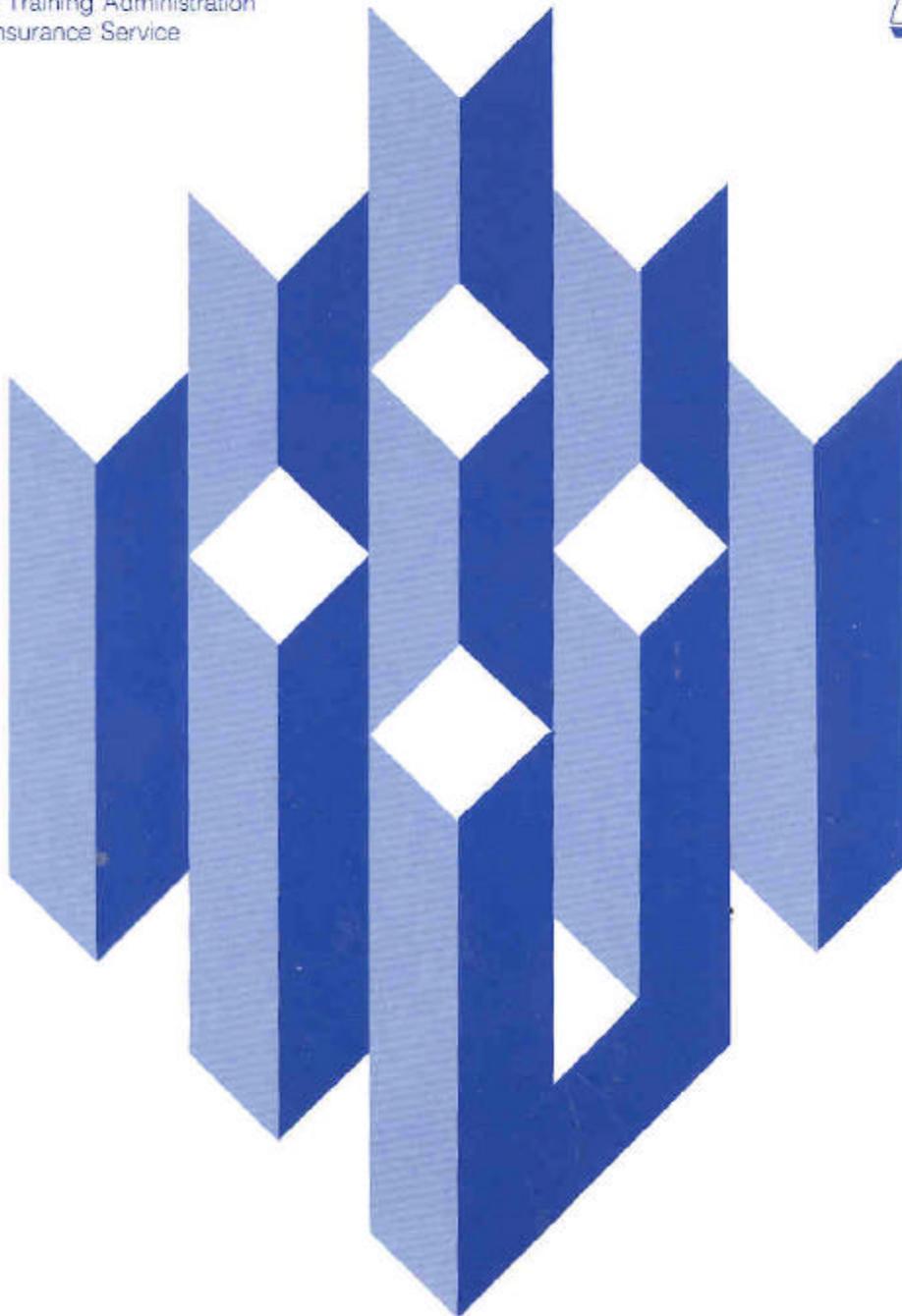


Leadership in Appellate Administration: Successful State Unemployment Insurance Appellate Operations



Unemployment Insurance
Occasional Paper 89-7

U.S. Department of Labor
Employment and Training Administration
Unemployment Insurance Service



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U.S. Department of Labor
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Employment and Training Administration
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Unemployment Insurance Service
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The Unemployment Insurance Occasional Paper Series presents research findings and analyses dealing with unemployment insurance issues. Papers are prepared by research contractors, staff members of the unemployment insurance system, or individual researchers. Manuscripts and comments from interested individuals are welcome. All correspondence should be sent to UI Occasional Papers, Unemployment Insurance Service, Frances Perkins Building, Room S-4519, 200 Constitution Ave., N.W., Washington, D.C. 20210.

LEADERSHIP IN APPELLATE ADMINISTRATION:

**SUCCESSFUL STATE UNEMPLOYMENT INSURANCE
APPELLATE OPERATIONS**

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PREFACE

This publication contains a portion of the collective wisdom of eighteen experienced and successful unemployment insurance appeals managers from fifteen States. These authors have given freely of their expertise, experience, and time in an effort to describe how they have achieved appeals promptness in their States. They have candidly described what has been done to achieve prompt appellate processes in their States. They have not written something which purports to be the best way or the only way to decide appeals promptly. Their work clearly documents a vast number of ideas that have been implemented and have proven to be successful.

The Project Coordinator, Jack Bright, tried to limit his editing of the authors' work to changes that were needed to make each piece fit into a unified structure for the entire publication. The editing was done to make the individual parts parallel, so that the reader can relatively easily compare how specific tasks are performed in each State. Each of these success stories is unique, and heavy-handed editing would have resulted in some of that uniqueness being lost or critical elements of a successful approach being edited out. Furthermore, it would have been presumptuous for him to impose his writing style upon individuals possessing the qualifications of these authors.

Each of the authors has graciously offered to supply additional and more specific information upon request. Their addresses and phone numbers are listed on the following pages.

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There are a number of people who must be recognized and thanked for their support and assistance in the preparation of this publication. Without their ideas, help, and encouragement the project that produced this publication would not have been conceived, approved or completed.

Joseph R. Gerace, Chairman of the Louisiana Board of Review, planted the seed of the idea for this project in February 1986. During a discussion at the Unemployment Insurance Appellate Board Training Conference at the National Judicial College, Mr. Gerace suggested that the best performing States in each U.S. Department of Labor Region should meet and document the methods they used to achieve high degrees of appeals promptness. The project to produce this publication grew from that seed.

Sandra T. King, Chief, Division of Program Development and Implementation, Office of Program Management, Unemployment Insurance Service, provided a great deal of help in obtaining approval to proceed with the project, and in preparing the materials announcing the commencement of the project.

Dan Riordan from the San Francisco Regional Office and Chuck Vantrees from the Atlanta Regional Office were very helpful with the coordination of the meetings of the authors. David Balducchi from the Office of Regional Management provided "behind the scenes" help, and encouragement throughout the project.

Each of the authors who participated in this effort did any and everything asked of them. Their enthusiasm and hard work were the most important contributing factors to the successful completion of this project. The authors' clerical and support staffs made a considerable contribution to the project with their assistance in preparing the many drafts of the materials.

Working with all of these people who are dedicated to working for a better unemployment insurance appellate system was a privilege and a pleasure. Many thanks to each of them.

JACK BRIGHT

PART ONE

I. INTRODUCTION

This paper is the result of a project to document the administrative practices and procedures used in a number of States to achieve high levels of promptness in deciding unemployment insurance (UI) appeals. The project concentrated exclusively on the administration and management of the appellate process. It did not attempt to investigate the elements of a "fair hearing" or "due process of law". Neither did the project attempt to develop the one best and most cost effective method of UI appeals administration. The goal of the project was to produce a resource document which would facilitate the sharing of expertise among the States' appeals administrators. This compilation of papers is that resource document.

This document will describe how fifteen separate State appeals units achieve levels of appeals promptness at either the lower or higher authority levels that exceed the criteria in the Secretary's Standard or the Desired Levels of Achievement. The fifteen States that participated in the project have willingly and candidly reported what they do and how it has produced the desired result, the prompt disposition of unemployment insurance appeals.

A portion of the project's goal of sharing expertise has already been realized. Some of the State participants are planning to implement successful techniques used in other States that they learned about while working on this project. This sharing of ideas by States that have successful performance records clearly establishes that no one State has a copyright on all of the good ideas or the best possible system for deciding appeals.

Part Two contains descriptions of the unemployment insurance appellate systems in fifteen States. These are systems that have been used by these fifteen States to achieve levels of appeals promptness exceeding the criteria in the Secretary's Standard and the Desired Level of Achievement. Each system has similarities to and differences from the other systems. The systems described are from States with vast differences in geographic size, population density, and appeals workload. But each one has a common attribute, good appeals promptness performance.

The participating State agencies and the U.S. Department of Labor's Unemployment Insurance Service hope that the States will find this publication useful in the endeavor to achieve an appeals process that promptly serves the citizens of every State.

II. PROJECT DESCRIPTION

In March 1988, the Unemployment Insurance Service Director

approved a proposal to seek State agency participation in documenting the administrative and management practices used in successful State appeals operations. A directive (Field Memorandum 59-88) dated April 18, 1988, asked Employment and Training Administration Regional Offices to solicit proposals from the States in their Regions. The States were requested to submit proposals to participate in the project. The proposals were to include a brief description of a portion of the State's appellate process or its complete appellate system and an outline for a comprehensive "working paper" describing the system or element being proposed for inclusion in the project.

Proposals were submitted by twenty-three States. The proposals from each of four workload ranges were then evaluated on the basis of quality of the described system, the potential for use of the described system in other States, the writing skill demonstrated in the proposal, and the State's appeals promptness performance record. The four workload ranges used were: Range One - Fewer than 5000 Lower Authority Appeals Cases per Year and Fewer than 1000 Higher Authority Appeals Cases per Year; Range Two - Between 5000 and 14,000 Lower Authority Appeals Cases per Year and Between 1000 and 2,500 Higher Authority Appeals Cases per Year; Range Three - Between 14,000 and 20,000 Lower Authority Appeals Cases per Year and Between 2,500 and 5,000 Higher Authority Appeals Cases per Year; and Range Four - More than 20,000 Lower Authority Appeals Cases per Year and More than 5,000 Higher Authority Appeals Cases per Year.

From the twenty-three excellent State proposals, fifteen were selected for participation. The fifteen States selected are arrayed by range below.

Lower Authority

Range 1 Fewer Than 5,000	Range 2 5,000 - 14,000	Range 3 14,000 - 20,000	Range 4 More Than 20,000
North Dakota West Virginia	Iowa Kentucky South Carolina	Indiana North Carolina Oklahoma Oregon	Florida Illinois Pennsylvania Texas

Higher Authority

Range 1 Fewer Than 1,000	Range 2 1,000 - 2,500	Range 3 2,500 - 5,000	Range 4 More Than 5,000
North Dakota West Virginia	Arizona Arkansas Indiana	North Carolina Oregon	Texas

After the selected States were notified, their authors prepared comprehensive "working" papers describing the appeals systems and procedures used in their States. The "working" papers were

exchanged among all the authors and the project coordinator. In early August 1988, the authors, Regional Office staff members from San Francisco and Atlanta, and the National Office project coordinator met for two days in Washington, D.C. During this meeting the authors from each workload range met as subgroups to plan and coordinate their efforts to produce this paper. Preliminary plans were developed for the structure and content of this document.

The authors spent the next several weeks preparing first drafts of the components of this paper. There was another two day meeting in Washington, D.C. in mid-September 1988. At the September meeting the preliminary plans were modified and refined. Consensus was reached on a final outline for this paper and plans were made for each of the authors to complete final drafts of the component parts by December 1988.

The parts were then assembled, edited, and prepared for publication by the project coordinator with the help of the two Regional Office staff members. This publication is the product of the efforts of about twenty different authors and an uncounted number of typists, clerks, and support personnel from the States involved in the project. In keeping with the view that there is no single best way to process appeals, the project coordinator has not attempted to impose a single best style of writing or organization on the authors of the various parts of this publication. An attempt was made to arrange the pieces in a way that would make it possible for the reader to compare and contrast the methods used by these fifteen States, to insure that each piece fit into the general organizational structure of the paper and that each system description contained the elements common to most UI appellate processes.

It was the project coordinator's preconceived opinion that workload levels would be an important factor in determining the methods and procedures used by the States. There is nothing in this paper to support that notion. In fact, Robert Sparks, the Chairman of the Arizona Board, has summarized the consensus opinion of the project participants as follows: "The one common denominator of all participating States that contributed the most to achieving Federal timeliness standards is a flexible management style with genuine commitment to meeting the Federal standards. In the 15 participating States there exists no one best way to achieve this objective. Neither workload size, nor automation, nor the lack of automation, nor geographic or demographic diversity is determinative of achieving promptness."

It is the project coordinator's considered opinion after working with the project participants for several months that one of the critical factors in the success of these 15 States is a group of hardworking individuals genuinely committed to not just meeting some Federal standards, but more importantly to serving the public.

This paper assumes that the reader has at least a general familiarity with the concepts of unemployment insurance, the Federal-State partnership, and the structure of State employment security agencies. An attempt has been made to use generic terms to the extent possible, where State specific terminology has been used, an effort has been made to define and clarify that terminology. The terms lower authority or lower authority appeals will be used to designate the first level of the appellate process in which the parties participate in an evidentiary hearing before a hearing officer. The terms higher authority or higher authority appeals will be used to designate the second level of the appellate process, which is typically a review of the first level of the appellate process. Appeals personnel for some unknown reason usually say "time lapse" when they are talking about promptness or lack of promptness. The more positive term promptness will be used here because there are not "time lapse" problems in the State UI appellate processes described in this paper.

III. THE APPEALS PROMPTNESS STANDARD AND DESIRED LEVELS OF ACHIEVEMENT

The Standard for Appeals Promptness - Unemployment Compensation, 20 CFR 650, was originally promulgated in 1972 in response to the decision of the U.S. Supreme Court in California Department of Human Resources v. Java, 402 U.S. 121 (1971). The Standard requires hearings and decisions, "with the greatest promptness that is administratively feasible".

The regulation specifically states that the Secretary of Labor's interpretation of Sections 303(a)(1), and 303(a)(3) is applicable to both first and second level administrative benefit appeals. The regulation also provides that the criteria for review of State compliance apply only to first level benefit appeals. For calendar years 1975 and thereafter a State is deemed to comply with the requirements of the regulation if it issues at least 60 percent of all first level benefit appeal decisions within 30 days of the date of appeal and at least 80 percent of all first level benefit appeal decisions within 45 days.

Since Fiscal Year 1982, a Desired Level of Achievement for second level benefit appeals has been a part of the State Agency Program and Budget Plan (PBP) for Unemployment Insurance Operations. This Desired Level of Achievement is issuance of at least 40 percent of all second level benefit appeal decisions within 45 days of the date of appeal and at least 80 percent of all second level benefit appeal decisions within 75 days.

The performance of the States in meeting these promptness goals has not been uniformly successful. A sizeable number of the States have consistently met or exceeded the criteria. More than half of the States have usually been successful, but from time to time have not met the goals. Usually these declines in

performance occurred for identifiable and understandable causes, and the problem was remedied within a reasonable period of time.

Unfortunately, there has also been a relatively small number of States that have perennially had difficulty in achieving the goal of prompt performance. The number and variety of reasons offered for these difficulties has far exceeded the number of States with difficulties. The reasons offered for poor performance run the gamut from, "The criteria are too tough", "Workload is too high", "Workload is too low", "Workload fluctuates too much", "Funding is inadequate", "There's a State hiring freeze", "It is difficult to find qualified staff", "We need automation", "We're having problems with our automated system", "Our State law makes it impossible to meet the criteria" to "We cannot be more prompt without sacrificing quality". These reasons, excuses, and/or problems seem to have occurred in many of the States on many occasions, but most of the States seem to have overcome them or found ways and means of dealing with them.

What has been done to achieve good promptness performance in the States chosen for this project should demonstrate that the barriers to prompt performance can and have been overcome in a wide variety of settings.

PART TWO

SECTION ONE - LOWER AUTHORITY APPEALS

I. RANGE ONE - NORTH DAKOTA AND WEST VIRGINIA
(FEWER THAN 5000 CASES PER YEAR)

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A. INTRODUCTION

North Dakota and West Virginia were selected from the States whose lower authority appeals workload is fewer than 5000 cases per year. These two States in recent years have had good track records for promptness. North Dakota has a long history of excellent performance. West Virginia for a period of time did not perform well, but in recent years has overcome those difficulties and has been very prompt.

In the context of this project, these two States are different from each other in virtually every respect except for annual appeals workload and prompt UI appeals processes. The description of their procedures which follows should be helpful to any State which shares common characteristics with either of them. It will be worth the reader's time and effort to carefully study this description to learn how and why there are differences in techniques, and to recognize the similarities in the general approach to the task by both States.

North Dakota has an appeal system which is fully automated on the agency mainframe computer. It is integrated with the benefit system. The Appeals Section utilizes the agencywide Word Processing Center. Their automated system is fully documented and the documentation is available upon request.

The West Virginia Board of Review (the Board) is an appeal system which functions without any automation whatsoever. They have no input to the benefit system. The Board does not utilize word processors. Some of the secretaries at the Board do have memory typewriters, but even these typewriters have limited capabilities and memory capacity.

B. STATE GEOGRAPHY AND DEMOGRAPHY

North Dakota is in the north central portion of the United States. It has an area of 69,273 square miles, and in 1980 had a population of 661,400. The principal cities are Bismarck (the State capitol), Fargo, Grand Forks, and Minot. The topography of the State is rolling plains in the eastern half of the state and rolling hills in the western half (North

Dakotans brag about having their mountain removal project completed). The principal industries include the coal and coal fired electrical and gasification plants, grain farming, cattle, and oil industries.

West Virginia is in the eastern portion of the United States, and has an area of 24,282 square miles. The population, according to the 1980 census is 1,949,644. The principal cities are Charleston, the State capitol, Beckley, Wheeling, Clarksburg, Parkersburg and Huntington. The topography of the State is mountainous terrain. The principal industries are the chemical, agricultural and coal industries, with coal being West Virginia's principal natural resource.

C. APPEALS UNIT STRUCTURE

In North Dakota, the Appeals Unit is in the Job Insurance Division of Job Service. The chief appeals referee reports to the division director. The executive director of Job Service reports to the Governor.

The North Dakota Appeals Unit has three referees who have decided up to 3,500 lower authority appeals in one year. Approximately 85 percent of the hearings are done by telephone conferencing.

In West Virginia there are not separate administrative units for the lower authority or higher authority appeals operations. Both levels are functionally integrated and are collectively referred to as the Board of Review. The support staff performs clerical functions for both the lower and higher authority personnel. In addition, the Chief of Staff and the Chief Administrative Law Judge perform duties that overlap the lower and higher authorities. There is no jurisdiction at the lower authority level in regard to tax appeals. There are, of course, administrative distinctions between the State agency and both appeals levels. Primary contact between the State agency and the lower authority appeals level occurs between the local office staff and the administrative law judges (ALJs). In many cases the local office deputies offer testimony at hearings. In addition, some central office personnel appear at evidentiary hearings before an ALJ. From a decisional standpoint the relationship between the state agency and the higher authority is limited. Most contact occurs when counsel for the Department appears at hearings before the Board. Administratively there are significant contacts between the State agency and the Board. On fiscal matters the Board's budget and expenditures must be approved by the State agency. Personnel matters are covered by the State's merit system, and technically require State agency approval. In practice, the Board has broad discretion in selecting staff. There are also routine contacts of a varied nature between the Board and the State agency.

While there is no separate administrative unit covering the work of the lower authority, a Chief Administrative Law Judge has been appointed who has the functional responsibility for supervision of the persons who perform lower authority work.

The professional staff consists of six ALJs and one Chief ALJ. The support staff performs clerical services for both the lower and higher authority processes. No recent time studies have been performed which precisely indicate the division of time spent by the support staff on higher authority work or lower authority work. Approximately 75% of the time of the support staff is spent in performing work for the lower authority.

In the past five years the appeals have averaged about 5,000. However, there has been a significant decrease in the number of appeals at the lower level. In 1987, 3,610 cases were heard. The lower authority is a centralized operation with 21 hearing sites. About 15% of all hearings are conducted by telephone.

D. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

1. Appeal Filing and Intake

In both States, after a claim has been established at a local office and all pertinent information is received and considered, a deputy's determination is issued. Any party of interest may appeal the determination at either the local office or by mail to the Board of Review.

In West Virginia, after an appeal is filed, the local office submits it with all relevant documents to the Board. These documents include the deputy's determination, factfinding statements, appeals forms with signature of appellant when filing appeals in person and/or letter from appellant stating his/her appeal and any other information utilized by the deputy when making the determination.

In North Dakota all determinations are issued from the central office and, therefore, the benefit folder is sent to the Appeals Section when an appeal is filed.

In West Virginia, the Board of Review receives appeals from 18 local offices on a daily basis. Mail is received, date stamped, counted, and forwarded to the appeals clerk for processing. The appeals clerk checks each appeal for accuracy and timeliness, and arranges the documents in proper order. If additional documentation is needed, it is requested from the appropriate local office. Each appeal is identified with an "A" case number and listed in the "A" case register for that number. The clerk then types a self-carboning Individual Appeals Report (BR-1) completing the upper section with the exception of one line. The pink copy is then removed and sent to the Data Processing Unit. Each case is then placed in a file folder annotated with the claimant's name, social security number, and employer.

The local office where the claim was filed is noted on the outside of the folder so the docket clerk will know where to schedule the case for hearing. A history card is then typed with more specific information and filed for ready reference of the office staff. The file is then given to the docket clerk for scheduling.

In North Dakota, when a request for appeal is received, the Appeals Section requests the claimant file from the Benefit Section. This file is reviewed for completeness and the more specific information is entered into the automated appeals tracking system. Folders are filed by city for in-person hearings and placed in a time date file system for teleconference hearings. The file is stamped to temporarily identify it as an appeals folder. This stamp includes room for the time lapse date, and space for claimant and employer name and phone numbers. The individual referees do their own scheduling.

2. Record Retrieval and Creation of Tracking Mechanism

In West Virginia, each of the 18 local offices is responsible for obtaining all pertinent information relevant to the appeal and forwarding it to the Board not later than the day following the day of receipt. In North Dakota, that same responsibility is placed upon the Benefit Section.

In West Virginia, for tracking purposes, a stamp is placed on each file folder in order to record the following information: date appealed, date received, date heard, date dictated, date typed, date closed, and date reopened. This procedure provides the capability of determining the step or steps most responsible if the promptness criteria are not met. In North Dakota, this same data is available in the tracking system and is a part of the monthly management reports.

3. Scheduling and Notice Preparation and Mailing

In West Virginia, as files are received, the docket clerk types a Notice of Hearing for each file. Dockets are set on Mondays and Fridays. The docket clerk pulls the cases to be set for each docket, placing like cases together and cases involving attorneys at the end, as they tend to take extra time. The docket sheet is then typed. The ALJ assigned to preside at the hearing has previously supplied the docket clerk with the dates and times to be used during that particular week. The date of hearing is typed on the Individual Appeals Report (BR-1) in each file and the white copy is sent to the Benefit Unit for entry of the date of the hearing in the State agency's computer. Date and time of hearing are entered on each Notice of Hearing. Other items to be completed on the Notice of Hearing are the name and address of the claimant and employer, case number,

local office, name of deputy who made the determination, and the date of the determination. Cases are then recorded on a docket sheet showing the time and date for each hearing. Copies of the Notice of Hearing are then prepared and mailed to all interested parties. A copy of the docket sheet is supplied to the local office involved so its personnel may participate in the hearing if necessary. After the notices have been mailed, the files are mailed to the ALJ. The "A" case register is then posted with the date of the hearing and the initials of the ALJ.

In North Dakota, the referees do their own scheduling. They give the schedules to the support person who enters them into the automated tracking system. The computer then automatically generates a Notice of Hearing that is distributed similarly to the process used in West Virginia.

The West Virginia Board has the capability of conducting a telephone hearing if one of the interested parties is located out of state. If an appeal needs to be scheduled for a telephone hearing, the docket clerk mails to all interested parties a telephone hearing response form. The interested parties are given eight days from the mailing date to return the form to the Board with the information needed to schedule a telephone hearing. After this procedure is completed, the docket clerk follows the normal procedures for scheduling of hearings.

In North Dakota, 85 percent of the hearings are scheduled by phone. Parties of interest are given an "800" number to call approximately ten minutes before the hearing time to leave a telephone number where they can be reached for the teleconference hearing.

The West Virginia Statutes require the Board to give a ten-day notice of a hearing. In North Dakota, a seven-day notice is required. During this period of time, the Appeals Unit receives and acts upon requests from interested parties regarding continuances, subpoenas, etc. If a continuance is granted, a Notice of Continuance is mailed to all interested parties.

4. Prehearing and Hearing Mechanics

In West Virginia, the entire docket with complete files is mailed to the ALJ the same day the notices are mailed to all interested parties. This process gives each ALJ time, prior to the hearing, to review the files and, if necessary, research the issues. It also allows for time to obtain any additional needed documentation without the necessity of a continuance.

5. Decision Making Mechanics

In both States, absent unusual circumstances, ALJs and referees are required to make their decisions within three days of the hearing. In West Virginia, a secretary types the decision and returns the file to the central office. In North Dakota, the referee dictates the decision. It is typed by the Word Processing Center and returned to the referee. Law sections and definitions are stored in the word processing system and are called variables.

6. Decision Duplication and Mailing

In both States, when the decision is returned to the Appeals Section, it is proofread, dated, photocopied, and mailed to all interested parties. In North Dakota, the computer generates a cover sheet. The cover sheet contains the names and addresses of the parties of interest and basic information to identify it as a decision, including information about further appeal rights. This eliminates a great deal of difficult proofreading and typing.

7. Performance Tracking and Reporting

In West Virginia, the primary performance tracking document utilized by the Board is the monthly report submitted to the U. S. Department of Labor. The Board also generates a monthly report showing the number of lower and higher authority appeals received, the number of cases heard by each ALJ, the number of continuances granted, the number of decisions typed by the clerical staff, the number of transcription pages typed by each staff member, and other miscellaneous information.

In North Dakota, all reports required to be submitted to the U. S. Department of Labor are generated by the computer tracking system. It also generates six different management reports that measure workload and performance. The automated system also eliminates the need for paper dockets, hard files, or any type of registry. This information is all available in the computer system.

8. Records Control and Closeout Procedures

In West Virginia, the last copy of the BR-1 is marked with the date closed and held for future reference when making reports. Disposition is then marked on history cards, registry book, and the outside of the folder. Cases are then filed alphabetically in the "closed" files. In North Dakota, the folder is returned to the Benefit Section; it contains both the benefit and appeals information and pertinent documentation. The results are entered into the tracking system.

E. PROCEDURES IF FURTHER APPEAL IS FILED

In West Virginia, each interested party has eight days from the date of mailing of the ALJ's decision to appeal to the Board. All parties are notified of the filing of the appeal and a transcript is prepared for each appeal. After the transcript is completed, a hearing is scheduled. Oral argument is permitted in each case.

In North Dakota, review persons are not given a transcript. They work from the hearing tape recording. A transcript is prepared only when a case has been appealed to the court system. Written argument is permitted, and if more information is needed to complete the review, the case is remanded to the appeals referee to reopen or redo the hearing.

PART TWO

SECTION ONE - LOWER AUTHORITY APPEALS

II. RANGE TWO - IOWA, KENTUCKY, AND SOUTH CAROLINA
(5,000 TO 14,000 APPEALS PER YEAR)

A. INTRODUCTION

Iowa, Kentucky, and South Carolina were selected from the States whose annual lower authority appeals workload is between 5,000 and 14,000 cases. These three States have all had good promptness track records for several years. As with each of the other groups of States there are more differences among these three States than there are similarities. They are located in different parts of the country, and the economy, geography, and demography of each is different from the others.

The structure of these States' lower authority appeals operations and the descriptions of the operations are different enough that it will be easier to divide this portion of the paper into a subsection for each of the three States.

B. IOWA

AUTHOR: William Yost

1. STATE GEOGRAPHY AND DEMOGRAPHY

The State of Iowa is located in the Midwest and the State capitol is Des Moines. State population is approximately three million. It is principally an agricultural State but it is also the second largest insurance center in the United States. The Missouri River is the western border and the Mississippi is the eastern border. While agriculture is the largest industry, the State has hundreds of thousands of acres of hardwood timber. There are many lakes; one, Lake Okoboji, is the only blue-water lake in the continental United States. The State enjoys the second highest literacy rate in the nation and is home of two of the nation's leading medical and veterinary schools. Its manufacturing industry is diversified with emphasis on tire and farm implement production. Two Interstate highways intersect near the center of Iowa and create a hub for the central United States.

2. APPEALS UNIT STRUCTURE

The State of Iowa's Appeals Bureau is located in the Job Service Division and has a 23-member staff. The staff includes a chief administrative law judge (ALJ), 13 ALJs, and a 9-member clerical unit. In addition, there is a three-member support group in the word processing section which is not directly managed by the Appeals Bureau. This group provides transcript and decision preparation service.

The Appeals Bureau is a centralized operation in the Job Service Division's administrative office in Des Moines. There are 16 in-person hearing sites scattered throughout the State. All staff members are assigned to the Bureau's Des Moines office and travel from it to conduct hearings at the in-person hearing sites. Usually there are three ALJs conducting in-person hearings throughout the State each week. Approximately 75% of all hearings are conducted by telephone. All of these telephone hearings originate from the Bureau's Des Moines offices to any and all points throughout the United States.

During the past ten years, the annual caseload has been approximately 14,000 hearings. In addition, the Appeals Bureau decides approximately 250 tax or liability cases annually. In these cases the Bureau is the final administrative adjudication prior to court review.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

By administrative rule and information supplied to all claimants and employers throughout the claims process, parties are instructed to file appeals by mail directly to the Appeals Bureau's address. Parties may still file an appeal in a local office and it will be forwarded to the Appeals Bureau the following day. Direct mailing to this designated address avoids the delays caused by mail being misdirected to other parts of the Department. Appeals must be in writing, and 98% of the appeals are received directly at the Appeals Bureau office. With anticipated further automation, appeals received in local offices will be transmitted electronically to the State agency's mainframe computer, and the documents will follow by mail.

b. Record Retrieval and Creation of Tracking Mechanism

On the day an appeal is received, it is matched with the claim folder by a member of the Appeals Bureau staff. This procedure adds control of, and motivation for, prompt file retrieval. The collated files are then placed in an intake tub for review and preparation of a worksheet by an ALJ. This results in extracting needed information from the file for preparation of a docket card, and for entry of this information into the computer. Cases that will have in-person hearings are sorted according to the hearing site, and those cases that will have telephone hearings are placed in the "telephone" file. The worksheet creating the basis for the docket entry as well as entry of the essential information into the computer, is ordinarily completed on the same day that the file is retrieved, or at the latest the following day. With anticipated further automation, an automated tracking mechanism for records control and ascertaining responsibility is expected. At present, the tracking mechanism employed to determine disposition and responsibility consists of each ALJ being required to mark the status of each case on his or her itinerary and turn it in each week.

c. Scheduling

Telephone hearings are scheduled in the order in which they are received. The 30-day time frame is marked on the file so that the ALJ judge can readily identify the thirtieth day from the file.

