractors plead ignorance of coverage as a subterfuge and there is much unfair competition? I think the whole thing will be clarified and only clarified by full coverage, the same as the Social Security Act. That will eliminate it in my humble opinion. We have at the present time contractors going out of New York who have taken the tax out of the employees' envelope and owing to the fact that the twenty week period is supposed to be in effect, have left the State of New Jersey and have taken the tax and nothing is done about it.

Now that particular type of unfair competition against the Jersey employer very often makes it possible for a Jersey contractor to lose a job because of that unfair competition and we have not been able to check it.

MR. RITCHIE:

That is a question of the Law as it should be in your estimation as compared with what it is.

MR. HILLOCK:

I was checking up on Mr. Leslie and wondering what manner do we have for checking on the employer who does not report.

MR. LESLIE:

That would be a much wider interpretation of what I said.

The Law requires every employing unit in New Jersey to file a Status Report. We know that every employing unit does not file a Status Report although a lot of them do.

On the basis of that Status Report, we try to determine their status. If they are determined to be subject, they are required to file reports and if we determine that they are not subject, or that they are exempt, they are not required to file reports.

However, that does not relieve him of filing a new report when we send it to him.

MR. RITCHIE:

I think that your question might be answered by saying that if we have any recommendations for changes in the Law it might be a good idea in the afternoon to present recommendations to the Commission to have the Law changed. Also, in connection with that problem, I think that the Appeal Tribunal can be of considerable assistance in catching up with some of these chiselers and chiseling employers. Whenever you find a case like that send in a special recommendation and we might be able to prosecute in some case and thereby make an example of the employer.

MR. HILLOCK:

There have been complaints of that type but there is never anything that comes out of it.

MR. RITCHIE:

Suppose you send your report to the Board of Review and then it will be up to us to see that something is done about it.

MR. HILLOCK:

I also brought it up in a letter to Mr. Leslie. There is a vast violation in that particular field.

MR. RITCHIE:

They have a lot of room there.

MR. LESLIE:

In the handling of active claims, I would not say that I am not interested in determining whether an employer is subject or not but it is not really within our province to prosecute. My job is to get a claim out as soon as possible. If after an investigation it develops that somebody is subject, we will make him subject and if we find that somebody has been trying to circumvent the

Law, the proper division of the Commission will take care of that. In many instances we find that the claimant will hold the employing unit as having deducted contributions etc. when as a matter of fact only old age benefits was deducted and not unemployment compensation.

MR. HILLOCK:

I can appreciate that.

MR. LESLIE:

If we followed it up, we would have a large number of people doing nothing else. We also get many letters expressing the opinion that so and so is getting benefits when he is employed, and many others about something else. Upon checking up we often find that the claimant is entitled to benefits but we didn't allow him his benefits until so long after he filed his claim that he got another job and was working before he actually got his benefits for the period he was out of work but the outsider saw him get his check and jumped to the conclusion that he was not entitled to it.

COLONEL KROESEN:

You spoke of having Appeal Tribunal Examiners. To whom is it up to to determine whether there should be a three man board or just the one, particularly in getting that information for the Benefit Section?

MR. LESLIE:

That is up to the Board of Review, I should say.

MR. RITCHIE:

The rules of the Board provide that in any case involving a disqualification, there must be a three man board. In any other case, it is at the discretion of the Board of Review to assign a three man tribunal. They can have it or cannot, as they think necessary.

I don't think it would be a bad idea to have a three man tribunal on all cases.

MR. SHAARA:

I might suggest that in view of the fact that you would not have the case handy and would not know the facts, and the case would be in the hands of the Appeal Tribunal Examiner, that whether there should be a three man board should be left in the hands of the Appeals Examiner.

MR. RITCHIE:

I said it would be advisable for the Appeals Examiner to make the recommendation that a three man tribunal be allowed. I also agree that a three man board should sit on all cases but that is entirely up to the Federal authorities who provide the money and we must get their approval before we can do it.

FRANK WILLIAMS:

I have sat on several cases of the Appeal Tribunal, and there is something I would like to say. When we are sent notice to the effect that a hearing is to be held the employer and claimant's name is listed and the notice requests you to attend the hearing held before the Appeal Tribunal at a certain time, place and date. We walk into that hearing cold - without any information as to what this question is all about. I have complete confidence in the Examiner that I have sat in with. However, I think in all fairness to both the employer and the claimant, there should be some synopsis of the case presented to the members of the tribunal.

I don't know if that would be possible under the laws of the Commission but I think it would facilitate a proper understanding of the case in advance and it would give the tribunal members who are reviewing the case what they are expected to hear at the hearing. You can naturally understand that every member of the Appeal

Tribunal is now in this game and are not constantly in touch with the situations as is the Commission and the Board of Review but if it is at all possible and within the letter of the law, I think advance information should be given to both sides, the employer's representative and the labor representative - that is a synopsis of the case so that when we go in to a hearing we will know just what kind of a problem we are going in to face. It is up to us to try to figure out the merits of the case and much cuuld be accomplished if arrangements could be made to give both sides some of the information that is in the hands of the Examiner.

MR. RITCHIE:

I agree that that should be done. In the past we have been very much handicapped by the large number of cases to be handled and the lack of help. The Examiners do not have enough help and the Board of Review does not have enough. However, I believe Mr. Leslie said that the Benefits Bureau is going to prepare a synopsis. If that is going to be done, it could be done in triplicate and a copy could be sent to the temporary Examiners as well as to the permanent Examiner.

Mr. Henry, Assistant Chief of Benefits, in charge of the Benefits Bureau, is here and he may be able to discuss some of the broader policies of the Benefits Bureau. Mr. Leslie is more or less in charge of determining legal questions and what should be presented to the Appeal Tribunal and so on but perhaps Mr. Henry could tell us more about the policies of the Benefits Bureau as a whole.

MR. HENRY:

With respect to presenting a synopsis of the case, it

would seem to me to be a very simple matter to prepare extra copies and hand them out to the permanent Examiner and he in turn can transmit them to the men who are expected to sit as a three man board. I think in that fashion that this further lack of knowledge will be taken care of and in future matters of that kind, they will be carried on in a fashion entirely acceptable to them.

MR. RITCHIE:

Do you have anything else to bring up?

MR. HENRY:

I am practically new at this business, as most of the rest of them are, and in the absence of any further suggestions, I am going to keep quiet and let you fellows do the talking.

MR. RITCHIE:

There is another thing. We should always remember that in these cases we are not sitting merely as a Court, nor as an umpire, taking only what is presented to us. The claimant ordinarily comes in without a lawyer and without any knowledge of the Law. We are to be not only an umpire between him and the employer but an assistant to him in bringing out all the facts which are helpful to develop his case. The purpose of the Law is to pay benefits to any workman who is unemployed and eligible for benefits and we should try to develop all the facts which will substantiate his case and if the members of the Appeal Tribunal have a knowledge of that case in advance they will be able to present questions which they think should be put in order to develop necessary testimony so that we shall try to arrange to have those synopses sent out in advance so that you will know what the case involves.

I might also say that it seems to me that you are not limited to sitting on the case on the actual day on which the hearing is held. If it involves the securing of further

testimony or further examination of the case, study of the case, writing of decisions or anything of that sort, there is no reason why you can't take an extra day or two days if necessary and put in your bill for it just the same because that is just as much an essential part of handling the case as the hearing itself. You are not limited to the one day. When you are sitting on a case, when you once start on a case, it is up to you to finish it. The reason we have representatives of labor and employees is to see that the case is properly developed and if any question arises, it is their job to see that their respective sides are presented.

We feel that all three members sitting on a case are going to be impartial and are not going to take the attitude of being an attorney for the employer or an attorney for the workman. We should be just and we should see that all the necessary facts are developed and if it takes more than one day in order to discuss it, if that is necessary, then there would be no objections to your putting in the extra time and naturally charging for it.

