Provisions for Appeal and Judicial Review of Unemployment Compensation Decisions

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Although there is no national unemployment compensation program, strictly speaking, every state has adopted an unemployment insurance program as a direct result of the passage of the Federal Social Security Act. Social insurance legislation and administration is a new field for the United States; but unemployment compensation was not the brain child of the New Deal, as it is sometimes presumed to be. True, the program is sharply at variance with other "relief" measures used previously during the depression; but when the Social Security Act was passed in August, 1935, approximately fifty million workers in other countries were covered by such laws, Great Britain having adopted the first compulsory system in 1911.

A federal excise tax is placed on the pay rolls of all employing units having eight or more persons in employment, unless the employment is one which is expressly excluded. Employers who are liable for this tax may obtain credit by a tax offset method up to ninety per cent of the federal levy by making payments into the unemployment compensation reserve fund of any state providing for the payment of benefits under a statute approved by the Social Security Board. Such a levy was intended to re-

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1. Here and elsewhere in this article the term "state" or "state law" refers equally to the forty-eight states, Hawaii, Alaska, and the District of Columbia.


4. Five general classes of employment are excluded: (1) agricultural work, (2) government service, (3) work performed by members of the crew of vessels operating in navigable waters, (4) persons employed within designated family relationships, (5) work performed for charitable or nonprofit organizations. Special exemptions have also been granted to numerous miscellaneous employments.

5. The conditions to be met are contained in Title IX. Among the requirements are the following:

(1) All compensation is to be paid through public employment offices.

(2) All money received by the state agency is to be paid over immedi-
move the fear of competitive disadvantage which had prevented some states from establishing unemployment insurance systems, and it had the effect of forcing the immediate adoption of state laws. The Social Security Board’s approval of the statutes of all fifty-one jurisdictions had been certified before the end of July, 1937.6

The Social Security Board is also authorized to make grants from congressional appropriations for the purpose of paying the costs of administering the state laws. In order to qualify for these grants-in-aid, requirements in addition to those contained in Title IX must be satisfied.7 These requirements permit the Social Security Board, acting through its unemployment compensation division, to exercise considerable control over administrative policy and practice, especially by establishing minimum administrative standards.

6. It is interesting to note that the laws of only twenty-five states use eight as the number of employees for determining employer coverage. In eighteen states a lower figure is used, and in eight states coverage is determined by total pay rolls which include employers of less than eight. Comparison of State Unemployment Compensation Laws, United States Government Printing Office (October, 1940).

7. 49 Stat. 620 (1935), as amended by 53 Stat. 1380 (1939), 42 U.S.C.A. §102(a) (Supp. 1940), prohibits the Social Security Board from certifying any state act for the purpose of administrative grants-in-aid unless it includes the following provisions (among others):

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the board shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the board to be reasonably calculated to insure full payment of unemployment compensation when due.

(2) The making of such reports, in such form and containing such information as the board may from time to time require, and compliance with such provisions as the board may from time to time find necessary to assure the correctness and verification of such reports.

(3) Effective July 1, 1941, the expenditure of all moneys received pursuant to Section 302 of the act solely for the purposes and in the amounts found necessary by the board for the proper and efficient administration of such state law.

(4) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to Section 302, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the board for the proper administration of such state law.
The essentially important feature of unemployment compensation for the purpose of the discussion undertaken here is its so-called "insurance" aspect. Benefits are paid as of "right" to individuals meeting specified conditions for eligibility. There are four fundamental qualifications. First, the claimant must be unemployed. Second, he must have had substantial earnings in covered employment during a recent period. Third, he must be able to work. Fourth, he must be available for work.

Although these factors form the basic framework of all benefit payments programs, every state law provides for the withholding of benefits under certain conditions. Thus, a claimant is usually disqualified in the following circumstances:

1. if he left work voluntarily without good cause;
2. if he was discharged for misconduct;
3. if he refuses to accept suitable work;
4. if his unemployment is due to a stoppage of work caused by a labor dispute.

