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# Social Security and Public Welfare

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## SOCIAL SECURITY AND PUBLIC WELFARE

### *Public Assistance*

Early in the year the Ohio Supreme Court upheld the power of the state Department of Public Welfare to, in effect, carve out a special program for aid to the permanently and totally disabled from the general poor relief program established under Ohio Revised Code, section 5113.01 et seq.<sup>1</sup> In *State ex rel. Robison v. Henderson*,<sup>2</sup> it was held that a mandamus action would lie to compel the commissioners of Harrison County to comply with the provisions of a "State Plan" promulgated by the Department in reliance upon the broad powers conferred by Ohio Revised Code, section 5113.09.<sup>3</sup> This decision was a highly important one to the Public Assistance program in this state since the General Assembly has unaccountably failed to provide a separate statutory base for this new category of aid to the indigent, and the continued receipt of federal funds for state-wide grants to the disabled has hung in the balance.<sup>4</sup> Most of those familiar with the problem agree that a firmer and more specific legislative base for this special program is still highly desirable.

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<sup>1</sup> Congress, in the enactment of the 1950 amendments to the Social Security Act, declined to adopt a permanent and total disability insurance program, but did provide for a new categorical Public Assistance program to afford aid to these unfortunate individuals on a needs basis. This "fourth category" was patterned after the already existing programs, in part federally financed, for old age assistance, aid to dependent children, and aid to the blind. In order to share in the federal funds made available for this new program, each state was required to develop and submit a "plan" which would meet minimum federal standards as outlined in the Social Security Act, a procedure which has become familiar through experience with the older categories. Officials of the Ohio agency felt that the powers conferred under Revised Code, Chapter 5113, which provided for a general relief program entirely distinct and separate from the so-called "categorical" programs, were broad enough to permit the establishment of this new program by regulation. This decision was not exactly unique, since other states have contrived to find equally broad authority in their existing statutes for the establishment of "plans" for categorical assistance programs and have avoided the necessity of new legislation, in numerous instances.

<sup>2</sup> 162 Ohio St. 504, 124 N.E.2d 150 (1955).

<sup>3</sup> Including the general power to make rules, to require reports from local relief authorities, to determine the kinds of obligations for poor relief on which state reimbursement will be based, and to cooperate with agencies of the state, federal and local governments.

<sup>4</sup> One of the conditions for federal grants to the state is that the program shall be state-wide, i.e., in effect in every county of the state. Harrison County's challenge, therefore, affected much more than the relatively small number of cases among its own people. At stake, perhaps, was the independence of local voices in the relief program, but otherwise the misgivings expressed in the opinions of the two dissenting judges do not seem too well-founded.

## *Unemployment Insurance*

### *Labor Dispute Disqualification*

In *Cornell v. Bailey*,<sup>5</sup> the Ohio Supreme Court removed any remaining doubt concerning the scope and application of the labor dispute disqualification provision in the Ohio act.<sup>6</sup> The drivers and helpers of a wholesale grocery business had gone out on strike, and the lack of normal delivery service eventually resulted in a substantial curtailment of the employer's business. The claimants were not members of the striking union, were not concerned in the dispute, and did not participate in any way. Nevertheless it was properly held that the claimants were not entitled to unemployment benefits since their lay-off was a result of the strike.<sup>7</sup>

However, where a worker was replaced by another while he was absent on sick leave and found himself out of a job when he attempted to return, a subsequent strike will not disqualify him even though he thereafter becomes a member of the striking union.<sup>8</sup>

In what is believed to be the first Ohio decision on the point, it was held that the Zanesville plant of the Timken Roller Bearing Co. was a separate establishment from the company's Canton plants where a strike had occurred, and the resulting unemployment among the Zanesville workers, for this reason, did not incur disqualification.<sup>9</sup> This highly significant decision is in accord with the majority of other jurisdictions where the same question has been raised. The court was of the opinion that the phrase "factory, establishment, or other premises," referred to a single place or location.

### *Discharge for Just Cause*

Quite a number of cases involved the question of disqualification resulting from a discharge.