Incidentally I notice that so far there have not been any dissenting opinions and that the opinions have simply been written by the permanent Examiners and concurred by the others. Of course if you reach an agreement in every case that is fine but you are not bound to do so. If you don't agree with the decision rendered, you have a perfect right to write a dissenting opinion and it may even be that that dissenting opinion would result in the case being reviewed by the Board of Review and further testimony developed. There should be no hesitancy about that at all.

That may result in extra time having to be put in. However, if you go all day on a hearing, you have a perfect right to put in your bill for the extra time that you may spend on

writing the decision if you feel that a decision should be written by a temporary member of the board and I think that is a necessary part of your work.

COLONEL KROESEN:

With regard to synopses, I have always told the members of the Appeal Tribunal in somewhat of a synopsis form the pertinent points of the case and the points to be decided. However, that has always been very sketchy and very vague and still would leave them in the dark somewhat and I believe if this information could go out to them when the notices go out to them, I believe it would be helpful.

MR. RITCHIE:

That will be done.

MR. LESLIE:

That is a plan which we could not have followed earlier in the game. We had so many appeals coming in when we first started and we had trouble finding the files and to take care of each one of those cases and examine each one carefully would have been a terrific job. Today we are getting comparatively few appeals. You may have a bunch ahead of you but if we eliminate the extra work on the affidavit situation and we have only straight appeals based on disqualifications or the question of status of employer or employee, things might go along much faster. Now what I plan to do if that is satisfactory to the Chief of Benefits is to make a synopsis of what we have done up to that time, the reasons for our decision or opinion on the case and reference to the law or that section of the law on which we based our opinion. In that way the Appeal Examiners get an idea of the case and they will know what we are thinking and why and

they can check up and see if our interpretation is in accordance with theirs. I think that will answer your questions and you will have the whole synopsis of the case plus our references to the particular sections of the law which we think apply. However there may be other things brought up in the hearing, but you will have something to go on.

MR. GROSMAN:

Speaking from my point of view as one of these examiners, I find that our principal difficulty has been - and that may be the reason that there have been no dissenting opinions - that we have nothing on which to base our opinions except our own common sense and the information embodied in the Act which is very sketchy and much narrower than interpretations which amplify the Act. We feel that some method should be devised whereby the Examiners should receive a digest of the decisions of the Board of Review, as well as the decisions of the Social Security Board upon which many of our decisions are based.

To give you an example, Mike Shaara, Ed Hillock and myself were quite up in the air about a case. It was a case where a girl who had been working for about a year in a plant and had quit because she said the fumes of the material bothered her and affected her health.

As I understand the Act it is an unemployment compensation act and not a health insurance act but when it comes to reemployment, the Act says you can't ask anybody to work at a job that affects the health. We were all rather up in the air as to whether she was entitled to benefits, but in the end we decided she was eligible for benefits. At a very late date, we got a digest of

decisions wherein they allowed benefits in a case very much like that but if we had been familiar with the decisions of this Bureau it would have saved us a lot of headaches. I think that the Examiners should be advised as to the status of the Law and the various interpretations by the Board of Review and the Federal Social Security Board if possible so that they might have some idea of what to do when they have a case presented to them and since each case is different and some of them are troublesome and we must be careful that we don't arrive at a conclusion that may be a headache later on, we should know the Law. All the information we have on the Law so far is one book of decisions which some of us got because we happened to hear about it and we have no information whatever as to the decisions of the Social Security Board, which should be very helpful. I also speak for the other examiners who are interested in this work and when I say it would help us a great deal when we sit down to listen to the different cases, I know the others feel the same way.

MR. RITCHIE:

In that connection, have you all received a copy of that digest? I will see that a copy is sent to every examiner. That digest only goes up to July but we are now preparing a new one which will come out in about a month. I also think it would be a good idea to mail to each examiner a mimeographed decision of each case.

MR. GROSMAN:

That would help a whole lot and if it was possible to get a copy of the decisions of the Social Security Board, I think it would be a good thing. I know the regular examiners got it and you are asking three men to decide on information possessed only by one examiner.

MR. RITCHIE:

Well we can make a request that they be furnished to all examiners but I don't know if that will be granted or not. That must be done by Washington. However there is a set available in the office of each examiner and if there are any questions which arise in a case which involves those decisions, certainly I am sure there would be no objections to your using them. In fact if it is necessary to take the next day, and if you think that it would benefit you to go in the Examiner's office and study those before you make your decision, do it and put in your claim for a day's work on that basis.

MR. SHAARA:

I don't know whether some of the members realize or know that the laws of the forty-eight states are not all alike. What might be right under our Law might be wrong in another state. I had occasion one time to look through those books. I was looking for a decision on a certain case and I thought if I could find a decision where the facts were the same, I would be all right. I found seven of them but unfortunately four of the decisions were one way and three the other way, so I calmly closed the books and wrote my own.

I think it might be all right to look at them for an opinion and the facts on which they base their decision but not to take the decision the way they give it. Let us take our own facts and our own Law and then base our opinion and decision on those facts and if we do that, and base our decision on our own Law and our own interpretation, then I think we will be better off because those decisions are merely for the purpose of giving us somebody else's opinion and I think we should have our own.

I think if you fellows read those green pamphlets unless you are lawyers, some of them are going to be pretty tough. If there are any of the members of the Board, however, who feel that they would like to go through those books, they are perfectly welcome to do it at any time. You are perfectly welcome to go through them and if you honestly think you have a case before you where you believe there may be something in those books which will be helpful, and if we can do it for you or if the stenographer can look it up for you, we shall be glad to do it. The stenographer may be able to give us just the cases out of there which we might be interested in.

If anybody has any suggestions along those lines whereby we might be of help to facilitate matters, I shall be glad to hear from them.

MR. RITCHIE:

Do you members of the tribunal feel that you have enough time to discuss your decisions? It might be a good idea for the Appeals Examiners to set aside one day each week when you will not hold hearings and bring up all the cases which have been decided in the previous week and have in the examiners who have sat on those cases and discuss it, if you feel that is necessary before your decision is rendered.

Suppose you are down in Vineland at a hearing and you get through at four o'clock. You want to get home for dinner and you don't want to sit around and discuss that case for a couple of hours but if you could come in and discuss it on that one day a week, I think it would be a good idea.

MR. WILLIAMS:

I think that that would be a very good idea. A man sitting on a case until four o'clock who wants to get home in time for

dinner and has a long way to go, naturally he would not have the interest of the case so much as he would have his dinner on his mind and he wouldn't perhaps give a just hearing.

MR. RITCHIE:

We found that to have those discussions was a good thing to do in labor dispute cases. Under the Law all cases involving a labor dispute are decided by the Board of Review. First the Deputy makes an investigation and then sends his report to the Board of Review.

Now we set aside Monday of each week for labor dispute cases. All the reports which have been received during the previous week are taken up on that day. The representative of the Benefits Bureau comes over and very often a representative of the Legal Section comes over to discuss those cases with us and after that discussion, we render our decision. We found that to be very helpful and it might be a good thing for handling your appeal decisions.

MR. SHAARA:

I think we could set one day aside and I think we might use it for further discussion but I would also suggest that we have a representative there from the Benefits Section in order that he might go back and tell them just exactly what we thought and why we rendered a decision. Sometimes they see it in cold type and they don't get the full opinion of just exactly what we mean and he may through these discussions bring back to the Benefits Section our reasons and information that might be helpful to them.

MR. RITCHIE:

What do you think, Fred?

COLONEL KROESEN:

I think the idea is good so far as discussing the case is

concerned but my one objection is the slowing up of the cases. A great many cases that we are still getting are where the claimant made application in January or February of this year and the case is slowed up considerably now and if you are going to take a couple of days a week away, it would slow it up considerably.

MR. RITCHIE:

Do you think you could complete your discussion at the time of the hearing?

