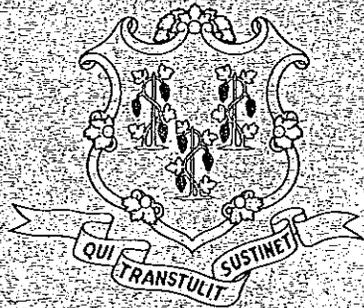


Employment Security Board of Review

Connecticut
General Assembly



LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE

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LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 as the Legislative Program Review Committee to evaluate the efficiency and effectiveness of selected state programs and to recommend improvements where indicated. In 1975 the General Assembly expanded the Committee's function to include investigations and changed its name to the Legislative Program Review and Investigations Committee. During the 1977 session, the Committee's mandate was again expanded by the Executive Reorganization Act to include "Sunset" performance reviews of nearly 100 agencies, boards, and commissions, commencing on January 1, 1979.

The Committee is composed of twelve members, three each appointed by the Senate President Pro Tempore and Minority Leader, and the Speaker of the House and Minority Leader.

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SUNSET REVIEW

EMPLOYMENT SECURITY BOARD OF REVIEW

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EMPLOYMENT SECURITY BOARD OF REVIEW

SUMMARY

The Connecticut General Assembly held a special session in November 1936 to establish an unemployment compensation system to conform with the federal unemployment compensation structure created under the Social Security Act. As part of that act, the governor was authorized to set up an unemployment commission as an appeal board for unemployment compensation claims. The unemployment commission was composed of six members--one from each of the five congressional districts, and one at-large member.

The unemployment commission remained Connecticut's mechanism for appeals until 1974, when because of a serious backlog and administrative problems with the commission, the U.S. Department of Labor conducted a study of Connecticut's appeal system. Its recommendation, which was legislatively adopted in P.A. 74-339, created a two-tier unemployment compensation appeal system with a pool of referees as the first level and a board of review as the second level.

The board, entitled the Employment Security Board of Review, is composed of three members appointed by the governor. The chairperson is a full-time member employed in the classified service and is executive head of the entire appeals division. The other two members are paid a per diem of \$60 and usually work one day a week. Each of these two members represents a constituency--one, employers and the other, employees.

The Employment Security Board of Review is statutorily required to consider any appeal from the referee's (first-level appeal) decision regarding unemployment compensation claims. The board must affirm, modify or reverse the decision of a referee, or remand the case to a referee for further consideration. The board decisions must be in writing and must be based on the record of the hearing before the referee. The board is also statutorily required to direct, supervise and control the referee section.

The Employment Security Board of Review is located in the Employment Security Appeals Division of the Department of Labor. The board's expenses, which are 100 percent federally funded, are not isolated in the budget but are included in the overall budget for the appeals division. The board is staffed by an executive secretary, three clerk-typists and a recently hired staff assistant.

During FY 1980-81, the board received 2,601 appeals and disposed of 3,332; during the first 10 months of FY 1981-82, the board received 2,737 cases and disposed of 2,570.

In considering an appeal, the board must decide each case by majority vote. Typically, each member reviews a number of different cases weekly, which are then reviewed by the chairman. If there is a disagreement in the decision, the third member must review the case.

In addition to hearing appeals, the board must submit monthly reports to the U.S. Department of Labor in order for the federal agency to evaluate compliance with federal time standards on hearing appeals.

The Legislative Program Review and Investigations Committee examined a number of issues concerning the Employment Security Board of Review including: existence and structure of the board; adoption of regulations; appeals procedures; guide to precedents; and provision for an acting chairperson.

Existence and Structure of the Board

In deciding whether the Employment Security Board of Review should be continued or not, the committee considered the manner in which other states set up their appeals systems and found that 48 of 50 states have a two-level appeals system. Also the program review committee concluded that termination of the board would severely impact the caseload of the courts, and could jeopardize the appellant's right to a timely appeal and hence affect the welfare of the state's citizens.

However, the committee believed that the board should be restructured for several reasons. First, the board does not consider the record of the hearing before the referee, as statutorily required. Second, in its seven-year existence, the board has not adopted regulations although the statutes require their adoption. Because of these serious deficiencies and because some of the other New England states have full-time boards, despite smaller caseloads, the program review committee concluded the board structure should be changed.

Therefore, the Legislative Program Review and Investigations Committee recommends that Connecticut establish a full-time Employment Security Board of Review, consisting of three members appointed by the governor. The chairman will continue to be in the classified service, and each of the other two members will continue to represent employers and employees respectively.

Adoption of Regulations

The committee found that the board has been operating since 1974 without having adopted regulations regarding its rules and procedures. The program review committee members believed that the absence of such regulations impairs an appellant's ability to prepare his or her case, and creates an unpredictable appeal system.

The Legislative Program Review and Investigations Committee, therefore, recommends that the Employment Security Board of Review adopt regulations regarding its rules and procedures following the provisions of the Uniform Administrative Procedure Act, as required by statute.

Appeals Procedures

In considering the board's appeals procedures, the committee's overriding concern was to reconcile a fair, timely appeals process with the board's capabilities, considering its time constraints and caseload.

With this as a foundation, the committee first looked at the requirement that a full board hear an appeal involving a labor dispute or in cases where a party to an appeal requests a hearing before the full board. The committee found the board has rarely done this. The committee determined that while it may be impossible for the board to approve all requests for full hearings, there should be established criteria by which the board would approve such petitions.

Therefore, the Legislative Program Review and Investigations Committee recommends that the full board continue to be required to hear and decide cases where a labor dispute is the cause of unemployment, and that the board approve or disapprove by majority vote each written request by a party seeking a hearing by the full board, in accordance with criteria to be established in regulation.

The committee next reviewed the requirement that the board hear cases (except those mentioned above) based on the record of the hearing before the referee. Again the board has not met this statutory duty.

Section 31-249 of the Connecticut General Statutes further stipulates that the board may hear additional evidence provided "the ends of justice so require." The same section requires that the board "issue its decision affirming, modifying or reversing the decision of the referee [and] in any case in which the board modifies the referee's findings of fact and conclusions of law, the board shall include its findings of fact and conclusions of law."

While the board is complying with the legislation, the decisions issued do not include any rationale specific to the case. To ensure that the appeals procedure is equitable and that each claimant is fully informed of why a decision is reached, the *Legislative Program Review and Investigations Committee* recommends the following:

Statutorily require the Employment Security Board of Review to establish in its regulations, criteria by which the board will consider the case based on the hearing before the referee, as well as standards by which the introduction of new evidence will be allowed. Further, the Legislative Program Review and Investigations Committee recommends that the board state in its decisions whether or not the decision was based on the record of the hearing before the referee and the reasons for the decision, including the citing of precedents.

Guide to Precedents

Examination of the board's procedures also uncovered a lack of any type of guide to board precedents. Statutorily, the board's decisions are binding in all subsequent proceedings involving similar questions. However, other than researching the board's files, no tool exists to assist the appellant in determining those precedents.