<sup>5</sup> 163 Ohio St. 50, 125 N.E.2d 323 (1955). This is the same case referred to in footnote 23 of last year's article, 6 WEST. RES. L. REV. 297 (1955), the higher court affirming the decision of the court of appeals.

<sup>6</sup> Under this provision, no individual may receive benefits for the duration of any period of unemployment with respect to which it is found he "lost his employment or has left his employment by reason of a labor dispute (other than a lock-out) at the factory, establishment, or other premises at which he was employed, as long as such labor dispute continues."

<sup>7</sup> The court recognized that the Ohio provision fails to include the "escape" clause contained in the statutes of many other states, pointing out that the Guthrie bill in the 98th General Assembly would have introduced such a provision but that the pertinent language was stricken before the amendments passed.

<sup>8</sup> *Donofrio v. Administrator*, CCH U. I. SERV. (Ohio) ¶ 8479 (Ohio Com. Pl. 1955).

<sup>9</sup> *McGee v. Timken Roller Bearing Co.*, CCH U. I. SERV. (Ohio) ¶ 8505 (Ohio Com. Pl. 1955).

Where a charwoman was discharged as a result of garnishment of her wages, it was held that such discharge was not for just cause *in connection with her work*, and the disqualification did not apply.<sup>10</sup> The court indicated that the result might be different in the case of an executive of the bank or one of the tellers. For similar reasons, a worker was not disqualified where he had been discharged because of trouble the union had with him.<sup>11</sup>

Failure to establish that the discharge was for just cause resulted, and benefits were allowed, where there had merely been an argument resulting from an honest disagreement,<sup>12</sup> as well as where the worker was absent for several days due to illness but had notified the company nurse the day he left, and his wife had tried unsuccessfully to reach the same nurse on subsequent days.<sup>13</sup>

On the other hand, disqualification was upheld in the following situations: where the discharge was the result of absenteeism totaling 202 hours in a 24-week period, and no medical substantiation of alleged illness was presented;<sup>14</sup> where the claimant started a fight by throwing debris in front of a co-worker's bench;<sup>15</sup> where a cab driver smelled of liquor on the job, after being duly warned, and went to sleep in his cab away from the dispatcher's office contrary to regulations;<sup>16</sup> where the percentage of rejects of switches assembled by claimant had increased materially during a 3-week period;<sup>17</sup> and where the claimant had violated a company rule against smoking at her desk and closing the office door on two occasions.<sup>18</sup>

#### *Voluntary Quit Without Just Cause*

A worker who moved from Columbus to Pomeroy while she was out of work as result of a labor dispute and who refused to return when notified to do so, but asked for a transfer to a job nearer her new home instead, was held to be disqualified from receiving benefits for having quit without

<sup>10</sup> Chalker v. First Federal Savings & Loan Assn., 126 N.E.2d 475 (Ohio Com. Pl. 1955).

<sup>11</sup> Layman v. Administrator, CCH U. I. SERV. (Ohio) ¶ 8508 (Ohio Com. Pl. 1955).

<sup>12</sup> Free v. Circle Cab Co., Inc., CCH U. I. SERV. (Ohio) ¶ 8492 (Ohio Com. Pl. 1955).

<sup>13</sup> Allen v. Board of Review, CCH U. I. SERV. (Ohio) ¶ 8480 (Ohio Com. Pl. 1955).

<sup>14</sup> Pry v. Tube Products Corp., CCH U. I. SERV. (Ohio) ¶ 8482 (Ohio Com. Pl. 1955).

<sup>15</sup> Renaker v. Globe Wernicke Co., CCH U. I. SERV. (Ohio) ¶ 8507 (Ohio Com. Pl. 1955).

<sup>16</sup> Minor v. B.U.C., CCH U. I. SERV. (Ohio) ¶ 8459 (Ohio Com. Pl. 1955).

<sup>17</sup> Bruney v. Administrator, CCH U. I. SERV. (Ohio) ¶ 8468 (Ohio Com. Pl. 1955).