COLONEL KROESEN:

If we don't schedule too many hearings in the one day. However, I think Mike's suggestion that we have a representative of the Benefits Section present would be halpful to us and to them, if we have these discussions.

MR. RITCHIE:

I think you can decide whether you want to discuss the case further. If you are all not in agreement as to how to decide the case, you can bring it up for discussion later. I think if you have these discussions, it would be a good thing to have a representative of the Benefits Bureau present but I think they should be held in Trenton then so that you could have Mr. Leslie or Mr. Henry there and they would not have to drive all over the State. If you could meet at Trenton say once a week and discuss things with them, I think it might help.

COLONEL KROESEN:

If we don't schedule too many cases in one day, we are able to make our decision after we hear the case. We might have a lengthy discussion if it is necessary or a brief discussion if we agree. I think however these discussions will help the other members of the Appeal Tribunal even though it will slow the work up but I think it would even be better to have less cases a day

and then we could discuss the case after the hearing.

MR. RITCHIE:

That is up to you - your scheduling of cases. If you find you have sufficient time to reach your decision after you hold the hearing, it is all right, and if you want further discussion, you can do that.

COLONEL KROESEN:

I think these weekly discussions would be a good thing.

MR. ROTHSTEIN:

As you recall in the beginning when we organized our field force, we held regular lectures for the field men. I think it would be a good idea once a month if you had some representative of the Legal Section come down and explain the fundamentals of the Law.

MR. RITCHIE:

That is another question that depends on Washington - whether they will spend the money.

MR. ROTHSTEIN:

I think some arrangement should be made for you to meet in some part of the State. That is for the benefit of the new men sitting on the three board tribunal.

I know that when we had our own field men, who later went out to make audits, they had to have some understanding of the Law and I think if we could continue those lectures until you got a good understanding of the Law and some foundation of the Law on which to base your decisions, it would be a good thing.

MR. SHAARA:

I think you have something there but as Mr. Ritchie says, Washington might not approve it but I don't think there would be any objection if some one from the Legal Division came to the various meetings that we might hold during this one day a week whenever they could find the time and they would not have to even apply to Washington for permission to do that and you would not have to

argue with them about the budget. They could come that one day when we are holding these open discussions on the cases that might be a bit difficult. They could come at that time and give us some valuable instructions insofar as the Law is concerned.

MR. ROTHSTEIN:

That isn't what I meant. Most likely all of the problems you would have could be taken care of by Mr. Leslie in the Benefit Section but what I mean is to give you a complete education on the Law itself. If you are holding hearings and then plan to discuss them on one day, most of your time is going to be consumed in taking care of those cases and you will have very little time left for any lengthy discussions on the Law.

MR. SHAARA:

We anticipate having one day a week to discuss all the cases. We don't ask you to come to the hearing, we only ask you to come on the day that we are holding these discussions for I don't think we are going to get permission from Washington for everybody to take a full day off and get paid for it.

MR. ROTHSTEIN:

You could tell them . . .

MR. RITCHIE:

I will recommend it.

MR. ROTHSTEIN:

I also say this, Mike, that assuming that your idea goes through, it means that we can only discuss those issues that you have before you, because you will have those cases at hand and you will want to take them up.

My idea is to spread the entire day over all of the Law. However, it is only a suggestion.

MR. SHAARA:

We will spend only part of the day on the cases we have before us and I don't agree with you about using the whole day for the Law. I think if you take it in parts, we can get it faster than if we take the whole day on it. There are some of us lawyers but we can't all assimilate the Law like you lawyers. If we take it in parts, we can digest it better.

MR. HILLOCK:

I think both suggestions are excellent.

MR. GROSMAN:

I know Commissioner Toohey makes it a practice of having one meeting a month at which time they have discussions of questions that come up during the month and they are able to arrive at some basis for uniformity of decisions. After all a lot of decisions based on the same policies should be somewhat alike and I disagree with some people for I think the layman is very essential in determining decisions.

We have some pretty intelligent men among these laymen and I think the suggestion of getting together once a month where the men from the different parts of the State can meet and discuss questions of Law and policy is very helpful. It will help in the sense that this Board is in its infancy and it is now passing upon questions of interpretation which if they are not fundamentally sound will break us in the future. We may have a case of some individual who makes $15 a week and our decision might affect 50,000 employees in the State, and I think that while they talk about the expense of getting these men together, and it may cost about $300, it may save

thousands of dollars later.

I think that we should have these discussions and have the questions ironed out with the help of the legal advisors of the Commission and I agree with Mike about the question of man power.

However, I think that once a month if the legal representatives could meet at a central place, we could be there and the problems that come up in one section of the State could be solved probably or they could help us along in our solution by having their opinions and perhaps having the opinions of the men from the other end of the State.

I also liked Mr. William's suggestion as to the digest.

MR. WILLIAMS:

I think another question that should be brought up is the question of too many hearings. We have a hearing scheduled for somewhere in the morning, say Clifton, and then in the afternoon for Hackensack, or maybe in the morning it is Elizabeth and in the afternoon Plainfield. I find we must rush through those hearings to make both of them and certainly no time is available for any discussion of the case. I think if they assigned somebody else for one hearing and somebody else for the other, instead of having one take both, it would give us more time for discussion. There is also much time lost in travel and it really does not give us as much time for ordinary discussion of the case as we should have and I think that is very essential, especially at this stage of the game.

IRA SCHARF:

With reference to these synopses that will be sent on these various cases, will that include the point that is to be taken by the Appeal Tribunal?

MR. LESLIE:

Yes.

MR. SCHARF:

I see. Now in an instance of this sort, where the Appeal Tribunal is requested to decide on a certain given point and the testimony presented might be sufficient to substantiate the employee on that particular point but during the testimony there might be some other point raised, entirely strange to the issue, where he may have some merits and may be entitled to benefits, would it be the duty or within the province of the Appeal Tribunal to consider that new point and decide upon that?

MR. RITCHIE:

It absolutely is. The synopsis is merely a suggestion. You are to determine the case and if you find a new point, it is up to you to disregard the synopsis, and consider that new point.

We are fortunate in having a representative of the Legal Section here today. Mr. Malloy was not able to come down but his chief assistant, Mr. Louis Rothstein, is here and he will now address you.

MR. ROTHSTEIN:

In regard to these synopses, you gentlemen understand that the information contained in those reports is absolutely confidential, and can only be used for the purpose of the information for the persons working on that case. In the case of a hearing, the hearing is public and of course there is no control over you in that respect but insofar as these synopses are concerned, or insofar as these reports are concerned, you are not permitted to discuss them with anybody on the outside because they contain information that is confidential.

MR. RITCHIE:

These reports of cases will not give the names. We will

send them out without the names of the employer.

MR. ROTHSTEIN:

I don't know if that would be a wise thing to do. They should have all the information before them that is available. When Mr. Leslie spoke of referring these cases to the Appeal Tribunal I wanted to ask him what information he was submitting to them with his request but later I found out he is adopting a new procedure. If Mr. Leslie is going to send out these synopses on the case and submit them to the members of the Appeal Tribunal, and along with that a suggestion on procedure, I was going to ask if it would not be possible to discuss these cases maybe five or ten minutes before the hearing was scheduled to be held.

COLONEL KROESEN:

That depends on the hearing calendar. I have always tried to have a discussion before the hearing but they are usually still in the dark at the time the hearing starts.

I have a chance to go over the case before we hold the hearing and I try to give them some idea what the case is all about but even at that they only get my interpretation of the questions to be answered.

MR. ROTHSTEIN:

That is why I suggested that monthly meeting or lecture. It would give you a broad education as to the act itself. Every claim is predicated upon the Law.

MR. SHAARA:

Mr. Rothstein, I still think that a synopsis is the best thing. If, as you say, under the Law it can't be given to them in advance for various reasons over which the Legal Department objects, why not make these synopses up any way for these different gentlemen

for them to have in front of them when the case is going on.