The existence of these circumstances does not deprive the claimant of his benefit rights, but he is ruled ineligible for the current period. Payment is delayed, either for a period fixed by the statute, or to be determined by the administrator within prescribed limits. Generally, the disqualification period merely serves to extend the waiting period, with no reduction in the amount of benefits which the claimant can receive once his claim becomes compensable. In a few instances, however, deductions are made from the maximum to which he would otherwise be entitled.

The desirability of alleviating some of the effects of unemployment by making payments to unemployed individuals as of "right" instead of using the "dole" system was one of the argu-

8. His unemployment may be either total or partial. If he is partially unemployed, however, he is eligible only for reduced payments.
9. It is impossible to summarize here the variations found in state laws with respect to the many factors and definitions involved in the rules for eligibility. They are almost endless and, of course, change rapidly by virtue of frequent amendments.
10. In all states except New York.
11. In all states except Massachusetts and Pennsylvania.
12. In all states.
13. In all states.
14. Disqualifications assigned because of labor disputes, however, continue as long as the stoppage of work exists as the cause of the unemployment. Other disqualifications usually range from one to seven weeks.
15. Indiana, Kentucky, Michigan, Oregon, and Texas, especially where there is misrepresentation of facts affecting eligibility.
ments most often used in favor of the adoption of a program of unemployment insurance. Some evidence of an acknowledgment of a "right" to benefits is to be found in the fact that payments are predicated on definite legal qualifications and the further fact that such payments are made from a trust fund.¹⁶ Such claims to benefits cannot become a vested right, however. Among the requirements of Title IX for tax-offset purposes is the following provision:

“All the rights, privileges, or immunities conferred by such law, or by acts done pursuant thereto, shall exist subject to the power of the legislature to amend or repeal such law at any time.”¹⁷

Precautions have been taken to avoid arbitrary treatment in handling claims for benefits, however. Section 303 (a) (3) under Title III requires that every state law provide an “opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied. . . .”¹⁸ This was a condition to be met before administrative grants-in-aid would be made available. It is further provided that such grants can be withheld if the Social Security Board finds, after hearing, that in the administration of any state law there is “a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law.”¹⁹

Because of a desire to permit employers to take immediate advantage of the tax-offset, there was a great deal of haste in the adoption of the state statutes. Few states had previously given serious consideration to such legislation.²⁰ Even where bills had been proposed, the method embodied in the Social Security Act created a new situation. Complete draft bills were submitted to state legislative committees by the Social Security Board, but considerable discretion was exercised by the state legislatures, especially as to the administrative organization. All states had

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¹⁶. Funds collected by the state agency must be reserved solely for the payment of benefits. The reserve fund is kept in a special account by the treasury department, withdrawals being made to meet current benefit needs.


²⁰. Wisconsin was the only state with a law in operation and benefits had not then become payable there.
departments of some type for administering other state labor laws, and some coordination of the new program with existing administration was provided in the majority of instances. Especially was it related to the administration of workmen’s compensation acts.

The administrative agency is entirely separate from other state departments in twenty-three states. In twenty states it is under a department of labor, an industrial commission, or a board administering workmen’s compensation; while in four states the agency is within another department but not subject to its jurisdiction. In the District of Columbia the three commissioners serve on the Unemployment Compensation Board with two other members. Administration is coordinated with other labor laws in the remaining three states because the Commissioner of Labor is one of the members of the Unemployment Compensation Board. In twenty states the program is under the direction of a single administrator. The predominant type of agency, however, is a board, or commission, composed of three or more members; this arrangement prevails in the other thirty-one jurisdictions.