<sup>18</sup> Federal Glass Co. v. Board of Review, CCH U. I. SERV. (Ohio) ¶ 8469 (Ohio Com. Pl. 1955).

just cause.<sup>19</sup> But where the claimant quit to accept another, temporary job, on the advice of his foreman who said that work was getting slack, just cause was found to exist and benefits were allowed for unemployment following the temporary job.<sup>20</sup>

### *Refusal of Suitable Work*

In *Culp v. Board of Review*,<sup>21</sup> the claimant had refused two job offers, one for night work which would have interfered with the care of her 11-year-old daughter and the other for paint spraying which had previously caused her skin trouble. On the strength of the Supreme Court's decision in the *Leonard* case,<sup>22</sup> the court reversed the ruling of the Board of Review and held that the claimant's limitation on her hours of work was reasonable under the circumstances and that she had good cause for refusing the paint spray job, so that benefits should be allowed.<sup>23</sup>

The question of moral grounds for refusing work arose again last year, and this time the ruling was against the claimant. The proffered job would have involved working on Sunday, and the claimant was an active church worker who frequently attended as many as three worship services on the Sabbath and objected to giving up her religious activities. She neglected, however, to testify that working on Sunday would violate the law of God or that she would be expelled from her church for so doing, and this was her undoing.<sup>24</sup> The *Tary* case<sup>25</sup> was distinguished on the ground that neither of the latter two elements was present.

<sup>19</sup> *Keeton v. Administrator, CCH U. I. SERV. (Ohio) § 8460 (Ohio Com. Pl. 1955)*.

<sup>20</sup> *Seibert v. Board of Review, CCH U. I. SERV. (Ohio) § 8461 (Ohio Com. Pl. 1955)*. Also, where the job of a 65-year old worker was changed by adding functions and making it more difficult, he was considered to have just cause for quitting, *Weaver v. United Woolen Co., CCH U. I. SERV. (Ohio) § 8493 (Ohio Com. Pl. 1955)*; but where a cook walked out because her employer accused her of loafing for 30 minutes, *held*, just cause did not exist, *Cost v. Board of Review, CCH U. I. SERV. (Ohio) § 8510 (Ohio Com. Pl. 1955)*.

<sup>21</sup> *CCH U. I. SERV. (Ohio) § 8477 (Ohio Com. Pl. 1955)*.

<sup>22</sup> 148 Ohio St. 419, 75 N.E.2d 567 (1947).

<sup>23</sup> A refreshing decision reflecting a more liberal view than many, in contrast with the view that availability is an around-the-clock proposition, regardless of circumstances. The Supreme Court's opinion in the *Leonard* case is also a landmark in this respect, and aptly cited.

<sup>24</sup> *Lowery v. Administrator, CCH U. I. SERV. (Ohio) § 8470 (Ohio Com. Pl. 1955)*. Although it may have been considered that the claimant would still have her evenings to devote to the church, her activity in behalf of the organization attempting to carry on God's work is bound to be much more limited if she accepts a Sunday job. In the case of a woman as active in the church as the court's statement indicates, it would hardly seem too much of a strain to take judicial notice of the admonition in the Bible to remember the Sabbath and keep it holy, and that Sunday is a day of rest, and this should be moral grounds enough for her refusal.

<sup>25</sup> 161 Ohio St. 251, 119 N.E.2d 56 (1954), discussed at some length in the 1954

### *Available for Work*

Opposing views as to what constitutes availability and an active search for work were well illustrated in two decisions rendered during 1955.

Where a carpenter who had been laid off moved away from the city, after registering with his union business agent, to Racine, Ohio, a relatively small community, where he had no previous employment history, he was found to be unavailable for work notwithstanding his application at a local furniture store for a job as a salesman, and at a steel plant across the river.<sup>26</sup> But where another claimant living in a rural area contacted four or five employers a week looking for work, the same eligibility requirement was considered satisfied.<sup>27</sup> Even taking into account a possible difference in degree and a slightly different work history, the latter view seems more in keeping with both the letter and the purpose of the Unemployment Compensation Law.