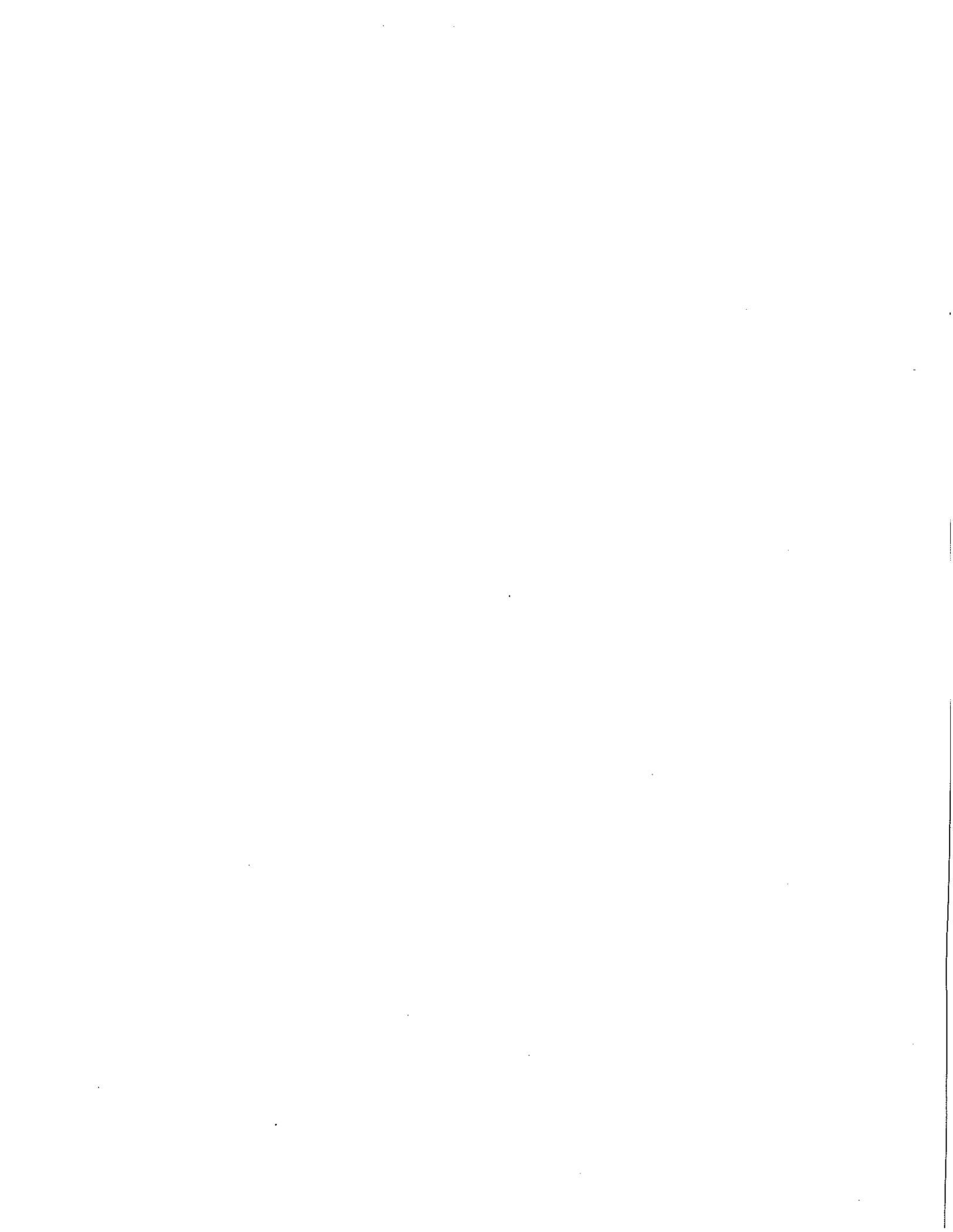
To enhance the appellant's ability to prepare his or her case, the *Legislative Program Review and Investigations Committee* recommends that the *Employment Security Board of Review* publish an index of all cases decided after the effective date of the legislation. The index shall include but not be limited to: a subject reference and a reference of all statutory sections and court cases under which the case was decided.

Provision for Acting Chairperson

Finally, the program review committee learned that no provision exists for a temporary acting chairperson. This shortcoming could severely impede the board's procedure, since the chairperson's role is vital to the entire appeals process. The committee determined that the chairperson's replacement should not represent a particular interest group as do the other two members, but that the acting chairperson possess knowledge and experience in unemployment compensation. The committee resolved that the staff assistant to the board was the most appropriate replacement.

Further, in order to achieve and retain the caliber of professionalism needed to perform the duties required, the

committee decided that both the position and a general statement of qualifications should be statutorily referenced. Therefore, the Legislative Program Review and Investigations Committee recommends that a statutory provision be established whereby the staff assistant to the board would automatically become acting chairperson in the chairperson's absence. The committee further recommends that the staff assistant position as well as a general statement of knowledge, skills and abilities required for the job be outlined in statute.



INTRODUCTION

Purpose and Authority

Chapter 28 of the Connecticut General Statutes provides for the periodic review of certain governmental entities and programs and for the termination or modification of those which do not significantly benefit the public health, safety, or welfare. This law was enacted in response to a legislative finding that a proliferation of governmental entities and programs had occurred without sufficient legislative oversight.

The authority for undertaking the initial review in this oversight process is vested in the Legislative Program Review and Investigations Committee. The committee is charged, under the provisions of Section 2c-3 of Chapter 28, with conducting a performance audit of each entity or program scheduled for termination. This audit must take into consideration, but is not limited to, the four criteria set forth in Section 2c-7. These criteria include: (1) whether termination of the entity or program would significantly endanger the public health, safety, or welfare; (2) whether the public could be adequately protected by another statute, entity, or program or by a less restrictive method of regulation; (3) whether the governmental entity or program produces any direct or indirect increase in the cost of goods or services and, if it does, whether the public benefits attributable to the entity or program outweigh the public burden of the increase in cost; and (4) whether the effective operation of the governmental entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

In addition to the criteria contained in Section 2c-7, the Legislative Program Review and Investigations Committee is required, when reviewing regulatory entities or programs, to consider, among other things: (1) the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program; (2) the extent to which the governmental entity involved has complied with federal and state affirmative action requirements; (3) the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated; (4) the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies; and (5) the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to review.

Methodology

The Legislative Program Review and Investigations Committee's sunset review process is divided into three phases. The initial phase focuses on collecting quantitative and qualitative data related to each entity's background, purpose, powers, duties, costs and accomplishments. Several methods are used by committee members and staff to obtain this information. These include: (1) a review of statutes, transcripts of legislative hearings, entity records (e.g., minutes, complaint files, administrative reports, etc.), and data and statutes of other states; (2) staff observation of meetings held by each entity during the review period; (3) surveys of selected persons and groups associated with each entity; (4) formal and informal interviews of selected individuals serving on, staffing, affected by or knowledgeable about each entity; and (5) testimony received at public hearings.

During the second phase, the staff organizes the information into descriptive packages and presents it to the committee. The presentations take place in public sessions designed to prepare committee members for the hearings, identify options for exploration and alert entity officials to the issues the committee will pursue at the hearings.

The final step of the review involves committee members and staff following up on and clarifying issues raised at briefings and public hearings. During this period, the staff prepares decision papers and presents recommendations to the committee. The committee, in public sessions, then debates and votes upon recommendations for the continuation, termination or modification of each entity.