MR. ROTHSTEIN:

I didn't make any objection to that. You misunderstood me.

MR. SHAARA:

Well as to the Law.

MR. ROTHSTEIN:

No. The only thing I wanted to bring out was that the information they had was not to be given out to any outsider. They must have it in order to make the decision.

COLONEL KROESEN:

With regard to these synopses sent out, do you prefer that they be sent to the Examiner and put in the file?

MR. RITCHIE:

I think that would be a good idea after they have had a chance to discuss them. After they are through with them they could be put in the file.

COLONEL KROESEN:

Should they be sent in advance to the members of the tribunal or given out at the hearing?

MR. ROTHSTEIN:

They would have no value or any further use for them after the hearing and they should have as much information as they can get so that they can make a correct decision.

I can see the difficulty that these men are having. If they don't know what it is all about, and they go into a hearing cold, you can't expect them to know what it is all about.

As I said before, we had the same trouble with our field auditors. Those men had to go out and determine status and they did practically the same work as the Appeal Tribunal except that

they made audits. I think those meeting proved to be very successful and if we adopt that here, I think it will eliminate a lot of trouble in misconstruing the various sections of the Law.

WILLIAM COUSE:

I think we could spend one day alone in deciding where agricultural labor starts and where it ends.

MR. WILLIAMS:

I feel after hearing the discussions that I am getting up a feeling just like a culprit because I have a file right now with a synopsis of the case in front of me which I made up and it is in my own handwriting. Is that illegal?

MR. RITCHIE:

No. You have a right to any information connected with a case but the Law says you shall not make use of any information with regard to an employer or benefit claimant. If you have it yourself it is perfectly all right.

MR. WILLIAMS:

When a matter comes before me for me to put my signature on it, I am interested enough in the case to satisfy myself that the writing up of that case is in conformity with the evidence put forth at the hearing and in that capacity I have tried to tie up my obligation in the Tribunal in a fair and impartial way.

We are handicapped and I still think that we are entitled to some understanding as to the case, as it has developed up to the point where it has been placed in the handsof the tribunal. It would set up better if we could get the obligation both to the employer and the claimant and we will be in a better position to render an honest verdict. I would not hesitate to render a verdict against the worker if I thought he was wrong and on the same basis, I would

render a verdict against the employer but I think we should be given the information up to the point that it comes to the tribunal.

I am bringing this out to emphasize the need for it. I think every member of the tribunal is conscious of the responsibility placed on them and I personally would not discuss anything about a case with any outsider, and I don't think we are asking for anything out of the ordinary if we want to have some knowledge of the case beforehand.

MR. RITCHIE:

I agree with you. I think you should have that information.

FRANK FIORE:

I was going to add to what has already been said that when a case is assigned to members of the tribunal and also to the examiner, if there would be enclosed in the same envelope as the notice a synopsis of the case so that when we meet with the examiner, we will already be familiar with the nature of the case and then if we have sufficient time there to discuss the matter after, we can return to the Examiner the copy of that synopsis. The original copy the Examiner can bring back to the home office or his own office and keep it as a matter of record and the copies forwarded to the members of the tribunal would be up to the examiner to do with what he wants. If he wants to retain them or disregard them, it is all right with us but in sending out the synopsis, it is not necessary that the name of the employer or industry be mentioned. If it just states that the claim is being referred and the reason why the case is sent to us and if we could have a general outline of the case, it would be helpful and then after the case has been decided, we can give that to the examiner and he can

keep the original copy for his own records.

VINCENT CARLSEN:

The thought occurred to me that would it be fair to the employees if the Commission made a ruling compelling all employers with eight or less to post a prominent notice stating that the name of the employer is so and so and stating whether or not the employer is subject.

MR. RITCHIE:

Every subject employer has to post that notice and if the notice isn't posted, it indicates that he is not subject. Persons not registered and who do not post that notice and they do have eight or more employees - then it is up to those employees to notify the Commission and see that they are registered.

MR. CARLSEN:

But those not subject do not post notices?

MR. RITCHIE:

But if they are subject and don't post notices those employees should notify the Commission.

MR. CARLSEN:

But if you had a notice to the effect that the employer was not subject, then the employee would be able to notice it. They may not know that they should notify the Commission.

MR. ROTHSTEIN:

The notice that we have now is a notice to employees saying that the employer is subject to the Unemployment Compensation Law of New Jersey but we have issued pamphlets to every subject employer's employees that they should report any irregularities.

MR. RITCHIE:

Whenever any employer or employing unit lays off an

employee, he is required to give him a copy of that pamphlet.

MR. CARLSEN:

What are you going to do when a man says he is not subject and he may be subject? Can't you compel every employer to put up a notice saying whether they had eight or more employees?

MR. RITCHIE:

It might be a good idea to present recommendations on these various things which should be taken up. We can ask the Commission to do it.

MR. CARLSEN:

There may be corporations that have the required number to be subject but they don't have up the required notice and nothing is done about it.

MR. RITCHIE:

It seems to me that the best way is to get the cooperation of the labor unions or organizers to have them instruct all their members to find out whether or not their employer is subject. If no notice is posted, it indicates that he is not registered with the Commission and if they feel the employer should be registered with the Commission, those employees should notify the Commission and an investigation will be made. Of course that can be done through the labor unions but as to those workers who don't belong to labor unions, I don't know how you could reach them.

MR. CARLSEN:

I suggested that after a hearing and the delegate wanted to know my name and address because I suggested that he should investigate the status of the employer where he has employees who could not fully understand.

MR. RITCHIE:

I don't say they have to. They don't have to. We can't tell them to do it.

MR. HILLOCK:

Very often we get notices to sit at a hearing or sit in on a case for the next day. On one occasion I got a telegram late at night for the next day. I checked up with Mr. Shaara and he tells me he sets the hearings down well in advance.

MR. RITCHIE:

It all depends on what he calls well in advance. How much notice do you give us, Mike?

MR. SHAARA:

Usually a week - that is the minimum.

MR. RITCHIE:

I might say that the Board of Review for the past six weeks has been very much handicapped. We had three new stenographers authorized and those three didn't come in and in addition one was sick and another was on vacation, so that we were extremely short-handed. However, if there has not been sufficient notice given, I will take that up with Mr. Fry. There is no question - you should have plenty of notice.

MR. SHAARA:

I wish to tell these gentlemen just how shorthanded we are all around.

MR. RITCHIE:

We do not have adequate clerical help but we are trying to get more and when we do, I think the situation will be cleared up.

MORGAN E. THOMAS:

Suppose a member of the Appeal Tribunal decides to write a dissenting opinion. What facilities would he have to write that? Would he go the the Employment Office and have their clerical help? I happen to have facilities but there may be other members who do not have.

MR. RITCHIE:

You can go to the Manager of the Local Office and request that help. If he will give it to you, you are perfectly at liberty to use it, or you can go to the office of one of the permanent examiners and if he can spare a stenographer, I am sure he will.

MR. ROTHSTEIN:

I might say for the benefit of those who represent labor. With regard to these contractors who come in from out of the State and the so-called unfair competition, we have within the last two years used the labor unions who convey that information to these employers and I can tell you that there aren't many days going by when we don't receive a letter or a dozen letters where they say they worked for John Smith from New York wanting to know if he can deduct for unemployment compensation. Those things are sent out to the field for checking up on the status of those units. I might say that any chiseling that has been going on has been reduced to a minimum. We have spread that program of education among the unions and they have been faithful in that respect. They have submitted a lot of information and we have often found these contractors subject and made them pay and file proper wage records.

I have also noticed that some of the members have discussed things not directly in line with their work. I think if you just stick to your immediate job and forget about these little corporations that don't have notices posted up and a few other things that do not have a direct bearing on your particular job that you

might get along a little bit better. You see all those things in the line of your work but the Commission has not overlooked those things. There are many problems arising and they all will be handled by the Commission but it takes a little time.