Single-party telephone hearings can be held on short notice if the party is willing. Ordinarily, single-party cases can be disposed of quickly, and our experience reveals that most individuals willingly waive notice if given that opportunity. The ALJs are encouraged and most willingly retrieve this type of file when their schedules permit.

They call the party directly, and if the party is willing to waive formal notice, they proceed to conduct the hearing.

Scheduling of in-person hearings is based upon pending workload at the given hearing site. Accordingly, a number of in-person hearings do not achieve the 30-day standard because of lack of staff necessary to regularly visit each of the 16 hearing sites.

The clerical staff is trained and motivated to meet the concept that, "Justice delayed is justice denied." Regular reviews by management of schedules and itineraries reveals if this goal is being achieved.

d. Notice Preparation and Mailing

Currently, hearing notices are typed from the worksheet that was initially prepared at intake. Thus, the information on the notice as to the issues and law sections involved comes from information extracted from the file by an ALJ. The notices are mailed approximately 11 days in advance of the hearing because of an Iowa law requirement. Ordinary mail, not certified mail is used. Our experience with certified mail was dismal in that many individuals would get the notice of certified mail in their absence but not pick it up for a multitude of reasons.

e. Prehearing and Hearing Mechanics

Iowa is an Administrative Procedures Act State and thus all the discovery processes available to individuals in civil actions are available to parties in contested cases involving unemployment insurance. The initiation of discovery, be it interrogatories or depositions, almost without fail delays the case beyond the 30-day criterion. Fortunately, this practice is used in only 4% to 5% of the cases. Each ALJ is responsible for granting or denying postponements of cases and has agreed to a standard of performance not to exceed a 10% postponement rate. This postponement rate is measured in 60-day intervals, and the report showing the percentage of postponements for each ALJ is shared with the entire staff. The 1967 average postponement rate for all ALJs was 6%. A request for a change from a telephone hearing to an in-person hearing cannot be denied under Iowa law if both parties reside in an area served by the same geographic hearing site. This type of request accounts for most of the postponements that are experienced. The ALJs are encouraged to, and in most instances do, attempt to get the parties to agree to a telephone hearing on a day that is still within 30 days of the appeal date, when requests to reschedule a telephone hearing are made. Each week the ALJs conducting telephone hearings are not scheduled on two different half days to provide time for correcting transcripts, completing dictation and other office responsibilities. Since ten

ALJs regularly conduct telephone hearings, there is always at least one ALJ who has no hearings scheduled on any given half day. This provides the necessary backup if an ALJ is needed to conduct a hearing that was scheduled to be heard by another ALJ who is involved in an unusually long hearing. This reduces delays and postponements.

f. Decision Making Mechanics

ALJs are expected, in most instances, to dictate the decision on the same day that the hearing is conducted. Dictation is done with the aid of an ALJ dictation guide which readily provides case authority and citations for numerous propositions. In addition, our word processing center has approximately 100 stored laws in their equipment. Thus, an ALJ can routinely dictate a number to have the full text of a particular statute or significant statement from a Supreme Court decision typed without having to dictate it in its entirety. This increases promptness, reduces proofreading time, and eliminates error. When traveling, ALJs are expected to send the first two days' dictation through office couriers to the administrative office so it can be prepared and be on their desks in rough draft form upon their return. If rough drafts are returned after the ALJ has left the office to return to the road, vacation, etc., another ALJ will correct them to avoid delay.

g. Decision Duplication and Mailing

The rough drafts are returned to the word processing center for preparation of the final copy, which is returned to the Appeals Bureau the following day. Decisions are again proofread for obvious errors and stamped with a facsimile signature by the support staff who initial the facsimile signature to identify the mailer. Multiple copies of the decisions are printed that same day and then mailed the following day. If the thirtieth day is the same day as the hearing, the ALJ is expected to dictate the decision and appropriately designate it so that it may be hand-processed through the system and mailed the same day.

h. Performance Tracking and Reporting

Currently, performance tracking of the individual ALJs is a laborious process that will soon be replaced with an efficient automated system. ALJs are also monitored on a random basis to determine whether or not decisions are promptly issued. This, however, can ordinarily be identified on a weekly basis upon the return of their itineraries, which show the disposition of various cases. If it is apparent that cases heard are not being decided within the time frames allowed by rule authority (seven days from the date of the hearing) or within the 30-day criterion if the file would require an earlier disposition,

then the Chief ALJ can visit with the particular individual to ascertain what difficulties may have occurred. The office manager regularly tracks the disposition of cases, and reports directly to the Chief ALJ. This information is also extracted from the computer by the State agency's Audit and Analysis Division, who files the required reports with the U.S. Department of Labor.

i. Records Control and Closeout Procedures

All records and information are stored in our computer system. In addition, a copy of all physical exhibits, decisions and docket cards are retained. The testimony tapes are maintained in a file and are not transcribed unless there is further appeal. This file is accessible to only two individuals, which prevents random staff members from taking tapes out without some inventory control. Iowa law requires that they be retained for only 60 days in the absence of further appeal, however all tapes are retained for a period of four months. Exhibits are placed in an envelope marked appropriately and secured with the legal file for the case. By placing them in an envelope and segregating them from the claim file, we have found that very few exhibits are lost.

4. PROCEDURES IF FURTHER APPEAL FILED.

The higher authority, the Iowa Employment Appeal Board, is a separate entity from the Department of Employment Services and is housed in the Department of Inspections and Appeals. This entity is separate both legally and logistically from the Department of Employment Services. Consequently, a formal agreement was made between the Appeals Bureau and the Iowa Employment Appeal Board about certain performance expectations. We mutually agreed that information belonging to one or the other will be exchanged within a 24-hour period exclusive of weekends. Thus, a Board appeal filed erroneously with us, will be transmitted to the Board for their docketing within a 24-hour period, and the converse occurs. Upon notification that an appeal has been filed from an ALJ's decision to the Iowa Employment Appeal Board (notification is supplied on a daily list to the Appeals Bureau), the tape and all documents, exhibits and files are immediately secured to eliminate their loss or destruction.

Both entities exchange files, documents, tapes and information by inventory signed by the party to be charged with the responsibility for possession of them. This has eliminated a great deal of disagreement as to who had the file or item last. The tape is forwarded to the Iowa Employment Appeal Board, whose staff transcribe it and send a rough draft to the Appeals Bureau for correction of the record of appeal. This same inventory process runs throughout. Upon completion of the record, the ALJ certifies the transcript of the proceedings for the Employment Appeal Board. A disposition by the Board is

likewise communicated to the Appeals Bureau within 24 hours of the date of disposition. A harmonious administrative relationship exists between the Appeals Bureau and the Board.

5. CONCLUSION:

The stressing of the importance of timely disposition of appeals commences at the time of hire, continues throughout the training process and recurs on a regular basis by motivating staff as to its purpose and desirability. At the time of hire, all prospective candidates for employment are fully acquainted with the high workload that is the nature of the job as well as the expectation of timely disposition of one's work. This continues throughout the training process, and individuals are instilled with the desirability of timely performance from the standpoint of the benefits to the participants as contrasted with merely accomplishing it because of the mandatory regulations of the U.S. Department of Labor. ALJs and clerks are imbued with the concept that, "Justice delayed is justice denied." It is impressed upon all that the importance of the promptness and the disposition of an appeal comes from a "fairness" concept to the parties without regard to resulting eligibility or ineligibility. Instilling this concept and philosophy into staff at the onset and throughout their employment makes more acceptable the various office procedures that are employed to achieve this result.

C. KENTUCKY

AUTHOR: Ron Marlette

1. STATE GEOGRAPHY AND DEMOGRAPHY

Kentucky is a State filled with a great amount of diversity due to its distinct geographical location. It covers nearly 40,000 square miles of varied topographical area including the eastern mountains, the central blue grass regions with its rolling plains, and the western plains. Kentucky has traditionally been an agricultural State but has become more urban and manufacturing oriented. Its principal cities are Louisville, Lexington, Owensboro, Covington, and Bowling Green. It is twenty-third nationally in population. While agriculture and coal mining are its principal industries; tourism and manufacturing have increased substantially. With its geographical relationship to all parts of the nation, Kentucky offers a great variety of industry, geography and people.

2. APPEALS UNIT STRUCTURE

The lower authority Appeals Branch is under the Unemployment Insurance Director who reports to the Commissioner for Employment Services. Higher authority reports directly to the Commissioner.

The Appeals Branch has 15 hearing officers and one supervisor. They have heard an average of 12,200 cases per year during the last five years. They are supported by a clerical staff of thirteen and one supervisor. It is a decentralized operation and hearings are conducted at 27 different sites. Currently about 30% of the hearings are conducted by teleconference.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

Kentucky's clerical process is totally automated. When an appeal is filed in a local office, that information is transmitted overnight by the computer to Appeals. By the time the written appeal is received, the case folder has already been set up.

When an appeal is received by mail, all information is put on the computer and the case file is set up while awaiting all hard copy paperwork.

b. Scheduling

Cases are scheduled daily. The earliest due date cases are scheduled first. Hearing officers and support staff are aware of the promptness criteria at all times. All hearing officers have equipment to conduct telephone hearings at

their "home" location. This allows all hearing officers to share the task of conducting telephone hearings. Telephone hearings are set with the thought of minimizing travel for the parties in interest. Telephone hearings are provided for by statute, but neither party is required to accept this method. However, the party objecting to the telephone hearing is required to travel to a hearing site near the party who does not object to a telephone hearing.

c. Notice Preparation, Subpoenas, and Continuances

All of these documents are generated through the computer. All the necessary information was put on the computer when the case was initially set up and can be recalled and used as needed.

d. Postponements

Postponements are the greatest problem in meeting and exceeding the promptness criteria. Over 20% of our cases are postponed each month. Our higher authority appeals unit, through their decisions, has basically ruled that any reason is sufficient for granting a postponement.

e. Decision Making Mechanics, Duplication, and Mailing

Hearing officers may call the Central Office to dictate decisions to meet a deadline. However, most cases are given to the clerical staff for typing. All decisions are dictated and the hearing officer uses code numbers for "canned" paragraphs that are stored in the computer.

f. Performance Tracking and Reporting

Daily printouts are prepared of each hearing officer's schedule. Any openings due to continuances will show where cases can be inserted.

Twice each month we receive a listing of cases that have not been released after being scheduled for a hearing. This alerts us that a case has been heard, but has not been decided.

Monthly, a detailed individual report is prepared for each hearing officer. This report shows promptness performance, how many cases were heard, how many hearings were by teleconference, how many hearings involved attorneys and many other interesting facts that you were afraid to ask. All of these statistics are the result of the computer compiling information stored in its data base.

4. PROCEDURES IF FURTHER APPEAL FILED.

Upon appeal to higher authority most of the information is already in the computer. The higher authority unit uses the

information that lower authority has entered in the computer and simply adds to it.

5. CONCLUSION.

Our success stems from several elementary factors: extensive use of the computer; telephone hearings; awareness of the promptness standard; and dedicated people.

D. SOUTH CAROLINA

AUTHOR: John M. Bundy, Jr.

1. STATE GEOGRAPHY AND DEMOGRAPHY

South Carolina is located in the Southeast and extends from the foothills of the Blue Ridge Mountains to the Atlantic Ocean. The State is 31,055 square miles in area and the 1986 population was 3,755,000. The capitol, Columbia, is centrally located. The other principal cities are Anderson, Charleston, Florence, Greenville, and Spartanburg. The principal industries are manufacturing, textiles, wholesale/retail sales and tourism. Natural resources are water, coastal beaches, farm land, forests, shrimp, and some gold. The network of Interstate highways and State primary road systems, and the compactness of the State make travel within the State easy and rapid.

2. APPEALS UNIT STRUCTURE

The Lower and Higher Authority Appeal Units are in the Legal Department and are under the supervision of the General Counsel. The General Counsel reports directly to the Executive Director. The Executive Director reports to the Commissioners. The Commissioners also act as a board of review to decide higher authority appeals.

The Lower Authority Appeal Unit consists of 21 persons with the Chief Administrative Hearing Officer having overall supervision of the unit. There are 11 hearing officers with the remaining staff being clerical. In the clerical staff, four persons are responsible for preparing case files, file cards, notices of postponements, and travel agendas for the Hearing Officers, and receiving telephone calls. The other four clerical workers are responsible for typing and mailing decisions. All staff persons enter appropriate data into the computer.

Lower Authority Appeals is responsible for conducting tax and employer status hearings to obtain evidence. However, the decisions in these cases are made by the U.I. Assistant Deputy Executive Director.

The unit is located in the Central Office in Columbia. Hearing officers work from this location and travel to the various hearing locations on a rotating schedule. The State is divided into ten circuits with multiple hearing locations in each circuit. There are 35 hearing locations, and telephone hearings are conducted from Columbia. During the past five years the hearings have averaged more than 9,000 per year.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake:

An appeal can be filed by any claimant, employer, or legal counsel. The appeal may be filed in person at the local office or by mail. However, the appeal must be filed within ten days from the date the initial determination was mailed to the party's last known address on file with the Agency. An appeal filed by mail must be postmarked within the ten day appeal period established by the law.

When the appeal is filed in the local office or is received in the local office, the document is immediately forwarded to the Appeals Unit in Columbia. When the appeal document is received a review is conducted by the Unit Supervisor and the appeal is sent to the Benefit Section for document retrieval.

b. Record Retrieval and Creation of Tracking Mechanism

The Microfilm Unit of the Benefit Section pulls the appropriate documents, places them in a file, and returns the file to Appeals. Generally, the files are promptly returned. The case is assigned a number and file cards are prepared noting the necessary information. Appropriate appeals data is entered into the computer. The case can now be tracked by use of the file card or the computer. The cards are filed by case number and this number is necessary to locate the proper card. The computer files records by the claimant's social security number. Both systems are used because the appeal process is not completely automated at this time.

The case is reviewed for timeliness, issues involved, adequate documentation and correctness of the information in the file. Some are dismissed when errors are discovered. Cases are also dismissed when the issue has been resolved subsequent to the appeal being filed and all parties are satisfied with the adjudication of the claim. Withdrawals are also handled if requested.

c. Scheduling

The file is then placed in the appropriate "bin" according to the hearing location. The files are pulled on a daily basis and scheduled as to date, time, and location. Cases approaching the end of the 30-day period are deemed priority cases and are identified by a red circle around the appeal date on the front of the case folder. Subpoenas, if requested, are sent to the witnesses by certified mail. File cards are noted with necessary scheduling information and returned to the file.

Telephone hearings are scheduled and conducted daily on all

interstate hearings. Telephone hearings are also scheduled if it is more convenient to the parties to do so. This is usually done if one party would need to travel too far to a hearing site. Normally all telephone hearings are conducted from the Central Office in Columbia. Telephone hearings increase productivity and greatly aid in achieving promptness.

Parties have an absolute right to an in-person hearing if they request it. The party making the request must bear the burden of travel to the hearing location nearest the other party involved if the case was originally a telephone one. Otherwise, it is held nearest the location where the claimant last worked.

The case files and hearing agenda are then given to each hearing officer for review. This process is usually completed within two weeks after the date the appeal was initially filed. The hearing officer then has time to obtain any additional needed information prior to conducting the hearing.

d. Notice Preparation And Mailing

The hearing information for each case is entered into the computer on the same day the case is scheduled. That night the notice of hearing is generated by the computer and mailed the next morning by the Data Processing Department. Appeals staff is not involved in this process except to enter the information in the computer and to place a copy of the hearing notice in the file. State law requires that seven days notice be given of any hearing.

e. Prehearing and Hearing Mechanics

Postponements of hearings are granted for emergencies. When a postponement is granted the case is immediately rescheduled after agreement of the parties to a new date and time. The parties are encouraged to agree to a telephone hearing if this would facilitate disposition of the case in 30 days.

The Hearing Officers work from a Central Office and travel to the different hearing locations on a rotating basis. They are also scheduled to conduct telephone hearings as needed in the Central Office.

Each week Hearing Officers travel and conduct hearings from Monday morning to Thursday afternoon. They return to the Central Office on Thursday afternoon, turn in completed decision dictation and complete the dictation on the hearings conducted. Decisions previously typed are proofread and signed. If case load permits, they are scheduled in the office on Friday, and use this time for review, preparation, staff meetings and updating policy and

procedure changes.

Telephone hearings are also utilized to reduce postponements. This may occur if an interested party or witness is available to give testimony but because of unforeseen circumstances cannot travel to the scheduled in-person hearing; for example, unexpected transportation problems, sudden illness of a family member, or the absence of an employee requires an employer witness to remain at the work place.

Each Hearing Officer is provided equipment that has the capability of recording a telephone hearing from any hearing location if necessary.

f. Decision Preparation And Mailing

All Hearing Officers and staff are fully aware of the necessity to promptly process priority cases and expedite the decision to meet the promptness criteria. Hearing officers must telephone the central office and dictate a priority decision as soon as the case is heard. Decisions are dictated on each case and submitted to the typist within the same week the case is heard. The decisions dictated on tape by the Hearing Officer at the hearing location may be mailed each day to the Central Office. They are then typed while the Hearing Officer is out holding hearings and are ready to be reviewed and signed on return to the Central Office.

The typists prepare decisions as soon as they are received. Decisions are proofread and signed by the Hearing Officer assigned to the case. Another Hearing Officer or the Chief Hearing Officer will sign them if it is necessary to meet the promptness criteria and the Hearing Officer who heard the case is out of the office.

g. Performance Tracking And Reporting

To monitor performance, an additional 3 x 5 card is prepared for each case and is filed by appeal date in a separate file. Each day the file is reviewed and the cards are pulled on cases needing decisions to be mailed to meet promptness criteria. Assurance is made that the decision is indeed typed, signed and mailed that day.

h. Record Control And Close Out Procedures

All appropriate information concerning the disposition of each case is entered into the computer and also noted on the case file card.

The cases are maintained in the Appeals Unit for approximately 45 days. If no further appeal is filed the file is purged. If appealed, the case file is transmitted

to the Higher Authority Appeals Unit. That unit transcribes the tape of the testimony.

4. PROCEDURES IF FURTHER APPEAL FILED

Appeals from decisions of the Hearing Officers are to the full Commission for review based on the record. The appeal may be filed in a local office on or before ten days after the mailing date of the Hearing Officer's decision. Appeals may be mailed to the Central Office but must be postmarked on or before the tenth day to be considered timely.

Appeals are screened to determine if the appeal will be allowed. If it is allowed, a transcript of the hearing before the Hearing Officer is prepared and a hearing is scheduled before the full Commission. If the appeal is not allowed, a decision is mailed denying the appellant's application for leave to appeal. Present policy is that all parties are entitled to full review even if their appeal is at first denied. If an appeal or request for hearing is received or postmarked within ten days of the denial the case is also transcribed and heard by the Commission.

The Commission acts as a board of review but is not bound by the findings of fact of the Hearing Officer. All Commission hearings are held in Columbia. The Commission issues most decisions in the same week the case is heard. Appeals are to the Court of Common Pleas for review on the record.

5. CONCLUSION

In essence there are five key elements used in case management: prompt scheduling of each case; control over postponements; prompt resolution of each case; utilization of telephone hearings to achieve maximum productivity; and awareness of the status of each case.

PART TWO

SECTION ONE - LOWER AUTHORITY APPEALS

III. RANGE THREE - INDIANA, NORTH CAROLINA, OKLAHOMA and OREGON (14,000 TO 20,000 CASES PER YEAR)

A. INTRODUCTION

Indiana, North Carolina, Oklahoma, and Oregon were selected from the States whose lower authority appeals workload is between 14,000 to 20,000 cases per year. These States span the country from the Atlantic coast in the southeast across the eastern and western parts of the Midwest to the Pacific coast in the northwest. There is great diversity in the economy, geography, and demography of these four States.

Oregon has a fully automated case tracking system. Indiana, Oklahoma, and North Carolina use computers for word processing in the preparation of decisions. Each referee/hearing officer hears approximately 25 cases per week. Telephone hearings are allowed by statute in North Carolina. In Oregon, Oklahoma and Indiana, telephone hearings are allowed by rule and/or regulation. Oregon conducts between 45% to 50% of its hearings by telephone. Oklahoma and North Carolina conduct approximately 25% of their hearings by telephone. Indiana conducts only 5% or less of its hearings by telephone. In all four States appeals can be filed in person or by mail. However, in Indiana, parties must appeal through the local employment office. The following is a description of functions and procedures for each State.

B. INDIANA

AUTHOR: David A. Shaheed

1. STATE GEOGRAPHY AND DEMOGRAPHY

Indiana is located in the Midwest and is considered a part of the Great Lakes region. It is primarily plains and/or farmland. Its area is 36,291 square miles and it has a population of approximately 5,500,000. Principal cities are Indianapolis (the State capitol and the largest city), Fort Wayne, Gary, South Bend, Terre Haute, Bloomington, Columbus, Evansville and New Albany.

2. LOWER AUTHORITY APPEALS UNIT STRUCTURE

The lower authority appeals are administered by the Unemployment Compensation Appeals Section (U.C. Appeals Section). This section is part of the umbrella agency and the Director/Chief of U.C. Appeals reports to the Deputy Executive Director for Program Administration, who reports directly to the Executive Director for the Department of Employment and Training Services. The Deputy Executive Director for Program Administration also has responsibility for the other unemployment compensation programs, i.e., tax administration, benefit payment control, benefit administration and quality control.

The U.C. Appeals Section presently has positions for 23 appeals referees, who must be licensed attorneys, and 18 clerk/typists, who provide specific support to these hearing officers. There is an administrative support staff of five clerk/typists and two attorneys, who can also hear cases. The U.C. Appeals Section has jurisdiction in benefit appeals, tax assessment appeals, labor disputes, job service complaints and JTPA complaints. There are 15 appeals offices in the state. The number of appeals during the period 1983 through 1987 varied from 14,000 to 19,000 per year. The average case load per appeals referee is 20-25 cases per 5-day week. Currently, the U.C. Appeals Section is structured for one clerk/typist for each appeals referee. This allows each appeals office to function as an independent judicial office after the cases have been assigned.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

A hearing is initiated in one of two ways:

- (1) After the deputy makes an initial determination and issues a Form U. C. 511, Form 111, or Form 506, the aggrieved party completes a Form 601-602-603, Request for Hearing Before a

Referee. The local office date stamps the completed Form 601-602-603 and mails it and the determination to the U.C. Appeals Section in Indianapolis; or

- (2) If there is a conflict of interest or if the deputy does not feel competent to make the initial determination, the deputy completes the Form 601-602-603 and requests that an appeals referee hold a hearing and make an initial determination.

The U. C. Appeals Section has initiated a test project in New Albany, Lawrenceburg, and Madison, Indiana. The project is intended to simplify the scheduling of appeal hearings, to increase promptness, and to reduce the workload of local office employees. These goals will be accomplished by a new form that combines the Initial Determination Forms (U. C. 511 and Form 111) with the Request for Hearing Form (Form 601-602-603). The determination mailed to the parties, will include both the notice regarding eligibility and information about requesting an appeals hearing. The aggrieved party will be able to complete the form and mail the entire form directly to the U.C. Appeals Section in Indianapolis.

Consequently, the U.C. Appeals Section will receive a copy of the determination and an appeal form from the appealing party, and will be able to immediately set up an appeal file. By receiving the appeal directly, there will be no delay in setting a hearing, and promptness performance should improve which will benefit both claimants and employers. This new procedure will effectively eliminate local office staff time.

b. Record Retrieval and Creation of Tracking Mechanism

The assignment and docketing of cases is done by the Director/Chief of Appeals and several support staff. Much of this activity is handled on the computer which makes the process of assigning the new case numbers for the docket and distribution of the cases among the appeals offices much easier. Most of the notices of appeals arriving each day are sent out the same day to the appeals offices outside of Indianapolis. Indianapolis, where the central administration for the entire agency is located, is handled differently. Because the volume of cases in Indianapolis greatly exceeds the cases in the other cities of the State, the nine appeals referees in Indianapolis function more collectively. Nonetheless, the primary aim is to allow each appeals referee to function as an independent judicial officer with his or her own support clerical staff after the cases have been assigned.

With this approach, each appeals office, or more

specifically referees and their clerical support, has the responsibility for scheduling the case, sending out the hearing notice, as well as other notices associated with the case, and mailing the decision promptly.

c. Scheduling, Notice Preparation and Mailing

The Notice of Appeals Referee Hearing (a multi-part form) is typed with the following information: names and addresses of the parties, issue, claimant's social security number, claim number, and case number. The docket sheet is detached and stapled in case file so that important notes can be made. The file card is detached and placed on the front of the file. The notice is placed in the file and any remaining unneeded parts of the notice form are discarded.

The file is given to the administrative head for assignment. The administrative head assigns cases by indicating date assigned and name of appeals referee on the Appeals Office Assignment Sheet (Form 641). If the employer is located in Indiana, the appeals referee covering that area of Indiana is assigned. Indianapolis appeals referees share equally the cases in which both parties are located out of state. If the appeals referee assigned to a particular city is on vacation or an appeals referee position is vacant, the cases for that city are assigned to an outstationed appeals referee or an Indianapolis appeals referee.

After collecting cases for a five-day period, the scheduling clerk advises each appeals referee the cities and number of cases assigned for the current scheduling week by mailing a copy of the assignment sheet to the appeals referee.

Since cases are received each day, the clerk/typist at the local appeals office has ample time to process the appeal (type hearing notice, and check file for documents and problems) before the appeals referee sets a hearing date. Receiving cases each day gives the appeals referee a daily picture of how the schedule is developing. This allows for an opportunity to move cases into an earlier scheduled week or to plan the scheduling routine for the week currently being scheduled. The clerk/typist mails the Notice of Appeals Referee Hearing and the Division exhibits to the claimant, employer, and representative(s) at least five days before the date of the hearing (The law was amended in 1989 to provide for ten rather than five days notice.).

Wednesday and Thursday cutoffs give the clerk/typists time to receive the last case file before the appeals referees schedule cases on Friday. (Indianapolis clerks receive case files on Friday with the hearing notices already typed). As a result, all appeals referees can schedule by

Friday afternoon or earlier.

Wednesday and Thursday cutoffs allow the administrative head time to revise past mailings during the week and have some cases sent to other appeals referees if there are case load imbalances. Wednesday, Thursday, and Friday cutoffs also permit the administrative head to delay scheduling cases for various cities due to staff shortages. For example, if the scheduling clerk is absent on Monday or Tuesday, no files need to be processed that day. If the scheduling clerk is absent on Wednesday, only the Wednesday cutoff cities need to be processed. If the scheduling clerk is absent on Thursday, only the Thursday cutoff cities need to be processed. If the scheduling clerk is absent on Friday, only the Indianapolis cases need to be processed.

d. Prehearing and Hearing Mechanics

(1) Intrastate Telephone Hearings: Must be requested in writing at least three days prior to the hearing.

(2) Change of Hearing Site: Must be requested in writing at least three days prior to the hearing and state cause for the request.

(3) Representation:

a. Employers - Themselves, an attorney, officer or member of the firm or its local manager, or recognized public accountant.

b. Claimants - Themselves, an attorney, a recognized public accountant, or authorized agent of any bona fide labor organization.

c. Representation is at the expense of each party.

(4) Dismissals: If appealing party does not appear within fifteen minutes of the scheduled hearing time, the appeal is dismissed.

e. Decision Making Mechanics, Preparation and Mailing

Appeals referees endeavor to dictate a decision on a case within 24 hours of the hearing. The clerk/typist types a draft from the dictation tape. After proofreading the draft is given to the appeals referee for final review. Corrections at this point are simplified in the Indianapolis office because personal computers with word processing programs are available for the clerk/typists. The clerk/typists are responsible for duplication, internal distribution, and mailing the completed decisions.

f. Performance Tracking and Reporting

At the end of each month, when promptness performance is calculated for the Appeals Section, it is also calculated for each appeals referee. A memo is sent to all appeals referees informing them of their promptness performance for the month. Further, the top three in performance are acknowledged in the memo. A copy of the memo is included in each appeals referee's personnel file.

The Appeals Section Management Information System (utilizing Minutes Per Unit) generates the following information for each referee and clerk on a weekly basis:

- (1) Number of hours spent in appeals involving single claimants.
- (2) The number of decisions mailed involving single claimants.
- (3) The time expended to schedule a hearing, conduct a hearing, dictate a decision, type a decision and mail a decision involving single claimants.
- (4) The number of pages in all the decisions involving single claimants.
- (5) The time expended to complete a page of a decision involving single claimants.
- (6) The time spent in appeals involving multiple claimants.
- (7) The number of decisions mailed involving multiple claimants.
- (8) The time expended to schedule a hearing, conduct a hearing, dictate a decision, type a decision, and mail a decision involving multiple claimants.
- (9) The number of pages in all the decisions involving multiple claimants.
- (10) The time expended to complete a page of a decision involving multiple claimants.
- (11) The time spent in travel.
- (12) The time spent in management and supervision.
- (13) The number of hours taken off as leave.
- (14) The number of continuances granted.
- (15) The number of hearing notices typed.

(16) The number of hours spent in processing liability appeals.

(17) The number of pages of liability decisions typed.

The Appeals Section Management Information System Reports enable the administrative head to evaluate over a period of time how well the appeals referee and clerk/typist utilize their time. If there is consistently a low number of cases and extensive processing, the administrative head can draw accurate conclusions on time utilization and productivity. However, it must be emphasized these figures can only become meaningful through evaluation over a period of time.

4. PROCEDURES IF FURTHER APPEAL IS FILED

Appeal of an appeals referee's decision is initiated by filing a form at the local office where the claim was filed or sending a letter to the agency indicating an intent to appeal. The file and hearing tapes are sent to the higher authority (Review Board). Transcript preparation is the responsibility of the Review Board.

5. CONCLUSION

The Indiana U.C. Appeals Section utilizes a decentralized approach in the administration of the lower authority appellate process. After intake, which includes receiving the appeal form, assigning a case number and assigning the case to an appeals referee, the responsibility for conducting the hearing within the criteria for promptness rests with the appeals referee.