BACKGROUND

Legislative History

In November 1936, Connecticut's General Assembly met in a special session to set up a state unemployment structure and bring the state into conformance with the federal Social Security Act that established the unemployment insurance system. As part of the legislation (Chapter 280a), the governor was authorized to appoint by October 1937, a six-member commission to hear appeals on unemployment insurance claims decisions.

The commission was made up of six members (one from each congressional district and one at-large member) each appointed for a five-year term. The commission was empowered to hear any appeal from the examiner's¹ decision. Under this system, the appeal was heard *de novo* (heard for the first time, not considering any decision made before) and was "held by the commissioner appointed for the congressional district in which [was] located the employment bureau or branch at which the claim was originally filed."² In some cases, if the chairman thought it was necessary, and at the discretion of that district's commissioner, the hearing could be held by three commissioners, with a majority of those three deciding the appeal.

In 1964, the system was somewhat changed as a result of Public Act 3. Although the number of commissioners remained the same, the act altered the commission representation to one member from each "compensation" district (a label given to territories for both unemployment and workman's compensation). A year later, P.A. 65-525 became law, giving the chairman of the commission the power to employ persons, make expenditures, or take any other action he deemed necessary for the effective functioning of the commission. Further, the act stipulated that the commission's expenses be paid from the employment security administration fund, a special, segregated fund of the state treasury consisting of all monies appropriated by the state as well as those received from the federal government.

Connecticut's appeal system came under close scrutiny in the early 1970's due to the fact the state was falling behind

¹ The examiner is the person who initially reviews the claim to determine eligibility.

² Connecticut General Statutes, Revision of 1949, Sec. 7510.

other states in disposing appeals. In 1972, the U. S. Department of Labor conducted a study of Connecticut's appeal structure that revealed:

- the unemployment commissioners were not required to work full-time (reports were that they generally worked two days a week);
- districts differed in the number of appeals heard, creating an uneven distribution of appeals workload;
- interpretations varied because commissioners worked independently of one another; and
- no precedents were established for future decisions.

As a result of the study's findings and the state's continued case backlog, the federal labor department in 1974 advocated a major overhaul of the appeals structure. The proposal suggested replacing the unemployment commission with a two-tier system consisting of pool of referees as the first level of appeal and a board of review as the second. According to the department at that time, the recommendation "would not only preclude the build-up of such a backlog but would assure consistency in interpretation and application of the law and better service the claimants."³

When the suggested changes were put forth in a proposed bill, the only public hearing testimony received came from the Connecticut State Labor Council. The spokesman for the organization, Joseph Bober, stated that the council was opposed to the bill for several reasons. First, he stated that until the early 1970's the unemployment commission had done a good job, and that it should be allowed to work out its problems rather than changing the system. Second, the labor council was afraid that improved efficiency would be at the expense of the claimant. Third, the council had doubts that the referees would be trained in unemployment compensation and therefore, would only parrot decisions made by the initial examiner.⁴

³ Connecticut Unemployment Compensation Law, Appellate System, U. S. Department of Labor, no publication date, p. 3.

⁴ Joseph Bober, Connecticut State Labor Council, Labor and Industrial Relations Public Hearing, February 21, 1974.

The proposed bill prompted much discussion both pro and con. Those in favor of the legislation stated that Connecticut had been unable to deal with its appeals effectively and that a change in the unemployment system was needed. Those opposed to the new legislation argued that rather than creating another layer of bureaucracy, the unemployment commissioners should be allowed to solve their own internal problems. The bill was passed with an amendment permitting the unemployment commissioners to serve out their terms and compete for a referee position based on the conditions of employment outlined in the legislation.

The act, P.A. 74-339, created a new administrative appeal mechanism for Connecticut--a two-tier system with a pool of referees as the first level and the Employment Security Board of Review as the second. The act placed both sections in the Employment Security Appeals Division of the Department of Labor, with expenses for administering the system coming from the Employment Security Administration Fund, as had been the case with the previous unemployment commission.

The first legislative change to the new system came in 1975. Public Act 339 specified that appeals from board decisions could be heard in the superior court for the area in which the initial examiner's decision had been made and not just in the Hartford-New Britain Superior Court, as the 1974 legislation had stated.

In 1977, several changes were made to the state's unemployment compensation act (P.A. 426). Aside from alterations in coverage and payment of benefits, the act also clarified the administration and enforcement areas. The act stipulated that the Uniform Administrative Procedure Act did not apply to appeals from decisions of the three administrative levels (examiner, referee and board). The board was also significantly affected by the "quits and fires" laws (Public Acts 319 and 323) of 1977 that, according to the board chairman, increased the board's caseload markedly.

Further revision of the original 1974 legislation resulted from the passage of P.A. 79-100. The act clarified that a majority vote of the board was required on an appeal, but that any member--not just the chairman as the original law had stated--could hear an appeal. During the same session, the legislature passed P.A. 79-187, extending from 15 to 31 days the length of time during which a decision of the board could be taken to court or the board itself could set aside or modify a decision. A year later, legislation was introduced extending appeal periods in other areas. Public Act 80-260 allowed for 21 days instead of 14 to appeal the initial examiner's decision and extended the appeal-time for the referee's decision from 15 to 22 days.

Structure

In order for a state to be eligible for federal financing of its unemployment insurance administration, the Social Security Act requires an "opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."⁵ Although the federal law does not specify how this appeal system should be structured, most states have a two-tier administrative appeal plan. Table II-1 shows the status of the appeal structure in the 50 states as of January 1981.

Table II-1. Unemployment Appeals Structure--50 States.

Second level of Appeal	- 46 states
Board of Review (or Appeals) as second level	- 30 states
Three-member board	- 28 states

Source: U. S. Department of Labor.

Connecticut, like the vast majority of states has, a two-level appeal structure. In this state it is located in the Employment Security Appeals Division of the Department of Labor. The initial appeals level consists of a network of 20 referees assigned to various locations of the state. The referees, who are appointed by the board, must first pass an exam making them part of the classified service. Most of the appointees have considerable experience in unemployment compensation prior to becoming referees. The chairman of the board of review designates a chief referee who supervises the referees and assigns cases to them.

Connecticut's second administrative appeal level for unemployment compensation claims is the Employment Security Board of Review. The board is composed of three members appointed by the governor. The chairman, who is a full-time employee in the classified service, also serves as executive head of the appeals division. The other two members--one representing employees and

⁵ 42 United States Code, Section 503 (a) (3).

the second, employers--serve coterminously with the governor and are paid on a per diem basis.

The total number of employees in the appeals division is 46, including the 20 referees. The board's staff consists of an executive secretary, three clerk-typists and a recently hired board staff-assistant.

Purpose, Powers and Duties

The Employment Security Board of Review is authorized under C.G.S., Section 31-237c, and its duties are outlined in Sections 31-237a through 31-249f of the Connecticut General Statutes. The board's major purpose is to serve as the second-level administrative appeal for unemployment compensation claims in Connecticut. It is empowered by statute to:

- consider appeals received from decisions rendered at the referee level;
- affirm, modify or reverse the decision of a referee, or remand the case to a referee for further consideration;
- issue written decisions on appeals from the referee level, based upon the record of the hearing before the referee; and
- direct, supervise and control the referee section.