Now to get back, Mike's suggestion with regard to having someone present from the Benefit Bureau during these discussions is I think a good idea. I think if time permitted, you should get the reports of the Tribunal together and the Tribunal and the Examiners should go over them, such as the procedure followed by the Board of Review. The three get together and discuss the cases and then make the decision after they have had a discussion of the facts and merits of the case and I think that might be a good thing for the Appeal Tribunal.

We do discuss the cases with the Examiner in the Local Office.

MR. ROTHSTEIN:

No. I mean after the case has been heard by the Appeal Tribunal.

MR. HILLOCK:

Where we have the other two members sitting on a case, an opportunity is given to us to discuss the case that no one might say they didn't understand. Our Examiners are certainly experienced enough to know the Law. They have had many cases to handle and are familiar with the procedure. Of course I think most of these things are legal problems and I think we should discuss them a little before the case is heard. However, you may find that they do not have as much time to do it in South Jersey as they may have in North Jersey or you may find that in South Jersey they do not have as much to do as in North Jersey.

Mr. Shaara has been very liberal in all cases that I have sat on and he has discussed them with me very thoroughly and given us all the time to criticize or go over any legal technicality we might not understand. He has given us all kinds of time and he has allowed us to ask even very foolish questions.

MR. RITCHIE:

I think that is true of both Colonel Kroesen and Mike Shaara. My thought was that there might be too many cases for you to do that and if that is true, you might be willing to come in another day to have a thorough discussion. Also, where a case might be held at a distant point and you may be in a hurry to get home, and you would not have time to discuss the case then. In any case, if you think you want further time, you should feel free to take an extra day and you can put in that extra day and charge for it.

MR. ROTHSTEIN:

I have also found that the Appeal Tribunal will have a case that we are working on in the Legal Section. For example that Goodman case. It also happened that Mike's decision came out before we had completed our investigation but he decided the same way as the Legal Section did so it was all right.

I think if you should ever find that we are in the process of obtaining facts or in the process of making a decision, it might be a good idea to get together on it.

MR. SHAARA:

I had some legal representative on the phone about seven or eight times on that one particular case and as I remember it, Wadley and Hart were considering holding them subject on one count and I thought after taking it up if they went subject on another

count it might be better. As I understood it at that time, the lawyer for the bakery was ready to take it to a higher court and I brought in the Pete Doe side of it and I think that stopped the case but I did that after talking with Wadley and Hart.

MR. ROTHSTEIN:

We didn't know anything about Pete Doe at that time. I think Judge Levy helped there.

COLONEL KROESEN:

Shouldn't the fact that it is being considered by the Legal Section be in the folder that comes to us?

MR. ROTHSTEIN:

It might be in the file.

MR. SHAARA:

I got the case that the claimant appealed holding the employee was not in covered employment. When I got the case, I immediately contacted Harkavy which had been my instructions on status cases so that he could have a field auditor get on it and to make sure before we rendered any decision that the employer was subject so that there would be no question about it. I later got in touch with Harkavy and he told me that he had sent the field report to the Legal Section. He said he would send me a copy and said would I get in touch with the Legal Section. That is how it came about.

MR. RITCHIE:

In any case where it appears that the question of coverage is coming up, it might be a good idea to send a memorandum to the Legal Section.

MR. SHAARA:

Any time there is a question of status, I took it up with two departments, one being the Legal Section and the other the Audits Section so that the three of us would have one tie-up at all

times on status questions in order to make things easier.

Meeting adjourned for lunch

12:45 P. M.

The meeting reconvened at 2.00 P. M. Mr. Ritchie presided.

MR. MARGOLIS:

Whenever we receive information that a labor dispute may be in existence, we communicate with the employer asking him to verify that fact one way or another and to send us a list of all claimants who may be unemployed because of this alleged labor dispute, together with their names and social security account numbers. We thereupon pend those individuals for disqualification. We merely hold them for a possible disqualification and dispatch the investigator to the employer's premises to conduct or secure a preliminary investigation. This investigation is in the form of sworn testimony, or rather, it is finally reduced to that form and is in effect what lawyers call an "ex parte" procedure. If the employer's testimony indicates that there is no labor dispute, then in so far as we are concerned, that is the end of the matter. The claims will be processed in the normal manner. If, however, the testimony indicates a prima facie case of labor dispute and a stoppage exists, we thereupon set the matter down for a formal hearing after notice to all parties concerned. No individual is disqualified by the Benefits Bureau in the Labor dispute matter without having had a chance to appear before a Special Claims Investigator and present any facts which he feels may warrant the imposition of subsections of the Law that permit exceptions from disqualification. On the basis of the Special Claims Investigator's testimony procured at this formal hearing, a report is prepared and submitted to the Board of Review, which contains full findings of facts as pertaining to a possible labor dispute disqualification, with perhaps, reference to the Law or previous decisions of the Board of Review, if the case falls in line. On the basis of that report,

the Board notifies the representatives of the employer and the employees to appear at a given day, if they wish, and I appear on behalf of the Benefits Bureau, and on the basis of the additional discussion and testimony taken, the Board renders a decision. When it is reduced to writing, it is transmitted back to the Benefits Bureau, and by authority of that decision, we clear the claims. The number and types of decisions the Board can and does render vary considerably. That, in short, is the procedure adopted by the Benefits Bureau.

The necessity for that procedure is found in the Law under Section 6 (b), which imposes in the Board and the Board only the authority to make actual decisions in labor dispute disqualifications. It is found in Section 5 (d), which imposes a labor dispute disqualification. Without going into a too detailed discussion, an individual is disqualified for any week of total unemployment which is due to a stoppage of work which exists because of a labor dispute, and the section in its subsections provides for exemptions from such disqualification where the individual can show that he is not participating, financing, or directly interested in labor disputes, and he also can show that he is not a member of a grade or class of workers, any of whom are participating, interested or financing such labor disputes and who were employed at the premises before the stoppage commenced. The ramifications that that one section has resulted in are tremendous. There are three things, in other words, that we have to show before we can disqualify. We have to show unemployment due to a labor dispute--

MR. RITCHIE:

The stoppage of work which is due to a labor dispute.

MR. MARCOLIS:

Thank you for correcting me. Now the definition of these phrases could be reduced down to a sentence. The facts vary and the circumstances vary in the application of the Law. A labor dispute has generally been defined as a resistance by a group or individual to a set of conditions. As a result of the refusal of those demands, some overt act results and you have a labor dispute. A stoppage of work has generally been defined as a cessation of production or an appreciable curtailment of production which is due because of the existence of a labor dispute. I am not too thoroughly prepared to discuss the existence of elements of labor dispute law and the various decisions which the Board has rendered. I do not know how far you want me to go!

MR. RITCHIE:

At this meeting, I think, it is a matter of answering questions. It should be understood by everybody that the mere fact that a decision has been rendered in a labor dispute does not deprive anybody of the right to appeal. The original decision is only a procedural decision. Take, for instance, the John Jones Company. It is implied by the employer that a labor dispute exists. After making as thorough an investigation as possible the Board of Review decides either that a labor dispute does or does not exist and the decision may be handed down that all workers are disqualified. That is merely on the evidence or basis that is presented. Every worker who is affected by that decision has the right to appeal to the Appeal Tribunal. Let that be definitely understood. They are not debarred from the right to benefits. We want them to appeal and the thing to be settled. However, when you have a strike with a thousand different individuals involved, if you sat down and took

every one of them one by one, it would be several weeks before we got through with it. Therefore, we take this action and every individual has the right to go before the Appeal Tribunal.

MR. THOMAS:

After it is considered by the Appeal Tribunal, I should like to know just where it goes.