Continuances and dismissals are within the referee's control and the appeals administration merely monitors and assists where necessary to help appeals referees meet promptness criteria. Each month, a promptness report is generated for each referee which becomes part of the referee's personnel file.

Currently, the U.C. Appeals Section is structured for one clerk/typist for each referee. This allows each appeals office to function as an independent judicial office once the case has been assigned. MPU reports are used to compare the week by week performance of these independent judicial units.

C. NORTH CAROLINA

AUTHOR: Thelma M. Hill

1. INTRODUCTION

The Employment Security Commission of North Carolina (ESC) has found the timely disposition of contested claims for unemployment compensation requires a lower and/or higher authority appeal process to be structured or restructured with the applicable federal appeals promptness criteria in mind. Such a process includes several elements, each selected because they foster both efficiency and promptness in the appeals process without reducing the quality of the end product.

2. STATE GEOGRAPHY AND DEMOGRAPHY

North Carolina is in the southeastern United States, lying on the Atlantic Ocean and bounded on the north by Virginia, on the south by South Carolina and Georgia, and on the west by Tennessee. The State Capital is Raleigh. The area is 52,586 square miles and the 1986 population was 6,333,000. The principal cities are Raleigh, Charlotte (largest), Asheville (mountain resort center), Greensboro, Durham, Winston-Salem (tobacco industry sites), and Morehead City and Wilmington (two deep-water ports).

North Carolina is divided into three physiographic regions, which are related to major diversities in life-styles among the people of the State, creating three distinct cultures within the State's boundaries. The Coastal Plain is a gently rolling, well-drained interior plain and swampy tidewater close to the Atlantic coast. Hurricanes occasionally occur along the coast, and there have been tornadoes inland. As for the entire State, severe storms are rare and heavy snow infrequent. The Piedmont Plateau is characterized by rolling, forested hills. The region is a prime symbol of the "New South," in which modern industry has largely replaced traditional agriculture. A concentration of industry occurs in a sweeping crescent westward and southward from Raleigh to below Charlotte. The colleges and universities that have been influential in the State's history are centered here. The Mountain Region is bounded by two ranges of the southern Appalachians. On the east are the Blue Ridge Mountains. In the far west the Unaka Mountains contain the Great Smoky Mountains that roll westward into Tennessee.

North Carolina's economy depends on manufacturing and agriculture, but tourism and research are gaining in importance. The principal industries are: textiles, tobacco, electrical equipment, metalworking, chemicals, paper and paper products, plastics and food processing. Transportation, shipping, forestry and fishing are other important sources of income. Tourism has a diversified base. Mineral deposits

include phosphate, kaolin, mica, feldspar, granite, copper, limestone, marble, marl, olivine, talc, sand, gravel and shale. Slightly more than 50% of the State is covered by dense forests.

3. LOWER AUTHORITY APPEALS UNIT STRUCTURE

The lower authority appeals and higher authority appeals units are within the Administrative Law Division headed by the Chief Deputy Commissioner, who reports directly to the Chairman of the Employment Security Commission.

In the lower authority appeals unit there are 19 appeals referees and 17 support staff members. The five-year average of appeals filed is 21,437 per year. Although the majority of the appeals referees are outstationed in Job Service Offices, the operations of the Appeals Department are centralized. Hearings are held at 65 sites, and approximately 20% of all hearings are telephone hearings.

4. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

By regulation, an appeal is deemed filed when received in any office or department of the Employment Security Commission. This filing may be done in person or by mail. Parties are encouraged to file appeals in local offices and use the form specifically designed for such purpose. The use of this form helps to avoid the delays resulting from parties failing to include sufficient information to identify the determination being appealed, or the delays caused by an inability to determine whether a letter was intended to be an appeal.

Lower authority appeals are forwarded to the Adjudication Department located in the Central Office where they are acknowledged by the Chief Adjudicator and processed. Any office or department receiving an appeal is required to forward it to the Adjudication Department on the same day it is received. The processing of appeals, which begins on the first day it is received in the Adjudication Department, includes, among other things, posting the appeal on the computer, reviewing the official record, and reviewing and/or completing the "Transmittal of Appeal" (a form detailing the issues appealed and any other pertinent information).

b. Record Retrieval and Creation of Tracking Mechanism

The Adjudication Department is responsible for reviewing and/or compiling the official record (the relevant documents maintained in that Department or in the local office if the appeal is from a local office determination), and forwarding the official record with a copy of the

acknowledgment mailed and the "Transmittal of Appeal" to the Appeals Department. The official record is compiled and certified as such by the adjudicator from whose determination an appeal has been taken. Unless extenuating circumstances exist, the official records are hand-delivered to the Appeals Department (located on the same floor) by designated members of the Adjudication Department's support staff, usually on the same day the appeals are received, but no later than one day after receipt.

The tracking mechanism is a combination computer and paper system. The automated Benefit Payment Computer (BPC) is utilized to post the appeal upon receipt by the local office or Adjudication Department, dates of the hearing and decision, and the results of the lower authority appeal process. The Docket Book, pages of which are generated on the word processing system by the Scheduling Clerk in the Appeals Department, is used to track the movement of the case file. The third aspect of the tracking mechanism is the file folder on or in which the staff records the details of the handling of the appeal.

c. Scheduling

The docketing of an appeal for scheduling begins immediately upon receipt of the official record in the Appeals Department. The docketing and scheduling tasks are performed by the same individual(s). This permits immediate action to be taken to schedule an appeal for hearing when there has been a significant delay in transmitting the appeal somewhere within the chain. All the steps of docketing, including the assignment of a number to the case, are performed manually. Appeals are docketed by geographic areas with appropriate reports detailing the number of cases to be scheduled for each area. The appeals are filed by geographic areas and by the last date on which notices of the hearing must be mailed in order to meet the regulatory notice period and the appeal promptness criteria. These files are checked daily by the Scheduling Clerk(s).

Parties are given three days after the mailing date of the Acknowledgment of Appeal to inform the Scheduling Clerk of any known prior commitments which may interfere with their availability for a hearing. All steps of the scheduling process are also performed manually by the clerk(s). In performing this task, the clerk utilizes the "Transmittal of Appeal", the "Acknowledgment of Appeal" and the itinerary of the appeals referees. Unless the caseload or the appeal promptness criteria require some deviation, cases are scheduled for hearing in local and branch offices in the respective geographic areas in accordance with the established hearing days for such offices. If the caseload is heavy in an area, the local offices are contacted to

obtain additional hearing dates. "Rover" appeals referees are utilized to cover the additional hearing days. In addition, appeals referees in low caseload areas may be shifted to hold hearings in high workload areas. Appeals in danger of missing applicable promptness criteria have priority in scheduling and, by regulation and over the objections of the parties, may be scheduled for telephone hearings before an appeals referee located anywhere within the State. Docketing and scheduling are performed daily.

In-person vs. Teleconference - Telephone hearings may be scheduled if one or more parties are out of state, the parties are at different intrastate locations, both parties are at a location where it is impractical to conduct in-person hearings, or the parties request it. Telephone hearings are also used for appeals promptness and/or efficient administration of the Employment Security Law. The parties are given three days from the mailing date of the Acknowledgment of Appeal to file a written objection to a matter being scheduled for a telephone hearing. Upon objection to a telephone hearing by a party, an in-person hearing will be scheduled provided, however, that if any travel is required to conduct the in-person hearing, the objecting party will be required to travel to a location which is convenient to the non-objecting party. If a telephone hearing has been scheduled to meet criteria for appeals promptness, the granting of an in-person hearing is within the discretion of the Chief Appeals Referee or the Commission.

Issues and Number of Parties - The amount of time and the type of hearing scheduled depends also on the number of parties, as well as the type and the number of issues involved. To facilitate this scheduling, the Adjudication Department separates the official records into four categories before forwarding the records to the Appeals Department. The standard categories, hearing time, and type of hearing are as follows:

<u>Issues/Number of Parties</u>	<u>Hearing Time</u>	<u>Type of Hearing</u>
Late Appeal	30 Minutes	Teleconference
Availability/One-party	30 Minutes	Teleconference
Two or more issues/ One-party	45 Minutes	Teleconference
Two or more parties	1 Hour	In-Person

Waiver of Mandatory Notice Period - The lower appeal authority may not shorten the mandatory notice period that must be given for a hearing unless a waiver is obtained from the affected parties. The scheduling clerk is authorized to contact the parties to request such waiver whenever there is insufficient time to give the full notice and meet promptness criteria.

d. Notice Preparation and Mailing

Once the appeal is scheduled for hearing, the complete file is forwarded to the support staff members responsible for both the preparation and mailing of the notices of hearing. The notice is prepared from the "Transmittal of Appeal," "Acknowledgment of Appeal," and the file folder in which the Scheduling Clerk has inserted all relevant information pertaining to the hearing. Although the notice should be prepared and mailed as soon as possible, the preparation personnel are provided a specially designed calendar that lets them know the very last day a notice must be prepared and mailed to meet the regulatory notice period. If the hearing is scheduled to be conducted by telephone, a questionnaire requesting information regarding the verification of telephone numbers and the employer witness to be contacted accompanies the hearing notice with a pre-addressed and postage-paid envelope for the questionnaire's return.

e. Prehearing and Hearing Mechanics

Any request for subpoenas to be issued must be received by the Appeals Referee at least five days prior to the date of the hearing. Subject to the appeals promptness criteria and the intent that proceedings before the Appeals Referee be informal, an Appeals Referee may permit prehearing conferences, discovery, stipulations, etc. In the absence of a continuance, the appealing party is allowed fifteen minutes after the scheduled hearing time before the appeal is dismissed for failure of that party to appear and prosecute the appeal. All parties are permitted to examine the official record before the hearing on the day of the hearing or by appointment prior to the hearing date. Exhibits the parties want to be offer as evidence must be mailed to the Appeals Referee and the opposing party in time to be received prior to the date of the telephone hearing. An abstract of voluminous documents desired to be offered into evidence must be prepared and offered as an exhibit. Requests for continuances or postponements must be made prior to the hearing. Additional restrictions on continuances or postponements are as follows:

Limited reasons for which an Appeals Referee may continue or postpone;

Appeals promptness criteria may not be affected by such delay;

Sufficient time to notify opposing party, and;

Parties willing to have a telephone hearing if delay granted.

The proceeding is to be conducted informally without the

formal rules of evidence being applied. In the interest of saving time, standard information and the official record are introduced into the record by the appeals referee with the standard refrain "in the absence of an objection by the parties, let the record reflect". The party with the burden of proof regarding an issue proceeds first in presentation of evidence. Rebuttal evidence by the party with the burden of proof is permitted. Parties must provide the Appeals Referee with the original and a copy to the opposing party of any exhibit offered as evidence. The appeals referee is required to control the hearing and provide impartial assistance to a party unrepresented by legal counsel.

f. Decision Making Mechanics

By regulation, the lower authority decision must be rendered and published without delay. The appeals referee has a maximum of five working days from the date of the hearing to render a decision. The appeals referee may only be exempt from compliance with this standard by the Chief Deputy Commissioner. Good cause must be shown if the exemption request is made prior to the 5-day period expiring. If the request is made after the period has expired, a showing of excusable neglect must be made by the appeals referee. Each case file that is forwarded to an appeals referee bears the 30-day time lapse date, as well as the 5-day deadline date. The 5-day date does not supersede the 30-day date. If the 30-day time lapse period applicable to a case expires prior to the 5-day period for rendering a decision, the decision must reach the support staff in time to publish it before the 30-day period expires. This may be done by telephone or delivering it by whatever means available.

Each appeals referee has a manual of form decisions which are maintained on the word processing system glossary by codes. On the checklist required to be completed for each hearing, the code of the form decision to be used by the word processor operators in transcribing the decision must be inserted by the appeals referee. The draft decision may be handwritten, typed or dictated by the appeals referee. Proofing of long decisions is performed by an adjudicator assigned to the Appeals Department, other appeals referees, or the agency legal specialists in the Office of the Chief Deputy Commissioner. Orders, wherein the appeal is dismissed, are edited by the support staff supervisors.

g. Decision Duplication and Mailing

When the proofing and editing have been completed, the word processor operator responsible for typing the decision produces the necessary number of copies of the decision to be distributed by utilizing the high-speed printers. Copies mailed to the parties and maintained in the file are

signed on behalf of the Appeals Referee by the operator. The same operator or another operator is also responsible for the folding and inserting of the decision in envelopes to be mailed to the parties. Due to the need to transfer outgoing mail to the Agency's mail center by a particular time of the day, the activities associated with mailing are performed at a designated time each day. A copy of the decision is placed in a depository for a designated staff member of the Adjudication Department to pick up at the beginning of the next workday. That Department inputs the results into the computer on the same day the decision is received.

h. Performance Tracking and Reporting

Those reports necessary for U.S. Department of Labor reporting purposes are maintained. In addition, docketing, scheduling, hearing and decision reports are prepared daily, weekly and monthly and include, among other things, the number of cases assigned to each Appeals Referee, the number of cases per geographic area, and the number of cases pending for scheduling, hearing, and decision. These reports also contain the specific cases which were not scheduled before the time-lapse period expired. An Appeals Referee's weekly list of outstanding cases is also generated. Individual promptness performance reports are maintained for each Appeals Referee on a monthly basis. Daily, weekly and monthly reports are also generated for each function performed by the Support Staff; i.e., quality and quantity performance in notice preparation, preparation and mailing of the decisions, and posting of information to the computer, docket book, etc. The Supervisory Appeals Referees are required to randomly select two cases of each Appeals Referee every two weeks and evaluate his/her performance on a form designed for such purpose. When a case is appealed to the higher authority, the Chief Deputy Commissioner may also conduct a review of the case and forward the results to the Chief Appeals Referee for appropriate action. All reports are manually prepared and maintained on the word processing systems.

i. Records Control and Closeout Procedures

After the statistical reporting has been completed, an entry is made in the Docket Book indicating the decision has been mailed which indicates that the case has been closed. Thereafter, the case file is placed in the closed files according to program and docket number. A case file control sheet is maintained in the file room and the removal and return of a file must be indicated on this sheet with appropriate dates and initials of those taking such action. After six months, the case files are transferred to the State Records Center which maintains the files for an additional year before destroying them. The Appeals Department prepares and maintains a listing of all

files that have been transferred to the Records Center with appropriate identification. The Record Center has its own procedure for records control.

5. PROCEDURES IF FURTHER APPEAL FILED

If an aggrieved party files an appeal from the lower authority decision, whether in the local office or by mail directly to the Appeals Department or any other department, the appeal must be forwarded to the Appeals Department for processing. Designated support staff member(s) of the Appeals Department are responsible for issuing an acknowledgment under the signature of the Chief Appeals Referee, responding to any requests for a record of the hearing, and processing the appeal. The processing of the higher authority appeal includes, inter alia, entering in the Docket Book the appeal date and the party appealing, posting the appeal to the computer, retrieving and compiling the record on appeal, determining whether the length of the evidentiary hearing (45 or more minutes) requires it to be transcribed, and forwarding all the records on appeal with the cassette tape or transcript of the evidentiary hearing to the higher authority. When a record of the hearing is requested, copies of the cassette tape with exhibits are forwarded to the parties along with a briefing order and a copy of the regulation governing requests for transcripts of the evidentiary hearing. Through the acknowledgment, briefing order and the regulation, the parties are informed of the specific deadlines for requesting discretionary oral arguments, filing briefs and requesting transcripts of the evidentiary hearings. Within one day after the acknowledgment has been mailed, usually on the day the appeal is received, a case involving an evidentiary hearing of less than 45 minutes is sent to the higher authority. When the record is transmitted to the higher authority or the cassette tape is referred for transcription, the Appeals Department so indicates in the Docket Book. Regardless of the length of the hearing, records of higher authority appeals in which oral arguments or other procedural requests are made are separated and forwarded immediately to the Chief Deputy Commissioner.

6. CONCLUSION

Noteworthy procedures and practices are the processing of appeals by the same department responsible for record retrieval; docketing and scheduling by the same individual; determining type of hearing and amount of time allotted for hearing by number of parties and issues involved; and establishing reasonable restrictions on the granting of continuances and issuance of subpoenas.

By utilizing the elements discussed in this paper, ESC has seen a continuous increase in the overall ability to meet appeals promptness criteria. For example, the 30-day lower authority appeal promptness rate, as maintained by ESC, has increased from 85% to 98% from November 1987 to June 1988.

D. OKLAHOMA

AUTHOR: Elaine Williamson

1. STATE GEOGRAPHY AND DEMOGRAPHY

Oklahoma, part of the Great Plains States, is slightly south of the geographic center of the United States. Approximately 24% of the State's total area is forested. The area is 68,655 square miles. The July 1986 population estimate was 3,305,000. The principal industries are manufacturing, but include wholesale, retail and business industries, mineral production, contract construction, transportation, public utilities, finance, insurance, real estate, government employment, printing, publishing, agriculture, and tourism. The principal natural resources are petroleum, natural gas, coal, lead, zinc, helium, gypsum, and clay. Agricultural products include beef cattle, sheep, hogs, poultry, milk, wheat, hay, sorghum, other grains, peanuts, and cotton.

Oklahoma's special characteristics consist of State Fairs in Oklahoma City and Tulsa in late September, music and arts and crafts festivals throughout the year. Native American Pow Wows are conducted throughout the year. The State's largest horse racing track, Remington Park, opened in September 1987.

2. APPEALS UNIT STRUCTURE

The Employment Security Commission (Commission) makes a determination that is appealable to the Appellate Division (the lower authority appeals unit). All decisions of the Appellate Division are appealable to the Board of Review (the higher authority appeals unit). Except for budgeting, each of these entities is independent of the other.

The Administrator of the Appeals Unit, by statute, reports directly to the five-member Commission at its regularly scheduled monthly meetings. However, for budget or necessities requiring monetary outlay, the Executive Director of the Commission has authority. The Appellate Division has 10 hearing officers and a support staff of 15. It is a centralized operation and there are 30 hearing sites. About 30% of all hearings are conducted by telephone conference. The Appellate Division also has jurisdiction in tax appeals.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing, Intake and Records Retrieval

- (1) Filing Appeals - Under the newly adopted rules, the parties file their appeals directly with the Commission rather than with the Appellate Division. This has been done so that the documentation will be included with the appeal.

In an effort to make a smooth changeover from the previous procedure which allowed parties to file appeals directly with the Appellate Division, the information about the appeal rights was changed to suggest that parties file appeals with the Commission.

- (2) Intake - All appeals go directly to the Benefit Division where the documentation is reviewed. The documentation and appeal are forwarded to the Reproduction Unit for preparation of two copies of each document. The following day the appeals received the previous day are delivered to the Docketing Unit by a runner. The individual who reviews the documentation completes a checklist of all documentation and notifies the Local Office of the Commission of any missing documentation needed for the appeal.

b. Creation of Tracking Mechanism

Upon receipt of an appeal, local office employees immediately input data that an appeal has been filed. From that information, a "Notice of Appeal" is computer generated and mailed to parties, along with an information pamphlet. Data about each step of a claim is input in the computer. A label containing pertinent information for a file folder and address labels are created. The file can easily be located by calling up the case on the computer tracking system.

c. Scheduling

- (1) Docketing - Upon receipt of an appeal in the Appellate Division, the case is reviewed by a knowledgeable staff member for framing of the legal issue. Each case is then given a docket number and all pertinent information about the case input into the mainframe. From that point on, the case can be tracked. This employee receives a label from the mainframe along with two address labels, prepares a file and places it in a hold cabinet for scheduling of a hearing. On Wednesday of each week, the total number of appeals filed is provided to the Senior Hearing Officer for docketing assignment. The weekly tally sheet sets out the number of cases by area of the State and specifically by hearing site name. It also sets out the number of telephone cases and base period employer cases. Hearing officers receive assignments by 3:00 p.m. on Wednesdays, set their dockets, and deliver cases to the Docketing Unit no later than noon the following day. All dockets are prepared on word processing equipment. The two docketing

personnel who prepare the Notices of Hearing, have been trained to re-review the pool cases and set all pool hearings.

Much of Oklahoma's ability to maintain good promptness performance is attributable to our pool docketing concept adopted from the Workers' Compensation Court. Most Oklahoma City in-person hearings are pooled. In order to pool cases, there must be at least three hearing officers per pool. When docketing assignments are prepared, the Senior Hearing Officer simply sets the time and dates for pooled cases along with the number of cases per pool. All notices are mailed Friday afternoon. The following Monday, all documentation is mailed to the interested parties and the Docketing Unit prepares an itinerary for the hearing officers. Notice information is then input into the mainframe so that the case remains easily trackable. By Wednesday of each week, all docketed cases are available for hearing officer review.

- (2) Pool Docketing - Normally, all hearing officers are docketed for in-person hearings the first three days of the week and for telephone hearings the last two days of the week. Except the pool cases, hearing officers review cases more than once before each hearing. Pool cases are reviewed shortly prior to calling the case. A pilot project, that we've labeled pool docketing, was started in Oklahoma City in January 1987. The pool docketing concept was adopted from the Workers' Compensation Court where it is still used. At first, some hearing officers in Oklahoma City were not impressed by the concept and thought it might not work. However, now they prefer the pool dockets because they have free time for research and writing at the end of each day.

In Oklahoma City, pool cases are set at 8:30 am, 10:30 am, and 1:30 pm. By 2:30 pm or 3:00 pm at the latest, the hearing officers begin dictation of that day's decisions. By 4:30 pm each day, a majority of their cases have been turned in for final decision preparation. By noon Wednesday, the pools for the week are completed. On Wednesday afternoons the Oklahoma City hearing officers prepare their dockets for two weeks of hearings. Thursdays and Fridays telephone hearings are conducted. There is an attempt to complete all dockets by Friday noon so that all cases may be turned in by the end of the day, on Friday.

Outstationed Hearing Officers hear in-person cases in the regular manner traveling their respective areas the first part of the week. The two outstationed Hearing Officers return to their home bases by Wednesday afternoon and begin telephone dockets Thursday morning. They call in on Wednesday afternoons to assist in preparation of their dockets.

EXPLANATION OF THE POOL DOCKETING PROCEDURE

1. Three to four hearing officers in each pool - never fewer than three; at least ten cases per pool with a maximum of sixteen for four officers and twelve for three.
2. Assignment made from docket sheet by receptionist on a rotating basis.
3. Example - Four Hearing Officers:

Case 1	Both Parties Present	H. O. "A"
Case 2	Both Parties Present	H. O. "B"
Case 3	One Party Present	H. O. "C"
Case 4	Absent	H. O. "D"
Case 5	Both Parties Present	H. O. "A"
Case 6	One Party Present	H. O. "B"
Case 7	Absent	H. O. "C"
Case 8	One Party	H. O. "D"
Case 9	Both Parties	H. O. "A"
Case 10	Both Parties	H. O. "B"

4. Cases are delivered to the Hearing Officers who review them and decide in which order to hear them. In the example, Hearing Officers "C" and "D" each have a hearing with only one party present. After they complete those hearings, they check with the receptionist to see if the parties in Cases 4 and 7 have arrived late. If so, the second case is called. If not, Hearing Officers "C" and "D" are through early and free to take cases from either of the two other Hearing Officers who may have drawn a prolonged case with several witnesses.

5. The wait is not extensive and provides representatives time to review files. To review a file, a party simply requests it from the receptionist.
6. Only the case being heard remains in the hearing room. The other cases are placed outside the respective hearing officer's offices in a container similar to those used in doctor's offices.

The advantages of pool docketing are many. Cases are heard and decisions prepared expeditiously and promptness is not jeopardized. If a hearing officer becomes ill, hearings are not postponed, but are absorbed by the other hearing officers. Parties who are unavoidably late to the hearing site can still be heard on that day, avoiding rescheduling.

There are also a few pitfalls in pool docketing which can be avoided or overcome. Ideally, hearing officers should work at the same pace. Otherwise, one or two hearing officers will be doing a disproportionate share of the work. Personality conflicts may arise, which is normal for people under pressure. The Oklahoma City group has been able to work through the problems as they arise and remain a cohesive group. We've come to realize that we are all in this together and our purpose is the same. Expedient due process to the parties must remain utmost in our minds.

Hearing officers meet every two months to exchange decisions and ideas. Meetings normally last about two to three hours and include at least one special guest. Special guests have been a Commissioner, the Agency Counsel, and attorneys who have spoken on specific issues. The Board of Review is invited to each meeting and we have been fortunate to have at least two members and sometimes all three members present. Input from Board members has been most welcome by the hearing officers. The meetings give the hearing officers an opportunity to get annoyances off their chests, air their differences and unite.

d. Prehearing and Hearing Mechanics

- (1) Prehearing - Presently, Oklahoma does not provide for prehearing conferences. A Hearing Officer has been appointed to hear all labor disputes. This hearing officer plans to allow for prehearing conferences in those type cases when necessary.
- (2) Hearing Mechanics - Cassette recorders are used to record all hearings. Headsets are used for teleconference hearings.

e. Decision Making Mechanics

Decisions are prepared on a simplified worksheet, handwritten or typed. Codes are utilized where applicable, such as for the law, history and issues. Word processor operators type decisions. The decision is then delivered to the proofer. After proofing has been completed, the decision is delivered to the Hearing Officer for signature.

f. Decision Duplication and Mailing

Decisions are dated and signed for certification. An individual does a final check for appeal rights and number of copies necessary. Decisions are then copied. The same individual is responsible for placing the decision in the envelope to each interested party and placing it in the mail.

g. Performance Tracking and Reporting

After a decision is mailed, the result is data entered in the mainframe. This information can then be tallied monthly by the computer, and used for various reports.

The following data summaries are used:

- (1) Appeals filed and disposed of during the month,
- (2) Time lapse report,
- (3) Issues,
- (4) Types of claim,
- (5) Reversal and affirmation rates,
- (6) Interstate and intrastate breakdown, and
- (7) Cases pending at the end of the month.

Reports utilizing this information are prepared for the U.S. Department of Labor and the Administrative Review team. Supervisors are continuously aware of how many cases each hearing officer holds daily, weekly, monthly, and how that particular hearing officer disposes of those cases.

h. Records Control and Close-Out Procedures

Records are prepared for storage and a list is input in a personal computer. From that list, we not only can pinpoint the location of a particular file but can maintain a track of the record, and of destruction.

4. PROCEDURE IF FURTHER APPEAL FILED

Board of Review appeals, the Appellate Division simply provides the file contents and tape upon request of the Board of Review. Records are maintained in the tracking system that an appeal was filed.

5. TENTH CIRCUIT COURT OF APPEALS DECISION'S EFFECT ON OKLAHOMA

The Tenth Circuit Court of Appeals' decision in Shaw v. Valdez, 819 F.2d 965, on May 26, 1987, had a considerable effect on Oklahoma UI appeals operations. Oklahoma is part of the Tenth Circuit, so this case directly affected Oklahoma. Oklahoma at that time may not have been complying with the "fair hearing" requirement due to lack of proper notice of the factual issues to be faced by the parties. An extensive study began in July of 1987, and it revealed that Oklahoma did not meet the "fair hearing" requirement in several respects.

Negotiations through a series of meetings began. The Legal Aid Society, unions, employer representatives and employer groups began to meet in an attempt to make the compliance agreeable to those concerned.

The results of the meetings in Oklahoma required an overall change of the Appellate Division's procedures and rules. Major changes were found necessary in the receipt of documentation and the Notice of Hearing. Prior to Shaw v. Valdez, only minimal documentation was provided by the Commission to the Appellate Division. The individuals involved in the meetings agreed that all documentation in the Commission file pertaining to the issue appealed would be provided to the Appellate Division immediately on appeal. It was also agreed that the Notice of Hearing should limit parties to the issues raised prior to the hearing and contained in the documentation. In other words, the parties are precluded from attempting to raise new issues after Notice of Hearing has been given. Immediately after the Notice of Hearing is mailed, a copy of all documentation contained in the file is mailed to all parties to the case. Prior to Shaw v. Valdez, Oklahoma law and rules provided the hearing officer with the authority to modify an issue and to decide on the modified issue. It was agreed that until the law is changed, a hearing officer may modify a case but that if the hearing officer could detect a possible need to modify a specific case, the Notice of Hearing would set out both issues. If the hearing officer could not detect a need to modify prior to the hearing, yet during the hearing found it necessary, could on his/her own motion continue the case for proper notice on the newly detected issue. The hearing officer may also explain to the parties this intention and offer them the opportunity to waive notice on the record.

Proposed rule changes were immediately submitted in accordance with the Oklahoma Administrative Procedures Act. Rule changes in Oklahoma require an extensive procedure. Notice of rule

change meetings must be posted and copies of the proposed changes mailed to anyone expressing interest. The Commissioners then listen to oral argument and vote to accept or may require changes if they accept amendments. If amendments are made, a meeting for a final vote of the Commission is required. After the Commission adopts rules, a legislative committee may agree to adopt or may suggest amendments. If amendments are suggested, they are returned for approval by the Commissioners.

Since Oklahoma has made the changes necessary to bring the appellate process into compliance with Shaw v. Valdez, other problems have surfaced. If a party asks for a continuance for preparation, the continuance is granted, if at all possible. Requests for continuances are fairly freely granted as compared to prior to the Shaw v. Valdez decision when the policy was very strict.

6. CONCLUSION

The Oklahoma Appellate Division received the Outstanding Performance Award in Region VI for 1986 and 1987. These successes were due to new and innovative ideas which resulted in an overall revamping of the Division.

Research of other agencies' successful procedures produced the pool docketing concept. By pool docketing, we have been able to hear more cases in a day and decide them faster which greatly improved promptness. Time is available at the end of each day which has allowed us to work on quality writing. Of course, it required a dedication to improving the system which resulted in a comfortable procedure with satisfied employees serving a satisfied public.

E. OREGON

AUTHOR: Teresa Mathis

1. INTRODUCTION

The Hearings Section of the Oregon Employment Division attributes much of its ability to achieve promptness to an integrated word processing/casetracking computer system.

Oregon has three regional hearings offices, Portland, Eugene, and headquarters in Salem. The three offices are tied together electronically via a central computer located in Salem. This computer network allows the offices to access a common database, which holds the hearings casetracking data. All three offices are involved in maintaining the casetracking system. Each step in the appeals process, from the receipt of the appeal through the issuance of the referee decision, is noted in an electronic file. This continuous updating of files gives up-to-the-minute information for each case. It also provides management information on timeliness oriented matters like workload, scheduling of cases, promptness of hearings, and issuance of decisions.

The information also has immediate value outside the hearings process. Other units within the Division have access to the system for informational purposes. They use the system to check the status of particular cases, or to respond to inquiries from the public.