The draft laws submitted to state legislatures included detailed provisions for the appeal of claims decisions and for judicial review of final administrative determinations. Because of the requirement in the federal law every state law included provisions dealing with these subjects. In view of the deviation from the draft law, to be considered later, it is difficult to regard any provisions as being “generally accepted.” There is a common pattern, however, which will be helpful for the purpose of analysis and discussion. There are three stages in reaching a final administrative determination on claims which are appealed:

21. Alaska, Arizona, California, Colorado, Delaware, Iowa, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, New Jersey, New Mexico, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Washington, West Virginia.
23. Indiana, Kentucky, Massachusetts, Minnesota.
25. Alabama, Arkansas, Colorado, Connecticut, Georgia, Illinois, Kansas, Louisiana, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Washington, West Virginia. It may be noted that in sixteen of the twenty instances the single administrator is found where the administration of the program is within another agency. See note 22, supra.
(1) The initial determination: This decision is usually made by a deputy, or examiner, acting as the designated representative of the administrator. Benefits are paid immediately in accordance with this decision, unless it is appealed. 26

(2) The initial appeal stage: Any interested party 27 can initiate an appeal, which is usually heard by an informal appeal tribunal, but may be heard initially by another authority in the agency. Five days after the deputy's decision is delivered, or seven days if it is mailed, is usually allowed for such appeal.

(3) The final administrative determination, or second appeal stage: The decision of the appeal tribunal is deemed to be the final administrative determination unless further appeal is sought within fifteen days after such decision is rendered. All except three states have a second appeal stage, but the right to such further administrative appeal is usually qualified, or entirely permissive. All expenses in connection with appealed claims, except fees for representation of the parties, are paid by the agency.

In most states 28 there is an intermediate step which permits the filing of an application for reconsideration before appeal is initiated. The agency then reexamines the facts, and if it finds

26. "If upon such initial determination, benefits are allowed, but the record of the case indicates that a disqualification has been alleged or may exist, benefits shall not be paid prior to the expiration of the period for appeal as hereinbefore provided. If an appeal is duly filed with respect to a matter other than the weekly benefit amount or maximum duration of the benefits payable, benefits with respect to period prior to final decision on said appeal shall be paid only after such decision: Provided, that if an appeal tribunal affirms an initial determination allowing benefits such benefits shall be paid regardless of any appeal which may thereafter be taken, and provided further that if benefits are paid pursuant to a decision which is finally reversed in subsequent proceedings with respect thereto, no employer's account shall be charged with benefits so paid. If subsequent to such initial determination benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination, the claimant shall be promptly notified of the denial and the reason therefor and may appeal therefrom in accordance with the procedure herein described for appeals from initial determination." Draft Bills for State Unemployment Compensation of Pooled Fund and Employer Reserve Account Types, Social Security Board (January 1937) § 6(b). This is the usual language adopted in state statutes.

27. "Interested parties have been limited usually to the deputy, the claimant, and his last employer, or a former employer who can show that his interests are proximately affected. This initial appeal right is qualified in some instances. The Louisiana act provides that "no employer shall be entitled to appeal a determination if he had failed to indicate prior to the determination, if and as required by regulation of the Administrator, that the claimant may be ineligible for such benefits or waiting period credit." La. Act 11 of 1940, § 5(c)[Dart's Stats. (Supp. 1941) § 4434.5(c)]."

28. Pennsylvania is the only large industrial state without such an adjustment procedure.
that the facts and objections presented justify a different deter-
mination, it may issue an amended determination. This procedure
does not in any way affect the party's right to appeal, except to
delay its exercise, and the time allotted for appeal begins with
the date of delivery or mailing of this amended determination in
the same manner as initial determinations.

Initial determinations are not always made by a deputy, or
examiner. Cases involving labor disputes are referred to another
authority in thirty-two states.29 Usually the facts are submitted
in the same manner as in other cases, but the findings of facts
go to the final administrative appeal body for an initial determi-
nation, instead of the examiner, or deputy. In eight of these thir-
ty-two states initial determinations in such cases are rendered by
the administrative head instead of the highest administrative
appeal body.30 In twenty-six states the deputy is permitted to
refer other types of cases directly to the appeal body for initial
determination.31 Usually these cases go to the initial appeal body,
but in seven instances they are referred to the administrative
head.32 They may be referred either to the initial appeal body or
to the final administrative appeal body in Arizona, Indiana, Iowa
and Kansas.