Fiscal Information

The Employment Security Board of Review, as indicated earlier, is located in the Employment Security Appeals Division which is funded totally with federal dollars. The expense figures for the board are not isolated in the budget, however, the state Department of Labor breaks down the figures for the appeals section, as outlined in Table II-2.

Included in the budget figures are the expenses for the two part-time board members who are paid a per diem of \$60. Each of the two members works one day a week, and are reimbursed for expenses.

Table II-2. Employment Security Appeals Division Budget.¹

	<u>FY 82</u>	<u>Estimated FY 83</u>
Personal Services	\$ 861,800	\$ 991,903
Personal Benefits	290,800	411,696
Other	<u>186,200</u>	<u>198,968</u>
Total	\$1,338,800	\$1,602,567

¹ Based on federal fiscal year October 1 - September 30.

Source: Connecticut Department of Labor

ACTIVITIES

The three-member Employment Security Board of Review is a quasi-judicial body established to serve as the second-level administrative appeal mechanism for unemployment claims. To clearly understand the board's role in the appeals process, it is necessary to describe the unemployment claims procedure as the two are interrelated.

When an employee files a claim with a local office, it is reviewed by an examiner, who represents the administrator of unemployment compensation--in Connecticut, the labor commissioner. Based on evidence at an initial hearing, the examiner determines the eligibility of the claimant as well as the duration and weekly amount of benefits due. A written decision on the claim is given to the employer and employee.

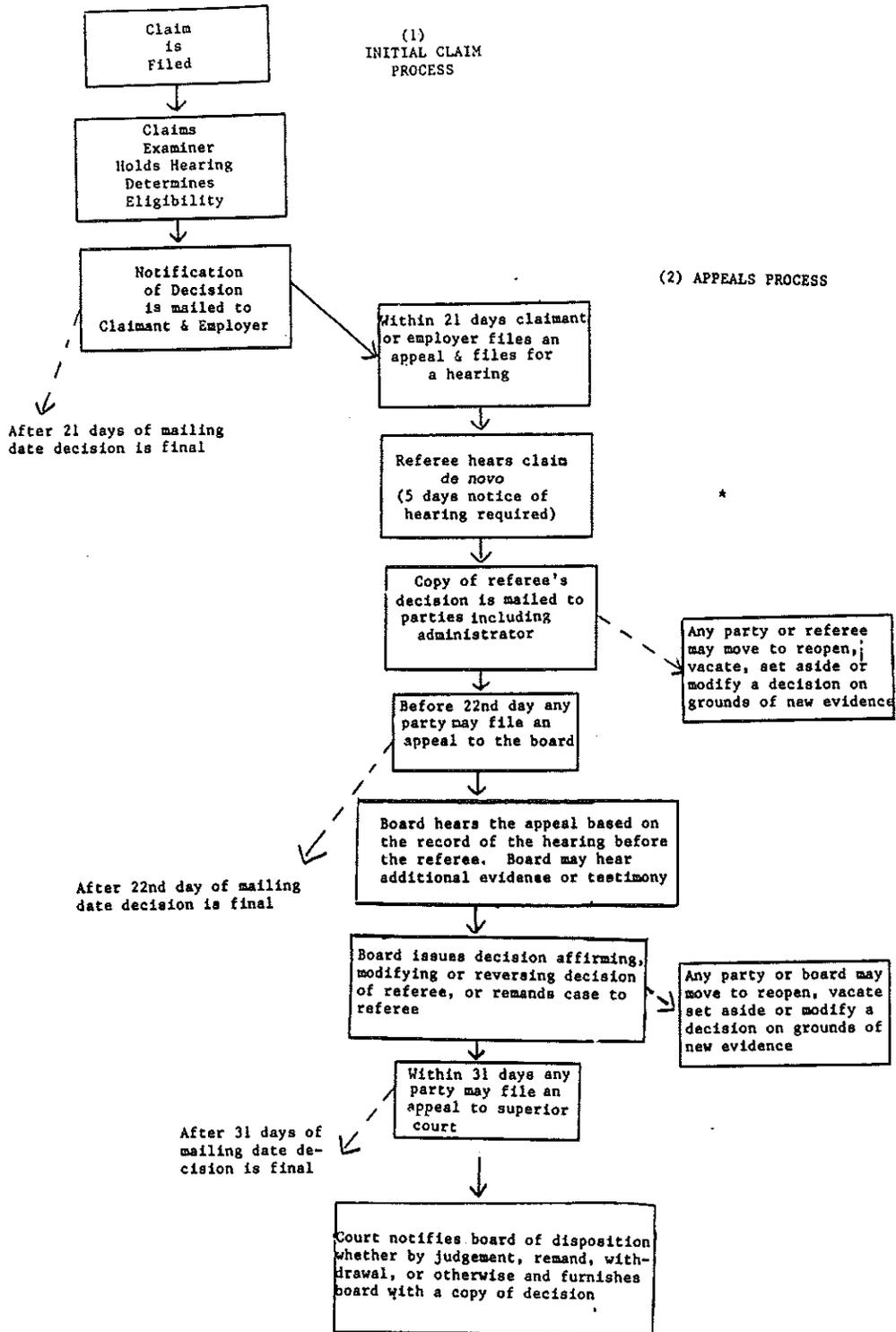
If either the claimant or the employer is dissatisfied with the decision, that party may appeal within 21 days of the mailing date of the decision. Unless the appeal is withdrawn, the chief referee assigns the case to a referee who hears the case *de novo* and renders a decision. The determination, based on the referee's findings of fact and conclusions of law, is mailed to all parties involved, including the administrator.

The referee's decision may be appealed to the Employment Security Board of Review by any of the parties (including the administrator) up to 22 days after the date the referee's decision is mailed.

The board is not statutorily required to meet as a whole to hear cases, except those appeals involving labor disputes or where a party requests a hearing before the whole board. Typically, the board's procedure for hearing a case follows the pattern outlined below.

The two part-time members travel to Hartford once a week to pick up the approximately 30 cases assigned to them weekly by the chairman. Each of the members returns the adjudged cases the following week. The chairman then reviews each of the decided cases and either agrees with or rejects the decision. If there is a disagreement in the decision, the third board member must then review the case, since the law requires that any board finding be by a majority vote of its members. Once a board decision becomes final, it establishes a precedent for all subsequent cases involving similar questions. (The entire appeals process is outlined in Figure III-1.)

Figure III-1. Overview of Appeals Process.



* At any time before the referee's decision becomes final, or before it is initially heard by the referee, any party, including the board, may request to transfer the case to the board.

The Employment Security Board of Review has a significant caseload. During FY 1980-81 the board received 2,601 cases and disposed of 3,332 (the extra cases being part of a backlog that had developed). During the first ten months of state fiscal year 1981-82, the board received 2,737 cases and disposed of 2,570.

In addition to hearing appeals, the board must submit monthly reports to the federal Department of Labor, indicating how quickly appeals are being disposed of. The reports are necessary so the federal agency can determine whether each state is disposing of at least 80 percent of its appeals within 75 days, the desired level of timeliness established for the second appeal level.