MR. RITCHIE:

Back to the Board of Review after it is appealed, where it will get a perfectly impartial decision. There have been at least 100 cases in which we decided that a disqualification existed, but when the individual presented the facts in his particular case, although a general disqualification existed, he was not disqualified. There may be 100 other people like him and it should be definitely understood that they have the right of appeal.

MR. THOMAS:

Mr. Ritchie, up to now we have had no appeals on the main or individual case to the Appeal Tribunal. Do you say that the main case can be appealed?

MR. RITCHIE:

The individual claim is affected by the main case.

MR. THOMAS:

May I ask this? Suppose the Board of Review has already decided that a stoppage of work existed because of a labor dispute and, thereafter, the individual appeals under the new procedure to the Appeal Tribunal in which he denies that such a stoppage exists. Another individual appeals to another Appeal Tribunal. Appeal Tribunal "A" agrees with the individual that no stoppage of work exists. Appeal Tribunal "B", on the same facts and on the same testimony, decides that a stoppage of work does exist. In other words, do I understand that the only thing the

individual may appeal is merely his right to benefits?

MR. RITCHIE:

he can appeal anything which affects his right to benefits.

MR. THOMAS:

I understand that there will be a complete abrogation in the future?

MR. RITCHIE:

Not at all. They are not getting the main case; the main case must be decided by the Board of Review. Each case will stand on its own merits. In the case of the John Jones Company, Appeal Tribunal "A" decides there was a stoppage of work, and in the case of another company, Appeal Tribunal "B" says there was no stoppage of work. There would be a conflict. If they can't settle it, we would have to settle it ourselves. The Law does not disqualify a man because he is engaged in a labor dispute. There are a great many cases in which a man may be engaged in a labor dispute and be eligible for benefits. The Law says he is disqualified if his unemployment is due to a stoppage of work which exists because of a labor dispute. Now, the mere existence of a labor dispute will not disqualify him; there must also be a stoppage of work. The employer must be prevented by the labor dispute from getting out work on hand. If the strike is called and the employer has no work on hand, there is no stoppage of work. If the employer has worked before the strike, but because of the fact that the strike occurs his customers withdraw the orders, there is no stoppage of work or disqualification. There must be available work which is prevented from being done because the strike exists, and if there is no work which is held up, there is no stoppage or disqualification.

MR. MASO:

I have a question. In the building trades the various trades give the contractors three months' notice prior to the change in agreement. We say that for some reason or other the contractor is back in his work and does not want to sign that agreement. The building is only half finished and he sees an opportunity to protect himself in his contract with the owner of the building and does not go along with the unions to sign that agreement. Where is the stoppage of work? Isn't it a labor dispute?

MR. RITCHIE:

There must be a stoppage of work due to a bona fide labor dispute.

MR. MASO:

Who determines it, the Appeal Tribunal?

MR. RITCHIE:

Yes. If the employer is trying to use a subterfuge, we say that there is no disqualification and the men get their benefits. An individual may be disqualified because of a lock-out--he may have every moral justification on his side and still be disqualified with a few exceptions. They are mentioned in the Law. It should also be remembered that if, for instance, in the erection of a building the masons go on strike and hold up the work, they may be disqualified. Now, the carpenters, electricians and others also will be held up and out of work, but they can't go ahead until the masons are finished. They will not be disqualified. They are innocent bystanders. We did have a case where all the building trades got together through their Central Building Trades Council. They all voted to call a strike. They were all going to be benefited by that strike. Only one group actually went on strike and the others were out because of the hold-up, but they had voted for the strike and helped to finance it. Where

they were not making part, they were not disqualified.

There is another important fact. In those situations where labor contracts are about to expire, or do expire, we quite often get the situation where no strike is called but the employer and employees virtually say, "Let us stop everything now and negotiate." You have a stoppage of work but no labor dispute. You have a difference of opinion. That period during which these negotiations are continuing and there is no work being done because of mutual agreement does not constitute a labor dispute. However, it takes but one little factor to change that situation--such as, when a shutdown is imposed because the workers refuse to work--but I have outlined the general principle involved. Where there is mutuality, there is no labor dispute.

MR. THOMAS:

Who determines the labor disputes?

MR. MARGOLIS:

It has been the function of the Board of Review.

MR. THOMAS:

Do I take it that the Appeal Tribunal has the authority to determine whether a labor dispute exists?

MR. RITCHIE:

Yes.

MR. KRAFTE:

Would the decision of the Appeal Tribunal in one particular case be binding upon another Appeal Tribunal? If John Jones filed an appeal, would that be binding when John Smith appealed and it came up before another Tribunal?

MR. RITCHIE:

If the facts are the same, I think it should be followed, although it is not actually binding.

MR. KRAFT:

And if the Board of Review in the first instance decided that there was a labor dispute, is there anything about the Board's decision that would be binding upon the Appeal Tribunal?

MR. RITCHIE:

No; they could disregard the Board of Review entirely.

MR. GROSMAN:

Mr. Ritchie, is there any machinery now whereby an Appeal Tribunal, if it has a case which it feels would be important enough to require it, could get the opinion of the Board of Review without deciding the case itself in the first instance?

MR. RITCHIE:

Yes; they could request an opinion at any time.

COL. KROESEN:

Mr. Ritchie; even though the Appeal Tribunal might disregard any action taken by the Board of Review in a decision, there are certain ethics which we should regard. Don't you think we might ask the Deputy to notify us at the time he sends a case, in which the individual has been decided by the Board of Review to be on strike due to a labor dispute, that we have full information made known to us at the time we get the appeal? I don't think it is our job to reverse anything which you might have decided upon.

MR. RITCHIE:

I think you should be independent. We are not going to stick by what we decided before if you show us that we are wrong.

COL. KROESEN:

I think we should be apprised about your case.

RITCHIE:

Yes.

MR. MARGOLIS:

Colonel Kroesen, I do not see how that is physically possible. At the present time, in many of our labor disputes, we have had as many as three or four conferences.

MR. RITCHIE:

The Board will see to it that in any labor dispute case you are advised about what is happening.

MR. MARGOLIS:

Suppose two cases are being conducted on the same day. Suppose Mr. Shaara and his group are holding a hearing in Jersey City and Colonel Kroesen in Atlantic City on the same day. The findings of the two Boards might conflict:

MR. RITCHIE:

You don't have to worry about it. We will take care of that.

MR. MARGOLIS:

I can tell you right now from my experience that almost every day you sit you will have duplicates.

MR. HILLOCK:

If the Board of Review has decided there is a stoppage of work, and the Appeal Board decides there is no stoppage of work, then does it go back to the Board of Review?

MR. RITCHIE:

Not unless somebody appeals.

MR. HILLOCK:

The decision of the Board of Review is binding?

MR. RITCHIE:

Unless somebody appeals the case.

MR. SHAARA:

Mr. Ritchie, are you in a position to accept two motions?

MR. RITCHIE:

Yes.

MR. SHAARA:

I make the following motion:

That a copy be made for each individual member of our rules and procedure, so that they may have it and read it during their leisure time.

We have that procedure in typewritten form, I believe, and I think that it could be run off on mimeographed copies and given to each one with the amendments as you have stated; and also:

That the Minutes of this meeting be typewritten and a copy sent to everybody so that they may digest it at some future date.

(The motions were seconded by Mr. McDonald and unanimously carried.)

MR. RITCHIE:

Is there anything else you want to bring up in connection with labor disputes?

MR. SCHARF:

Does the laborer know that he has the right to appeal?

MR. RITCHIE:

If he is not satisfied with a decision, he may appeal within seven days.

MR. SCHARF:

Who makes the opinion?

MR. RITCHIE:

The Benefits Bureau.

MR. SCHARF:

Who do they refer that to?

MR. RITCHIE:

A copy goes to the employer and a copy to the representative of the workers, whether he be a lawyer or union official.

Then every claim which has been filed by employees of that company is determined by the Benefits Bureau on the basis of that decision, and an individual notice goes to the worker himself. On that notice it says that he has the right to appeal within seven days.