The laws of most states provide that the appeal tribunal, the
body which usually hears the initial appeal, may consist of either
a single referee, or a three member board composed of a referee
and one member each to represent employers and employees.33
In thirteen states the appeal tribunal must be a single referee,34
while the Minnesota statute requires a salaried referee and one
representative of employers and employees. The Arizona pro-

29. Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia,
Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland,
Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey,
New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina,
South Dakota, Tennessee, Texas, Virginia, Wyoming.

30. Alabama, Florida, Georgia, Illinois, Minnesota, Mississippi, Nebraska,
Tennessee. In Minnesota the director is required by law to make all

31. Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia,
Indiana, Iowa, Kansas, Maine, Maryland, Missouri, Montana, Nebraska, New
Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Okla-
homa, South Dakota, Tennessee, Texas, Virginia, Wyoming.

32. Indiana, Maine, Maryland, Missouri, New Mexico, North Carolina,
South Dakota.

33. All states except those mentioned or included in notes 34 and 35,
infra. Wisconsin and Indiana permit a tribunal composed of three salaried
referees.

34. Alabama, Alaska, California, Colorado, Illinois, Kentucky, Michigan,
New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont.
vision is somewhat similar to Minnesota's, but it has been interpreted as allowing also a single referee. In practice virtually all states use a referee as the initial appeal body unless the statutory provisions prohibit.

Several states have provisions which do not fit any particular pattern. The initial appeal body in Connecticut is the Unemployment Compensation Commissioner for the congressional district in which the employment office at which the claim was filed is located.\(^5\) In Hawaii the initial appeal is before the County Industrial Accident Board in three counties and is before the Labor and Industrial Relations Appeal Board in Honolulu County. The Massachusetts act provides for a single referee, or that the initial hearing may be held by some member of the board of review, while West Virginia has similar provisions, but in addition permits a three member board. The Washington statute requires only that there be a "tribunal" presided over by a salaried referee.

Although the draft bills suggested an independent board of review as the body to decide final administrative appeals at the second stage, only eighteen states adopted this proposal.\(^6\) In three of these\(^7\) the board also has similar appeal duties under other labor laws. Massachusetts has a board of review, but cases go before it on initial appeal, there being no second appeal stage. The administrative agency itself is the final appeal body in thirty states.\(^8\) Connecticut and Nebraska, like Massachusetts, have only one administrative appeal stage. The Connecticut commissioner's decision on such initial appeal is final, while in Nebraska the ruling of the appeal tribunal is final.

Although any claimant whose claim has been denied has a right to appeal initially on any grounds and to demand a hearing, this right does not extend to the second appeal stage in all states.\(^9\) In twelve states it is entirely dependent upon the per-

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35. The unemployment compensation commissioners in Connecticut are chosen from each of the congressional districts.
37. Alabama, Arkansas, Colorado.
39. Massachusetts, Connecticut, and Nebraska are excluded from consideration here because they have only one appeal stage.
mission of the final administrative appeal body. Further appeal is a matter of right to claimants or interested employers in any case in eleven states, but this right does not extend to a deputy whose decision has been altered in California, District of Columbia, Idaho, Minnesota, Oregon and Vermont. In the remaining twenty-five states further appeal is permissive, except that it is a matter of right for an interested party where the decision of the appeal tribunal is not unanimous. In these states it is likewise available as of right to a deputy whose decision has been changed.

The procedures for filing appeals and for the conduct of hearings are drawn up by the administrative agency or by the board of review, depending upon the type of appeal body rendering the final administrative determination in the particular agency. Usually the same body has continuous jurisdiction over appealed claims, and can remove to itself or transfer to another appeal tribunal any case pending before an appeal tribunal. The procedure for the conduct of hearings need not conform to accepted legal rules of evidence, or other technical rules of procedure, but it must be adequate for determining the "rights of the parties."