ANALYSIS AND RECOMMENDATIONS

Existence and Structure of the Board

The sunset review conducted by the Legislative Program Review and Investigations Committee concentrated first on whether or not the Employment Security Board of Review should be continued and, if so, in what form. The options examined were:

- a) continue the board as currently structured;
- b) establish a three-member, full-time board with members appointed by the governor, but have the chairman be in the classified service;
- c) establish a full-time board with all three members in the classified service and having knowledge and experience in unemployment compensation laws and procedures; or
- d) sunset the board.

In considering the options, the committee found that 48 of the 50 states have a two-level appeals system. The committee also acknowledged that the board of review provides a buffer between the initial referee's decision and the courts, which would be deluged with appeal cases if the board was terminated. This latter point was introduced to the committee by a labor union official in public hearing testimony:

I think that to go back into the courts for appeals from unemployment comp[ensation] decisions not only would wreak havoc with the court system, ...you'd have a number of people starving to death before the appeals could be processed through the courts.⁶

Based upon these factors, the committee decided that to terminate the board would jeopardize the appellant's right to a timely appeals process and would create undue strain on the state's judicial system.

⁶ Betty Tianti, Connecticut State American Federation of Labor, Congress of Industrial Organizations, Legislative Program Review and Investigations Committee public hearing on Sunset 1983, May 27, 1982, p. 70.

While the committee judged the board's continuation as necessary, program review members also examined whether the present board is structured to deal with unemployment appeals in the most effective, efficient way. Consideration of this question was prompted when the committee learned that the board of review is not meeting a crucial statutory mandate--to consider appeals "based on the record of the hearing before the referee." As was explained in the previous section, the two part-time members each review a number of case files weekly. Those files include the initial fact-finding report, the initial examiner's decision, all documents and records that the referee may have used in making his/her decision, and all official appeal forms. However, only the files of appeals heard in the Hartford office contain tapes of the hearing before the referee, and it was disclosed that even those are rarely listened to.

Second, the board has been operating for over seven years without having promulgated any regulations, even though the statutes require their adoption. At its public hearing on May 27, 1982, committee members questioned the chairman of the board about its failure to adopt such rules. The chairman replied that while he had begun to write regulations when the board was first established, he was unable to complete the task because of a proliferation of cases.

Another indication that the current board is not constructed to operate at optimal efficiency is the criticism leveled at the board that it is merely a "rubber-stamping" body. That charge was one of the grounds upon which the Connecticut Labor Alliance based its lawsuit against the Employment Security Board of Review in U.S. District Court. One of the attorneys for the plaintiffs in the case appeared at the sunset hearing on May 27 to voice dissatisfaction with the current board operations. He stated that appeals from board decisions to the court are running at 40 per week due to the fact that "...the board is a rubber stamp and the [appeal process] is essentially a meaningless activity."⁷

To gain a sense of whether that criticism was legitimate, the program review committee reviewed the board's disposition of appeals considered during the first 10 months of the state's 1981-82 fiscal year. The figures outlined in Table III-1 indicate that the vast majority (over 90 percent) of cases decided agree with the referee's decision. Only 3.4 percent of the decisions during this period were overturned and less than 4 percent

⁷ Edward Mattison, New Haven Legal Assistance, LPR&IC public hearing on Sunset 1983, May 27, 1982, p. 51.

were remanded to the referee.

Table III-1. Employment Security Board of Review--Disposition of Decisions, July 1981-April 1982.

Type of Appellant	Number of Appeals	Number of Decisions in favor	Percentage of decisions in favor
Claimant	1,928	39	2.0%
Employer	513	27	5.0%
Administrator	26	18	69.2%
Sub-total Decided	2,467	84	3.4%
Remanded	101		3.9%
Unaccounted	2		
Total	2,570		

Table III-2. Comparison of Reversal Rates--New England States.

	<u>1st Quarter 1979</u>		<u>1st Quarter 1980</u>	
	<u>Claimant</u>	<u>Employer</u>	<u>Claimant</u>	<u>Employer</u>
Connecticut	3.2	12.7	.1	8.2
Maine	9.4	12.2	17.1	38.8
Massachusetts	24.1	9.2	24.5	8.5
Rhode Island	15.0	40.5	22.0	55.6
Vermont	39.4	12.5	31.8	17.4

Totals in Percentages

Source: U.S. Department of Labor, Regional Office, Boston.

The committee compared the reversal rate in Connecticut with that of other New England states. The results (outlined in Table III-2) show that Connecticut's reversal rate (especially in favor

of the claimant) is considerably lower than other New England states.⁸ Furthermore, during federal FY 81, Connecticut's reversal rate was 2.6 percent (1.9 percent for claimants and 2.4 for employers) while the national average was 16.4 percent (13.5 percent for claimants and 19.3 percent for employers). The statistics shown in Table III-1 reveal no change in this trend.

Finally, in deciding whether Connecticut's appeal board structure should be changed, the committee surveyed how the appeals systems operate in other New England states; it found that excluding New Hampshire all states have a two-level appeals procedure. Full-time boards exist in Massachusetts, Maine and Rhode Island, while Vermont has two part-time members like Connecticut. However, Vermont's caseload was less than 400 last year--approximately one-sixth of Connecticut's.

The above information led the committee to conclude that the board of review is not operating at peak efficiency, basically because of time constraints placed on what is essentially a part-time board. *In light of this, the Legislative Program Review and Investigations Committee recommends that Connecticut establish a full-time Employment Security Board of Review, consisting of three members appointed by the governor. The chairperson will continue to be in the classified service, and each of the other two members will continue to represent employees and employers respectively.*

In making this recommendation, the committee is mindful that this change will bring Connecticut's structure in line with other New England states having comparable caseloads. Secondly, since the administration of unemployment compensation systems is federally funded, the change would not present an additional strain on the state's budget. Further, with unemployment continuing to rise, the Legislative Program Review and Investigations Committee can foresee no lessening in the number of cases being appealed to the board, and that given an increase in caseload, only a full-time board could handle it effectively.

While the committee does not propose any specific salaries for the two new full-time members, a survey of salary levels in other New England states found a range from the low to high \$20,000's. Based on a \$27,000 salary for each of the two additional members, this would mean a net increase in expenses of \$45,760, (not including fringe benefits).

⁸ New Hampshire was establishing a second-level appeal during the review so it is not included in the table.

Adoption of Regulations

In the committee's judgement, the change to full-time status will improve the board's ability to deal with the caseload in a thorough yet timely manner. Nevertheless, the program review committee believed the board's operating procedures also needed study.

As previously mentioned, one of the board's chief shortcomings is that it has failed to promulgate regulations, even though the board has been in operation since 1974. While the board's ability to promulgate procedural rules has been impeded by its heavy caseload, the absence of such regulations severely impairs the appellant's ability to prepare his/her case. This impact on claimants was confirmed by the New Haven Legal Assistance attorneys who stated that in representing clients on appeals, the attorneys have found the board's procedures to be haphazard and unpredictable.

The Legislative Program Review and Investigations Committee believes the public has a right to full information regarding the workings of the appeals process. *Therefore, the Legislative Program Review and Investigations Committee recommends the Employment Security Board of Review adopt regulations regarding its rules and procedures, following the provisions of the Uniform Administrative Procedure Act, as required by statute.*

This recommendation should increase appellants' awareness of what to expect from the appeals process because criteria for each step in the procedure will be clearly established.