2. STATE GEOGRAPHY AND DEMOGRAPHY

- a. Oregon is in the northwest corner of the continental United States, bordered by Washington to the north, Idaho to the east, California to the south, Nevada to the southeast and the Pacific Ocean to the west.
- b. Total area, land and water, is 97,073 square miles (96,184 land, and 889 water). Oregon ranks tenth in size among the States.
- c. The population is 2,659,500, ranking thirtieth in the nation. Median age is 32.4.
- d. The largest cities and major university centers are located in the beautiful Willamette Valley. Portland, to the north, is the largest city with a population of 379,000. Eugene, at the southern end of the valley, is the second largest with a population of 106,100 and is the home of "The Ducks" of the University of Oregon. Their rivals, "The Beavers" of Oregon State University, are located in Corvallis 30 miles to the north. Another 30 miles to the north lies Salem, the capitol of Oregon and the third largest city. Salem

has a population of approximately 96,000 and is located 50 miles south of Portland.

- e. Topography - Distance of 395 miles east to west, 295 miles of coast line north to south, and three major mountain ranges: Coast Range, Cascade Range and Blue Mountains.

The Willamette Valley runs north to south between the Coast and Cascade Ranges, with a yearly rainfall of 15 inches in the southern valley and 30-50 inches in the north. Coastal locations receive 60-80 inches, with the slopes of coastal and Cascade mountain ranges receiving as much as 100-200 inches of rain annually. There are five mountains over 10,000 feet.

- f. Lumber, wood products and agriculture are primary employers, with tourism and high tech close behind. From 1976 to 1985, employment in high tech increased 57%.

Recent emphasis has been on international trade with Pacific Rim countries, i.e., Korea, Japan, China and others.

- g. Oregon's principal natural resources include:

- (1) Forest lands;
- (2) Abundant water resources - lakes, reservoirs and 112,000 miles of rivers and streams;
- (3) Fish and wildlife;
- (4) 297 miles of public coastline;
- (5) Geothermal energy;
- (6) Thirteen national forests; and
- (7) Thirteen winter sport areas.

- h. Oregon, with its scenic beauty and vast recreational and economic possibilities, has a homogenous population that takes pride in being Oregonians. Slightly conservative on most issues, Oregon is a leader on environmental concerns and was the first State in the union to establish a bottle bill that has greatly cleaned up its highways and waterways. Oregonians are optimistic about the future and support the current, intense dedication to economic development on the part of the present administration.

3. LOWER AUTHORITY APPEALS UNIT STRUCTURE

The Hearings Section, lower authority appeals, is a part of the State Employment Division. The section is managed by the Assistant Administrator for Hearings, who also serves on the agency's executive staff. Higher authority, the Employment Appeals Board, is an agency separate from the Employment Division. It is comprised of three board members appointed by the governor, three staff attorneys and two clerical support staff.

The Hearings Section has 20 hearing officers and a 12-member support staff. About 16,000 cases are heard and decided annually. Its jurisdiction includes tax appeals. It also conducts hearings for several other State agencies. It is a decentralized operation with three regional offices serving 30 hearing sites throughout the state. Approximately 45% of all hearings are held by telephone conferencing.

4. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

Requests for hearing are filed in person at local offices or by letter mailed to the office which issued the administrative decision being appealed. The controlling appeal date is considered to be the postmark date or earliest date received in any office of the Employment Division.

Adjudication units at the originating offices compile relevant supporting documents from the claim file to forward with the appeal to the central office of the Hearings Section in Salem.

b. Records Retrieval and Creation of Tracking Mechanism

As appeals are received in Hearing Section's case processing unit, they are sorted by geographic origin for assignment to one of the three hearings offices. Case file records are then created by entering the basic data into the computer. A review process begins at this point, as the case processing specialist sorts through the supporting documents and identifies the information needed. If documents pertinent to the appeal are missing, the originating local office is notified. Processing is continued with a notation to the record that the missing information is to arrive by the time a hearing is set.

The initial entry program expedites batch processing, insures accuracy and eliminates all manual paperwork involved with case receipt.

- (1) A new data screen is sequentially called up for each case entry and automatically assigned a

reference number. The reference number is used to quickly recall the electronic file to enter additional data in the hearings process such as notice, decision and status inquiry.

- (2) As batches of cases are entered for each hearings office, the entry date and office designation are automatically recalled after first entry.
- (3) The system checks for duplicate case file records by searching for duplicate social security numbers at the time the initial data entry is made. This prevents scheduling cases twice when duplicate appeals are received. It also alerts personnel to the existence of other appeals, from different decisions, by the same individual. Appeals that come in at varying intervals can often be combined with issues that have already been scheduled for hearing, thereby decreasing the time needed for disposition of the cases.
- (4) An "A" date (final date upon which to meet 30-day promptness criterion) is automatically computed and filled in on the screen when the appeal date is entered.
- (5) Case file labels are generated through word processing output of the information contained in the entry screen. The labels are printed on adhesive paper and then attached to the paper case files. Information contained on each label includes the "A" date. This affords an easy reference and prominent reminder to everyone who handles the case.
- (6) Key codes are used to fill in names and addresses of frequently used employer representatives, attorneys, legal aids, etc.
- (7) Issue code number keys are also used to fill in verbiage to identify issues. Some issue code numbers also trigger the automatic addition of specific units within the Division that will need to be notified of the hearing.

The case file labels are printed and attached to folders upon completion of casetracking batch entries. Cases are then ready to schedule by Salem and/or forward to Portland and Eugene hearings offices. In each office, the files are reviewed for scheduling criteria and placed in file drawers by geographic location. The entire process of entry and file distribution is completed on the same day appeals are received.

c. Scheduling

Scheduling is normally completed once a week for hearing dates set at least two weeks in advance. The supervising referees in each hearings office draft the scheduling for their referees by filling in date, time, place and referee on the case file labels. Referees are given approximately 20 hearings per week, with rotating assignments made for telephone or in-person hearings. Cases are generally scheduled in the order received with priority attention given to promptness deadlines.

d. Notice Preparation and Mailing

The case files with scheduling information are distributed to the word processing operators in each office. For each case being scheduled, the file number is entered in the casetracking notice program, along with the referee name, date, time and place of hearing. Place of hearing is indicated by an entry of "T" for telephone and "P" for an in-person location. Cases entered in batches by date and referee require that only the time be reentered with each successive file number. As the entries are made, the data is simultaneously being written by the system to the individual case record and information from that record translated and output to a notice document. A separate daily calendar is also automatically created. When printed, the notice document will contain information specific to each case. For example, if scheduling is for a telephone hearing, the system will have noted the absence of a telephone number for either party and inserted a statement for them to contact the Hearings Section immediately.

The notices of hearing are printed on multi-part "ncr" sets. The sets are separated and appropriate copies mailed to the parties in window envelopes along with an informational pamphlet on how to prepare for the hearing. If the case has been scheduled for a telephone hearing, evidentiary documents which have been noted by the supervising referee are copied and mailed along with the notices. Copies of the referee calendar are duplicated and mailed to respective employment offices. Units to be notified within the Division other than local offices receive copies of the notices via electronic transmission to their individual printers as the scheduling data is input.

e. Prehearing and Hearing Mechanics

- (1) Prehearing - Requests for postponements are allowed or denied based upon a "good cause" standard defined by administrative rule. Requests for subpoenas are allowed or denied based upon demonstrated relevance to the issues being litigated. At the discretion of the

referee, prehearing conferences may be conducted in any case where the referee feels a conference is warranted. Normally, in the interest of saving time, conferences are set up informally through telephone contacts, and are conducted by telephone.

Exhibits for telephone hearings must be received prior to the hearing. Exhibits submitted by the parties must also be sent to the other parties prior to a telephone hearing. Parties are advised in the hearing notice that failure to provide all parties with copies may be grounds for excluding the evidence.

In order to keep prehearing delays to a minimum, parties are sent, along with the notice of hearing, a pamphlet entitled "How to Prepare and Present Your Case". The pamphlet provides an overview of the appeals process and answers questions most commonly asked about hearings.

- (2) Hearing - Although recorded, administrative hearings are informal. Strict rules of evidence do not apply. The referee is expected to control the hearing, question parties and their witnesses, and insure that the parties have ample opportunity to give their evidence. By statute, referees are compelled to "make a full and fair inquiry" into the facts of each case and to provide assistance to unrepresented parties.

Generally, the party requesting the hearing is asked to present evidence first. However, the referee is given broad authority to establish the order of the evidence. When the facts are not in dispute, a referee may ask parties for stipulations. Stipulations may also be obtained in prehearing conferences but must be noted in the hearing record.

In all hearings, referees are expected to comply with federal quality criteria.

f. Decision Making Mechanics

- (1) Hearings Referee - Referees are requested to issue their decisions within five days of the hearing and begin drafting their decisions as soon as time allows between scheduled cases. Decision preparation time is reduced through extensive use of "canned" formats. These formats generally contain explanations of the law for commonly encountered issues. Formats reduce the data input, research and deliberation required to

create decisions. Many of Oregon's referees utilize word processing and system glossaries to type their decisions in draft form before submitting to the word processing operators for final preparation and mailing.

- (2) Administrative Support Staff - As the referees turn their decisions in to the word processing unit, the case files are sorted according to promptness priority and are prepared and published accordingly. Operators utilize the casetracking decision program to automatically transfer the appropriate names, addresses and identification to the decision heading. Statistical coding and finality dates are computed by the system and appear on the screen for verification. The headings are electronically merged with the edited decisions and printed.

g. Decision Duplication and Mailing

Decisions are duplicated according to necessary distribution number. Copies to interested parties are mailed in window envelopes. Appropriate rights of review and law excerpts are enclosed with the decisions.

h. Performance Tracking and Reporting

All reports are generated from data in the casetracking system. A variety of daily, weekly, monthly and "spot" management reports are regularly used to track performance and are invaluable in helping meet promptness criteria.

- (1) The time it takes local employment offices to forward requests for hearing has a significant effect on promptness. Regular local office performance reports, based upon the dates of appeal and the dates the files were received, identify the individual offices and help correct problems.
- (2) Reports concerning the time it takes to get hearings scheduled also help isolate unnecessary delays. These reports indicate which hearings offices are taking longer than normal to schedule hearings and what factors are contributing to the delays.
- (3) Workload reports indicate where the major volume is, what type of work it is, where it can be shifted to, or where additional manpower is needed. The casetracking system identifies which hearings offices have which cases pending, making it easy to determine the exact caseload in each

office. Moreover, the use of economic prognostications and historical caseload data can be an effective aid to seasonal and long-term manpower and case management planning.

- (4) Reports regarding the time it takes referees to issue decisions reveal individual problem areas. When broken down further, by legal issues or other criteria, they can reveal the need for additional training and may uncover a host of other qualitative issues that can affect timeliness.
- (5) Word processing reports are used to indicate how long it takes an office's unit to issue decisions. Through the integrated casetracking and word processing system, these reports indicate if word processors are having difficulties and help identify the contributing factors.

i. Records Control and Close Out Procedure

After a referee decision is issued, the file is returned to the Salem Hearings office. Final review of the disposition is made through a casetracking verification program which, in effect, audits the case data and allows for modifications in statistical reporting. Files are placed in the "closed" drawers according to date disposed. If the decision is not appealed, the physical case file is purged after six months. All pertinent documents and exhibits are sent to the Division's microfilm unit. A complete record of the case is maintained on the casetracking system.

5. PROCEDURES IF FURTHER APPEAL FILED

This step is discussed under Higher Authority for Oregon (See Page 133).

6. CONCLUSION

One of the biggest advantages of having the computer network is that the Portland, Eugene and Salem hearing offices can move much of their workload electronically. For example, an overburdened clerical staff in one office may ask another office to print out and mail its notices, or attach headings and mail out its decisions in order to meet promptness criteria. The transfer of work is accomplished merely by transmitting the electronic "documents" to the remote office.

Oregon's computerized casetracking is an information storage and retrieval system designed to:

- (a) reduce the number of times data entries are made;
- (b) increase the speed and accuracy of case processing;

- (c) provide immediate information on status of cases;
- (d) increase the speed and accuracy of word processing; and
- (e) provide a variety of management reports.

The application of this system significantly reduces the time it takes to complete the appeals process.

LOWER AUTHORITY - RANGE THREE WORKLOAD STATES

F. SUMMARY

These Range Three workload States have recognized that the ability to meet appeal promptness criteria is not solely dependent on whether the appeal process is manual or automated. In conjunction with the procedures already in place, there must be a strong management commitment to promptness.

This commitment includes, among other things, the willingness to recognize the need and institute change when and where necessary. Management must effectively communicate the commitment to achieving this goal to those employees who are responsible for accomplishing each task of the appeals process.

Employees must be encouraged by management to view their area of responsibility as vital, with the knowledge that the failure of any part could adversely affect the whole.

PART TWO

SECTION ONE - LOWER AUTHORITY APPEALS

IV. RANGE FOUR - FLORIDA, ILLINOIS, PENNSYLVANIA, AND TEXAS (MORE THAN 20,000 CASES PER YEAR)

A. INTRODUCTION

Florida, Illinois, Pennsylvania, and Texas were selected from the States whose annual lower authority appeals workload is more than 20,000 cases. As with each of the other groups of States there are more differences among these four States than there are similarities. They are located in different parts of the country, and the economy, geography, and demography of each is different from the others. The structures of these States' lower authority appeals operations are also very different.

The representatives of the four States in this workload category engaged in extensive debate regarding the method to be selected for this paper. The issue was whether to "merge" the step-by-step descriptions of the four states into a single document or submit separate papers. They decided unanimously that much of the significant detail and the flavor that distinguishes each program would be lost if they merged their descriptions. Perhaps the ultimate factor in reaching this decision was the realization that no two State operations are alike. Their purpose then is to raise as many topics as possible for potential application to other programs. A summary chart of the management reports used by these four States is included at the end of the Pennsylvania part of this section on page 92.

They also concluded that "size alone" is no barrier to achieving success in appeals promptness. Finally, they agreed that this project had been a learning process for all of them and they may adopt in their own programs, elements from the others' procedures.

B. FLORIDA

AUTHOR: Robert Whaley

1. STATE GEOGRAPHY AND DEMOGRAPHY

As a southeastern state, Florida is part of the U.S. Department of Labor's Region IV. With 58,560 square miles, Florida stretches from Pensacola to Key West, a distance of almost 800 miles. The population, which is currently over 12 million, is concentrated primarily in the central and southeastern areas of the State. Being a coastal area with a tropical climate, Florida benefits greatly from its tourism trade. Only agriculture rivals tourism in the number of people it employs. The manufacturing sector only accounts for 12.6% of Florida's workers. Major cities include Miami, Tampa/St. Petersburg, Orlando and Jacksonville.

2. APPEALS UNIT STRUCTURE

The responsibility of running the UI program in Florida lies with the Department of Labor and Employment Security, which functions under the direction of an appointed secretary. The claims, lower authority appeals and tax bureaus operate within the Division of Unemployment Compensation, which is one of five divisions within the Department. The higher authority body, the Unemployment Appeals Commission, receives support from the Division of Unemployment Compensation, but is independent and has no direct supervisory control over the Bureau of Appeals.

At the present time, the Bureau of Appeals staff of seventy employees is evenly divided between professional and support personnel. During the last five years, an average of 31,794 appeals were filed per year; however, a steady decline has been experienced since 1985. Of the total number of cases heard, an average of 147 per year relate to tax issues. Except for the docketing function, the Bureau of Appeals is decentralized with district offices in Miami, West Palm Beach, Orlando, and Tampa. The Bureau's central office is located in Tallahassee. Hearings are conducted at 43 locations, primarily claims offices, job service offices and Bureau of Appeals offices. Approximately 15% of all hearings are conducted by telephone.

DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

An appeal may be filed in person at a claims office, district appeals office, central appeals office, or the Unemployment Appeals Commission, which is Florida's higher authority in UI matters, or by mail directed to one of these locations. When an in-person appeal is filed, the appellant and agency personnel complete a preprinted notice of appeal form. When an appeal is received via the mail, an agency representative completes the notice of

appeal form and attaches the original appeal letter to it. The letter's postmark date, which is the appeal date for the case, is noted. Since the vast majority of appeals are filed in person at, or by letter directed to, a claims office, the procedures for such an appeal have been automated. If an appeal is filed at one of the other possible locations, notice is provided to the claims office so that similar procedures can be followed.

For docketing purposes and so that pertinent documents for a case can be retrieved or generated, claims office personnel input into the Department's mainframe computer a notice that an appeal has been filed. Each claims office is required to input by 5:00 p.m. each day either a list of appeals or a report showing that no appeals were filed that day. From this data, a list of all appeals filed within the State, in social security number order, is computer generated during evening hours and provided to the central appeals office by 8:00 a.m. the following day.

A word processing systems operator begins the docketing process by entering specific information into the computer. A docket number is automatically assigned to a case by the computer. After corrections are made, that day's docketing information contained within the computer's data base is copied onto diskettes which are sent to each district office at the same time the files are forwarded.

b. Records Retrieval and Creation of Tracking Mechanism

Original claims office documents concerning the appealed issue, along with the notice of appeal, are forwarded by the claims office directly to a predetermined district office where the appeal will be heard. For most cases, a majority of the file documents relating to the appeal will be transferred directly from the claims office to the district appeals office.

In addition to the list of appeals provided to the central office, certain file documents are automatically generated at the agency's central office during the same night the list is generated. A progress report sheet, as well as reproductions of the claimant's wage transcript(s) and determination(s), are printed for each appeal that was filed. An index of microfilmed documents for each claim is also generated to insure that a complete file will be compiled.

On the same day that the list of appeals is provided to the Bureau of Appeals, personnel from the Bureau of Claims and Benefits utilize the index of microfilm documents to produce the necessary microfilm copies and associate them with the computer generated wage transcript(s), determination(s), and progress report sheet. These documents are normally delivered in one batch to the

docketing unit of the Appeals Bureau by 3:30 p.m. the same day. Upon delivery to the Appeals Bureau, a clerk notates on that day's list of appeals the receipt of the individual files to insure that all necessary files have been generated and given to the Bureau. In addition, the clerk groups the files by district. An examiner for the Bureau checks the files for any problems. The files are then transported to district offices by a courier service.

As part of its records management system, a district office maintains one file for each claims office within its district. When the original documents sections are received, they are directed to the appropriate claims office file, where they are maintained until either the remainder of the file is received or a referee pulls it for purposes of scheduling a hearing.

c. Scheduling

In Florida, the hearing scheduling is decentralized. Each referee is primarily responsible for setting his or her own schedule of hearings. Generally, a referee conducts hearings for four days of the week. The fifth day is reserved for the scheduling of cases, completing unfinished decisions, in-house training, and, on occasion, the holding of continued hearings. With one exception, each office has the same in-day for its referees. This system was developed so that in-house training could be coordinated in addition to annual statewide training. Having one planned scheduling day per week has not adversely affected promptness performance.

Under Florida law, a party must be given at least ten days notice of a hearing. A referee need not wait until the complete file has been received or a docket number has been assigned to a case in order to schedule the hearing. Since the claims office forwards the appeals instrument and most of the pertinent documents to the appropriate district office as soon as the appeal data is entered into the computer system, the referee has sufficient information to schedule the case. The hearing can be, and often is, scheduled from the information supplied by the claims office, pending receipt of the docket number and remainder of the file from the Bureau's central office. A temporary docketing progress report is completed to reflect the status of the case. Scheduling in this fashion results in a time savings of up to two working days that would be lost if the referee had to wait for docketing information before scheduling. Each district office maintains a case flow management system so that the original documents section can be located after the remainder of the file is received from the central office. These systems range from the use of a log sheet to a case card system. After the two sections have been combined into one file, the data from the temporary docketing progress report is transferred to

the progress report sheet by either a word processing systems operator or the referee, depending upon the physical location of the file. If a case has not been scheduled for hearing prior to the receipt of the file from the central office, the two sections of the file are associated by a word processing systems operator and placed in a separate file drawer in time-lapse date order. In scheduling cases for hearing, a referee gives the files located in this drawer higher priority inasmuch as they generally have older appeal dates. Since cases are normally pulled and scheduled by referees on a weekly basis, diligence in noting the thirtieth day is required. The cases are generally scheduled for hearing in date order; however, to facilitate meeting promptness criteria, cases which will become due on the day of the hearing will be given priority over other cases, such as continued hearings which are not due that day. On each referee's weekly list of hearings, notation is made of the thirtieth day. A referee can readily determine if any cases scheduled for hearing for the upcoming week will require special attention.

Whenever the parties are geographically separated, one or both are scheduled to be heard by telephone thus eliminating the additional time which would be required in a bifurcated hearing procedure. In addition, if the parties are located near each other but in an area isolated from the referee, a telephone hearing may be scheduled to avoid a delay in the disposition of the case that would result if the referee waited until a sufficient workload developed to make a trip to that area cost effective. Telephone hearings are scheduled for approximately 15% of the cases.

d. Notice Preparation and Mailing

In scheduling the hearing, the referee completes the appropriate sections on the progress sheet, which includes a notation outlining the issue(s) by standard code number(s). These issue code number(s) are entered into the computer systems by the word processing systems operator. The hearing notice is automatically generated by the computer, reflecting in detail the issue(s) to be heard at the hearing. To complete the hearing notice, the word processing systems operator is only required to input the document number; date, time, and location of hearing; additional addresses; referee name; and issue codes. Prior to the duplicating process, the word processing systems operator types all notices for that day. Since some cases require copies to be made of file documents which will be sent to the parties, the notices are generally associated with the file prior to the copying function. The word processing systems operator makes the necessary copies and then stuffs the notices in window envelopes. All mail is placed at a designated pick-up area.

So that parties will better understand the notice and the procedures to be followed at the hearing, an informational pamphlet is sent with the notice. A Spanish version of the pamphlet is mailed if the file indicates a party is of Hispanic background. The informational pamphlet strongly encourages the parties to appear for the hearing on time.

e. Prehearing and Hearing Mechanics

If an office determines that a case cannot be heard timely because of insufficient personnel being available, another office can be contacted to hold the hearing by telephone, thus meeting the due date for that case.

The effort to achieve timely disposition of cases continues during the hearing. In introducing the record, a referee provides only the basic information needed to identify the case and the issue(s) involved. For example, the recitation of actual statutory citations is eliminated where possible. Florida requires that the referee make the contents of the benefit file known to the parties, which is usually done at the hearing. In cases where a large number of documents are pertinent to the case or an interpreter is likely to be used, copies of the documents are mailed to the parties prior to the hearing. The referee then has the option of not reviewing each document at the hearing, thus saving scheduled hearing time for testimony and lessening the likelihood that the hearing will be continued. As a means of promoting a time efficient hearing, a referee customarily does not invoke the rule of sequestration. If, however, a party invokes the rule or hearing room space is limited, the witnesses will be sequestered. Both prior to and during the hearing, referees are encouraged to use a worksheet to record information to enable them to keep the issues in perspective during the hearing and to facilitate the dictation of the decision. Parties are requested to leave the hearing room together, which not only prevents ex parte communication, but also prevents the parties from lingering after the hearing and, thus, taking up the referee's time. Requests for continuances are considered by the referee and are granted only upon a showing of good cause. If a hearing must be continued, the referee attempts to reschedule informally, with the consent of all parties, and hold the hearing prior to the due date. If the referee will be away from the location of the parties, a telephone hearing may be scheduled rather than delaying the hearing until the referee returns to the area. If a party requests a continuance due to the absence of a witness from the area, the referee has the option of attempting to schedule the witness to give testimony by telephone and avoid delaying the hearing. When an appellant fails to attend the hearing, the case is dismissed by the referee. Customarily, the referee waits fifteen minutes prior to advising the appellee that the hearing will not be held. Testimony is generally not taken

from the appellee if the appellant fails to attend the hearing. Rather than appealing the dismissal decision to the higher authority, the appellant has the option of requesting that the referee rescind the prior dismissal decision and reschedule the hearing. Based upon a showing of good cause, the appellant can be allowed to proceed with the merits of the appeal. Although they do not normally exercise their right to discovery, the parties can request that a hearing be delayed for this purpose. In such cases, the referee works closely with the parties to insure that unnecessary delays do not occur. In many instances, an order to shorten the time for a response to discovery is issued.

f. Decision Making Mechanics

Referees are encouraged to dictate a decision as soon after the conclusion of the hearing as feasible. With the facts still fresh in their minds, referees are less likely to need to review the record prior to dictating the decision.

In order to speed the process, referees use standardized or "canned" language where appropriate. These paragraphs, which are primarily used within the conclusions of law section of the decision, are indexed by code numbers. Rather than dictating the standardized language, the referee simply dictates the code number. Likewise, the word processing systems operator is only required to enter a number into the terminal to produce the desired language. Standardized court case references are also computerized by number for use by the referees as a tool to aid in the timely dictation of cases. Dismissal decisions, whether based upon the appellant's nonappearance or a lack of jurisdiction, are standardized and require minimal effort from both the referee and the word processing systems operator.

After a decision on the merits has been dictated by the referee, the file is placed at a designated location. A word processing systems operator is assigned to log the docket number onto a log sheet and then place the file in a file drawer in due date order. An available word processing systems operator then retrieves the file and types the decision. When a referee's schedule requires the conducting of hearings away from the district office for several days, dictation tapes, along with the case files, are regularly mailed to the district office for processing if this will result in a quicker transfer of the files from the referee to the word processing unit. When a due date is near, the decision is telephoned in, rather than mailed. The referee plays his dictation tape into the telephone and a second tape is used by a word processing systems operator to record the dictation. The accuracy of the typed decision is verified by a second clerical worker and is mailed without proofing by the referee. If the word

processing systems operator notes a problem, verification is sought from either the referee or a referee supervisor. A signature stamp is used to affix the referee's signature to the decision prior to mailing. As a general rule, the referee, as with telephoned-in decisions, does not proof the decision. A second word processing systems operator proofs and notes any corrections. The file is then returned to the first word processing systems operator, who makes any needed corrections and affixes the signature stamp. Since word processing systems operators will be typing first drafts and final drafts throughout the day, a cutoff time has been established, such as 3:30 p.m., for everyone to concentrate on final drafts of cases that are due to be issued that day.

When district office personnel are unable to type referee decisions in a timely fashion, the district clerical supervisor will coordinate the transfer of workload with central office staff. The transfer may occur through the use of a courier service or by telephone in the fashion described above.

g. Decision Duplication and Mailing

Generally, decisions are typed for an extended time, such as the first four hours of the day, prior to the duplicating process. At an appropriate time, the word processing systems operator who typed the decisions makes the necessary number of copies on a copying machine, puts them in window envelopes and places them at the mail pick-up area.

h. Performance Tracking and Reports

Statistical reports regarding such items as number of decisions issued by a referee and promptness performance are computer generated on at least a monthly basis (See page 92 for detailed listing of reports). From these reports, potential problems in a district office are revealed. Each referee's workload and promptness performance are monitored. Although not used in the evaluation of the referee, a monthly report is computer generated reflecting each district office's performance based upon the disposition of cases appealed to the higher authority. In addition, a list of cases over 45 days old is generated. Each case is then scrutinized to determine why a decision has not been issued. This report is another means of encouraging referees not to procrastinate.

i. Records Control and Closeout Procedure

From the time an appeal is docketed at the central office, a record of each active or recently closed case is maintained on the computer. This information can be used in locating the actual file if the need arises. When cases

are completed at a district office, a transmittal listing the docket numbers is prepared. The preparation of the transmittal also results in the final updating of the district's computer regarding the completion of the case.

After receiving the files and transmittals at the central office, a word processing systems operator closes out the case on the central office computer. The original documents in a file are then prepared for microfilming. After that process is completed, the file is returned to central office where it is kept for four months.

4. PROCEDURES IF FURTHER APPEAL FILED

Most appeals to Florida's higher authority, the Unemployment Appeals Commission, are received either by a claims office or the Commission. If an appeal from a referee's decision is received by the Bureau of Appeals, it is forwarded to the Commission.

A list of appeals to the Commission is computer generated by the mainframe computer on a daily basis. That list is provided to the Bureau of Claims and Benefits, Bureau of Appeals and the Commission. All computer generated documents and pertinent microfilmed documents under the control of the Bureau of Claims and Benefits are transferred to the Bureau of Appeals, where they are associated with a case's original documents and cassette tapes. The files are then transferred to the Commission for its review.

C. ILLINOIS

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1. INTRODUCTION

Lower authority appeals case load in Illinois remained stable during 1985, 1986 and 1987 averaging 42,432 appeals per year. A decline in promptness performance began in 1983 after a reduction-in-force. The exercise of "bumping rights" affected critical positions outside the span of control of Illinois Department of Employment Security (IDES) management.

The introduction of automated systems began in May, 1985 with the Personal Computer/Local Area Network (LAN) to process Referee decisions with greater efficiency and accuracy. In May, 1986 electronic docketing of cases replaced slower, manual methods, with the introduction of the Referee Docketing System (RDS). In addition to automated systems, IDES management initiated a broad range of activities designed to improve promptness performance and achieve Federal criteria.

A comprehensive Appeals Action Plan was developed which accurately projected, six months in advance, the month (April, 1987) in which Illinois would return to meeting the promptness performance criteria. Illinois lower authority promptness performance has been above the criteria for the fifteen consecutive months through June, 1988.

2. STATE GEOGRAPHY AND DEMOGRAPHY

Illinois is located in the Midwest. It has 102 counties covering 56,400 square miles. The population is 11,511,000. The principal city is Chicago and the State capitol is Springfield. The terrain is prairie and fertile plains, open hills in the southern portion of the State. Manufacturing, wholesale and retail trade, finance, insurance, real estate, services and agriculture (corn, soybeans, wheat, oats, and hay) are the primary State industries. The main natural resources are the fertile land and the timber. The State of Illinois Center (SOIC) in Chicago is, in this author's opinion, the most futuristic and unique State structure in the nation. Chicago is emerging as one of the most favored locations of producers and directors for film making.

3. APPEALS UNIT STRUCTURE

The Illinois "lower authority" appeals unit is designated the "Benefit Appeals Sub-Division" (See page 71, Glossary 4.b). In addition to this Sub-Division is the "Administrative Hearings Sub-Division" which conducts hearings primarily on employer appeals on tax liability issues. Both of these Sub-Divisions are within the "Appeals Division" which has an Appeals Manager who reports to the Deputy Director of Program and Planning; who

in turn reports to the IDES Director.

There are currently four Hearing Supervisors (attorneys) and 29 Hearing Referees (attorneys). The Hearing Referees report to the Hearing Supervisors, who report to the Chief Hearings Referee. The Benefit Appeals Sub-Division currently stations Referees at the Chicago Central Office and nine remote locations, strategically located throughout the State.