Testimony is taken under oath and a record must be made of all proceedings. It is the duty of the appeal body to make certain that the record is complete, because this record is the usual basis for any further review, either by a superior appeal body, or by a court. The appeal authorities are granted power to subpoena witnesses and to compel the production of records deemed necessary for the proper disposition of an appealed claim. Subpoenas are issued by the appeal body acting as an unbiased investigator, rather than as a referee between opposing parties.

42. In California, District of Columbia, and Minnesota, however, the appeal body can bring up the referee's decision on its own motion.
43. Since single referees predominate as initial appeal bodies, the usefulness of this provision is limited.
44. The language of the statutes is almost the same in all instances, and is generally as follows: The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeal before any deputy, appeal tribunal, or the board of review shall be in accordance with regulations prescribed by the commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure.
and a stipulation of the information being sought is required of any party requesting such process. In most cases the appeal body has almost complete freedom in conducting the hearing as to time, place, and adjournment; but once the hearing is concluded decision must be rendered promptly, and both the findings of fact and the rules of law followed in reaching a decision must be set forth.

Parties to an appeal hearing may be represented. Only Oklahoma and North Carolina require that such representation must be by counsel-at-law, although properly qualified attorneys may appear before the appeal bodies of all states. In nineteen states it is required that representation be either by an attorney, "or other person qualified to represent others." The application of this phrase is left to the appeal authority, and any person who is regarded as "qualified" may appear. Maryland saw fit to describe those who were qualified as "any person who possesses the necessary education, training, experience, and technical qualifications which would enable him to represent others." Twenty-five states require merely a counsel, or other duly authorized agent, although the Delaware act will not permit any labor union member to be represented by the business agent or officer of the union. In Indiana, however, an authorized agent of any bona fide labor organization is named with qualified attorneys and recognized public accountants as having the right to appear. Massachusetts and Michigan authorize representation by an attorney, or any "other agent who is not a witness for the claimant." California only requires that authority be given in writing to "any person," and parties may be represented by "any agent" in New York.

All fees for representing claimants in any proceeding in connection with an appealed claim, either on administrative

45. In most states there is a regulation which permits the appeal authority to refuse to allow any person to represent another before it if such person is found guilty of unethical conduct, or if he intentionally fails to observe the provisions of the unemployment compensation law, or regulations adopted pursuant thereto.


48. However, in New York only attorneys are permitted to collect fees for such representation.
appeal or before a court, must be approved by the board of review or administrative agency. Usually such fees are limited to ten per cent of the amount involved. 49

Although only a very small proportion of claims become involved in any appeal proceedings, 76,354 cases were received by the lower appeals authority in all states during 1940. 50 Almost one-third of the entire number were filed in New York. Pennsylvania, which does not have an intermediate adjustment procedure, accounted for slightly less than 10,000; while two states, Arizona and Louisiana, did not report any appeals before either appeal authority. The higher appeal authority received 7,963 cases. During the same period more than one-half billion dollars was paid in benefits to a claims load for all states averaging nearly one million individuals each month.

PROVISIONS FOR JUDICIAL REVIEW

With the exception of California every state has expressly provided some form of court review of decisions rendered by the appeal bodies. The acts in thirty-seven states 51 provide that such petitions may be filed before a lower court of jurisdiction in the county of claimant's residence, or the county in which the claim was filed. The particular court in which appeal is sought depends upon the lower court system in these states. Usually it is a district or a circuit court. In some instances it is the superior court, 52 or the court of common pleasings, 53 and in four states it is any court of competent jurisdiction in the county of claimant's residence or in which the claim was filed. 54 In Tennessee, review

49. Claimants are represented by counsel in only a small percentage of cases. In Wisconsin parties have counsel in only about twenty per cent of the cases, and in most of these instances the counsel represent employers. Snyder, Administrative Law Procedures in the Handling of Contested Unemployment Compensation Claims Under the Wisconsin Act (1938) 22 Marq. L. Rev. 185.


52. Connecticut, Delaware, Georgia, North Carolina, Pennsylvania, Rhode Island, Washington. The Georgia act places jurisdiction in the county where the claimant was last employed before filing claim.