### *Miscellaneous Benefit Questions*

In *Cornell v. Dalpiaz*,<sup>28</sup> the court ruled that a trade school set up by

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Survey, 6 WEST. RES. L. REV. 295 (1955). It is doubtful that the majority opinion in the *Tary* case can properly be limited to the extent that the court in the instant case seems to indicate. The basic principle enunciated in Judge Lamneck's opinion should apply to Christians in any church who consider the issue a moral one, whether or not they express their views as absolutely or as vehemently as do some others. A sincere rejection of such an offer by an active Christian should be enough to indicate a moral issue, at least so far as that individual is concerned. Businesses which see fit to operate on the day generally recognized as the Sabbath in this country hardly need the support which this decision indirectly gives them, and a governmental policy which encourages more rather than less business as usual on Sunday hardly seems sound, particularly where it seems to originate in the courts. The labor force surely contains enough individuals who have no moral convictions on this point, or who celebrate the Sabbath on another day of the week, to avoid strangulation of Sunday business if a different interpretation of the statute were adopted.

<sup>26</sup> *In re Pickens*, CCH U. I. SERV. (Ohio) ¶ 8465 (Ohio Com. Pl. 1955). The court based its decision, in part, upon the conclusion that a claimant cannot delegate the duty of actively seeking work to a business agent, it being something which the individual must carry out personally, following the view in *Clemmer Construction Co. v. Scott*, CCH U. I. SERV. (Ohio) ¶ 8332 (1952), in preference to that expressed in *Nelson v. Van Horn Construction Co.*, 45 Ohio Op. 378 (Ohio Com. Pl. 1951). The choice is hardly one to be applauded, representing as it does a rather narrow and unenlightened point of view. Cf. Louise F. Freeman, *Availability: Active Search for Work*, 10 OHIO ST. L. J. 181 (1949).

<sup>27</sup> *Abbott v. Board of Review*, CCH U. I. SERV. (Ohio) ¶ 8487 (Ohio Com. Pl. 1955). Removal to the rural area must have been the basis for the adverse ruling of the Board of Review, since the Bureau has a rule of thumb that two calls a week is normally sufficient to establish an active search. Cf. *Culp v. Board of Review*, *supra*, note 21, in which the court indicated that the requirement had been met where only one call had been made in some weeks but three or more calls had been made in most weeks involved.

<sup>28</sup> 128 N.E.2d 132 (Ohio App. 1952).

the Veteran's Administration is not an established educational institution within the meaning of section 4141.29 of the act (subparagraph C-8), and it was held that a claimant attending such a school remained available for work where he could attend either day or evening classes and was conscientiously seeking employment.

A claimant who was living on a small farm but had never worked on it for his livelihood, having kept it rented out on shares, was held to be unemployed rather than self-employed after losing his city job.<sup>29</sup>

In an important test case concerning the retroactivity of benefit increases contained in the 1949 amendments to the state law, it was held that the administrator could not reopen claims which became final prior to the effective date of the amendments, and that benefit determinations become final if there is no appeal therefrom within a ten day period.<sup>30</sup>

### *Right to Appeal*

In several decisions it was made abundantly clear that a notice of appeal from an administrative decision under this act must clearly state the errors complained of.<sup>31</sup> However, an appeal assigning as error that the decision of the Board of Review was not sustained by the evidence, was contrary to law, and contained other errors "apparent in the record," was held sufficiently specific to meet the statutory requirement.<sup>32</sup> Failure to serve the employer with a notice of appeal within the time fixed by statute proved to be fatal.<sup>33</sup> And where the appellant-employer failed to appear at the hearing of claimant's appeal before a referee, it was held that the Board of Review properly denied an attempt to institute further appeal for the purpose of presenting new evidence.<sup>34</sup>

### *Experience Rating*

By its ruling in *Apex Smelting Co. v. Cornell*,<sup>35</sup> the Ohio Supreme Court has definitely settled the question of succession to an experience

<sup>29</sup> Woodruff v. Board of Review, CCH U. I. SERV. (Ohio) ¶ 8456 (Ohio Com. Pl. 1955).