Since the committee made this recommendation in June 1982, two incidents have occurred that signal regulations will soon be promulgated. First, during this past summer, the Employment Security Board of Review hired an attorney to serve as staff assistant to the board. One of the attorney's primary tasks is to write the regulations concerning the board's procedures. Second, the decision in the court case mentioned earlier in this section was issued on September 28, 1982 and included a requirement that within 45 days of the decision the board submit written policies and procedures for the court's approval.

Appeals Procedures

While the committee acknowledged that establishing regulations will make the appeals process clearer, the committee felt a number of the procedures themselves need redress.

One stipulation of the appeal process outlined in statute is that the full board hear any appeal involving a labor dispute or cases where a party to the appeal requests a hearing before the

whole board. However, rarely has the board complied with the latter provision, despite the fact there are no standards established on which to deny such a request. The program review committee reasoned that even the new full-time board could not realistically be expected to approve every request for a full board hearing. However, the committee firmly believes that standards for such approval or denial should be outlined in the board's regulations. *The Legislative Program Review and Investigations Committee, therefore, recommends that the full board continue to be required to hear and decide cases where a labor dispute is the cause of unemployment, and that the board approve or disapprove by majority vote each written request by a party seeking a hearing by the full board, in accordance with criteria to be established in regulation.*

A second procedural area that came under the program review committee's scrutiny was the basis upon which the board decides appeals before it. As mentioned earlier, the board is statutorily required to consider cases (except those involving labor disputes) based on the record of the hearing before the referee, but it seldom does. The following excerpt from May 27 public hearing testimony criticizes the board for its failure in this area:

...as the present system runs, the notices that the board sends out to people, the form decisions that it sends out, are false. The board decisions which you get in 98% of the cases says, we have reviewed the record before the referee, and we find that the referee's findings, in fact, are substantiated by the evidence. Well, in 5 of the 15,000 appeals that have been filed in the last 5 years, that statement is true, because the board has listened to the tape recording. In the other 14,995, it is false, because they have no way of knowing if the evidence before the referee substantiates the findings, without listening to the tape.⁹

Section 31-249 of the Connecticut General Statutes also stipulates that the board may hear additional evidence provided "the ends of justice so require." The board chairman indicated at the May 27 public hearing that this proviso is rarely granted, but again there is no established standard indicating when the board will allow new evidence.

⁹ Gregory Conti, attorney, New Haven Legal Assistance, Legislative Program Review and Investigations Committee public hearing on Sunset 1983, May 27, 1982, p. 54.

The program review committee also determined that reform was needed in the way the board conveyed its decisions. The statute requires only that the board "issue its decision, affirming, modifying or reversing the decision of the referee [and] in any case in which the board modifies the referee's findings of fact or conclusions of law, the board's decision shall include its findings of fact and conclusions of law."¹⁰ While the board decisions basically comply with the legislation, the example of a board's affirmative decision presented below shows a deficiency in providing any particular reason or basis for that determination.

Acting under authority contained in Section 31-249 of the Connecticut Unemployment Compensation Law, the Board of Review has reviewed the total record in this appeal.

The Board of Review finds that the Referee's findings of fact are supported by the evidence and testimony that were introduced at the Referee's hearing and that the conclusion reached by the Referee is supported by said findings of fact and is legally consistent with those findings and the provisions of the Connecticut Unemployment Compensation Law governing the issue or issues presented by the appeal.

Accordingly, the Board of Review adopts the Referee's findings of fact and decision as its own.

The decision of the Referee is affirmed.¹¹

If it were not for the case number identifying each appeal on the top of the decision notice, it would be difficult to know to whom this finding applied.

In the absence of such standards in the above areas, the committee contends there is no way for an appellant to measure whether the procedure is equitable and whether each claimant is treated in a similar manner. *Therefore, the Legislative Program Review and Investigations Committee concludes the adoption of these standards is absolutely crucial and recommends the following:*

Statutorily require the Employment Security Board of Review to establish in its regulations, criteria by which the board will consider the case based on the hearing before the referee, as well as standards by which the

¹⁰ Connecticut General Statutes, Section 31-249.

¹¹ The case number is removed from this decision to protect the claimant's anonymity.

introduction of new evidence will be allowed. Further, the Legislative Program Review and Investigations Committee recommends that the board state in its decisions whether or not the decision was based on the record of the hearing before the referee and the reasons for the decision, including the citing of precedents.

The program review committee considers this recommendation to be beneficial to both appellants and the board. It sets realistic boundaries for what the board can actually accomplish, considering time constraints and caseload, yet it should clarify the rights of the appellant in the appeals process.

Guide to Precedents

Examination of the board's procedures also uncovered a lack of any type of guide to board precedents. Statutorily, the board's decisions are binding in all subsequent proceedings involving similar questions. However, other than researching the board's files, no tool exists to assist the appellant in determining those precedents.

To enhance the appellant's ability to prepare his or her case, *the Legislative Program Review and Investigations Committee recommends that the Employment Security Board of Review publish an index of all cases decided after the effective date of the legislation. The index shall include but not be limited to: a subject reference and a reference of all statutory sections and court cases under which the case was decided.*