53. South Carolina.

is afforded before the chancery court of claimant's residence; while in Vermont review is before "a Municipal Court in, or Chancery Court for, the County of claimant's residence."

In all the remaining states, except New Hampshire and New Jersey, appeal is before a particular tribunal, regardless of the place of residence of any party. Presumably, it was hoped that by confining review to one tribunal conflicts of lower court decisions would be avoided, and that this court would become familiar more quickly with the questions involved in appealed cases. In five instances the circuit or superior court of jurisdiction in the state capital is named. In Minnesota and Utah appeal is direct to the state supreme court, and in New York it is to the appellate division of the supreme court, third department. Review is before the United States District Court in Alaska, and the Supreme Court for the District of Columbia in that jurisdiction.

In New Hampshire questions of fact are appealed to the superior court "in the same manner as parties aggrieved by the decision of fact of a Municipal Court"; whereas parties aggrieved by a rule of law must file exceptions with the commissioner, who transfers the case to the supreme court "as in actions at law." New Jersey's statute merely provides for judicial review "by writ of certiorari directed to the Board of Review."

The right to judicial review of decisions of appeal authorities is granted to "parties aggrieved thereby," and the administrative agency is usually given special permission to appeal in its own behalf in order to settle doubtful questions of law. Any claimant whose claim is still disallowed after appeal to the administrative tribunals is an aggrieved party, and his last employer is so regarded under virtually all state laws. Employers other than the claimant's last employer may be permitted to appeal under certain conditions.

55. Vt. Act 1 of 1936 (E.S.) § 6(g).
56. In Louisiana the judicial review is made by the district court of the domicile of the Commissioner of Labor. La. Act 97 of 1936, § 5(j), as amended by La. Act 164 of 1938, § 2(j) [Dart's Stats. (1939) § 4434.5(j)].
60. The Pennsylvania act permits an appeal to be taken "by any party claiming to be aggrieved." Pa. Stat. Ann (Purdon, Supp. 1940) tit. 43, § 830. It is possible that some showing of grievance is required, however.
61. The right of any employer to judicial review is questioned by Pennock, Unemployment Compensation and Judicial Review (1939) 88 U. of Pa. L. Rev. 137.
62. This is particularly true in those states which have employer-
No review is permitted in any state unless the party appealing has exhausted his administrative remedies; which requires that appeal of the decision of initial appeal bodies be sought before the higher appeals authority in states having two appeal stages. It is not believed that the statutory provision under which rulings of the lower appeals authority are deemed to be the final decision of the superior body, if no further administrative review is sought within a specified time, will permit review of the lower appeal body decision. A contrary interpretation is possible, however, because the language of the statutes varies considerably on both points.

Petitions for judicial review must usually be filed within ten days after the administrative determination becomes final. In effect this permits a twenty day period after the decision of the highest appeal authority is rendered, because an additional ten day period must elapse before the decision of the administrative tribunal becomes final. During this period rehearing can be requested, or some other administrative action initiated.

In order to obtain court review in most states, and especially in those states where the appeal is heard by a circuit or a district court, it is only necessary to bring an action against the commission in which the grounds for appeal are stated. Usually it is not necessary to enter exceptions, and no bond is required. Any other parties to the administrative appeal proceedings are made defendants. The administrator certifies his files to the court, including a transcript of all testimony taken in the appeal proceedings, the findings of fact upon which the decision was based, and the rule of law followed.

The court considers the appeal on this record. When the court’s decision is rendered, an order in accord with it is entered by the administrator. By express provision petitions for review do not act as stay orders, although the court, or in some instances the administrator, may enter an order to that effect. The appeals are heard summarily, and are given preference on the docket over all other civil cases, except similar petitions in regard to workmen’s compensation awards. Further appeal to the supreme

reserve funds or provisions for adjusting the contribution rates to the employment experience of the individual employer.

63. Service is deemed complete, however, if as many copies of the petition as there are defendants are left with the administrative agency.