<sup>30</sup> Jaskiewicz v. Board of Review, CCH U. I. SERV. (Ohio) ¶ 8476 (Ohio Com. Pl. 1955).

<sup>31</sup> Royal Grill v. Nelson, CCH U. I. SERV. (Ohio) ¶ 8472 (Ohio Com. Pl. 1955); Stahl v. Board of Review, CCH U. I. SERV. (Ohio) ¶ 8506 (Ohio Com. Pl. 1955).

<sup>32</sup> McGee v. Timken Roller Bearing Co., CCH U. I. SERV. (Ohio) ¶ 8483 (Ohio App. 1955), reversing the decision of the Common Pleas Court on this point at ¶ 8446.

<sup>33</sup> Kendall v. Administrator, CCH U. I. SERV. (Ohio) ¶ 8509 (Ohio Com. Pl. 1955).

<sup>34</sup> Hamilton Provision Co. v. Matthes, CCH U. I. SERV. (Ohio) ¶ 8457 (Ohio Com. Pl. 1955).

<sup>35</sup> 164 Ohio St. 369 (1955).

rating account during the period from 1941 to 1951,<sup>36</sup> where less than the entire business was transferred. The buyer was held not to be a "successor in interest" for the purpose of obtaining the seller's experience rating account where any part of the business, however small or temporary, was retained by the seller. In another case, it was held that the employer who sold a substantial part of its business to another could not appeal from a redetermination of the contribution rate of the successor, since only the party whose rate is involved can appeal.<sup>37</sup>

Two partnerships, commonly owned but operated separately, were held to be separate employing units for experience rating purposes.<sup>38</sup> A creditor who took over the operation of a debtor's business after default was held to be a successor in interest and required to assume the predecessor's liabilities for unpaid contributions,<sup>39</sup> but a business which was closed for several months as a result of a fire was held not to be a going business when subsequently acquired, and the buyer did not obtain the experience rating account of the predecessor.<sup>40</sup>

Where, after having received notice of disallowance of benefits to a former employee, the employer received no notice of a subsequent allowance thereof, it was held that the employer's account could not properly be charged with the benefits thereafter paid.<sup>41</sup>

#### Coverage

Where the owner of a beauty parlor rented out space to various operators, each of whom had her own customers, kept her own records, furnished her own supplies, and paid a weekly fee for the space rented, it was held that the owner could not properly be considered the employer of said "lessees" notwithstanding the fact that the latter had failed to obtain shop licenses under the state Cosmetology Law.<sup>42</sup> The latter situation

<sup>36</sup> Before 1941 the transfer provision included the phrase "in whole or in part." The deletion of this phrase in the 1941 amendments was discussed in *Eiber Realty Co. v. Dunifon*, 84 Ohio App. 532, 82 N.E.2d 565 (1948), and the court of appeals in that case held that only a total transfer would carry with it the predecessor's experience rating account thereafter. This view has now been confirmed by the Supreme Court in the instant case. The Ohio law was again amended in 1951 to permit transfer in connection with the sale of a "clearly segregable and identifiable portion of an employer's enterprise."

<sup>37</sup> *Curtiss-Wright Corp. v. Cornell*, CCH U. I. SERV. (Ohio) ¶ 8473 (Ohio App. 1955).

<sup>38</sup> *Church Budget Envelope Co. v. Cornell*, CCH U. I. SERV. (Ohio) ¶ 8496 (Ohio App. 1955).

<sup>39</sup> *Jacobs v. Cornell*, CCH U. I. SERV. (Ohio) ¶ 8490 (Ohio Com. Pl. 1955).

<sup>40</sup> *In re Serv-Rite Inc.*, CCH U. I. SERV. (Ohio) ¶ 8491 (Ohio Com. Pl. 1955).

<sup>41</sup> *William Brooks Shoe Co. v. B.U.C.*, CCH U. I. SERV. (Ohio) ¶ 8502 (Ohio App. 1955).

<sup>42</sup> *State v. Lowe*, 57 Ohio Op. 243, 129 N.E.2d 221 (Cleve. Mun. 1954).