4. GLOSSARY

- a. Appeals "Stacking" - refers to an RDS scheduling parameter which identifies and schedules appeals in sequential time slots for the same Referee on the same day, for which the same major employer (as determined by volume of appearance) or employer representative is a participant. The "stacking" of appeals greatly facilitates the hearing process while also serving as an accommodation to the employers or employer representatives affected.
- b. Benefit Appeals Sub-Division - refers to the organization unit within the Appeals Division charged with responsibility for the scheduling and disposition of nonmonetary benefit appeals. The Chief Hearings Referee is in charge of this statewide multi-location unit.
- c. Benefit Information System (BIS) - refers to a complex electronic system for tracking all data related to unemployment insurance claims including, but not limited to benefit payments, overpayment determinations and appeals.
- d. Downstate - is a term used frequently throughout the Benefit Appeals Sub-Division and the Illinois Agency to mean that total area of the State outside of Cook County and its collar counties.
- e. Field Operations - Under the IDES table of organization, the local offices, through their respective managers, report to a UI Regional Manager. The seven Regional Managers report to the Manager of Field Operations who has Statewide responsibility for the operation of local offices. The Field Operations Manager maintains a staff liaison with the Chief Hearings Referee of the Benefit Appeals Sub-Division.
- f. Local Area Network (LAN) - is a personal computer based system shared by multiple users. In the Benefit Appeals Sub-Division the LAN is used primarily for the preparation of Referee decisions.
- g. Referee Docketing System (RDS) - is an automated support tool designed to assist Referees and their

supervisors in the random docketing, scheduling, tracking and reporting of appeals of nonmonetary determinations. The RDS system is an adjunct system to the Benefit Information System from which it draws claims data.

- h. "Window" - as used in the segments on the Referee Docketing System, and Local Area Network, refers to a period of time in working days in which each system is programmed to perform a certain function automatically or to enable a certain function to occur if given appropriate data.

5. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeals Filing and Intake

A party may file an appeal to the Referee of an adverse determination or finding in person or by mail. The appeal is filed in the local office where the claim was filed. The following are stages in the filing and intake of an appeal:

- (1) The appeal must be filed within 30 days after the determination or finding was mailed or hand delivered to the parties. No special form is required, although an appeal form is available on request from the local office. The appeal should be:
 - (a) In writing, dated and signed by the party or the party's representative;
 - (b) Limited to one claimant and contain the claimant's social security number; and
 - (c) A statement by the appealing party which sets forth the parts of the decision with which the appealing party disagrees and the specific reasons for that disagreement.
- (2) Incomplete documents, including appeals and employer protests, may be returned to the originating party by the Agency for completion. If the missing information is provided and the document returned to the Agency within ten days of the date the Agency mailed it back to the party of origination, the document is deemed filed on the date the Agency originally received it.
- (3) A nonparty employer may appeal an adverse determination of its party status.
- (4) A nonparty employer is entitled to receive notice of the Referee hearing if the claimant is appealing under a separation issue (VL, MC or RW). The nonparty employer may appear and

participate in the hearing, but has no right of further appeal to the Board of Review.

- (5) The local office data enters the determination or reconsidered determination into the Benefit Information System (BIS) within 48 hours of the day the appeal is received or by the end of the next working day, whichever is later. BIS processes the data entries at night, and the determinations entered during the day appear on the Referee Docketing System the next day. (The RDS system is described under "Scheduling" below.) The local office must forward the appeals case record on the same day the determination or reconsidered determination is data entered into BIS. The local office does not data enter the appeal into BIS as this generates Referee Docketing System automatic functions and is a responsibility of the Benefit Appeals Sub-Division.
- (6) The local office completes the Notice of Reconsideration and Appeal and mails copies to the parties and/or representatives. The notice serves as the cover page for transmittal of the appeals case record from the local office to the Benefit Appeals Sub-Division as well as the data entry instruction sheet for the Referee Docketing System (RDS) staff. Prior to transfer of the appeal to the Benefit Appeals Sub-Division, the local office in which the appeal is filed assembles the appeals case record in a prescribed order.

b. Records Retrieval and Creation of Tracking Mechanism

The Benefit Appeals Sub-Division has two Referee Docketing System Units. The Chicago RDS Unit schedules all appeals arising from local offices in the Chicago metropolitan area and its collar counties. The Springfield RDS Unit schedules all other appeals. The 64 local offices are instructed to transfer appeals case records directly to the RDS Unit responsible for scheduling its appeals. The following actions relating to records retrieval and case tracking are taken by RDS staff:

- (1) The Benefit Appeals Sub-Division clerk-messenger in Chicago picks up appeals at six collection points in Chicago and environs. The courier makes separate a.m. and p.m. pick up runs on Mondays, Wednesdays and Fridays for a total of six circuits per collection point per week. Each collection point serves one or more local offices. Many appeals are brought in by the courier on the same day they are filed.

Collection points are designated by the Field Operations Manager in agreement with the Benefit Appeals Chief Hearings Referee. Collection points change from time to time to reflect the change in volume of appeals filed from office to office.

- (2) Overnight delivery services are used by several offices in the Chicago metropolitan area and increased utilization of this proven and reliable method is anticipated.
- (3) Outside of the Chicago metropolitan area, downstate local offices must utilize the United States Postal Service as the only available means of appeals case record transfer. However, because it is the slowest and least predictable means of transfer, reliance on it will be eliminated as courier or express mail delivery becomes available.
- (4) Mail consisting of appeals and other documents relating to hearings is opened and machine time and date stamped for both intake and audit trail purposes.
- (5) Appeals received by mail or courier are recorded on daily intake logs in the RDS Unit by date received, originating local office, UI Region, claimant's last name, and last four digits of the claimant's social security account number. The time lapse between the date of filing of the appeal and the date the appeal was received by the RDS Unit is determined and entered on the log.
- (6) The time lapse between the date of the appeal and the date of receipt by the RDS unit is monitored for local office compliance to the forty-eight hour forwarding standard. A monthly report is prepared on appeals forwarding time lapse and local office compliance levels and transmitted to the Manager of Field Operations for review and corrective action, if necessary.
- (7) After the "logging in" process, the contents of all incoming appeals case records are screened for completeness of documents, and then for issue. If the issue correctly belongs to the Administrative Hearings Sub-Division, the log tally is cancelled and the file transferred to Administrative Hearings. The Field Operations liaison is notified of the incorrect transmittal by the local office.
- (8) All appeals case records that correctly belong to

the Benefit Appeals Sub-Division are "gross sorted" by major employer (determined by frequency of appearance) and employer representative. In anticipation of RDS electronic docketing, and to facilitate RDS "stacking" processes, appeals which have been "gross sorted" are entered into BIS/RDS on the same day.

c. Scheduling

The Referee Docketing System is an automated support tool designed to assist Referees and their supervisors in the random docketing, scheduling, tracking and reporting of Referee appeals of nonmonetary determinations. RDS is an adjunct system of the Benefit Information System (BIS) from which claims data is obtained.

The objectives served by the implementation of the RDS electronic docketing system are:

- (1) The elimination of many manual functions such as the typing of hearing notices, weekly Referee case schedules and mass duplication of the weekly case schedules. The substitution of automated activity in lieu of the manual systems has resulted in significant savings of cost and time.
- (2) The expedient production of more accurate hearing notices. Fewer notice defects mean fewer cases rescheduled to "cure" defects.
- (3) The integrity of the docketing process itself as the RDS system randomly assigns cases to available Referees.
- (4) Scheduling parameters which permit the immediate (same night) scheduling of the hearing to a particular Referee, date, time and place.

Significant design features of the RDS system include:

- (1) The Referee Resource Control Table which identifies each Referee by a three digit BIS number. Only Referees posted to the Resource Table may be scheduled for hearings by RDS.
- (2) The Referee Unit Table which identifies the geographic RDS Unit in which the Referee is assigned to conduct hearings. Referee Units are grouped according to geographic and workload distribution. Currently, the Unit Tables docket independently of one another.
- (3) Scheduling parameters compel the system to

schedule into a three day "window" which is always eight to ten working days in advance of appeals data entry. The three day window advances one day each working day. The eight working day minimum to the window is required to comply with the minimum ten calendar day hearing notice requirement of the Benefit Rules. In any eight working day period there is always a two day minimum of additional calendar weekend days. The window is three working days wide to permit complete case scheduling for all available Referees to occur without gaps in the docket. RDS cannot be forced to schedule before or after the eight to ten day window, i.e., RDS cannot schedule cases either for the seventh working day or for the eleventh working day. This feature mandates some manual docketing whenever case load fluctuates downward and scheduling for the seventh RDS working day is incomplete. An illustration of this phenomenon is as follows:

- (a) On the night of July 14, 1988, the RDS eight to ten working day window is July 26, 27 and 28, 1988.
 - (b) If on the night of July 14, 1988, RDS had not already fully scheduled cases for Monday, July 25, 1988, the system cannot "go back" and fill in the gaps because July 25, 1988 is the seventh working day from July 14, 1988.
 - (c) However, new appeals may be on hand in the RDS Unit ready for scheduling and because July 25, 1988 is the eleventh calendar day from July 14, there is still a minimum ten day calendar period in which to mail the legally required notice. Under these circumstances, RDS staff are instructed to docket available cases manually to complete the Referee schedule for July 25, 1988 with available cases.
- (4) The "stacking" of appeals for the same employers or employer representatives is done in sequential 30 minute time slots for one Referee on one date. RDS automatically "stacks" appeals whenever three or more employers or employer representatives are data entered into the RDS system in the same Unit Table. The high volume of appeals involving employers or employer representatives permits a significant amount of nightly "stacking." The efficiency with which RDS permits these types of appeals to be docketed, scheduled and noticed (all from the

same date of data entry) greatly assists efforts to achieve promptness criteria. Conversely, appeals entered into RDS which do not "stack" are held one additional work day before scheduling. During this added day of "hold to schedule" the RDS Unit staff will do file maintenance on the appeal, if required.

- (5) Rescheduling parameters of fifteen days from the date the appeal was originally scheduled by RDS to be heard are used. If for any reason a case is delayed for rescheduling beyond the fifteen day automatic reschedule "window," the case must be manually rescheduled because the appeals data has been purged.

d. Notice Preparation and Mailing

The automated Referee Docketing System is used for the random docketing and scheduling of hearings and the automated preparation of the hearing notice. The system operates through nine screens. Three of the nine screens are for informational purposes only and are accessible by all BIS users. The other six screens may be accessed only with approved badge reader cards. These six screens are used by RDS staff for various maintenance actions affecting appeals. Before automated docketing occurs, significant system programming and maintenance must take place as follows:

- (1) On or about December 1st of each year for the succeeding calendar year the Julian calendar is entered into the RDS program. The calendar blocks for that year all weekend days and holidays from being scheduled for cases. This blocking cannot be overridden, except by a systems change request and reprogramming. Before entry, the calendar is checked for accuracy by at least two independent teams of RDS users. It is then approved by the Chief Hearings Referee for programming of the calendar into RDS by the Project Officer. An error (e.g. failure to identify and block a holiday from being scheduled) could cause significant disruption to operations, poor public relations and time lapse delay. Cases scheduled in error would have to be cancelled by manual notice to the parties.
- (2) Referee availability is posted to the system for each date and each time slot the Referee will be available to accept an RDS assigned case. Referee nonavailability is indicated either by a "V" for vacation or sick leave or an "S" to indicate that the Referee is not to be assigned RDS cases. The "S" designator is used when

Referees conduct dockets of manually assigned cases in other RDS Unit Tables, act as temporary Hearings Supervisors or have other special assignments.

- (3) Appeals are data entered into the Benefit Information System daily. This is essential to ensure that all potential Referee dockets are filled and scheduling backlogs do not develop.
- (4) Daily maintenance of the RDS system is necessary to ensure that all data entry "took" and that data in the system is correct as to names, addresses, issues, periods of time and employer representatives, if any.

After programming, posting of Referee availability and data entry of appeals, automatic preparation of hearing notices occurs. The hearing notices are specially designed preprinted mailers and are generated nightly. In addition to hearing instructions which are preprinted on the notice, the form's design permits data and other messages from the BIS/RDS system to be printed on it as well.

Along with the preparation of hearing notices, a series of schedules and reports are automatically prepared. A Referee Weekly Benefit Appeals Schedule is printed each Wednesday night for the succeeding calendar week. A Daily Location Load Analysis Report is printed daily to show the status of cases in the system by location (Unit Table) and by age (number of days in the system). This report is particularly helpful to management in locating case buildups. Cases Referee resources are shifted, as needed, to eliminate backlogs. File Maintenance Reports, printed daily are used by staff to correct data entry errors. A Daily Hearings Schedule by Location is another report which indicates by Unit Table all cases docketed (by docket number) as of the date of the report. The Daily Hearings Schedule is frequently helpful in identifying case load problems or problems unique to the docketing of employer representative companies.

RDS staff screens all hearing notices before they are mailed. When the screening is complete, the preprinted label, also generated by RDS, is attached to the file folder.

e. Prehearing and Hearing Mechanics

Methods used by IDES to expedite hearings include the in-service continuing legal education of Referees, preprinted instructions that create the expectation of efficient hearings procedures, the use of telephone hearings and teleconference participation of parties, and ongoing monitoring of Referee performance.

IDES maintains a strong management commitment to in-service continuing legal education of Referees by utilizing all available training tools which include:

- (1) Review of the U.S. Department of Labor video tape training program on quality hearings and decisions;
- (2) Referee participation in programs and seminars such as those presented by the National Judicial College;
- (3) Guest lecturers, including circuit court judges and the Assistant Attorney General; and
- (4) In-service training programs for Referees emphasize:
 - (a) The prompt payment of benefits when due. Promptness of Referee action is valued, encouraged and emphasized in view of this principle and its assumed unwritten corollary of prompt denial of benefits when not due. The integrity of the UI program is injured by payments to ineligible claimants.
 - (b) The significance to the entire case of the Referee's control of the hearing. A recent Illinois appellate court decision applied the doctrine of res judicata to the unemployment insurance appeal hearing. The court decided that there was a preclusive effect to the circuit court proceeding because of issues and causes of action which could have been, but were not, raised in the Referee appeals hearing. The attorney community became aware of this case and otherwise routine separation hearings before the Referee have become the battleground for the "other issue" subsequently litigated in the "other forum." (Martinez v. Admiral Maintenance Service, 157 Ill. App. 3d 682(1987))
 - (c) Granting of continuances only for "good cause shown." Referees have been encouraged to take a strong stand on continuances and are supported if a party seeks reversal of a Referee's decision from higher management. Significantly, it has been found that many denied continuance requests are ultimately held as originally scheduled. If a continuance is granted, the Referee assumes a "fall back position of same day, next day, this week," so that the 30-day criterion can

be met whenever possible.

Expectations of a "speedy trial" on the part of the participants are initiated with preprinted instructions on the hearing notices. Parties are urged to "BE ON TIME" for their hearings. Because the hearings are scheduled at 30 minute intervals, the parties are also advised by notice that the "average length of a hearing is 20 minutes." The Referee is not bound by a time constraint, but the parties knowledge of the hearing schedules, plus the instructions "BE ON TIME" help set the tone of the hearings and establishes an expedient process.

A long standing practice is the recognized "grace period" of fifteen minutes in which the parties may arrive after the time set for the hearing but still have the matter heard by the Referee that day. The hearing is conducted if the appellant appears within the "grace period." If the appellant does not appear within the "grace period" the Referee dismisses the appeal and issues a written decision to this effect.

The utilization of telephone hearings and teleconference participation of parties, representatives and witnesses helps balance workload between the Chicago metropolitan area and the rest of the State. Telephone hearings avoid some unnecessary continuances and enable the hearing to be conducted on the date and time of the original scheduling. Although a rule requires that all hearings, with the exception of interstate benefit hearings, be scheduled as in-person hearings, all hearing notices contain two toll-free numbers for use by parties in requesting telephone hearings. One number is for use by intrastate callers and the other for use by interstate callers. A Referee may deny a request for a telephone hearing if it is determined that the in-person appearance of the party or witness is required to determine credibility. One party may not compel the format of hearing for the other party.

The Benefit Appeals Sub-Division monitors and maintains Referee compliance with the criteria for hearing conduct established by ETA Handbook No. 382, Appeals Performance Criteria for Evaluating Unemployment Insurance Hearings and Decisions. These criteria support and facilitate an expedient hearing process which satisfies due process requirements. Hearings Supervisors currently review two hearings per Referee per month. Results are used to identify deficiencies, eliminate barriers to efficient processes, and to provide immediate feedback to the Referee on the quality of the cases reviewed.

f. Decision Making Mechanics

Referees are encouraged in the direction of accuracy, speed and brevity in the production of their decisions.

Decisions are expected to exceed federal quality standards as established by ETA Handbook No. 382 and to comply with the law, rules and court opinions as to form and content.

The form which administrative decisions must follow is specified by law and Benefit Rule. All Referee decisions must contain separately stated "findings of fact" and "conclusions of law."

Precedent decisions are contained in the Digest of Adjudication Precedents. Relevant and applicable court opinions are distributed to Referees as they become available.

Referee decisions are reviewed for compliance with criteria Nos. 22-30 of ETA Handbook No. 382. These criteria have been excerpted and printed on a single page for use as a "Decision Check List" as the Referee prepares the draft decision. ETA Handbook No. 382 quality scores are discussed with the Referee as are the Hearings Supervisor's comments on criteria Nos. 22-30 of the Appeals Performance Score Sheet. Decision quality deficiencies are identified and monitored for improvement in future reviews.

Efficiency in the preparation of Referee draft decisions is encouraged through the use of preprinted and "boilerplate" draft decision formats. The Referee "boilerplate" draft decision format was designed to accommodate the great majority, by volume, of the issues arising on appeal in the Benefit Appeals Sub-Division. To encourage brevity of decisions (provided the decisions comply with the law, Rules and quality standards) the "Appeals History/Decision Format" is printed on the front top and the reverse bottom of each form. Space on the front bottom may be used for "findings of fact." Space on the reverse top may be used for the "conclusion." The Referee may attach as many pages of draft decision as the circumstances require. All Referee "short form" decisions contain significant entries of preprinted "boilerplate" to cover the majority of issues and contingencies which may arise.

Statements of law have been standardized. Referees are expected to use "approved text" for stating the law on the most common issues of appeal. Approved law text has been encoded for permanent file storage in the Local Area Network (LAN). Referees need only identify the appropriate LAN Code within their draft decisions and the approved text is printed automatically by the computer in the conclusion of the decision. (LAN Codes Booklet available from author on request).

Correct language usage, spelling, punctuation and grammar in the preparation of Referee draft decisions are emphasized. Legibility is stressed for ease of preparation of the draft decision by LAN Unit staff. Principles of

composition and clear, concise language are encouraged. Referees were issued The Elements of Style, Third Edition, by William Strunk Jr. and E. B. White and encouraged to adopt this excellent manual's techniques to improve their writing style.

Methods used to prepare Referee decisions in our high volume operation have progressed beyond succeeding generations of word processors. Memory typewriters have been replaced by personal computers, high speed printers and print servers. The Local Area Network, our Agency's internal on-line computer system, is shared by multiple users. Much of the software in LAN is specifically designed for Benefit Appeals use. LAN requires each operator to be assigned an individual user password.

Documents (Referee decisions) are created from the Referee draft decision by the LAN operator and placed in semipermanent (five working days) storage. Approximately 500 new Referee decisions are entered in the LAN system weekly. File data is purged weekly to permit the entry of new data. During this time, final Referee action (reading and signing) occurs. Referee decisions returned to the LAN Unit for correction or changes after the five day storage period has expired must be recreated as a new document to implement the changes.

Approved text for statements of law as well' as "boilerplate" components of the "Appeal History/Decision Format" are retained in permanent LAN storage files. The use of permanent storage files for standard and routine decision components makes overall decision preparation more efficient.

Among the principal benefits of LAN prepared decisions are improvements in the speed of production and the accuracy and quality of the decision. LAN functions permit the on-site, same day production of a high volume of decisions. With improved accuracy, appearance and timeliness, the credibility of the Referee's final decision and the Agency's public image are enhanced.

g. Decision Duplication and Mailing

A desired level of achievement (DLA) for the mailing of typed Referee decisions provides: "85% of all cases must be processed from typing to mailing within 2 days (1 day typing 1 day mailing)." The existing operating procedures and monitoring are designed to enable and ensure compliance with this DLA.

By management decision, and in cooperation with the Field Operations liaison, it was decided to expedite the processing of Referee decisions by mailing all typed decisions before data entry of the decisions into the

Benefit Information System (BIS) computer system. Procedures were agreed upon between Field Operations and the Benefit Appeals Sub-Division to handle the "lag period" between the date of the mailing of a typed Referee decision and the actual date of its entry into the BIS system. Any Referee decision not entered into the BIS system by the tenth calendar day from the date of mailing is data entered by local office staff.

Completed Referee decisions (LAN processed or typed and signed by the Referee or the Referee's supervisor) are screened by the LAN Unit Supervisor for time lapse aging. Top priority for "distribution" is assigned to cases nearing either the 30-day or the 45-day due dates. "Distribution" activity consists of date stamping, duplicating and mailing copies of the Referee decision to the parties, attorneys or representatives. A copy of each Referee decision mailed is returned to the local office from which the appeal originated. An additional copy is routed to the "time lapse" master file for inclusion in the RS-40 Monthly Reports of Benefit Appeals.

h. Performance Tracking and Reporting

In the Illinois system of lower authority appeals, the Hearings Supervisor plays a vital role in the evaluation of Referee performance and the tracking and reporting of all assigned cases. Each Referee reports to a Hearings Supervisor who in turn reports to the Chief Hearings Referee. Management has emphasized the autonomy of Hearings Supervisors and supported their overall authority for Referee case processing activity.

Hearings Referees are required to write draft decisions on the same day the hearing is conducted. The Hearings Supervisor reviews all draft Referee decisions for accuracy and completeness and returns those draft decisions not meeting quality standards to the Referee for whatever action may be required.

Referees are required to submit Daily Action Reports on their completed cases to their respective Hearings Supervisors. The Action Reports record specific Referee actions taken regarding case dispositions in twenty one areas of activity. Hearings Supervisors will review and discuss case docket management with any Referee found to be granting excessive numbers of continuances.

Referees are required to submit Weekly Case Status (backlog) Reports. The Referee is required to identify all case records still possessed for any reason, to state the reason for delay or incompleteness and to report on any backlog completely and truthfully. These weekly reports are cumulative in nature. Referees reporting excessive (four or more cases) weekly backlog are assisted by their

Hearings Supervisor in liquidating the backlog.

The Hearings Supervisors conduct a full quality compliance audit of two Referee decisions per month per Referee (24 Referee cases per year) and measure Referee performance against the 30 criteria in ETA Handbook No. 382. Each case reviewed is assigned a quality score. Each score becomes a part of the Referee's performance evaluation in the quarterly review for that quarter and a part of the permanent Referee performance evaluation for the year in which the review was conducted. If Referee quality scores fall below acceptable Illinois minimums, appropriate corrective actions are taken.

The Hearings Supervisors monitor same day turn-around on typed decisions given to the Referees for review and signature. Delays are identified and obstacles to efficient case processing are removed.

The Hearings Supervisors review and approve all cases submitted by the Referees for rescheduling. Only bona fide reschedule requests (notice defects) are approved. Cases which actually constitute continuance requests, and not bona fide reschedules, are returned to the Referees. Continued cases are carried on a Referee's docket in addition to the on-going daily case load. Continued cases are heard and disposed of on the earliest mutually convenient date so that promptness criteria are met. A special Reschedule Request Form was developed and is in use for this purpose.

i. Records Control and Closeout Procedures

Closed case files are transferred from the point of decision preparation and mailing to either of the two processing points (Chicago or Springfield) for data entry of the Referee decision into the Benefit Information System. After data entry, all closed case files are forwarded to the Chicago Central Records Unit where they are maintained in a centralized, secure location. In order to expedite retrieval of closed cases, extreme accuracy of filing is mandatory. If a case is appealed to the Board of Review or reopened by the Referee, the closed case file is retrieved and appropriate action is taken. If no subsequent action in a case is taken within six months, the closed cases are "purged" and prepared for long term storage in the Chicago warehouse. The Benefit Appeals Records Unit works closely with the Board of Review Records Unit on all cases appealed to the Board. The actions taken are more fully described in the next section.

6. PROCEDURES IF FURTHER APPEAL IS FILED

A party may file an appeal to the Board of Review of an adverse decision of the Referee. The appeal may be filed in person or

by mail in the local office where the claim was filed or with the Board of Review.

- a. The appeal must be filed within ten days of the mailing date of the Referee's decision mailed to the parties. No special form is necessary to file an appeal. The appeal should:
 - (1) Be written, dated and signed by the party or the party's representative;
 - (2) Contain the docket number of the Referee's decision, and the name and social security number of the claimant;
 - (3) Set forth the parts of the Referee's decision with which the appealing party disagrees and the specific reasons for that disagreement.
- b. Upon receipt of the appeal either by the Board of Review or the local office, the appeal is data entered into the Benefit Information System (BIS).
- c. The automated Board of Review Docketing System (BRDS) is an adjunct system to the Referee Docketing System (RDS). Drawing appeals data from RDS, the BRDS system after data entry of the appeal, completes the following functions nightly:
 - (1) Assigns a Board of Review docket number prefix of "ABR" to each appeal;
 - (2) Automatically generates a "Notice of Pending Appeal" which is mailed to parties as required by Rule; and
 - (3) Generates a daily comprehensive report titled "Board of Review Dockets".

The Benefit Appeals Sub-Division is first notified of the filing of an appeal of a Referee decision to The Board of Review by the BRDS daily report. The report is the list from which the closed file case records are retrieved.

After closed appeals case records are retrieved they are separated into two categories. The first category includes cases in which neither was a hearing conducted nor was a record made. The Records Unit staff prepares an appeals transmittal document, retains a copy of the Referee decision for file and transfers the closed appeals case record to the Board of Review. The second category includes cases in which the hearing was conducted and a record was made. These case records are filed sequentially by docket number, a log is created and a letter of transmittal is prepared. The cases are sent to the transcription service for preparation of a transcript. The normal schedule of pick up and delivery of transcripts is twice weekly, however the schedule may be changed at the request of the Chief Hearings Referee.

Separate operating procedures exist for implementation of the "automatic appeal" provisions of the Benefit Rule. The Rule permits a party who did not appear for the Referee hearing to request a "reopening" of the appeal. If the Referee denies the request to reopen the Referee hearing and issues a written decision to this effect, the issuance of the denial is deemed an "automatic" appeal to the Board of Review. (No separate or additional action is required by the "appellant"). Special complications may arise under this procedure if the nonappearing party files a "request to reopen" with the Referee and also files an appeal to the Board of Review. Tracking of this type of appeal is presently difficult but procedures are currently being developed to provide quicker identification of these cases.

C. PENNSYLVANIA

AUTHOR: John Eckert

1. STATE GEOGRAPHY AND DEMOGRAPHY

Pennsylvania is located in the northeast portion of the United States. Its area is 45,000 square miles, and the population is in excess of 12,000,000. The principal cities are Philadelphia and Pittsburgh; the State capitol is Harrisburg. The topography of Pennsylvania consists of rolling hills. The principal industries of the state are manufacturing and agriculture; its natural resources include coal, petroleum and natural gas.

2. APPEALS UNIT STRUCTURE

The Unemployment Compensation Board of Review is a departmental board administratively assigned to the Executive Deputy Secretary for the Department of Labor & Industry and contains both higher and lower authority appeals. Lower authority appeals are under the policy and administrative control of the Board; however, the Board's legal staff reports to the Department's Chief Counsel, who falls within the Governor's Office of General Counsel. The State's Employment Security Agency is also in the Department of Labor & Industry, and its functions are divided among four different Deputy Secretaries.

Presently there is no jurisdiction at the lower authority in regard to tax appeals. There are 32 hearing officers, a chief referee for the western sector of the State, and a chief referee for the entire State. There are 68 support staff who work directly for the hearing officers. About 25% of their time is spent on work related to the processing of higher authority appeals.

The average number of appeals filed per year for the last five years is about 40,000. The operations of the lower authority are highly decentralized. All scheduling, hearings, preparation and mailing of decisions are accomplished within each local Referee office by the Referee and the local support staff. Referees conduct hearings at over 90 sites throughout the State. Approximately 7% of hearings are conducted involving testimony by telephone.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

Parties to UI determinations of the 89 local claims offices file their appeals with the local offices. Filing is by mail or in person. The local office staff mails copies of the appellant's appeal to the other parties along with an information pamphlet on the appeal system.

b. Records Retrieval and Creation of Tracking Mechanism

The local office at which the appeal is filed retrieves a copy of its determination and all the supporting documents, including a printout of claims history. An appeal number is assigned, information on the appeal entered in the local office's automated claim system, and the appeal documents forwarded to the Referee designated to hear appeals from that local office. Local offices are required to forward appeals within 24 hours of their filing.

Upon receipt by the Referee, a manual control card is prepared to track the case while it is at the Referee office. A copy of the appeal notice is also mailed by the local office to the Board of Review Central Office which prepares a second control card for tracking and statistical purposes. Eventually, a mainframe-based system will replace both of these manual card operations.

c. Scheduling

Each Referee office schedules the hearing to take place in the Referee office or at the local office in which the claimant is currently filing. The appeals file is first reviewed for completeness, and missing documents are obtained from the local office. The case is analyzed, parties and issues identified, and the hearing location, time and type (telephone hearing or in-person) are determined. Mixed in-person - telephone hearings are permitted.

A daily hearing schedule, prepared with claimant and employer names, scheduled hearing time, issue involved, appeal number and timeliness deadline, is used as a control document for annotating mailings of the hearing notices. Later it also serves to note appearances and mailing of decisions, tabulate statistics, and provide evidence of regularity of procedures for documenting the mailing of notices.

On the average, 30 - 40 hearings are scheduled per week; usually, over four days but occasionally stretched over five. If the fifth day is unscheduled, it is used for research, decision-writing and assisting neighboring referees.

d. Notice Preparation and Mailing

Hearing notices are prepared by and mailed from the Referee office, typically within a few days of the receipt of the case. The hearing notices are multi-part forms with each copy a different color to help ensure accurate distribution to all parties. Numerical issue codes are used on the hearing notice to reflect the issue involved. Each code relates to a paragraph on an attached paper describing all

potential issues.