64. In a few states the court is expressly authorized to remand for the taking of additional testimony, and does so in practice in some other states.
court is permitted "in the same manner as provided in civil
cases, but not inconsistent with provisions of the Act."

The procedure outlined above is applicable in all its particu-
lars to only a few states but it is followed rather consistently
in at least twenty-six states. Writs of certiorari are stipulated as
the proper method for obtaining review in five states, while the
Indiana law provides for appeal "for errors of law under the
same terms and conditions as govern appeals in ordinary civil
actions."

The extent of judicial review is limited in nearly all states.
The facts found by the highest administrative tribunal are
usually conclusive if they are supported by evidence and there
is no fraud. This general formula is followed in thirty-one
states, review being limited to "questions of law." Although
there are variations in the language, the statutory provision
usually follows the wording of Section 6(i) of the Draft Bill of
January, 1937.

"In any judicial proceeding under this section the find-
ings of the Commission (or Board of Review) as to the facts,
if supported by evidence and in the absence of fraud shall
be conclusive and the jurisdiction of said Court shall be
confined to questions of law."

Several of the states listed here have provisions which differ
significantly. The Tennessee law makes findings of fact con-
clusive, "if there be any evidence to support the same." In addi-
tion to the Draft Bill provision, the Wyoming statute gives weight
to this position by stating,

"Subject to appeal proceedings and judicial review as pro-
vided in this section, any determination, redetermination or

65. Draft Bill, op. cit. supra note 26, at § 6(i).
66. Alabama, Alaska, Arkansas, Arizona, California, District of Columbia,
Delaware, Florida, Georgia, Kansas, Maine, Maryland, Mississippi, Missouri,
Montana, New York, Nevada, North Carolina, Oklahoma, Oregon, Pennsyl-
vania, South Dakota, Utah, Vermont, Washington, Wyoming. One provision,
however, is common to all statutes. No claimant is charged any fee in any
of the proceedings, these fees being paid by the administrative agency.
67. Illinois, New Hampshire, New Jersey, New Mexico, Tennessee. In
New Mexico both the law and the facts are subject to review, while only
questions of law are reviewed in the other states.
69. Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia,
Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missis-
ippi, Missouri, Montana, Nevada, North Carolina, Oklahoma, Oregon,
Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia,
decision as to rights to benefits shall be conclusive for all purposes of this Act and shall not be subject to collateral attack by any employing unit, irrespective of notice."

The New York act apparently does not qualify the finality of the administrative findings of fact, while in Iowa the act appears to give only a limited effect to the findings of the administrative tribunal:

"In the absence of fraud any finding of fact by the commission, after notice and hearing as herein provided, shall be binding upon the court on appeal, when supported by substantial and competent evidence."

Michigan did not adopt the wording of the Draft Bill provision and requires that findings be supported by "the great weight of the evidence."

The Washington statute states:

"If the Court shall determine that the commissioner has acted within his power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, it shall be reversed, or modified. . . .

"In all court proceedings under or pursuant to this act the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same."

No specific limitation is placed on judicial review in the District of Columbia, Hawaii, or North Dakota. In each of these states there is a broad provision whereby an appeal is afforded the injured party or parties, but no detailed procedure is set forth. Five statutes go no further than to provide that review

71. Wyoming Act, § 6 D.V.
72. "A decision of the appeal board shall be final on all questions of fact, and unless appealed from, shall be final on all questions of law." N.Y. McKinney's Consol. Laws, 1940) Unemployment Insurance Fund Law § 534.
73. Iowa Code (1939) § 1551.12(I).
74. Mich. Act 347 of 1937, § 38, as amended by Mich. Act 324 of 1939; "The findings of fact made by the appeal board acting within its powers, if supported by the great weight of the evidence, shall, in the absence of fraud, be conclusive, but the circuit court of the county, in which the claimant resides as the circuit court of the county of Ingham shall have power to review questions of fact and law on the record made before the appeal board involved in any such final decision or determination, but said Court may reverse such decisions of said appeal board upon a question of fact only if it finds that the said decision of the appeal board is contrary to the great weight of the evidence."
76. The North Dakota provision, which is typical of these three statutes,
shall be by writ of certiorari, while in three states the statutory provisions for judicial review of unemployment compensation decisions are so related to the review of workmen's compensation awards that an examination of these latter statutes is necessary in order to determine the scope and procedure.