MR. GROSMAN:

With reference to labor disputes, has the Board gone into the question of the bona fidenss of the dispute? For instance, if a group of men are getting a dollar an hour--the contracts are about to expire and the boss tells them, "I won't pay you more than fifty cents an hour"--naturally they would refuse that--does that disqualify them?

MR. RITCHIE:

No; that is not a question of a bona fide labor dispute.

MR. GROSMAN:

Would that disqualify these men if they refuse to work under these unreasonable conditions?

MR. RITCHIE:

That is a difficult question. If it is not a bona fide labor dispute, there is no disqualification. Just how far that will go I don't think I can say until the Board decides the case, because there are two other members of the Board. Ordinarily, we do not have any right to decide whether the men or the employer are right in respect to their demands. For instance, if they demand seventy cents an hour and they are getting sixty cents, we can't say whether it is reasonable or not. If they were getting a dollar an hour and the employer said, "You can't work unless you take fifty cents an hour"; that would be unreasonable and we might say it is not a bona fide dispute. If it appeared that he was approaching a slack season and he was making that unreasonable demand

in order not to pay benefits and so protect his merit rating, there would be no disqualification. There are a lot of these things we can't tell you before a decision is made because they are very difficult. We have one case we were arguing about for two weeks. Two members of the Board decided one way and I another. I didn't agree with them.

There is one other question coming up all the time--that is the question of coverage of employers and of workers. You may have the case of the employer who says he is not subject at all, or you may have the case of the employer who is subject but who says that certain people who work for him are not covered. For instance, insurance companies claim insurance agents working on commission are not covered. They admit they have eight or more employees, but they say the others are not covered and won't pay them. We have the case of the Steel Pier at Atlantic City, in which they say that musicians were not covered. We have two cases in the Supreme Court now--The Fuller Brush Company, and The Investors Syndicate--who contend that commission salesmen are not covered. We held that they are covered. In the latter case, we went into that carefully. Our decision covers seventy-nine pages. We have gone into the question very thoroughly, and it might pay you, if you have time, to stop in the office and look over the decision. A great many questions of Law are brought up in that decision.

Roughly speaking, the question of employment is first determined by Section 19 (i) (6). There are three parts to that section. The Law says that any services performed for remuneration or under a contract of hire--now that is important because there must be a contract of hire,--any services performed for remuneration under any contract of hire constitute employment subject to the Law, unless the employer can show three things: first, that

the alleged employee is not subject to direction and control--and the Law says "both under his contract and in fact"--therefore, we are not bound by the terms of the contract but we may consider all facts which affect that relationship; second, that the services performed are not performed at the place of business of the employer or in the usual course of business of the employer; third, that the person alleged to be an employee is not customarily engaged in an independently established trade, occupation, business or profession.

Now, the employer in order to avoid coverage, must show all three of those points. In the Investors Syndicate case, the company argued that their salesmen were working under contracts. They paid all their own expenses and worked whenever they wanted entirely on a commission basis, and the contract provided that they were to be regarded as independent contractors. The company argued that these men were under the Common Law independent contractors and, therefore, could not be employees. We decided that that was not so under our Law. A man may be an independent contractor in the eyes of the Common Law and yet, if his services are performed at the place of business of the company and in the usual course of its business, and if he is not himself customarily engaged in an independently established business, he is an employee.

Now, in the case of the K. L. G. Baking Company, which is also going to the Supreme Court, they have a group of distributors, men who go out on wagons with bread and cake. The company sold them the goods and fixed the price, which was the price at which the men would sell, but they gave them a discount of twenty per cent. The difference was all the profit that they got and they had to pay their own expenses and sustain any credit losses. Here, too, the company claimed that these people were independent contractors, but because

they were not customarily engaged in an independently established business of their own, we hold that they were subject. In that case, these men, you might say, had a business. But nevertheless, that business rests entirely on the business of the employer. It is part of it. The minute that they are fired by that employer or dismissed by him, they do not have any business any more. They are really working for him. We say "customarily engaged in an independently established business" means more than just having an independent business. There must be a certain period of time during which it becomes customary. If it depends entirely upon the will of the employer, it is neither customary or established. In that case, they are employees of the company.

Then we had another case, the Steel Pier, where the musicians involved were members of an orchestra which performed together at all times. However, the regulations of the union provided that where the leader secured a job for them, he was merely acting as their agent, and that the person who took them on became the employer. He simply acted as the agent for the other men in the orchestra. The leader would go in and say, "I will furnish myself and the eight or nine other men as an orchestra." They were definitely outside of the corporation's employment, but when they went into the company to work there for several months, their services were all performed at the place of business of the corporation in the usual course of its business. Therefore, regardless of the fact that they might be subject to direction or control, they were employees. There were three points there. The presumption is at the beginning that anybody who performs services either for remuneration or under a contract of hire is an employee. In order to take him out of that classification, the employer should follow three things: first, freedom from direction or control; second,

services performed outside the place of business; and third, the alleged employee is customarily engaged in an independently established business.

MR. WILLIAMS:

I should like to have an opinion upon a case that came directly under my observation in the past six months. I think your statement has some bearing upon this. There is a question in my mind as to the place of business. A company employs a crew of young men, six or more, and they go to work in the morning and report to the office and they are assigned certain jobs. They may be in any part of a fifty-mile area. They are assigned these jobs on a contract basis. They may leave the company's place of business in the morning and go to work on jobs where the company has signed a contract for six separate units.

MR. RITCHIE:

What kind of contract?

MR. WILLIAMS:

Building. Is that company liable?

MR. RITCHIE:

That depends on the three points mentioned previously. We had a case similar to that which was decided by the United States District Court. The company would go out to home owners and say, "We will build you a house for five (or six) thousand dollars," and then go to different masons and carpenters and say, "We will contract with you to do this job for five hundred dollars" and each one would get a portion. They claimed those workmen were independent contractors. Under the Common Law they probably would have been, but it so happened that they were workmen who simply worked for a job. In this case, they took a contract instead of working for day wages, and because they were not customarily engaged in an independent

business o their own, they were considered as employees. The United States District Court upheld us in that decision.

MR. DREIER:

Take that bakery situation. If their route is taken away from them and if the company refuses to sell to them any further, they are out of a position and they are entitled to benefits under the Act. Take that same situation and say these men had a little store and handled exclusively that bakery's brand of goods on the same basis. The bakery stops selling to them. They are a total loss and cannot continue their business until they get another brand to sell. Would they still be in a different category?

MR. RITCHIE:

It would depend on other factors. Had they been in business before they went with this company? If not, they were not customarily engaged in an independently established business and they are entitled to benefits. If a man is eligible for benefits, the fact that his employer has not paid any taxes does not stop him from getting any benefits.

MR. DREIER:

Suppose he had someone working with him, who would be his employer, the original bakery?

MR. RITCHIE:

Whose employer?

MR. DREIER:

The helper.

MR. RITCHIE:

The bakery would be his employer.

MR. DREIER:

The people whom he hires are the original employer's workers.

MR. RITCHIE:

In connection with this, the representatives of the Investors Syndicate hired stenographers, whom the company tried to say were not employees, but we said that the stenographers were the employees of the company.

MR. FORT:

Referring back to the insurance agent--and not for commercial purposes, as I am an insurance agent--I was under contract with a certain large insurance company. Their contract restricted me to the selling of their insurance only. The question came up as to whether we came under the Act and were entitled to social security. One day they sent us all new contracts and relieved us from their guidance and direction and we signed new contracts making us free lances, which would explain that "under the direction of the employer". Now we can do as we please, although we are still under contract. It does not limit us to the extent that they must limit our activities. In such a case, are we covered under the terms of the new contract?

MR. RITCHIE:

That all depends upon the actual facts. If you are limited to a certain territory and if you are required to make reports, and if they exercise control in any other way, they are still your employers. The mere fact that you signed a contract which says you are a free lance means nothing.