Notices are typed on a typewriter or personal computer and sent by regular mail to the claimant, the involved (usually separating) employer, the local office, all counsel of record, and the Board's Central Office. Mailing is done at least seven days prior to in-person hearings and fourteen days prior to telephone hearings. Additionally, in telephone hearings, copies of all documents are included with the parties' notices.

e. Prehearing and Hearing Mechanics

Postponement requests, whether prior to or at the hearing are the responsibility of the Referee office to decide and may be granted based on a showing of proper cause by the requesting party. Documents provided by the local office become local office exhibits in the appeal record. Requests for subpoenas, postponements, telephone participation and the like are handled by the Referee office. These documents become Referee exhibits. In the hearing notice, parties to in-person hearings are advised to arrive prior to the hearing. This extra time is to provide them with an opportunity for a prehearing review of the documents.

Primarily, hearings are recorded on cassette tape with the equipment operated by the Referee. Each hearing begins with an opening statement by the Referee which includes the identification of parties and witnesses; an outline of parties rights to counsel, cross-examination and presentation of witnesses; introduction of all of the exhibits; opportunity for review and objection to the exhibits; statement of the issue or issues involved in the hearing; and an outline of the procedures for the hearing itself. Witnesses are not routinely sequestered.

During the hearing, the Referee may rule on evidentiary or procedural objections raised by the parties. The Referee uses a worksheet to identify individuals at the hearing and assign a transcript code to identify them in a future transcript, as well as a review form which outlines basic information which needs to be obtained in each of the hearings. Most Referees use these forms for note taking, and they are retained as part of the file but are not a part of the record.

In Pennsylvania, Referees are required to make a decision on all appeals; the Referee cannot dismiss on the basis of nonappearance. Form decisions may be used, however, in late appeal and withdrawal cases.

f. Decision Preparation

Referee decisions have a standard format consisting of

identifying information, numbered findings of fact, reasoning and order. The identifying information is available from the case file and, if need be, can be prepared by the staff ahead of time. At least one paragraph in the reasoning recites the provisions of the statute under which the case is being decided, and these paragraphs are stored in a word processor library to save both Referee and staff time. The "order" portion of the decision parallels the local office's order which, like the identifying information, is usually available from the case file even before the hearing takes place. Thus, the Referee needs only to communicate the numbered findings, specific reason and "affirm" or "reverse" to the staff to be combined with the file information for the decision to be prepared. Referees provide this information on tape, in longhand or some combination of longhand and shorthand codes they have developed with their staff. It is not uncommon for Referees to telephone this information to their staff from an outlying hearing site to expedite release of a decision. In such cases, the completed decision may be proofed, signed and mailed by the referee staff. Most decisions are mailed within two days of the hearing.

g. Decision Duplication and Mailing

Finished decisions are duplicated and mailed to the parties by the Referee offices. One copy is provided to the Central Office for collection of statistics.

h. Performance Tracking and Reporting

For timeliness, the 30 and 45-day time frames are prominently marked on the case folders and hearing schedules. Each week, the Referee reports timely and untimely dispositions on his weekly report of cases on hand. At the end of each month, timeliness, number of decisions and number of errors in decisions, broken down by office are distributed statewide. Pennsylvania considers this to be its key report, as it provides crucial timeliness feedback and reinforcement for its hearing officers. Annual quality appraisal results with reviews of problem areas are shared at Referee conferences and training sessions. Referee supervisory staff conduct individual monitoring and reviews on a spot-check basis. See also the Summary of Recurring Reports on page 92 for a comparison of reports used in Florida, Illinois, Pennsylvania and Texas.

i. Records Control and Closeout Procedures

Case files are maintained at the local Referee office where they may be retrieved by appeal number or last name for up to two years prior to disposal. The tape recording of the hearing recycled after four months.

4. PROCEDURES IF FURTHER APPEAL FILED

As in the case of original appeals, further appeals are filed with the local office. Copies of the further appeal are mailed to all parties, the Referee and to the Board.

The Referee's office then arranges for transcription of the hearing tape(s). If the transcribing is done by the referee's staff, the case file, completed transcript and the hearing tape(s) are forwarded together. Otherwise, the case file is forwarded to the Board while the tape(s) are mailed to a transcribing contractor who in turn delivers the completed transcripts and tapes to the Board by courier. The contractor is subject to a \$10 monetary penalty for lateness, poor quality or both, which provides for an under five-day turnaround time by the contractor.

5. TRAINING

Introductory training of newly hired referees involves a 1-2 week indoctrination by Referee supervision, followed by a progressively increasing case load handled under the observation of one or more experienced referees. The U.S. Department of Labor training tapes have proved useful. Formal continuing education involves outservice training at the National Judicial College, as well as two-day in-state training conferences an average of three times a year.

SUMMARY OF RECURRING MANAGEMENT REPORTS

FLORIDA, ILLINOIS, PENNSYLVANIA, TEXAS

	FL	IL	PA	TX
Timelapse 30/45	hrsm	srm	hrsma	hsw
# decisions by referee	hrsm	hrsm	hrsma	hsw
Cases on hand	sm	hrsdw	hswma	hsm
Cases on hand by program	sm	---	sma	hs
# delayed cases on hand	sm	hrdw	---	hsw
list of delayed cases on hand	---	hw	---	---
% and/or # of further appeals	sm	---	sma	---
% and/or # of reversals	rsm	---	sma	hsm
% and/or # of remands	rsq	---	sma	---
Quality appraisal	ha	hm	sa	h6
Reopens	---	hrsww	---	hsw
Reschedules	---	hrsww	---	hsw
Local office timeliness	---	lrdww	---	lw
Individual Staff Production	---	hdww	---	lw

Key:

Reports by: h - hearing officer
 r - sub-state, region, district or the like
 s - statewide
 l - local office

Report frequency: d - daily
 w - weekly
 m - monthly
 q - quarterly
 6 - 6-month
 a - annual

D. TEXAS

AUTHOR: Stan Chapman

1. STATE GEOGRAPHY AND DEMOGRAPHY

Texas is located in the south-southwest part of the country. It has an area of 276,338 square miles and its population in 1982 was 15,280,000. The principal cities are Dallas, Houston, San Antonio, El Paso, Austin (State capitol), Fort Worth, Amarillo, Beaumont, Corpus Christi, Galveston and Laredo. Texas topography includes mountains, plains, piney woods, desert and sea coast. The principal industries are agriculture, petroleum, tourism, high-tech industries, mohair production, beef cattle and sheep. Its natural resources include oil, natural gas, and sulphur.

2. APPEALS UNIT STRUCTURE

Appeals (lower authority) and the Office of Commission Appeals (higher authority) report to the Special Counsel, who reports to the Administrator of the Texas Employment Commission. The Administrator reports to the three member Commission appointed by the Governor.

The lower authority appeals unit has a Supervisor of Appeals and five Assistant Supervisors of Appeals. The staff also includes 71 hearing officers and 47 support personnel. Lower authority jurisdiction includes tax liability appeals if a claimant is involved. There is a "Special Hearings Unit" that handles tax cases where no claimant is involved. This unit was formed about a year ago. These cases were formerly handled by attorneys in lower authority appeals.

The number of lower authority appeals during the last five years varied from more than 98,000 to less than 66,000 cases per year. Appeals has a centralized operation for scheduling and mailing of notices. It is decentralized as far as the conduct of hearings and decision making is concerned. There are 40 hearing locations throughout Texas, 20 permanent and 20 itinerant. Approximately 35% of all hearings are conducted by telephone conferencing.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

All appeals, whether to a claim examiner's determination or to an Appeal Tribunal decision are handled initially by Appeals. The lower authority appeals are sorted from higher authority appeals. On a daily basis, the higher authority appeals are sent to the Office of Commission

Appeals. Appeals also conducts remand hearings which are cases sent back for a complete new hearing, and Commission Rehearings which are cases that normally involve only one or two specific points of inquiry if the Commission directs that an in-person hearing be conducted. Office of Commission Appeals personnel (many of whom are former lower-level appeal hearings officers) conduct the telephone conference Commission rehearings.

Texas Employment Commission Rules require all appeals to be in writing and signed by the appellant or the appellant's authorized representative. An employer or a claimant may file an appeal from a determination or decision by writing to the Appeal Tribunal or may file an appeal through a local office by the use of a Notice of Appeal Form. Local office procedures require that appeals taken in the local office be sent to the State Office on the same day the appeal is made. Statistical information is maintained and monitored to ensure that the local offices adhere to this procedure.

b. Records Retrieval and Creation of Tracking Mechanism

If the appeal is filed in the local office and the records are maintained in that office, the records and the appeal form are sent to Appeals in the State Office. If the appeal is mailed to Appeals in the State Office, the support staff sends a form to the office where the records are located asking that the records be mailed to the hearing officer who is assigned to conduct the hearing.

All incoming appeals are date stamped when they are received in the State Office. They are sorted and those which appear to be lower authority appeals are keyed into a CRT by social security number to obtain a copy of all determinations mailed within the past 60 days, along with a claimant master file history. Interstate appeals are sorted out at this point and claimant folders are requested from the Benefits Records Control Unit. (Interstate folders are created by the Benefits Department Interstate Unit pertinent to any disqualification period and other records are also placed in these folders.) Wage credit cases are sent to the Benefits Department Redetermination Unit for additional information they may have regarding the wages.

After the rough draft notice is prepared for a case, certain information is entered into the computer creating a data base (Appeals Status File). This information is used to track the case as it proceeds through the Appeals system.

c. Scheduling

Scheduling is centralized in the State Office in Austin. One person has been assigned the responsibility of scheduling hearings for our 71 hearing officers. It is her

responsibility, within guidelines set by management, to schedule hearings in order to meet the 30 and 45-day promptness requirements. The scheduler assembles a schedule for each hearing officer indicating the date and time for each hearing. The schedules are then ready to be typed and prepared by the support staff. The notices of hearing are mailed at least nine days prior to the hearing date.

A successful feature of our scheduling system is that hearings are scheduled throughout the day, Monday through Thursday with Friday reserved for continuances, dictating decisions, preparing for the next week's work and handling other office duties. It is felt that reserving one unstructured day a week contributes to hearing officer efficiency and an orderly flow of work.

d. Notice Preparation and Mailing

Once the files are assembled, they are reviewed by four full-time professional rough draft notice writers. These individuals review the file and prepare a rough draft notice of hearing. Within guidelines set out by management, they determine whether the hearing should be a telephone conference or in-person hearing. If the hearing should be conducted in-person, they indicate in what city the hearing should be conducted.

The notice writers also indicate on the outside of the file the employer's name, whether they are a party of interest, the 30 and 45-day due date, and other special instructions, such as whether an interpreter is required. File documents are reviewed to determine the issues in the case. Appropriate issues and program type are written on the appeal document. Each issue has a segment number and is stored in the computer to facilitate the expeditious preparation of the notice of hearing by the typist. Cases that are lacking certain documents are sorted at this point and identified accordingly. Also, those appeals that are clearly late are sorted out for issuance of a form "Order of Dismissal" decision. After all the requested documents are received, cases are once again sent through the rough draft notice writers to prepare a rough draft notice of hearing or for further appropriate action.

About 1,600 notices of hearing are typed each week by four key entry operators. This is accomplished by entering the social security number which calls up the claims information from the main frame. The key entry operator then enters specific hearing information such as date, place and time of hearing and hearing officer assigned to the case. The number coded issues are stored in the system. The claimant's name and address, the employer's name and address, the initial claim date and other claims information are already in the computer and do not have to

be re-entered to prepare the notice of hearing. The Automatic Data Processing Department prints the notices and the hearing officers' weekly schedules from the information entered on the CRT. Control and file copies are brought back to Appeals from ADP, the file copies to be associated with the file and the control copies to be used for ready reference. The notices of hearing to be sent to the parties and representatives are sent to the mailroom for automatic stuffing and mailing. At the time the notice of hearing is printed, the computer generates itineraries for the hearing officers which show their week's schedule. Each itinerary is attached to the group of folders and forwarded to the hearing officer's duty station.

e. Prehearing and Hearing Mechanics

We have instituted certain administrative procedures in the conduct of hearings that we feel minimize the chances for unnecessary delay. The first is a strict postponement policy. Briefly, this policy is that a postponement will not be granted except in the case of the death or serious illness of the appellant or a key witness of the appellant. This would also include the death or serious illness in the immediate family of the appellant or a key witness. There are two other circumstances what would warrant a postponement. Texas assumes the responsibility for providing interpreters for a party who does not speak the English language or is deaf. If a party appears at a hearing and needs an interpreter, the hearing will be postponed to provide one. Finally, if the claimant or the employer or a material witness is a defendant in an imminent prosecution based on acts or omissions which are likely to be the subject of testimony at the hearing before the Appeal Tribunal, the hearing will be postponed. However, if the postponement is likely to be longer than a month, the hearing officer consults his or her supervisor to determine appropriate action.

If an interested party fails to appear at the hearing and the decision resulting from that hearing where a party was absent is adverse to the absent party, then that party may petition for a new hearing pursuant to Rule 16 of the Texas Employment Commission Rules. The first issue to be decided at such a reopened hearing is whether the petitioner had good cause for failing to appear at the previous hearing(s). The hearing officer will take testimony on both the procedural as well as the substantive issues. However, if the hearing officer decides tha the petitioner did not have good cause for failing to appear at the previous hearing(s), the request for reopening will be denied and the previous decision will remain in effect.

This is a change from our Rule 16 reopening policy that existed prior to June 19, 1989, the parties were limited to one new hearing unless the nonappearance by a party was the

result of some Commission error such as mailing the notice to an incorrect address. "Good cause" was presumed unless the issue was raised by the non-petitioning party which in practice rarely occurred. One effect of the implementation of the "good cause" provisions of the Texas Employment Commission Rules will be a workload increase. The extent of this increase has not yet been determined.

In the past, we had numerous problems with late-arriving parties. To resolve this problem, we have included a statement on the notice of hearing that "Hearing will begin on time." Also, the following procedure has been established. If a party is 1 to 15 minutes late, the party should be permitted to participate in the hearing. If a party is 16 to 30 minutes late for the hearing, it is up to the hearing officer whether to permit the late-arriving party to participate. If the party is more than 30 minutes late, normally they will not be permitted to participate.

f. Decision Making Mechanics

After a hearing is conducted, a decision is dictated on cassette tape for a typist to transcribe. Typists are stationed throughout the State at most locations where hearing officers are assigned. However, stenographic support is not assigned to some single hearing officer locations. Also, hearings are frequently conducted at itinerant points where hearing officers or clerical support staff are not assigned. The use of remote dictation equipment has definitely contributed to promptness. Hearing officers may telephone from any location in the State and dictate decisions to a cassette tape machine in the State Offices in Austin or Dallas. We have the capacity for three hearing officers to call in decisions simultaneously. Hence, remote location, illness of support staff or late arrival back in the office is no longer an obstacle to promptly issuing a decision. All decisions called in on the remote dictation equipment are reviewed for typographical errors and technical correctness by professional personnel before the hearing officer's name is stamped on the decision and it is mailed.

All support staff are equipped with computerized equipment to type decisions. Each computer has stored in its memory canned "CASE HISTORIES", "DECISIONS" and sections of the Texas Unemployment Compensation Act and Texas Employment Commission Rules. Hence, only the FINDINGS OF FACT, a portion of the CONCLUSIONS and the coversheet of the decision are actually typed. Corrections are easier and faster to make. Furthermore, there is less of a fatigue problem for the support staff members. This results in fewer mistakes.

g. Decision Duplication and Mailing

After a decision is typed and produced on the personal computer, it is reviewed for correctness by the hearing officer or someone in his or her stead. The decision then goes to a mail clerk for preparation of copies for all parties and representatives as indicated by the hearing officer on the file cover and mailing. It is anticipated that sometime in the future the duplication, stuffing and mailing operations will be automated.

h. Performance Tracking and Reporting

As soon as an appeal is received in the State Office, the claimant's social security number is entered into the computer. Additional information is entered for record keeping, reporting and tracking purposes after the rough draft notices are prepared but before the hearing is scheduled.

After scheduling, updated information is entered including such things as the date and time of the hearing, the hearing officer assigned to the case, primary issues involved and hearing location. Finally, more information about the disposition of the case is entered after the decision is prepared. This information is entered on a "summary sheet" prepared by the hearing officer. This sheet shows the information to be entered on the computer about whether the determination was affirmed or reversed, whether both the claimant and the employer appeared, primary issue, whether an interpreter was required, whether a form decision was used, date dictated, date typed and date mailed.

i. Records Control and Closeout Procedures

The Appeals Department maintains its own records and files. All files are maintained by social security number and are under the control of the Appeals Department. Files are maintained for nine months in active status. They are then boxed and sent to the warehouse. The files are maintained in the warehouse for five years before disposal.

4. PROCEDURES IF FURTHER APPEAL IS FILED

All appeals where a previous hearing has been held and a decision issued or where a form decision has been issued, are reviewed initially by a support supervisor. Those cases where both sides appeared at the Appeal Tribunal hearing or where the appellant appeared and received an adverse decision are forwarded directly to Commission Appeals (higher authority). The remainder of the cases are reviewed by a hearing officer on "reserve duty" to determine if the case is a Commission Appeal, a request for reopening because one side or the other failed to appear, or other action is necessary. Other action might

include mailing of an "Order of Dismissal" or a letter; for example, if a party attempts to appeal a decision that is in its favor.

PART TWO

SECTION TWO - HIGHER AUTHORITY APPEALS

I. RANGE ONE - NORTH DAKOTA AND WEST VIRGINIA
(FEWER THAN 1000 CASES PER YEAR)

A. INTRODUCTION

North Dakota and West Virginia were selected from the States whose annual workload is fewer than 1,000 cases. These two States were also selected in workload RANGE ONE in lower authority appeals. Reference will be made to material presented in the section on Lower Authority Appeals (pp. 6-12) rather than duplicating here, information that has already been presented.

B. NORTH DAKOTA AND WEST VIRGINIA

AUTHORS: James Lienhart, North Dakota
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1. STATE GEOGRAPHY AND DEMOGRAPHY

For description of North Dakota and West Virginia see pages 6-7.

2. HIGHER AUTHORITY APPEALS UNIT STRUCTURE

In North Dakota an assistant attorney general, housed with Job Service, reviews and recommends decisions to the executive director when appeals referees' decisions are appealed to the Bureau. Although the Appeals Unit and the Legal Unit are separated administratively and physically, there is close communication and weekly meetings between the two units.

In West Virginia the Board of Review is composed of three statutory members appointed by the Governor and subject to confirmation by the State Senate. They work on a part-time basis. The three Board Members and the Chief Administrative Law Judge (ALJ) constitute the professional staff. The support staff performs services for both the lower and higher authority levels, with approximately 75% of their time spent performing work for the lower authority.

Over the last five years, in West Virginia, appeals averaged 3,610 per year. However, in recent years the number has decreased significantly. In 1987 there were 878 cases heard by the Board. Oral argument and/or hearing is permitted in all appeals to the Board.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

In both States, most of the appeals are filed directly with the higher authority by a simple letter stating the interested party wishes to file an appeal. In some instances, one of the interested parties goes to the local office and signs a form indicating an appeal of the lower authority decision. The appeals clerk checks each appeal for correctness, completeness, and timeliness. In West Virginia, when the appeal is received at the Board of Review, it is date stamped, counted, and given to the appeals clerk for processing. In North Dakota, it is entered into the automated appeals tracking system.

b. Record Retrieval and Creation of Tracking Mechanism

In West Virginia, when an appeal is received, the appeals clerk simply goes to the closed files and retrieves the same file used at the lower authority. All pertinent information is already contained in the file. Each appeal is given an "R" case number and listed in the "R" case register by that number. The clerk types an Individual Appeals Report (BR-1). The pink copy is removed and sent to the Data Processing Unit for their information. Each case is placed in a folder with the original appeal. The history card which has already been made for the "A" case appeal is noted to show that a higher authority appeal has been filed by placing the "R" case record on the card. A Notice of Appeal form is mailed to all interested parties notifying them of the appeal and explaining they will be notified when a hearing has been scheduled. The transcript book is also noted by "R" case number with necessary information such as the date of the hearing and the administrative law judge who presided.

In North Dakota, the case file is pulled from the Benefit Section. The case is then activated again in the appeals tracking system. The system is capable of generating a notice of review to the interested parties and a simple affirmation decision.

In West Virginia, the Board utilizes a tracking form for each higher authority appeal that is docketed. By reference to the tracking document, the status of each case is readily ascertainable and measures may be taken at any given step to expedite a case if it has fallen behind schedule. In North Dakota, this information is in the appeals tracking system.

c. Transcript Preparation

In West Virginia, the Board contracts with a stenographic service to supplement its staff in the preparation of

transcripts. This service is particularly necessary when workload is heavy and regular employees cannot dispose of the cases in a timely fashion. After the tracking form has been completed, the file is assigned to a typist or to the stenographic service for the completion of the transcript. In North Dakota, the higher authority review staff work from the hearing tape.

d. Scheduling or Work Flow Control

In West Virginia, after a transcript is completed, it is returned to the central office. Information from the transcript is noted in the transcript book. The transcript is mailed to all interested parties, then the case is ready to be placed on the next scheduled docket. All parties are notified at least ten days in advance of a scheduled hearing before the Board of Review.

In North Dakota, a copy of the hearing tape is made available to the interested parties upon request. All parties of interest are notified that the case will be reviewed.

e. Hearing or Oral Argument Mechanics

In both States, a Notice of Hearing is mailed to each party at least ten days prior to the scheduled hearing or review date. Absent extraordinary circumstances, the West Virginia Board does not conduct evidentiary hearings. Thus, in West Virginia, hearings are scheduled for the purpose of oral argument only. In North Dakota argument may be submitted in writing, but is not solicited.

In West Virginia, no record is made of nonevidentiary hearings. In both states, if a party desires to submit new or additional evidence, a formal motion must be filed. If the request is meritorious, the case is remanded to the lower authority appeals unit for an additional hearing. Requests for continuance must be in writing and are granted for good cause.

f. Hearing Record Review Mechanics

When a hearing for oral argument is scheduled before the Board in West Virginia, a copy of the complete record is mailed to each of the Board members for their review. In North Dakota, an Assistant Attorney General housed with Job Service reviews the file, presents the findings and recommendations to the Executive Director orally and then prepares the Executive Director's written decision.

g. Decision Making Mechanics

In West Virginia, the Board meets in executive session to decide cases. Usually, these meetings are held the same

day hearings are scheduled.

h. Decision Preparation

In West Virginia, Board decisions are ordinarily drafted by the Chief ALJ. After the draft has been completed, it is sent to the Board members for approval. After approval, the decision is mailed to all interested parties with instructions for filing an appeal to Circuit Court.

In North Dakota, the decision is drafted by an Assistant Attorney General and is signed by the Job Service Executive Director. Instructions for filing an appeal to District Court are included in the decision. The hearing tape is transcribed only after a petition for judicial review is filed. The results of the decision are entered into the appeals tracking system.

i. Decision Duplication and Mailing

In West Virginia, if the decision of the Board is the same as the decision of the ALJ, an affirmation is prepared. The second page of a short form affirmation notifies all parties of their rights and the appeal procedures to the Circuit Court. If the decision of the Board changes, in any way, the decision of the ALJ, a completely new decision is prepared. This new decision is proofread, dated, copied, and mailed to all interested parties by the Appeals Section. In North Dakota, the process is similar.

j. Performance Tracking and Reporting

In West Virginia, a copy of the tracking form is taken out of each file after the decision has been mailed so that it is possible to look back at the previous month and identify problem areas that can be corrected. For instance, if too many continuances were granted, appropriate steps are taken to rectify the situation. The U.S. Department of Labor report is also utilized by the Board as a measure of performance.

In North Dakota, all U.S. Department of Labor reports and several management reports are automatically generated by the appeals tracking system at the end of each month. There are also some weekly reports and daily activity reports.

k. Records Control and Closeout Procedures

In West Virginia, the remaining copy of the BR-1 is marked with the date closed and held for future reference when making reports. Disposition is then marked on history cards, registry book, and on the tracking form inside each folder. Cases are then filed alphabetically in the closed files. In North Dakota, the results are entered into the

appeals tracking system.

4. PROCEDURE IF FURTHER APPEAL IS FILED

In West Virginia, a further appeal may be made by filing a petition for appeal with the Circuit Court. Copies of that petition are served upon the Board of Review. The closed Board case is then pulled from the files. The history card and the "R" case register are noted with the civil action number assigned by the Court. The case is then listed in the Civil Court register. Letters are mailed by certified mail to the respondents in each case along with a copy of the petition for appeal in order to notify them that an appeal has been filed. All previous appeals, decisions, and the transcript of testimony are pulled from the file and sent directly to the Circuit Clerk's office.

The records are noted with the date the case was sent and the folder is filed in the pending Circuit Court files. The State agency is represented in Circuit Court by agency counsel. Typically, the Board is not represented.

After an opinion has been issued by the court, a copy is sent to the Board of Review. The agency copies the opinion and distributes it to each ALJ and Board Member in order to keep the decision-making body updated on precedent setting cases. The Board makes a final order implementing the Court's decision. The order is given to the support staff to be proofread, dated, copied, and mailed to all interested parties. This disposition is then marked on the history file cards, Circuit Court registry, and on the outside of the folder. The case is then filed in the closed Circuit Court files.

In North Dakota, the petitions for appeal are filed in the individual District Courts throughout the state. The cases are handled in a manner similar to West Virginia, except they are also tracked through the automated appeals tracking system. The results are also entered into the system.

PART TWO

SECTION TWO - HIGHER AUTHORITY APPEALS

III. RANGE TWO - ARIZONA, ARKANSAS and INDIANA
(1,000 TO 2,500 CASES PER YEAR)

A. INTRODUCTION

Arizona, Arkansas, and Indiana were the States selected from the States whose higher authority appeals workload is between 1,000 and 2,500 cases per year. All of these States have had good promptness performance for several years. As with the other groupings of States, there are very few similarities shared by these three States. That diversity has not prevented any of the three from exceeding the Desired Levels of Achievement for higher authority appeals promptness.

B. ARIZONA

AUTHOR: Robert D. Sparks

1. STATE GEOGRAPHY AND DEMOGRAPHY

Arizona is a land-locked southwestern State with approximately four million inhabitants dispersed over 113,909 square miles. The population base is concentrated in two large metropolitan areas - Phoenix, the capitol, and Tucson. Additionally, the small to medium cities of Flagstaff and Yuma comprise most of the remaining population. These four cities together account for more than 80% of the population base.

The State's topography ranges from deserts to mountains with peaks in excess of 9,000 feet above sea level. Five and four-tenths per cent of the State's population consists of Native Americans dispersed among approximately 30 tribes, the largest of whom occupy a significant land area within the State that is formally designated as reservation land. Arizona's population is 16.2% Hispanic.

The State's economic activities are focused on light industry and the service sector, but still contain some heavy industry, mostly mining. The historical economic basis of cattle, citrus and copper are present but decreasing in importance.

2. HIGHER AUTHORITY APPEALS UNIT STRUCTURE

The Appeals Board is a legally autonomous but administrative dependent unit within the Arizona Department of Economic Security, an umbrella agency administering numerous Federal and State social services. The unemployment insurance program consumes approximately 70% to 75% of the Board's time, with the balance of the activity devoted to Food Stamps, Aid to Families with Dependent Children, General Assistance, and other miscellaneous State programs.

Appellate review generally consists of a review on the record as developed by the Office of Appeals (lower authority), a separate administrative unit. The Board has the discretionary authority to supplement the record by remand or conducting additional hearings, and does so occasionally. Cases involving labor disputes, the assessment of tax liability, and the transferability of employer experience rating accounts, are also adjudicated by the Appeals Board, but as the initial trier of fact. Review of Board decisions by the Court of Appeal consists of a discretionary review on the record.

The workload of the Appeals Board in the unemployment insurance area has been about 1,800 cases per year ranging between 1,274 and 2,143 cases annually. These cases are processed by a staff of thirteen, five of whom are support services, and five of whom are Administrative Law Judges (ALJs) who prepare initial

drafts for the three-member Board.

An understanding of the administrative procedures is critical because the importance top management places on the sought-for goals appears in the monitoring tools identified at this organizational level as well as their final incorporation into employee performance evaluations.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

After a Tribunal Decision (lower authority) has been appealed, a verbatim transcript of the hearing is prepared at the Office of Appeals (lower authority) from the tape recording of the proceedings and forwarded to the Appeals Board, along with the case file. Upon receipt, the Clerk/Typist date stamps the file and all pages of the petition. A time-lapse stamp is also put on the outside of the folder calculating the due out date from the date the appeal was filed. A pink separation sheet noting "APPEALS BOARD" is inserted in the file on top of the Tribunal Decision to separate higher and lower authority case activity. The file is then reviewed for certain basic information. After this review, a checklist is completed which, at a glance, discloses:

- (1) That the file and petition have been stamped;
- (2) Whether there is a claimant/employer representative and their addresses;
- (3) Whether there is a timeliness issue;
- (4) Whether the current address of the appellant is correct;
- (5) Whether the petition is signed by the claimant/employer;
- (6) Whether a transcript is in the file; and
- (7) To whom the notice of appeal should be sent.

Any change of address or representation is noted under "Comments" at the bottom of the form. If the petition is not signed, a notation is made in the space between the upper and middle portion of the slip. Subsequently a form letter is mailed to the appellant, with a copy of the petition, requesting a signature. Next, the date the Tribunal Decision was mailed, and the date it was appealed, are placed in the upper right-hand corner of the checklist. The checklist is then attached to the upper right-hand side of the outside of the case file. At this time, the 30, 45 and 75-day due-out dates are entered

within the time lapse stamp on front of the folder, and the case files are given to the Administrative Secretary. The Administrative Secretary does the following:

- (1) Makes sure appeal addresses issue(s) in file(s). If not, requests appropriate file and transcript from Office of Appeals;
- (2) Double checks all timeliness and due-out dates;
- (3) Thoroughly reviews petition to insure all requests for transcripts/documents have been properly addressed;
- (4) Makes note of any extension requests so file can be directed to Docket Clerk for extension order;
- (5) Notes 45-day due-out date, in red, on checklist; and
- (6) Under two dates located at top right-hand corner of checklist, notes whether it is an inter- or intrastate appeal, A (AZ) or O (Other); whether it's a claimant appeal (C) or employer appeal (E); and the appropriate issue code B (discharge), A (vol. quit), etc.

This easy access to important basic facts minimizes the need for subsequent searching for this information.