Six states provide for trial de novo. The Nebraska act permits the petition to be filed in the circuit court of the claimant's residence, in which he was last employed, or in any other circuit court agreed to by the parties, and provides that, "In any judicial proceeding under this section, trial de novo shall be had to the judge of such court." In Rhode Island the petition for review goes to the supreme court and it is instructed to "proceed to hear de novo all questions of law and fact therein involved and such witnesses as may be presented by any party in interest." The Vermont statute provides: "Petition for review within the provisions of this Act shall be granted as of course and the original issue shall be tried by the Court."

Alabama and Texas merely provide that appeals shall be de novo without prescribing any further procedure to be followed. In the remaining state, Massachusetts, appeal is to the district court and "it shall review such decision, hear any or all of the witnesses and determine whether or not upon the law and the evidence such decision was justified, and shall thereupon affirm, modify, or revoke such decision."

These statutes, which not only grant unlimited review, but require all petitions to be tried as a new case, are in sharp contrast with the California act, which has no provision for any appeal to the courts. Neither are there any additional procedures for handling administrative appeals. This arrangement appears to be better adapted to the adjustment of appealed claims than are

reads: "... any party aggrieved thereby may secure judicial review thereof by commencing an action in the District Court of the County in which the employee claiming compensation resides ... ." N. D. Laws (1937) c. 232, § 8(1).

80. R. I. Gen. Laws (1938) § 9. Upon further appeal to the supreme court, the lower court's findings of fact are conclusive.
81. Petition for review is permitted before a municipal or a chancery court, but if appeal is not sought before such tribunals within the allotted time, any interested party may appeal to the supreme court, and in such cases the supreme court is limited to a consideration of questions of law which are certified by the commission. Vt. Act 1 of 1936 (E.S.) § 8(g)(h)(j).
the schemes employed in other states. Initial determinations are made by a deputy and the usual five-day period is allowed for appeal to the appeal tribunal, which is a single referee. The referee's decision may be appealed to the commission in the same manner that prevails in other states, and the decision on such further appeal is final.

CONCLUSION

Clearly, the provisions for appeal and judicial review of unemployment compensation decisions will require adjustments. It is not to be expected that a system of quasi judicial tribunals designed and established before the program began to function would be entirely satisfactory or that such a system could be placed at once in its ultimate position in the field of American jurisprudence (which has as yet few definitive and generally received principles for the review of administrative determinations). Applicable precedents were entirely lacking. Provisions for review of workmen's compensation awards afforded the only pattern, and there are differences of considerable significance between these two programs, especially in their respective legal positions.83

The field of social insurance legislation and administration is already extensive, and it appears quite likely that other similar programs will be adopted in the future. It is all the more important, therefore, that a study be made of their judicial and administrative problems. The paramount objective is the efficient and equitable administration of a statute—a statute conferring limited rights to an increasing number of workers; but no element is more necessary to the attainment of that aim than the development and application of the judicial attitude. Whether this attitude can best be developed and applied in a system of tribunals not directly related to our ordinary courts, as in Great Britain,84 is perhaps the first and most fundamental question to be answered.

Complete uniformity of state statutes is not to be expected, although it is apparent that it would be desirable to have greater similarity than exists at present. Although the details of the individual state benefit programs vary considerably, the essential features are similar, and every state agency accepts claims for

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83. Some of these differences are discussed in Pennock, supra note 61.
benefits due under the statute of any other state. However, the experience obtained under different methods and scope of review in the various states can be of great value in determining the general outlines of the most suitable system, if it is made available and studied. No examination of method or principle, however, should get out of touch with the nature of the program. The best hearing will always be the one based on the facts related by the parties at the time and at the point of occurrence, and there is a great need for an understanding of present methods of production, their history and the industrial background.