Provision for Acting Chairperson

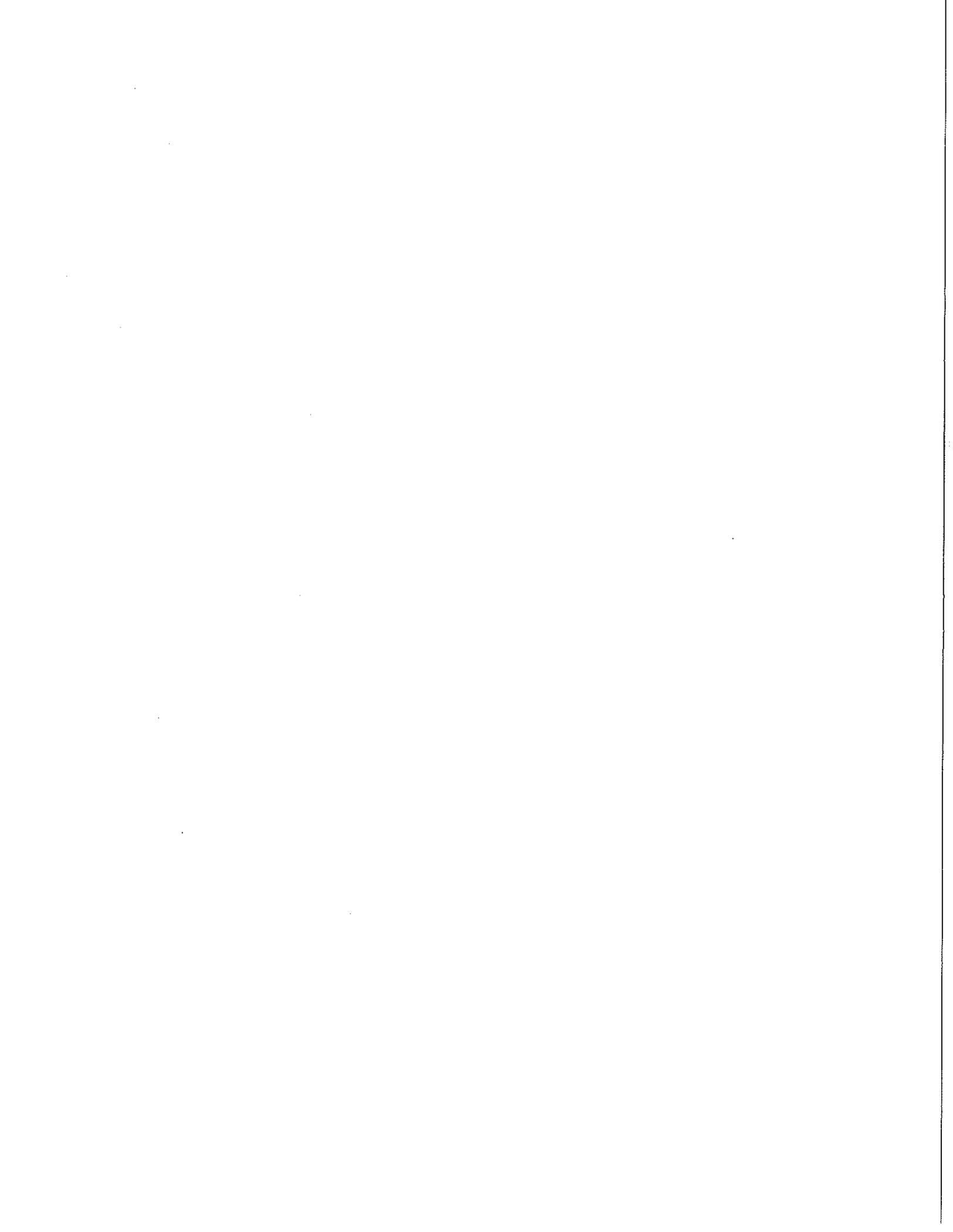
Finally, the Legislative Program Review and Investigations Committee's review focused on how the board provides for an acting chairperson. In the recent past, when the board chairman was unable to fulfill his tasks due to sudden illness, there was no statutory provision for appointing an acting chairperson to replace him. This apparently called into question the legality of the board's decisions made during his absence. The chairman's role is vital to the board's operations since each board decision must be by majority vote, and the chairman typically reviews every case. Further, since the chairman is the executive head of the entire appeals division, his absence could be detrimental to the whole appeals procedure.

The program review committee recognized the importance of having an automatic replacement procedure for the chairperson and discussed who would be the most appropriate substitute. The options examined for this replacement were:

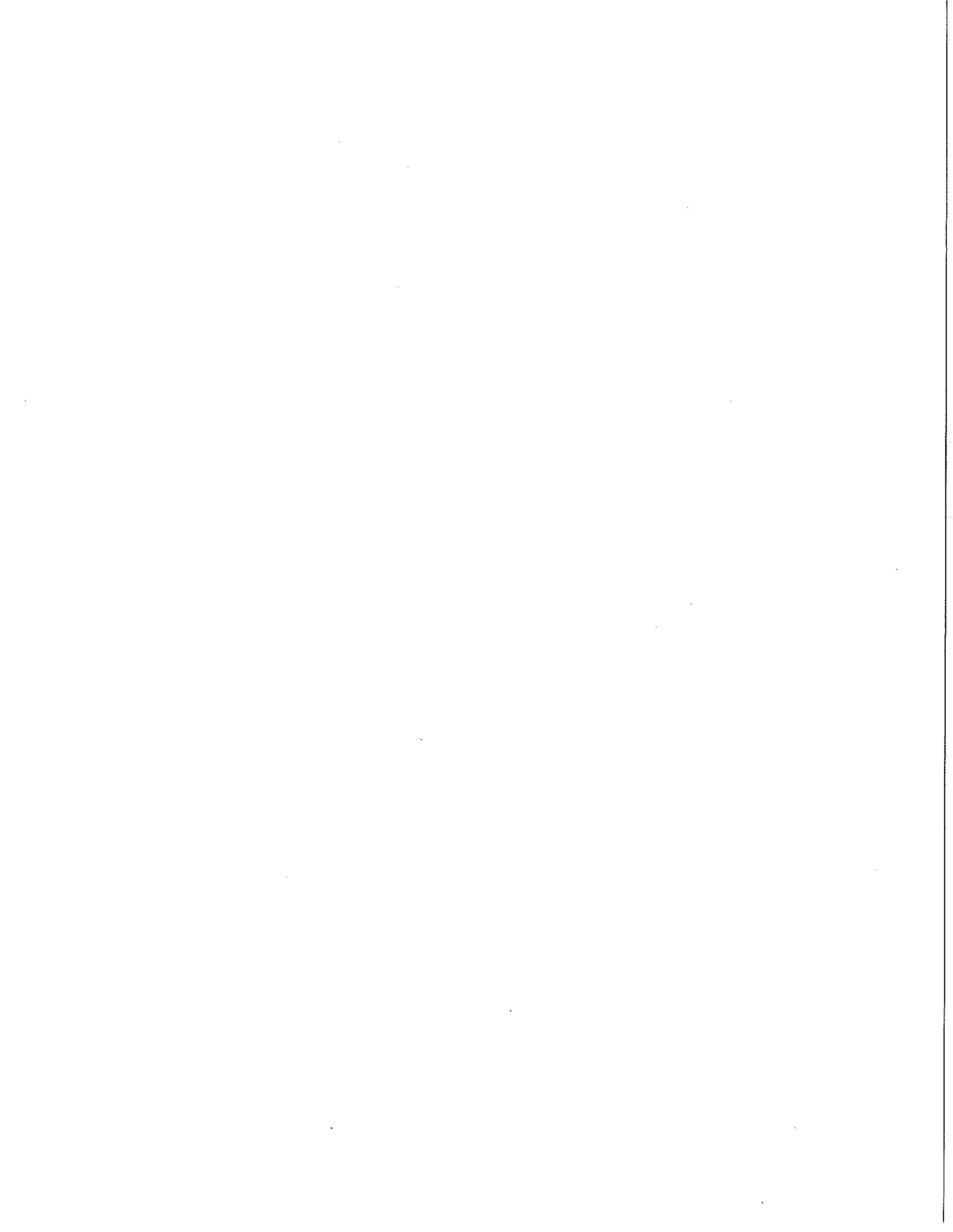
- a) establish a provision in statute whereby the staff assistant to the board would automatically become acting chairperson in the chairperson's absence;
- b) establish a provision in statute whereby the chief referee would automatically become acting chairperson in the chairperson's absence; or
- c) allow the board to establish in regulation a provision agreed upon by the board for the appointment of an acting chairperson.

While the committee agreed that all the options offered a remedy to the current situation, members concluded that option a offered the best solution. First, because the chairman's position is established in statute, the committee decided that the replacement procedure should also be in statute. Second, the committee noted that having the chief referee serve as acting chairperson could present a problem. Since the chief referee directly supervises the first level appeals referees, deciding cases from that level would seem to pose a conflict, so that option was rejected. *The Legislative Program Review and Investigations Committee recommends that a statutory provision be established whereby the staff assistant to the board would automatically become acting chairperson in the chairperson's absence. The committee further recommends that the staff assistant position as well as a general statement of knowledge, skills and abilities required for the job be outlined in statute.*

Like the chairman, the staff assistant is in the classified service and represents no particular interest group in contrast to the other two board members. Therefore, the assistant would serve as the most objective replacement for the chairman. Also, the tasks performed by the staff assistant (see Job Description in Appendix B) indicate that he/she is knowledgeable about unemployment compensation law as well as the board's procedures, and should, therefore, provide capable leadership in the chairperson's absence. However, to assure that the caliber of professionalism required to perform such tasks continues, the committee believed some form of safeguard was needed. Committee members discussed the issue and concluded that the position and a general statement of qualifications should be referenced in statute.