When the administrative review of the file has been completed, the case files are numbered chronologically, starting with the next number after the final entry in the docket book. The number is always preceded with a B (for Board initial review), followed by the number, and ending with the last two digits of the current year (B-123-88). After the files are numbered, the necessary information is entered into the docket book (Board number, Tribunal number, claimant's name and SSN, employer's name, whether the appellant is the claimant or the employer, date of Tribunal decision and date of appeal). The case numbers are noted in a "Meetings Notice" logbook under the applicable 45-day due-out date. The corresponding date on the file itself is checked to denote entry into the log.

b. Creation of Tracking Mechanism

The case files are then returned to the Clerk/Typist who completes the "Notice" forms, copies the necessary attachments, and completes the mailing procedures. Notices are sent by certified mail to all interested parties. The parties are advised that they have the option of responding within 15 calendar days unless an extension is granted. At the expiration of this time, a decision will be made. If a response is filed, a copy is sent to the other side, but, effective August 1988, additional replies were not permitted.

A "control card" is then prepared. This control card is extremely important in subsequently locating a file and provides the following information:

- (1) Name and SSN of Claimant;
- (2) Appeals Board number;
- (3) Appeal Tribunal number;
- (4) Date file was received at Board;
- (5) Whether a transcript was received;
- (6) Whether a file had to be returned for a transcript;
- (7) When a notice was sent; and
- (8) What due-out date the case is filed under in the ALJ law judge drawer.

As the case progresses, the following information is entered on the card during different phases of the appeal process:

- (1) Initials of ALJ who pulled the file and date it was pulled;
- (2) Date and initials of ALJ to whom case was assigned (in the case of dismissals);
- (3) Date decision was actually mailed; and
- (4) 35-day suspense date.

c. Scheduling or Workflow Control and Decision Making Mechanics

When the control cards are completed and filed, the case files are then put in file drawers, or "ALJ drawers", by due-out date, as noted on the checklist, and in chronological order behind the due-out date. These case files are pulled, as needed, by the ALJs. As soon as a case is pulled from the drawer, the ALJ informs the Administrative Secretary to note the date, case number, and name of claimant in the ALJ logbook, and transfer the pertinent information onto the control card.

At various times between the initial filing of the petition for review and the issuance of a decision, either party may request a copy of the prepared transcript of the lower level hearing, and may request an extension of time to supplement their legal arguments by reference to the transcript. Under certain conditions, the granting of an extension is automatic; in all other situations the extension is specifically granted after a formal request to the Appeals Board. Time delays caused by physical preparation time, as well as continuances granted to the parties, automatically or by request, significantly contribute to delays in time for disposition. The instructions given with the appeal rights accompanying the

lower authority decisions significantly reduce administrative processing time, but do not entirely remove the delay. The granting or denial of requests for extensions of time in all other instances are controlled by due process considerations which may or may not be at odds with timely disposition. These cases are disposed of on a case-by-case basis.

When untimely appeals are submitted, no transcript is prepared for the Board. These cases are treated differently in two respects: (1) they are not initially noticed to the opposing party; and (2) they are assigned rather than put into the ALJ drawers. Since dismissals are considered simpler cases and consume less preparation time, they are assigned on a proportional basis to the ALJs to equalize the workload.

After a draft decision has been prepared to the satisfaction of the ALJs, three copies are made, attached to the file and, routed through the individual Board Members. Each Member removes a copy and makes comments and/or tentative corrections to his or her personal copy without discussion with any other Member. No discussion is possible outside a previously noticed public meeting because the Appeals Board falls under the Arizona Open Meeting Law, A.R.S. 38-431 et seq.

Pursuant to public notice, the Board meets daily to discuss cases. The cases are routinely noticed during the week they are due (45 or 75 days after filing) and on an as-needed basis the Board meets, exchanges concerns, and takes appropriate corrective action regarding the draft. Unless the draft can be corrected within the confines of the Notice, it will be renoticed. No second routing is, generally required unless the changes are extensive.

Arizona provides an extra internal level of Board review, and by statute makes this request for review a condition precedent to any review by the Court of Appeals. Unlike the petition for review, this review serves to focus the legal issues and must be "... a written request and memorandum stating the reasons why the appeals board's decision is in error and containing appropriate citations of the record, rules and other authority." To expedite the administrative processing, the Chairman initially reviews the file for jurisdiction and legal complexity, assigns it to an ALJ. Then notices and accompanying material are mailed, generally pursuant to the same procedures as the Board's first review subject to ratification of the tentative action at the appropriately noticed Board Meeting.

4. PROCEDURE IF FURTHER APPEAL IS FILED

If an Application for Appeal to the Court of Appeals is filed, it is processed by the Appeals Board Clerk, who serves as a

liaison between the Appeals Board and the Court of Appeals. All parties are notified by the Appeals Board Clerk, including the Assistant Attorney General who represents the Department (not the Appeals Board). A record is prepared and transmitted within 40 days. It includes the Transcript of Testimony (from the Tribunal hearing), Tribunal Decision, Petition for Review, Original Appeals Board Decision, Request for Review (and any responses), Appeals Board Decision Upon Review, and the Application for Appeal to the Court of Appeals. The Appeals Board Clerk also prepares a Certificate of Authenticity, and an Index of the documents. At the time of transmittal, a copy of the Index is mailed to all parties, and a bound file copy is sent to the Assistant Attorney General, and a second bound copy is retained.

The Court of Appeals will review the documents and either grant or deny the Application for Appeal. Denied cases are returned to the Appeals Board Clerk, who logs and docketes the decision and retains the original office file along with the Court file.

If the Application is granted, the Appeals Board Clerk logs and docketes this information and, within 40 days, prepares a complete case file which includes all documents contained in the original record, as well as a Certification form and Index. Once discretion to grant the Application for Appeal is exercised, it becomes an Appeal to the Court of Appeals. The Court notices all parties and assigns a time limit in which the appellant must submit an opening brief.

If no brief is received, the case is dismissed and the file is returned to the Appeals Board Clerk. If a brief is received, the opposing party has an opportunity to respond, as does the Department.

C. ARKANSAS

AUTHOR: Mary Spencer McGowan

1. STATE GEOGRAPHY AND DEMOGRAPHY

Arkansas is located in the south central United States with an area of 53,187 square miles that include over 500,000 acres of lakes and 9,740 miles of streams. The 1980 census recorded a population of 2.3 million with the principal cities being Little Rock (the State capitol and largest city), Fort Smith, North Little Rock, Pine Bluff, Fayetteville, and Hot Springs. The State is about equally divided between lowlands and highlands with the Gulf coastal plain on the east and south and the interior highlands, the Ozarks, on the west and north. The Arkansas River flows between them with the highest peak Mount Magazine at 2,753 feet above sea level found in the Arkansas River Valley.

Arkansas has been a predominantly agricultural State. It ranks fourteenth among the States in harvested acreage with a total of 7,783,000 harvested acres. The State ranks first in the production of rice, fifth in the production of grain sorghum and sixth in the production of both cotton and cottonseed. Arkansas also ranks first in the production of commercial broilers (chickens) and fourth in the production of both farm chickens and turkeys.

Arkansas possesses a wide variety of minerals with annual production valued in excess of \$1,000,000,000. The State leads the nation in the production of bauxite, providing over 80% of this valuable ore from which aluminum is made. It also ranks first in the production of bromine, accounting for about one-half the world's output, and in silica stone, a natural abrasive. Murfreesboro, Arkansas is home of the only diamond mine in North America open to the public. The State also has 18,282,000 acres of forest land.

2. HIGHER AUTHORITY APPEALS UNIT STRUCTURE

Arkansas' Board of Review is composed of a full-time Chairman who, by statute, represents the public's interest and who must be an attorney. The other two Board members, representing employers and employees are part-time members. The Board is appointed by the Governor and each serves a term concurrent with that of the Governor. A case is only decided by the full Board (all three members) if the Chairman has designated the case as a full Board case or if a party has requested such designation in writing. To illustrate the difference in work load, the full Board issued approximately 60 decisions last year as compared to some 2,000 cases decided by the Chairman alone.

Thus, the challenge of rendering decisions promptly in Arkansas

lies in developing a system in which cases are reviewed entirely (i.e. the tapes of the Appeal Tribunal hearings are heard, as well as the written documents reviewed) but not solely by the Chairman.

The Board of Review professional staff is made up of six staff attorneys, one of whom is an intermittent or part-time employee. The Chairman has an administrative assistant who also oversees the clerical work of seven secretaries, some of whom are intermittent workers.

By statute, the Chairman also appoints (or hires) the Appeal Tribunal or lower authority. The Appeal Tribunal has a staff of some thirty persons including a Chief Referee, who must be an attorney. Both the Board of Review and the Appeal Tribunal are funded by the Arkansas Employment Security Division (ESD). However, both the Board of Review and the Appeal Tribunal are separately located from ESD, and ESD appeals cases to the Board of Review. The Board has the statutory authority to affirm, modify, dismiss, reverse, remove or remand a case to the Appeal Tribunal or to ESD. During troubled times at the Appeal Tribunal when loss of personnel or workload increases cause scheduling overload, the Chairman of the Board of Review directs the Board of Review staff attorneys to conduct hearings instead of remanding the cases to the Tribunal for hearings to be conducted. These hearings are conducted by telephone from the Board of Review's office in Little Rock. If all the parties are from Little Rock, then in person hearings may be scheduled.

Employer tax coverage cases are also within the Board's statutory jurisdiction. These cases bypass the Appeal Tribunal. They are kept physically separate and are assigned to one staff attorney for conducting the hearing, review, and recommendation to the Chairman. The Chairman has also conducted hearings in these cases. An appeal of a hearing held before the ESD Administrator may be lodged at the Board of Review or a party may choose to have the Board of Review conduct the hearing rather than the Agency. In either case, there is a further right of appeal to the Court of Appeals.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

The process begins when an appeal is lodged at the Board of Review. An appeal may be filed by any interested party in person at the Board of Review, the Appeal Tribunal or at any local ESD office or by mail to the Board of Review, the Appeal Tribunal or a local ESD office. If mailed, the envelope must be postmarked within 20 days of the mailing date appearing on the Appeal Tribunal decision. If the appeal is perfected in person, it also must be filed within the 20 day time limit. If the appeal was filed in any location other than the Board of Review, the Appeal

Tribunal or the local office forwards the appeal to the Board of Review. The time limit for filing the appeal is tolled, however, on the date stamped received at any of the locations.

b. Records Retrieval and Creation of Tracking Mechanism

Each appeal is date stamped received by the Board of Review. At that time a white cross-reference card is prepared listing the claimant's name, and the newly assigned Board of Review docket number. These docket numbers consist of the year's date, the letters BR and the number assigned to that case, e.g. 88-BR-408. A blue control card containing the claimant's name, social security number, claimant's address, Board of Review docket number, employer's name and address (if an interested party), the indicator as to who is the appellant, the date filed, the date received and the date the decision was mailed. It also contains information as to whether or not the case was remanded or another hearing was conducted at the Board of Review. A file folder is prepared for the appeal and it is labeled with the claimant's name, the Board of Review docket number, whether it is a claimant, employer, or Agency appeal, and/or whether the issue is the timeliness of the appeal to the Appeal Tribunal or to the Board of Review or is an overpayment waiver case. A case docket is maintained which lists by docket number, the claimant's name, section of law, date filed, date received, who is the appellant and when the decision is mailed. A list of the appealed cases is prepared daily and sent to the Appeal Tribunal who then sends all the documentary evidence and the tape recording of the Appeal Tribunal hearing to the Board of Review.

A docketing clerk assembles the file with all the relevant documents and the Appeal Tribunal tape recording(s). The documents are arranged in the file in a descending order of the most recent document received and all the documents are attached by a metal clip. The tape recording is taped inside the file. The referees at the Appeal Tribunal have been instructed to label the tape with the case number, the date of the hearing and the length of the hearing. The Board of Review docketing clerk indicates the time-lapse dates (both the expiration of the 45 day time limit as well as the 75 day time limit) on the file folder. Then the file is color coded, based on the length of the tape recording. This is achieved by marking the labels with colors. Cases containing tape recordings of forty minutes or less and an affirmation by the referee at the Appeal Tribunal of the Agency's determination are coded blue. Cases containing recordings of sixty minutes or less and either an affirmation, modification or reversal of the Agency's determinations are coded red. Default cases are color coded white and are scheduled for a hearing on remand to the Appeal Tribunal or the hearing is conducted by the

Board of Review staff attorneys.

There are statutory provisions for allowing untimely appeals both to the Appeal Tribunal and the Board of Review to be considered timely if the party shows that the untimely filing was due to circumstances beyond its control. An Arkansas Court of Appeals decision has held that a hearing must be conducted in order to allow parties to present their reasons for circumstances beyond their control causing the untimely filing. These files are also color coded white and are labeled timeliness if the appeal was late to the Appeal Tribunal. If the issue was an untimely filing to the Board of Review, the files are also coded white and are assigned to Board of Review staff attorneys to conduct the hearings.

c. Scheduling and Workflow Control

Notices for the hearings are prepared allowing at least two weeks' notice of the scheduled date, time and issues to be heard. The statute provides a mandatory notice of five days. By allowing a little more time, postponement requests and mail delay are reduced. Enclosed with the hearing notice are forms to be completed by the parties indicating the telephone number where each can be reached for the hearing and their respective signatures. Postage free envelopes are also included in which to return the forms.

A large calendar is maintained on which the Board hearings are scheduled as to the date, time and which staff attorney will be conducting the hearing. This enables the clerical staff to route the returned forms and any phone calls to the appropriate staff attorney.

An Arkansas Court of Appeals decision has held that the Board of Review may accept additional evidence but only through a hearing to allow the parties to cross examine witnesses and offer rebuttal evidence. Each appeal is reviewed by the Chairman to determine if the party is attempting to introduce new evidence or is providing argument. Requests for new hearing are reviewed by the Chairman. The appropriate acknowledgment letter is selected and in all cases is individually signed by the Chairman who also reviews the coding and the file. Acknowledgement letters are sent to all interested parties including the local ESD office unless the party appealed from the local office on an ESD form. If a party is represented by counsel or another representative, a red flag is attached to the outside of the folder listing the representative's name and address. An Arkansas Court of Appeals case has held that attorneys and representatives must be notified of the decisions even if it appears they are no longer active in the case. The red flag serves as a reminder to the clerical staff. Appearance sheets for

hearings as well as telephone logs concerning all conversations involving the parties in the case are maintained in the file.

The case folders are then placed in the appropriately color coded file drawers (e.g. red, white and blue).

d. Hearing Record Review and Decision Making Mechanics

Staff attorneys are responsible for pulling the cases from the file drawers and listening to the tapes and reviewing the documentary evidence. They then draft a summary of the evidence presented at the hearing and a draft of a recommended decision for the Chairman. These summaries and rough drafts are prepared on the word processor and are double spaced for the Chairman's ease in editing and reading. The rough drafts contain standard paragraphs and are the same format each time.

In the code blue cases which consist of the shorter tapes and affirmation of the Agency determination by the Appeal Tribunal, a "short form" decision is often appropriate. This decision adopts the findings of fact and conclusions of law found in the Appeal Tribunal's decision as those of the Board's. Tape summaries of these cases are also prepared and the staff attorneys fill in the blanks in a standard short form decision format. The rough drafts, short forms, and tape summaries are attached to the case folder and all are placed in a vertical file in order of the time-lapse dates appearing on the outside covers of the files for the Chairman. The Chairman then reviews the entire file of each case and frequently listens to some of the tape recordings. The Chairman edits the rough draft and either approves it for final draft or returns it to the staff attorney with questions and/or instructions for a rewrite.

The use of the Appeal Tribunal tapes rather than transcripts serves several purposes and is arguably better than a transcript. The first and most obvious reason is a time consideration. The preparation of a transcript takes time and that time is better used in the decision making process. The second is that in cases involving issues of credibility, hearing the voices of the witnesses can help decide whose testimony is more credible. Third, for those higher authorities like Arkansas who are charged with the supervision of the lower authority, listening to the tapes becomes an effective tool in rating the performance of the appeals referees for personnel evaluations and in overseeing their work.

The decision in final form is returned to the Chairman who signs it. The decision and the case file are routed to the administrative assistant who supervises the actual dating of decision with the mailing date and the mailing of the

of heavy industry. There are also a multitude of smaller manufacturing endeavors that account for a good share of the annual earnings.

Government services, retail sales, TV and communications, as well as construction, wholesale facilities, mining and, of course, farming round out the State's economy.

3. HIGHER AUTHORITY APPEALS UNIT STRUCTURE

Indiana had an Employment Security Division and an Office of Occupational Development until July 1, 1987. These two divisions then merged into one Department of Employment and Training Services. The specific intent of this legislative change was to incorporate into one coordinated department the responsibility for administering the unemployment insurance program, the Wagner-Peyser program, the Job Training Partnership Act (JTPA) program, and other related Federal and State employment and training programs as directed by the governor. This single coordinated effort helps maximize Indiana's efforts to provide employment opportunities for its citizens. This department's responsibility, within the context of this paper includes the administration of claims and payment of benefits to persons unemployed through no fault of their own as provided by the statutory provisions through the implementation of the rules, regulations and guidelines established by the Unemployment Insurance Board.

The Review Board established by the Indiana Code is separate and distinct from the Unemployment Insurance Board. The Review Board is fulltime and consists of a Chairman and two members appointed by the Governor to three year terms. There is a supporting staff of one secretary to the Chairman, five clerk-typists, and one legal analyst.

The Review Board has statutory jurisdiction over all disputed claims decided by an Appeals Referee, if the aggrieved party has filed a timely appeal. It is worth noting that the Board's jurisdiction includes the power to have an appeal from an initial deputy's determination sent directly to the Board rather than to a Referee, however, this power is rarely exercised.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

The time for filing an appeal from the "lower authority" decision is 15 days from the date of mailing of the Referee's decision. The aggrieved party, normally, goes to the local office and completes a Form-651 (A request to appeal the matter to the Review Board). It includes as much detail about the reason for the appeal as possible. The local office date stamps this form and that becomes the filing date for that appeal. If an aggrieved party mails

decisions. Weekly reports as to the number of cases filed and decided and their respective promptness category are prepared for the Chairman. The monthly report contains that information as well as indicators as to the appellant, the issues involved and the local offices. A weekly report on the promptness of the Appeal Tribunal is prepared for the Chairman of the Board of Review. The monthly Appeal Tribunal reports are also sent to the Chairman. These reports are the first indication of any potential problem meeting promptness criteria at both the Board and the Tribunal.

Full Board meetings are conducted monthly. The number of cases discussed varies each month with an average of five cases. Oral argument by attorneys before the full Board has occurred but it was been limited to cases of first impression

4. PROCEDURE IF FURTHER APPEAL IS FILED

All appeals of Board of Review decisions are made directly to the Arkansas Court of Appeals. Transcripts of the hearings are prepared by secretaries at the Board of Review and at the Appeal Tribunal. The Chairman certifies the record to the Court. A separate court docket is maintained with the Board of Review docket number, the Court of Appeals docket number, the claimant's name, the date the decision was mailed, the date of the Court's decision and the results.

C. INDIANA

AUTHOR: Anthony Guido

1. INTRODUCTION

Most workers in the United States, regardless of where they may live, know that off-work benefits, generally, are available to them. They know the general procedure for filing a claim for unemployment insurance benefits if they have been laid off, lost their job, or have left their job for what they consider good cause. Even the worker, unemployed for the first time, soon learns the routine to follow to get unemployment insurance benefits.

Certainly, a tremendous number of those who file receive benefits without "a hitch." However, there is a small percentage who are denied benefits by an initial ruling. In Indiana, these workers may, and do, appeal and hope the result of a hearing before the Appeals Referee will be favorable.

Also, many employers have learned that they should appeal the initial determination when they believe that the evidence has not been properly evaluated. Consequently, employers are filing appeals for a hearing before the Appeals Referee in increasing numbers.

As a result of the above, the number hearings is growing and the presentation of evidence at those hearings is becoming more sophisticated. The lesson has not stopped here. Claimants (unemployed workers) and their employers are more frequently asserting the right to go to that "Last Administrative Step" in Indiana, if the Referee's decision was adverse to their interests.

2. STATE GEOGRAPHY AND DEMOGRAPHY

Indiana has 35,932 square miles within its borders. It is situated in the heartland of our nation. The Ohio River forms its southern border, and the State of Michigan and Lake Michigan form its northern border. It is flanked by the States of Ohio to the east and Illinois to the west.

Indiana has a population of 5,500,000. Its capitol is Indianapolis, and the other major cities include Fort Wayne, South Bend, Gary, Bloomington and Evansville.

Most of Indiana consists of fairly flat lands in the north and center sections, with gradual rolling hills in the south. The principal natural resources are coal, natural gas and farmland. Its industry is varied. Manufacturing leads in total annual earnings with automobiles, automobile parts, heavy-duty transmissions and aircraft, automobile, heavy-duty off road vehicle and truck engines, making up the major portion

the Referee and clerk-typist execute affidavits as to correctness and completeness of the official file.

Equity of workload for the clerk-typist's is difficult to maintain because of the differences in the number of tapes, number of documents submitted during the hearing, the clarity and enunciation of those speaking and other factors unique to tape recordings. However, the task is attempted on the basis of the number of transcript pages produced per day and, of course, the difficulty involved in the individual case. Thus, a case which has been assigned to a clerk-typist which has not been started may be re-assigned to another whose pending cases are not as old as the one in question.

e. Scheduling and Workflow Control

After the intake person has prepared the files for each day, the files are divided equally among the three Board members for review.

Each Board member checks the file for completeness, the documents are perused, the member listens to the tapes and formulates a tentative decision. Then, the file and the first member's tentative decision are passed on to the second member for review and likewise to the third member.

When all three members, or two, agree on a result for a case, the legal analyst prepares a draft decision. The draft is then submitted to the Board for approval and preparation of the final decision.

The Board is empowered to make several different rulings. These are: Affirm the Referee (includes modifying and affirming); Reverse the Referee; Remand temporarily to Referee to hear additional evidence and resubmit to the Board; Remand de novo for a completely new hearing of the evidence by the Referee; Schedule the case for oral argument only; or Schedule the case for oral argument and additional evidence before the Review Board.

Usually, the second and fourth Tuesdays of the month are reserved for hearings by the Board. This practice makes it possible to assign cases as they are ready to be heard, and to give the parties at least three weeks notice prior to a hearing. Consequently the parties have adequate time to prepare for the hearing.

f. Hearing and Oral Argument Mechanics

The hearing notice sent to all parties includes detailed information about the rights of each party. Included in the mailing is a prepaid postcard. Blocks preprinted on these cards may be checked by the parties to indicate their intentions concerning the hearing. For example, will the

an appeal then the filing date for that appeal is the date of receipt at either the local office, the Review Board office or any office of the department.

If the aggrieved party wishes to offer additional evidence, a separate Form 666 is prepared detailing the reason why the evidence was not submitted during the "lower authority" hearing. This form and the appeal form are then sent to the Review Board.

b. Records Retrieval and File Preparation

When an appeal is received the intake person checks the appeal for timeliness. If it is timely, the intake person requests the "lower authority" file. NOTE: If there is a question as to whether the appeal is timely or not it is referred to the legal analyst for review. The legal analyst then makes a recommendation to the Board for a decision. When the appellate file is received from the "lower authority" it is merged into the Board's file.

c. Creation of the Tracking Mechanism

The intake desk assigns a Board case number (the last two digits of the current year, a dash, then a "R" followed by a dash, then a sequential number of the case) and prepares a docket sheet. The docket sheet lists the Board case number, claimant's name and social security number, employer's name and account number, date of appeal, mailing date of Referee's decision, name and code of local office, lower authority case number, date of the Referee's hearing, the Referee's name, number of hearing tapes, and whether the appeal was timely filed.

The docket sheet is the means for tracking a file during its entire stay at the Review Board. After the lower authority's file has been merged with the file of the Board, a Form 663 is completed and stapled to the front of the file folder. This form is the internal tracking mechanism to ensure each Board Member and the legal analyst, when required, sees and reviews the file.

d. Transcript Preparation

Transcripts are prepared if the Board decides to hear a case or a party aggrieved by a Board decision files a notice of intent to appeal to the Indiana Court of Appeals. If a transcript is needed a clerk-typist prepares it from the tapes of the hearing. Presently electronic typewriters with a floating line of 88 characters are being used. This permits the operators to watch for errors before text is committed to paper. This means of preparation still results in many pages having to be re-typed after the transcript has been reviewed by the Referee. After approval of the transcript by the Referee,

file is retrieved and handled the same way as any other appealed file. A remand for de novo hearing is considered a permanent remand to the lower authority. This results in a new hearing and decision by the Referee. Thus, the matter is treated as closed and the decision and distribution of that decision is handled accordingly, except the lower authority's file is returned to it.

A temporary remand is an order to the lower authority to take additional evidence to supplement the evidence already received during the original evidentiary hearing. Temporary remand cases are placed in the pending files until all the evidence has been submitted to the Board for its review and decision.

After an appeal has been processed fully, the file is taken to the posting desk for proper notations on the docket sheet of the change in status of the file together with proper dates.

h. Decision Making Mechanics

Each decision maker has an individual style of reviewing cases. But, each of them considers: the documents admitted into evidence and if offered documents were not admitted was their exclusion correct; previous decisions with similar fact situations; the applicable rules, regulations and statutes; and the testimony of the witnesses. Then, if the evidence appears to be balanced, an attempt is made to determine witness credibility. The review by the Indiana Board is not limited to that of an appellate court. It may find facts and reach conclusions different from those of the Referee; but if credibility is at issue, there must be conclusive evidence in the record to overturn a Referee's decision based solely on credibility.

The Board's responsibility is to reach decisions based on the law. Consistency in decision, and the maintenance of a fair and impartial attitude toward all the parties is also necessary for due process.

i. Decision Preparation

Decisions are first drafted by the legal analyst. The draft must substantiate each fact and conclusion of the decision. If the draft decision is adopted by the Board it must be sufficient to withstand the minute scrutiny of the Court of Appeals. Therefore, careful draftsmanship is required so that all "t's" are crossed and all "i's" are dotted.

j. Decision Duplication and Mailing

After the final version of a decision is typed and approved it is sent to the Department's print shop for printing the

aggrieved party attend or not, or does the party want the Board to decide the case merely by review of the record, etc. If the aggrieved party indicates an intent to be present at the hearing, the case is maintained on the docket. However, if an aggrieved party indicates an intention not to attend, the matter is removed from the docket and the parties are informed that a decision will be forthcoming. A case removed from the docket is replaced by another case, if time permits.

Before a hearing, to prepare questions they wish to have answered during the hearing, the Board members and the legal analyst review the file, the transcript and the notes made during their initial review of the case.

On hearing days the hearing room is arranged to be convenient for the parties (tables and chairs for comfort and utility), and to assure quiet surroundings and the proper functioning of the recording equipment.

After the parties are brought to the hearing room and identified, they are instructed by the Chairman about the procedures to be followed to permit both sides an opportunity to adequately present their positions. If additional evidence is to be presented, the witnesses are sworn and the evidence is received. Cross-examination by the parties, and questions from the Board members and legal analyst are allowed.

The parties may submit proposed findings of fact and conclusions of law after the hearing. If none are submitted, and if enough time exists before the next case, the Board discusses the issues, evidence and oral arguments. The legal analyst does not participate in these discussions unless requested to do so.

g. Hearing Record Review Mechanics

The procedure for review of the record is identical to that already described, up to the hearing. In either situation, if all or two members agree, the legal analyst drafts a decision. The draft is reviewed by the Board, modified, if needed, and then typed, printed and mailed.

If the decision is to dismiss the appeal, a draft is prepared by the legal analyst based on the precise reason for the dismissal and submitted to the Board for approval before printing and mailing.

If an appeal has been dismissed and the aggrieved party petitions to reinstate the appeal, (as permitted by statute and the regulations), the case is reviewed by the legal analyst to ascertain the appropriateness of the request. Then a draft decision is prepared and submitted to the Board for its approval. If the matter is reinstated, the

the decision of the Board was mailed. An intake slip showing the notice of intent is timely or untimely filed is prepared and, along with the official file, is given to the Chairman for review. If it was timely filed the Chairman initials the intake slip and returns the file to the proper staff person for further processing of the appeal. If it is not timely filed, a letter is sent to the party filing the notice of intent notifying them the decision of the Board has become final and the notice was not timely filed.

For timely appeals, a card with all information concerning the case is typed along with the Notice of Intention to Appeal. The notice is mailed to the parties. The notice that is sent to the appealing party includes a form which explains how the fees for preparing the transcript are computed. Then the case file is retrieved and if no transcript has been prepared, the case is assigned to a clerk-typist for preparation of a transcript. If a transcript has previously been prepared, it is reviewed for completeness and certification.

A transcript is not provided to any party until arrangements have been made for payment of the required uniform average fees or a pauper request has been received and approved. Payment of the fees must be made by cash, certified check, money order or check drawn from a business or law firm account. When the fee is received, a receipt is prepared and forwarded to the party. Payment is recorded in a ledger with pertinent information regarding the case and taken to Fiscal Accounting for same day deposit.

After the transcript has been prepared the actual cost of preparation is calculated and a refund form is prepared if the actual cost is less than the amount paid, or the party involved is notified of the additional fees to be paid before the transcript will be released.

Upon receipt of the full fees, the transcript is mailed by certified mail to the appealing party or the legal representative, and/or the party requesting a copy of the transcript.

The Attorney General's office represents the Board in the court proceeding. The dates of all the above activities, including the date of the Board's request for representation by the Attorney General are recorded in the litigation book.

The appealing party must file with the Court of Appeals within 30 days of the date of the Notice of Intention to Appeal. If the transcript will not be ready within 30 days the Board may request an extension for 15 days. If the appealing party fails to perfect the appeal to the Court of Appeals, the Board notifies all parties, including the Department, that the Board's decision as previously distributed has become final. In these circumstances the Board's records are closed out. When a decision is made by the Court of Appeals, a copy of it

number of copies needed. The distribution desk sends the printed copies to all interested parties, and, the Director of IDETS, the Research and Statistics Section, the Chief of the Appellate Section, and the Review Board's posting desk.

Copies are placed in the Board's file, the lower authority file, and the Board's decision book. The lower authority file is then sent to the Technical Services Section, pending a possible appeal to the Indiana Court of Appeals.

k. Performance Tracking and Reporting:

Presently no statistics are kept on the performance of Appeals Referees because this is not within the scope of the Board's authority. However, unique matters of concern in a particular situation are provided to the Chief of the Appellate Section for appropriate handling.

Performance evaluations are maintained on the legal analyst and the support staff by continuous observation and evaluation of their work.

1. Records Control and Close Out Procedure

The Board maintains card index files on claimants and employers by name. These two index files are maintained for three years. The docket sheets are maintained by year. When all of a year's cases have become final, i.e. no cases remain open by virtue of a pending appeal, that year's docket sheets are microfilmed and the originals are destroyed. The microfilm is presently being kept permanently in microfilm case files in the Board's offices.