MR. DRINER:

Why shouldn't I come under the Social Security Act?

MR. RITCHIE:

You should. Now referring to the previous question,

it would depend upon all the facts, but unless they can show three things that I outlined before--freedom from direction and control, that the services are performed outside of the usual course of business, and that the person is not customarily engaged in an independently established business--they are employees. Insurance agents are employees. That is different from a broker. He represents the purchaser of insurance. (To Mr. Dreier): You should insist on being covered if you want to be. You tell the Commission about it and they will notify the company that they have to pay.

MR. DREIER:

Mr. Ritchie, I know a case where I assume they used subterfuge to avoid the Act. A newspaper had boys deliver papers from house to house and the people paid at the newspaper office. Recently, they said they were setting up the boys in business and that hereafter they should pay the boys once a week. Wouldn't they still come under the Act?

MR. RITCHIE:

I think so. Of course, there is another part to the Law which says that a minor whose principal occupation is attending school is not covered anyway.

MR. GROSMAN:

Has the Board made any decision on the question of what address of the employer controls, in determining whether they are subject? For instance, I know a case where there is a firm who has an office in Michigan and a branch office in New Jersey from which they control agents or salesmen who travel in New England and the south. Has the Board decided what state controls unemployment compensation payments?

MR. RITCHIE:

There again different factors might be involved. The

Law states specifically that if all the services are performed in New Jersey they are covered, and if most of the services are performed here, the other services are incidental. If some services are performed in New Jersey, no matter how small a part, and in addition to that the place of their direction and control is in New Jersey, then they are covered in this State, even if part of their work is performed outside the State.

MR. BRIER:

That is regardless of their residence?

MR. RITCHIE:

Yes. Where a person is a resident of New Jersey and performs services outside, he may come under the Law by election. Another question that has raised a lot of difficulty--so much so that the Board of Review went back and reversed its own decision--is that of interrupted or alternate weeks or days of employment. We had a case where a group of men were working one week and be laid off the next week, going back the third week. That was done for the purpose of dividing up work between all the men who were on the job. There were originally ten men employed. The company did not have enough business left to keep them all going, and used this method. Now, the Law says that in order to be eligible for benefits a man must be an unemployed individual. We originally held in line with the ruling made by the Commission through its Chief Counsel that in that case they were regularly employed even though they were not working in these alternate weeks and were not eligible for benefits. We were not satisfied with our own decision and re-opened the case. On second thought, we went to Section 19 (m) (1). It states that if an individual performs no services and receives no remuneration during any week, he is totally unemployed

for that week. Therefore, we decided that even though they remained on the payroll of the employer and had a regular position there, they were eligible for benefits because they performed no services and received no remuneration. However, that would not be the case if they received less than $3.00, because that would not be an odd job. They might have only an hour's work and get $1.00. In that case, they would be keeping at their regular job and during that week they would have performed some services and received some remuneration. They were regularly employed. But where they were laid off for that week, they were eligible for benefits in that week, even if they go back to work the next week. In that case, you would have to make sure that they were available for work. If a man holds that kind of job and goes to an employment office and would not take another job, he is not available. He must be not only eligible but able and available. However, he is eligible if he performs no services and receives no remuneration, and if, at the same time, he is able and available for work.

MR. SHAARA:

Can you modify that "available"?

MR. RITCHIE:

What do you mean?

MR. SHAARA:

If you ask a man if he is available for a position and he states, "certain periods of time only" (such as Mondays or Wednesdays), would he still be called available?

MR. RITCHIE:

That question has not been decided. I would say he must be available for any job which is offered to him.

In a particular case, the man specifically said under oath that he was not available, but later he became smart and said he was available. What do you do in such a case?

MR. RITCHIE:

In that particular case, everyone came in and we said, "Would you take another job if it was offered to you," and they said, "Yes." We even asked them, "Would you take a regular job which would take all your time and under which you would get the same amount per year as you were getting?" They said, "Yes." So, of course, under that testimony we had to say that they were available for work.

MR. RITCHIE:

Are there any questions on disqualifications?

MR. SHAARA:

I have one in reference to which Mr. Leslie spoke this morning. Sometimes cases come before us on disqualification and they have on the pink sheet "availability for work." Then when we bring the case out in the open, that does not seem to enter into it at all. In other words, the employer forgets all about what he wrote in the original letter and says something else. There is a big difference between availability and misconduct. Now, as a matter of record, are we to take into consideration everything that comes before us, or are we to limit ourselves? It makes a big difference.

MR. RITCHIE:

I thought I made that clear this morning! When you get a case, you consider everything that is involved. If six new questions should arise in the course of your hearing, you decide every one of those questions. The case in your hands is a new case, and you do everything you think right to determine whether the man is eligible for benefits. I might say that in determining benefits we

feel the Law was passed for the purpose of paying benefits. The Legislature has said that it is the policy of this State to guard against the hazards of unemployment. The State is a party also. The State will gain by the men's receiving benefits. We should approach it from that viewpoint and that wherever a question of eligibility is to be determined, we will make our decision from a liberal standpoint in an effort to secure benefits for the worker. Whenever a question of disqualification arises, we approach it from a standpoint of very strict construction also, in order to save the benefits for him and to prevent the disqualification. I do not mean that we will try to circumvent the Law, but our interpretation should be liberal in consideration of eligibility and strict in consideration of disqualification. That was set forth in a case in Rhode Island. It was the case of Ringuette against the Rhode Island Commission. I think it is followed pretty generally in most states.

The question was raised by some of the men to the effect that cases have been started by one group of Appeal Examiners, and they were postponed before they were completed, and at the postponed hearing, somebody else was assigned. That is something I didn't know was happening because I didn't follow it up. That shouldn't happen. Wherever you are assigned to a case, you are assigned for that case, and if it requires a postponed hearing or ten postponed hearings, you go back to sit on that case without any further designation. We won't send you any other designation. You sit right through until that case is finished.

MR. SPAARA:

Mr. Ritchie; I believe I had that out also with some of the boys at noontime, and I straightened a couple of them out on it. In granting the postponement, we had heard the case, and where a couple of wage records were needed, we got them. There was no use

in holding another hearing, so we compiled them all together and made the decision.

MR. RITCHIE:

How did you get the wage records?

MR. SHAARA:

We got them by reason of the fact that we had the investigator.

MR. RITCHIE:

That is not evidence. Also, when you get a designation on a case, that carries the designation to sit all the way through and to put in all the time necessary. If you have to hold another discussion among yourselves, you go under the original decision. You don't need anything else for it. You just sit.

MR. WILLIAMS:

Mr. Ritchie, I have a question on agricultural labor. Suppose some of the large dairy farms produce milk for distribution throughout the State. Would those workers be classified as "agriculture"?

MR. RITCHIE:

It would depend upon the kind of work they are doing. I would say that people working on machines are covered employees. People who are engaged in taking care of cows in the fields are agricultural. The one is definitely industry and the other is agriculture.

MR. SHAARA:

Agriculture is defined as the art or science of cultivating the ground; the production of crops and livestock on a farm.

MR. RITCHIE:

Another thing I want to bring to your attention is that people must report to the employment office for any week in which they claim benefits. In a good many cases they don't. However, if

they do not report because the local office through misinterpretation of the Law has told them that they shouldn't report, that is not their fault, and they could be credited with having reported if we are satisfied the local office told them not to.

MR. GROSMAN:

Mr. Ritchie, those suggestions that were made--are we going to take them up with the Board?

MR. RITCHIE:

I think it might be a good idea, in connection with those things which might require Federal action, for you gentlemen to come to Trenton and go with me to talk with the Federal representative on these things. If someone backs me up, he will probably give me more consideration than if I went to see him alone.-- Now, if you have no further business, we will adjourn the meeting.

The meeting adjourned at 3.30 P. M.

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