APPENDICES



APPENDIX A

EMPLOYMENT SECURITY BOARD OF REVIEW

STATUTORY REF: C.G.S. Sec. 31-237a-31-249f.

ESTABLISHED: 1974 (P.A. 74-339)

ORGANIZATIONAL LOCATION: Department of Labor - Employment Security Division

PURPOSE: To provide a second-level administrative appeal mechanism for unemployment security claims in the state.

POWERS & DUTIES:

- To consider appeals received from decisions rendered by the referee level;
- To affirm, modify, or reverse the decision of the referee, or remand the case referee for further consideration;
- To issue written decisions on the appeals based on the record of the referee's findings of fact and conclusions of law.

BOARD MEMBERSHIP: three members: one full-time (who is also the executive head of appeals division)

two on a per diem basis (one representing employers and one representing employees)

APPOINTING AUTHORITY: Governor

PER DIEM COSTS: \$60 per day and expenses

STAFF: 45 (includes total Appeals Division)

Budget: Appeals Division*

<u>Actual FY 82</u>		<u>Estimated FY 83</u>
Personal Services	\$ 861,800	\$ 991,903
Personal Benefits	290,800	411,696
Other	186,200	198,968
	<u>\$1,338,800</u>	<u>\$1,602,567</u>

* This division is totally funded with federal monies, and above budget figures are based on federal fiscal year October 1,

STATUTORY REQUIREMENT FOR MEETINGS: Meetings of full board only required to hear and decide cases where a labor dispute is cause of unemployment, or where a party requests a hearing by full board.

APPEALS - STATISTICS

FY - 1980-1981

Total Received - 2,601
 Total Disposed of - 3,332

FY - 1981-1982 (July 1981 - April 1982)

Total Received - 2,737
 Total Disposed of - 2,570
 Decided - 2,467
 Remanded to Referee - 101
 Unaccounted - 2

DISPOSITION OF DECISIONS

Type of Appellant	Number of Appeals	Number of Decisions in favor	Percentage of decisions in favor
Claimant	1,928	39	2.0%
Employer	513	27	5.0%
Administrator	26	18	69.2%
Total	2,467	84	3.4%

OTHER STATES (January, 1981)

Second level of Appeal - 46 states
 Board of Review (or Appeals) as second level - 30 states
 Three member board - 28 states

APPENDIX B

STAFF ASSISTANT TO EMPLOYMENT SECURITY BOARD OF REVIEW

CLASSIFIED
CLASS CODE: 7837
ITEM NUMBER: 9130c

NF27

Effective Date

OCT 2 1981

SUMMARY OF CLASS:

Assists the Board of Review in carrying out its responsibilities by conducting legal research, resolving questions of law and appellate procedures, preparing a precedent manual and advising members of the appeals division staff on legal questions.

SUPERVISION RECEIVED:

Works under the direction of the Chairman of the Board of Review.

SUPERVISION EXERCISED:

May supervise clerical staff members of the Board of Review.

EXAMPLES OF DUTIES:

Conducts research on purely legal issues and interpretations of the Unemployment Compensation Law for application to cases before the Board; prepares and maintains a precedent manual of Board of Review and court decisions for use by referees and the Board; drafts and issues explanatory memoranda interpreting court decisions on unemployment compensation issues for use and application by referees; advises referees, upon request, on legal questions pertaining to procedural and substantive problems arising from appeals and hearings; resolves questions of law and appellate procedures from attorneys representing claimants and employers during the pendency of an appeal or after issuance of the Board's decision; assists the Board Chairman in preparing recommendations for amendments to the Unemployment Compensation Law pertaining to appellate matters; reviews decisions of two part-time Board members for compliance with legal standards and criteria; may review and recommend disposition of motions to reopen, vacate, modify, or set aside decisions issued by the Board; may hold non-evidentiary and evidentiary hearings on appeals to the Board at the direction of the Board Chairman or in his absence, and render decisions on the record of the referee's hearing or on the facts found from such hearings; performs related duties as required.

MINIMUM QUALIFICATIONS REQUIRED

KNOWLEDGE, SKILL AND ABILITY:

Knowledge of the purposes, principles and provisions of Connecticut laws, rules, and regulations pertaining to Unemployment Compensation; knowledge of labor problems, with particular reference to unemployment; knowledge of quasi-judicial procedures, rules of evidence, and the judicial rules of procedure pertaining to administrative hearing agencies; considerable ability to comprehend, interpret and apply laws, regulations and court decisions; considerable ability to make sound decisions on the bases of findings of fact, evidence and applicable laws, regulations and precedent judicial rulings; considerable ability in written and oral expression, ability to deal effectively with others and establish cooperative relationships.

EXPERIENCE AND TRAINING:

General - Three (3) years experience in technical work involving formal hearings, appeals, or administrative proceedings which require the rendering of written decisions; OR legal responsibilities involving the construction, research or application of laws and regulations.

Substitution Allowed - A law degree may be substituted for two (2) years of the General experience.

APPENDIX C

Legislative Changes Needed to Implement LPR&IC's Recommendations

- Amend Sec. 31-237e of the Connecticut General Statutes to require that in addition to the chairperson, the two board members be full-time rather than compensated on a per diem basis.
- Amend Sec. 31-237g of the Connecticut General Statutes to require that the Employment Security Board of Review adopt regulations concerning its rules and procedures following the provisions of the Uniform Administrative Procedures Act.
- Amend Sec. 31-237d(b) to add that in cases where a party specifically requests a hearing before the full board, the board will approve or disapprove by majority vote the written request, in accordance with criteria to be established in regulation.
- Amend Sec. 31-249 of the Connecticut General Statutes to require that the board establish in its regulations, criteria by which the board will consider the case based on the hearing before the referee, as well as standards by which the introduction of new evidence will be allowed.
- Amend Sec. 31-249 of the Connecticut General Statutes to require that the board state in its decisions whether or not the case was heard and decided based on the record of the hearing before the referee and the reasons for the decision, including the citing of precedents.
- Amend Sec. 31-249f of the Connecticut General Statutes to require the board to publish an index of all cases decided after the effective date of the legislation. The index shall include but not be limited to: a subject reference and a reference of all statutory sections and court cases under which the case was decided.
- Amend Sec. 31-237f of the Connecticut General Statutes to add the provision whereby the staff assistant to the board would become acting chairperson in the chairperson's absence.
- Amend Sec. 31-237a of the Connecticut General Statutes to name and define the "Staff Assistant to the Employment Security Board of Review."
- Amend Sec. 31-237e of the Connecticut General Statutes to add the requirements for the staff assistant position, including the knowledge, skills, and qualifications needed and duties performed.