When a final decision has been made and no further appeal is possible, the case file, is purged of unnecessary papers and microfilmed. After the microfilm is edited, the State Archives Section examines the files for any files that should be kept for historical purposes. Those files are sent to the Archives for safekeeping, and the others are destroyed. The microfilm records are kept permanently.

Decisions are kept numerically and in individual books by year for reference purposes for three full years. Those decisions older than three years are shredded.

Other records relating to the Board's operations are kept pursuant to statute and regulations promulgated by the Archives.

4. PROCEDURE IF FURTHER APPEAL IS FILED

If the decision of the Board is appealed, the first step is to submit a notice of intent to appeal the decision to the Review Board. The date the Review Board receives the notice of intent is the filing date and it must be within 15 days of the date

is filed appropriately and the Board's records are closed out.

5. CONCLUSION

Indiana's higher authority, the Review Board, has been able to accomplish a fairly remarkable record in meeting the Desired Levels of Achievement for timeliness established by the Department of Labor. Indiana's average performance has consistently been above 90% in all categories. Considering the very basic means at the disposal of the Board and its staff this record is especially noteworthy. It speaks well for their dedication.

Prior to 1985, there was no requirement for an attorney to be a member of the Board, nor was an attorney on its permanent staff. A legal analyst was approved and the Review Board hired a qualified attorney for the position in February, 1988. The addition of an attorney to the Board and of a legal analyst has led to an increase in the quality and consistency of decisions and rulings.

The Review Board looks forward with anticipation to the acquisition of personal computers that are presently being procured. The Board expects a quantum leap in the ease of performance of many of its tasks, and to an upgrade in the quality of "the higher authority" appeals process in the State of Indiana. Plans are being formulated to utilize the computers wherever possible, even though no uniform main frame system currently exists within the department. A precedent manual is planned on relevant issues for use by Referees and the Board.

PART TWO

SECTION TWO - HIGHER AUTHORITY APPEALS

III. RANGE THREE - NORTH CAROLINA and OREGON
(2,500 TO 5,000 CASES PER YEAR)

A. INTRODUCTION

North Carolina and Oregon were selected from the States whose higher authority appeals workload is between 2,500 and 5,000 cases per year. These two States are on opposite coasts of the country. One is in the southeast and the other is in the northwest. Their approaches to higher authority appeals decision making are very different, but each has a process that produces prompt results. These two States were also selected in workload RANGE THREE in lower authority appeals. Reference will be made to material presented in the section on Lower Authority Appeals (pp. 35-42 and 51-59) rather than duplicating here, information that has already been presented.

B. NORTH CAROLINA

AUTHOR: Thelma M. Hill

1. INTRODUCTION

The Employment Security Commission of North Carolina (ESC) has found the timely disposition of contested claims for unemployment compensation requires a lower and higher authority appeal process to be structured or restructured with the applicable federal appeals promptness criteria in mind. Such a process includes several elements, each selected because they foster both efficiency and promptness in the appeal process without reducing the quality of the end product.

2. STATE GEOGRAPHY AND DEMOGRAPHY

A description of North Carolina appears on pages 35-36.

3. HIGHER AUTHORITY APPEALS UNIT STRUCTURE

The higher authority appeals and lower authority appeals are within the Administrative Law Division headed by the Chief Deputy Commissioner, who reports directly to the Chairman of the Employment Security Commission. The staff for higher authority appeals consists of the Chief Deputy Commissioner, three professional staff members, and one secretary. The five-year average of appeals filed is 3,800 per year. Oral arguments occur in 20% to 25% of the cases.

4. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

See "Procedures If Further Appeal Filed" as described for North Carolina Lower Authority (Page 42).

b. Record Retrieval and Creation of Tracking Mechanism

See "Record Retrieval and Creation of Tracking Mechanism" as described for North Carolina Lower Authority (Pages 36-37). When the record is received by the Chief Deputy Commissioner, it is "FILED" and assigned a docket number. A docket sheet is prepared along with a index card for an alphabetical listing of cases. A file folder is also prepared.

c. Transcript Preparation

See "Procedures If Further Appeal Filed" as described for North Carolina Lower Authority (Page 42).

If a party requests a copy of the hearing record, a cassette tape with exhibits is furnished to both parties at

no cost. In order to obtain a transcript of the proceeding, the requesting party must pay the statutory rate or file affidavits of in forma pauperis status. In addition, the request must be made within the established time limits. The Chief Deputy Commissioner may direct transcripts to be prepared in cases of less than 45 minutes.

d. Scheduling or Workflow Control

Cases with an evidentiary hearing of less than 45 minutes are initially reviewed by the Agency Legal Specialist assigned to the Office of the Chief Deputy Commissioner who will recommend whether the case should be "short affirmed" or referred to the Legal Department for further review and proposed decision. Cases with evidentiary hearings of 45 minutes or more are referred directly to the Legal Department for review and proposed decision. Even if the case has been scheduled for oral arguments, a Staff Attorney is assigned to prepare a proposed decision for the Chief Deputy Commissioner.

e. Hearing or Oral Argument Mechanics

Upon receipt of a timely request for oral arguments, the Chief Deputy Commissioner reviews the record to determine whether such arguments would be of assistance in the rendering of a decision. If it is determined that oral arguments may be helpful, a hearing notice is mailed to the parties. Otherwise, a letter denying the request and the reason therefore is mailed. Also, untimely requests which are not attributable to actions or statements by an ESC employee are, more likely than not, denied by letter. Hearings before the Commission are discretionary and are scheduled by the Chief Deputy Commissioner. Parties are provided a minimum of ten days notice of the hearing. Unless extenuating circumstances exist, the hearing is scheduled to be held at least seven to ten days prior to the expiration of the applicable time-lapse period. In order for a continuance to be considered, a written motion for continuance must be received at least five working days prior to the date of the scheduled oral arguments. Upon a showing of commonality of facts and parties, cases may be consolidated for oral arguments.

f. Hearing Record Review Mechanics

The review consists of an examination of all testimonial (cassette tape or transcript) and documentary evidence presented at the proceeding before the Appeals Referee. No additional evidence may be offered to the Commission for review. Briefs and/or memoranda of law timely filed may be considered, but they are not considered a part of the hearing record.

g. Decision Making Mechanics

The Commission may affirm, modify or set aside any decision of any Appeals Referee on the basis of the evidence previously submitted in the case, or vacate the decision and remand the matter for the taking of additional evidence. The Commission review entails a determination of whether the factual findings are supported by competent evidence in the record, whether the law was properly applied to the facts found, and whether the resultant decision was correct. It also encompasses whether procedural errors were committed by the Appeals Referee in scheduling, conducting the hearing, or rendering the decision. The party's grounds for appeal are specifically addressed.

h. Decision Preparation

Within five days after assignment of the case, the Staff Attorney and the Agency Legal Specialist are required to submit a proposed decision to the Chief Deputy Commissioner. Each Staff Attorney has a manual of form decisions which are maintained on the word processing system glossary by codes. The code of the form decision to be used by the Attorney's secretary in transcribing the decision is inserted by the Attorney on the draft decision, which may be handwritten, typed or dictated. Proofing is done by the Attorney and the secretary. Before the proposed decision is submitted for final review and approval and signature of the Chief Deputy Commissioner, it is routed to the Attorney's supervisor for initial review. If the decision is approved by the Chief Deputy Commissioner, it is signed and returned directly to the secretary of the Attorney responsible for preparation of the decision. If changes are required or the proposed decision is not accepted, it is returned to the Attorney's supervisor with appropriate notes attached.

i. Decision Duplication and Mailing

The duplication and mailing of the signed decisions to all interested parties is performed by the secretary of the Attorney responsible for preparing the proposed decision. When the decision is mailed, the secretary signs the certification of mailing inside the file folder. A copy of the decision is placed in a depository for a designated staff member of the Adjudication Department to pick up at the beginning of the next workday. That Department usually enters the results into the computer on the same day the decision is received.

j. Performance Tracking and Reporting

Those reports, including promptness performance, necessary for federal reporting purposes are manually prepared weekly

and monthly. Reports of the number of cases received, decided, and pending are generated weekly and monthly.

k. Records Control and Close-Out Procedures

After the statistical reporting has been completed, an entry is made in the Docket Book indicating the decision has been mailed, which means that the case has been closed. Thereafter, the case file is placed in the closed files according to docket number. A case file control sheet is maintained in the file room and the removal and return of a file must be indicated on this sheet with appropriate dates and initials of those taking such action. After twelve months, the case files are transferred to the State Records Center which maintains the files for an additional year before destroying them. The Legal Department prepares and maintains a listing of all files that have been transferred to the Records Center with appropriate identification. The Record Center has its own procedure for records control.

5. PROCEDURES IF FURTHER APPEAL FILED

If post-decision relief is sought within the administrative process, the Chief Deputy Commissioner rules on the motion or request pursuant to the grounds established by regulations for granting or denying such relief. The motion or request must be filed with the Chief Counsel for the Employment Security Commission within ten days after the Commission decision was mailed. A copy also must be served on the opposing party. Depending on the relief sought, the entire review process may be repeated. If judicial review of the Commission decision is sought, the matter is handled by the Legal Department and the Chief Deputy Commissioner no longer has jurisdiction to act in the matter.

6. CONCLUSION

Noteworthy procedures and practices are the processing of appeals by the same department responsible for record retrieval, automatically transcribing only evidentiary hearings of 45 or more minutes and requiring parties to pay for transcripts, establishing deadlines for requesting oral arguments, opportunity to file briefs and requesting transcripts and/or records of the hearing, limiting the number of cases scheduled for oral arguments, and setting deadlines for requesting continuances.

By utilizing the elements discussed in this paper, ESC has seen a continuous increase in the overall ability to meet appeals promptness criteria. ESC has been consistently ranked as one of the top five States nationally in meeting the higher authority Desired Levels of Achievement, and has led the States in Region IV in these measurements.

1. STATE GEOGRAPHY AND DEMOGRAPHY

A description of Oregon appears on pages 52-53.

2. HIGHER AUTHORITY APPEALS UNIT STRUCTURE

The Oregon Employment Appeals Board serves as the higher authority to which referee decisions may be appealed. The Board consists of three fulltime members appointed by the Governor. One of the members is designated Chairperson. The Board is assisted by a support staff which includes three attorneys and two clerical personnel. The Board reviews about 2,200 referee decisions per year. Oral argument is always allowed, if requested. However, only 5% to 10% are actually argued.

Plans are currently being formulated to add the Employment Appeals Board to the Hearings Section (Lower Authority) casetracking system (See pp. 54-59). The Board would realize the same kinds of benefits the Division currently enjoys from this automation. The addition of the Board to the system will expand our ability to track, report upon, and analyze case data.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

As appeals are received and reviewed, the relevant information is recorded in a computerized docketing system. The docket system then serves as a database from which acknowledgement letters to the interested parties are produced. A daily listing of appeals received is simultaneously created and forwarded to the Hearings Section, requesting that the respective case files and hearing tapes be sent to a contracted typing service for transcription.

b. Scheduling and Agenda Preparation

Draft agendas for the Board's weekly meetings are prepared in conjunction with the daily receipts. The agendas list the cases to be considered at the Board's meeting three weeks hence. The three week period affords sufficient time for the transcripts to be prepared and read by the Board members. The Board normally receives about 40 cases per week and schedules that many per agenda.

As case files and transcripts are received from the typing service, an agenda number is assigned and transcripts are distributed to the Board members to begin review and make

preliminary decisions. Transcript copies are also sent to the interested parties at this time with deadline instructions for submitting written arguments. Parties who have noted an intent to present oral argument are given a date and time from the scheduled agenda. Any slots left empty on the agenda by reason of dismissal are filled by review of reconsideration requests and preliminary review of timeliness issues.

c. Decision Preparation and Close Out Procedure

By the scheduled time of the Board meeting, transcripts and written arguments have been reviewed and draft decisions made for the cases on the agenda. Final approval and modifications are made by the Board at the meeting. The clerical staff utilizes word processing, which includes formats and some "canned" legal definitions and explanations of law, to produce final copies of the decisions. The decisions are mailed three days after the scheduled agenda. Closed files are sent to the Division's microfilm unit.

d. Performance Tracking and Records Control

The computerized docketing system utilized by the Board is updated by frequent manual entries throughout the higher appeals process. It serves as an inquiry base and facilitates creation of basic statistical reports for a revolving volume of 525 cases. The system is routinely purged to retain only current cases. The purging process creates a hard-copy listing of disposed case information.

4. PROCEDURE IF FURTHER APPEAL FILED

Decisions of the Employment Appeals Board may be appealed to the Oregon Court of Appeals. Such requests are processed and routed by the Division's Benefits Section. The Board is notified of all Court appeals and given an opportunity to reconsider their decision.

5. CONCLUSION

Noteworthy procedures are in the area of workflow control. The Appeals Board's method of filling agenda time slots as cases are received allows board members to begin review and make preliminary decisions well in advance of meetings. Ninety per cent of the cases have draft decisions already written by the time of the board meeting. This permits the Board to spend more concentrated time on cases requiring a consensus vote and closer scrutiny.

As mentioned above, plans are being formulated to include the Appeals Board in the Lower Authority's tracking system. This will allow them to more fully automate their already efficient process, substantially reduce their data input, and

significantly increase both the amount of information available to them and the speed with which it can be retrieved.

PART TWO

SECTION TWO - HIGHER AUTHORITY APPEALS

IV. RANGE FOUR - TEXAS (MORE THAN 5,000 CASES PER YEAR)

A. INTRODUCTION

Texas was selected from the States whose higher authority appeals workload is more than 5,000 cases per year. For several years it has had the largest workload in the country, and during that time its promptness performance has exceeded the Desired Levels of Achievement.

B. TEXAS

AUTHOR: Jerry Garvey

1. STATE GEOGRAPHY AND DEMOGRAPHY

Texas is a large, geographically and demographically diverse State. It has an area of 276,338 square miles, and its population approaches 16,000,000. Physical geography varies from coastal plains to high plains, from piney woods to desert, from spring-fed hill country to semitropical areas bordering the Rio Grande. Texas shares a lengthy border with Mexico, and the Hispanic population of Texas is second only to that of California. Despite the western movie image of Texas as a wilderness frontier, it is a highly urbanized State which has three (Houston, Dallas, and San Antonio) of the nation's ten largest cities.

Principal industries include, of course, the traditional cattle and oil, but the economy continues to become more diversified. Electronics and petrochemical industries abound, a wide variety of agricultural operations (including timber) cover the State, fishing is a valuable industry along the Gulf Coast, and tourism is an ever-growing force in the economy.

The sheer size of Texas, while the stuff of legends, cannot be overlooked. The capital, Austin, is centrally located, but is 331 miles from Brownsville at the mouth of the Rio Grande, 341 miles from Texarkana on the Arkansas border, 485 miles from Amarillo in the Panhandle, and 583 miles from El Paso. The distance from Orange to El Paso on Interstate 10 is 855 miles, leading to the famed trucker's lament:

Been driving from sunrise to sunset,
Ain't got out of Texas yet.

El Paso is closer to Los Angeles than to Houston.

2. HIGHER AUTHORITY APPEALS UNIT STRUCTURE

The higher authority appeals function is centralized in Austin. The board of review, or Commission, consists of three full-time members appointed by the Governor with the consent of the Senate. Commissioners serve staggered six-year terms. One represents employers, one represents employees, and the Chairman represents the public at large. While the Commission sets agency policy and appoints an Administrator to oversee day-to-day operations, the primary function of the Commission is to sit as the final administrative board of review for contested unemployment insurance cases. From January 1, 1983, through June 30, 1988, the Commission averaged over 15,000 decisions per year, with a high of 17,952 in calendar year 1987.

The Commissioners meet weekly, usually 50 times per year, and

consider about 350 cases per week. Each Commissioner is assisted by two attorneys and several support staff members in reviewing the cases. Under Texas law the meetings are open meetings, and the docket of cases to be considered at a meeting must be posted eight days before the meeting. Discussion of cases among Commissioners outside of an open meeting is prohibited by law. The review is strictly on the record; the Commission entertains no oral argument at its meetings on benefit cases. However, the Commission has allowed oral arguments in tax coverage cases, of which there have recently been about 250 per year. Beginning in February, 1988, a separate special hearings unit, consisting of four attorneys and one administrative technician, holds these hearings and presents proposed decisions to the Commissioners.

The higher authority appeals unit is called "Commission Appeals." Authorized staffing is 24.5 attorneys (including a department head and one assistant) and 25 clerical support positions. At present, it is operating at slightly less than full staffing. In addition to preparing written factual and legal summaries of each case, with recommendations, justifications, and proposed decisions, the staff is also conducting 750 to 1,000 rehearings per year by telephone, either on jurisdictional (timeliness) issues or to further develop specific issues upon the direction of the Commission.

The head of Commission Appeals reports to a Special Counsel who in turn reports to the Administrator.

3. DESCRIPTION OF THE ADMINISTRATIVE PROCESS

a. Appeal Filing and Intake

The primary sources of appeals are in-person appeals filed at local offices and appeals mailed either to the Appeals (lower authority) or Commission Appeals (higher authority) departments. Occasionally, an individual appeals in person in the State central office. Some appeals are also filed directly to the Commissioners by way of mailed correspondence or written appeals delivered in person. These two methods, however, account for a very small portion of the total appeals filed.

Unless mail is specifically directed to the Commission Appeals department, it is routed to Appeals if it appears to be an appeal of any sort, since they handle by far the greater volume of the two departments. When the mail is sent to Appeals, it is sorted into lower authority appeals and higher authority appeals. Higher authority appeals then are forwarded to the Commission Appeals with or without the complete file attached.

A clerical supervisor date stamps and screens all documents received in the department. By checking appeals status screens on the interdepartmental computerized status

system, it can rapidly and accurately be determined if the document is a new appeal to the Commission from an adverse ruling at the Appeal Tribunal level.

Several factors need to be analyzed. The document may actually be a request for a reopening at the Appeal Tribunal level by a party who received an adverse ruling and had not appeared. Occasionally, there is an adverse ruling against the party at the Appeal Tribunal level, but the document seems to be discussing another collateral ruling. In either of these cases, the document is returned to Appeals for adjudication. If the document is an appeal to the Commission, it is forwarded to a "file pull" clerk.

b. Records Retrieval and Creation of Tracking Mechanism

While briefly screening the document, the "file pull" clerk will check for requests for tapes of the hearing or documents previously submitted by a party. If there are such requests, notations are made to take action at the appropriate time. After the "file pull" clerk completes this review, the appeal is keyed into the computer by social security number and claimant last name.

The computer generates a list in social security number order, and a label for each, that includes current date, social security number, and claimant's last name. Each label is attached to an outcard which is then taken to the central file unit. Folders will be pulled and replaced by an outcard with a label indicating the file has gone to Commission Appeals. Files are usually complete because after lower authority made a decision the entire file was sent to the central file unit, which is in the same building in Austin as Commission Appeals.

At this point some problems develop if a file is not located. These are listed as NF's (no finds) and are researched by the "file pull" clerk. The file may be at the Appeal Tribunal level for adjudication of a separate issue or in another unit of the agency such as the overpayment collection unit, the benefit payment control (fraud) unit, or possibly a special program area. All cases which remain NF's are rechecked every several days to ferret them out and get them in the system as rapidly as possible.

All files with an authentic appeal and for which the files have been located now have basically completed the intake process. If the screening indicated a tape or document request, the file is first sent to a clerk in the department who handles tape or document requests. This is done at this time in order to give the party requesting the tape or document as much time as possible to present any arguments based upon the tape or document before the case is presented to the Commissioners. Otherwise the case

might have to be pulled off a docket at the last minute for additional review of the newly submitted material, thereby forcing it to miss the deadline. No transcripts are prepared for parties, only duplicate tapes. All cases without tape or document requests have already been forwarded to the acknowledgement clerk.

Making turnaround time on appeals a factor in evaluating local and regional offices greatly decreased the amount of time taken by local offices to forward appeals to the central office. Cooperation with lower authority appeals, who receive the bulk of higher authority appeals mail, is also essential to prompt receipt of appeals.

After appeals have been received, associated with files, and tape or document requests honored, the files go to the acknowledgement area. The first action there is to date stamp the bottom of each folder with the date of receipt in the acknowledgment room.

The acknowledgement area arranges the file with the notice of appeal on top of the file. Its reference to a particular Appeal Tribunal decision is double checked. The appeal date is located on either the envelope or the notice of appeal. By referring to the ever rotating 28 day cycles of colors in relation to appeal dates the color code of this particular appeal is determined. The sequential commission appeal number as well as the entire appeal number which includes the claim year, program code, and date of appeal are all listed. The files are physically marked by an asterisk with the correct color code (blue, red, yellow, or green). The back of the file folder is similarly marked with a distribution stamp indicating where copies of the Commission decision are to be mailed (claimant, employer, local office, file, attorneys or other representatives). The clerk also notes on the back of the file, the length of the tape of the Appeal Tribunal hearing.

The next process is keying the information. This creates numerous documents used by the attorney and the Commissioners in processing the case and begins the entry of information in the status records. The social security number is entered first. Appeal Tribunal status information then appears and is verified with the Appeal Tribunal hard copy document in the file. The newly assigned CA sequence number is then entered, followed by the program code. Next, the appealing party is entered, followed by the appeal date. Finally, the date of the entry of this information is entered. Addresses are then verified from previous records and address changes are entered. New or additional parties (such as recently retained attorneys) are added to the status record at this point.

Overnight, the ADP Department creates an acknowledgement

letter showing appellant, appellee, any representatives, and the commission appeal number and the appeal date with copies for all individuals. The next morning the mailroom mails copies to all parties. Only a file copy is picked up by Commission Appeals. A summary information sheet is prepared for each case. This is a coversheet for the summary to be prepared later by the attorney and indicates the parties, the procedural history of the case and certain preliminary information. Since the majority of cases result in affirmations, a standard form affirmation which adopts the Appeal Tribunal decision is printed in each case. These documents are associated with the file. Once these steps have been taken, a method of tracking the case has been set up and the status of the case as it is assigned, docketed, and mailed can be followed. The case is now ready for assignment to an attorney.

c. Transcript Preparation

This phase of the process is accomplished in Texas with the speed of light. No transcript is prepared. Attorneys review tape recordings of the hearings and prepare written summaries for review by the Commissioners and their staff members. Commissioners have access to the tape and the complete file in all cases.

d. Scheduling or Workflow Control

Because the Commissioners meet only once per week, usually on Wednesday, cases are batched into seven-day groups which for convenience are also color coded.

Assignment clerks perform the extremely important task of color sorting the cases. The color coding system consists of the constantly rotating four week color system of blue, red, yellow, and green cases, which effectively batch cases into seven-day units. The Commissioners meet regularly each Wednesday and decisions are mailed Friday, two days after the meeting. The color coding system dates back from this Friday mailing date. Cases mailed on that date theoretically will have filed during a single week thus giving attorneys and stenos a consistent amount of work to do each week. The only slack time occurs in the first few weeks of the procedure. The system used waits as long as possible to assign cases. Cases are assigned week by week as much as possible solely by color coding. Cases are only assigned early, i.e., assigned to attorneys to do in a week which would get them on the docket a week earlier than absolutely necessary, when there is, for some reason or other, an unusually small number of appeals which are required to go on the docket that week.

The first step of the assignment procedure is to select all cases which do not absolutely need to be assigned at this point in order to make the 45 day deadline (i.e., those at

day 15 or earlier). The next step is to sort the cases by length of hearing tape. Cases with no tape are put together and then tapes are grouped by lengths of 15 minutes, that is, 1 to 15 minutes, 16 to 30 minutes, etc. The number of cases in each category is determined. Calculations are made to determine the total number of minutes of tape which need to be analyzed by attorneys in the forthcoming week. To calculate assignments, we determine the total number of available attorneys the following week. This will vary due to vacations, special assignments, etc. In effect, all current cases are then divided as evenly as possible among the attorneys based upon the tape length and the number of cases.

If there are any cases which for whatever reason were not completed within the original 45-day limit, they are worked back in. These 75-day cases are worked into the like color batch which is on track to meet the 45 day deadline. The color charts work on two tracks, a 45-and a 75-day (actually 73-day) cycle. They are merely separated by 28 days. These cases are added to the calculation and assigned. The priority with which cases are assigned will be: (1) all of the available 45-day cases for that color week; (2) all 75-day cases of that same color from four weeks earlier; (3) next, any other cases over 45 days but less than 75 days (those 1, 2 or 3 weeks overdue from the 45-day criterion), (4) finally, if not enough work is available for the attorneys based upon our usual average work loads, any "premature" 45-day cases, those being cases which could be delayed for one week or more and still meet the 45-day criterion.

Division of work to attorneys in this manner is admittedly somewhat inaccurate. The length of a tape is no sure and certain reflection of the amount of work involved. However, it is the best measure we have. Attorneys may have good or bad weeks, but the assignment is as reasonable and fair, as can be determined in advance.

Presuming the sorting has been done correctly, the attorneys do not need to give much thought to promptness. They merely must complete the work by the following Tuesday. On Wednesday and Thursday of the next week there will be some final proofing of one week's work going on while original dictation of the next week's cases will be involved.

Each attorney is free to develop whatever system that attorney is most comfortable with. Some do the longest cases first, thereby getting the worst of the week's work out of the way. Others use the opposite approach getting the greatest number of cases accomplished in the first several days and then finishing up with the worst individual cases. Others use more random approaches. The system allows total flexibility for individual preferences

in this manner.

If attorneys finish assignments early, they can either assist other attorneys who are having difficulty in that particular week or they can volunteer to work up other cases. Actually a great number of over 45-day cases get assigned before their actual 75 day deadline comes due by this mechanism. Flexibility is an asset here as several staff members can get together and help each other during a particularly bad week with the understanding that there will be a payback at a later date without management being involved at all.

No system is perfect, and occasionally not all assignments are completed. Illness cannot be factored into the system in advance. Holidays are problematic to the system as five days' work must be accomplished in fewer days. This often creates 75-day cases four weeks after holidays. Likewise, while it is strongly discouraged, there are occasional cases which simply require more work to be done than time allows in any particular week. On a case by case basis, these cases can be handled by management. A proportional share of cases relating to the period of illness can be turned back in. Generally speaking, however, attorneys must verify to management when picking up the next week's cases that all of the last week's cases have at least been dictated.

Two days after the deadline date for attorneys to hand in their cases, final drafts of all cases will be finished by clerical staff and approved by attorneys. At that point all the cases are sent to the docket unit. This unit sorts the cases numerically, and does the final proofing of all proposed decisions. It prepares a docket list by case number, claimant, and employer name. Copies of the attorney summary and the Appeal Tribunal decision are forwarded to each Commissioner and the Commission Appeals department head for review. The docket is posted according to the Texas Open Meetings Law by delivering a copy to the Texas Secretary of State. When posted the oldest case on the particular color code being worked should be 35-days old (63 days if a 75 day-case) and the newest should be 29 days old (57 for a 75-day case). The meeting for this docket will be held in eight days, although a meeting will be held the very next day for the docket posted one week earlier.

e. Hearing or Oral Argument Mechanics

Although the Commissioners are required to discuss among themselves and vote on the cases at an open meeting, no oral argument by the parties is allowed, and no hearing as such is held. The review is strictly on-the-record.

Should the Commissioners want particular areas of a case

developed further, they can order a rehearing. Commission Appeals staff attorneys hold the hearing by telephone, summarize the testimony, and present it to the Commissioners. The Commissioners also have the option of completely remanding a case to the lower authority.

f. Hearing Record Review Mechanics

The basic summary format prepared by the Commission Appeals staff in each case is:

- (1) CLAIMANT (if a quit) or EMPLOYER (if a discharge) TESTIMONY:
- (2) EMPLOYER (if a quit) or CLAIMANT (if a discharge) TESTIMONY:
- (3) FILE DOCUMENTS
- (4) APPEAL TRIBUNAL RATIONALE
- (5) APPELLANT'S APPEAL
- (6) RECOMMENDATION & JUSTIFICATION

All summaries along with the Appeal Tribunal decision are forwarded to the Commissioners when a docket is posted. They are reviewed by the Commissioners and their staff members. If a Commissioner has any problem or disagreement with a case it goes on a "pull list", which means it will be discussed at the meeting. Any one Commissioner can pull a case. Usually 20-25% of the cases on each docket are pulled, meaning the Commission unanimously agrees with the recommendation in 75-80% of the cases.

g. Decision Making Mechanics

At each meeting, all "pulled" cases are fully discussed by the three Commissioners. Testimony can be reviewed, legal precedents cited, and policy implications debated. All cases not "pulled" are simply called and signed.

h. Decision Preparation

Along with the preparation of the summary, Commission Appeals attorneys and clerical support staff prepare a decision to be mailed to the parties in each case, in accordance with the staff recommendation. A standard form affirmation adopting the Appeal Tribunal decision is in the file in each case, having been prepared when the acknowledgement letter is printed. Word processing equipment has standard jurisdictional dismissal decisions "canned." Reversals, modifications, and long form affirmations (agreeing with the result but changing the reasoning) require dictation and typing.

In cases where the staff recommendation is accepted by a majority of the Commission, the decision is already prepared, and will be signed at the meetings; however, the Commission can, and occasionally does, order a re-write. If the majority ultimately votes contrary to the staff recommendation, the case is returned to the staff attorney immediately after the meeting to write the decision in accordance with the vote of the Commissioners.

Dissenting or concurring opinions need to be added by the Commissioner's staff members after the meeting. If only an indication of a dissent or concur but no written opinion is requested by a Commissioner at the meeting, a label to that effect is attached to the decision at the meeting and the decision is signed and ready to mail.

Only if a new decision is needed or a written dissent or concurrence is required is a decision not ready for mailing immediately after the meeting.

i. Decision Duplication and Mailing

Copies of decisions signed at a meeting are made for all interested parties, as indicated on the acknowledgement letter and the distribution stamp. Window envelopes are used for the parties, who are listed on the decision. Copies for representatives require typing of envelopes, which is usually done at the time decisions are prepared. The original signed decision is retained as the file copy.

This work is performed beginning shortly after the meeting, and will be completed the next day (day 44) or the following Friday (day 45). Thus all of these decisions will be mailed by the deadline.

Cases requiring re-writes of decisions or written dissents or concurrences can miss the deadline, but this is priority work and every effort is made to have these decisions mailed by Friday (day 45). Since cases are batched weekly and only the oldest case is 45 days old on the usual Friday mailing date, some of these cases mailed early the following week (i.e., a case which was only on day 40 on Friday) will in fact be mailed within the deadline.

j. Performance Tracking and Reporting

Upon mailing, the status files are updated to reflect mailing date and the result of the decision. Weekly percentages of decisions mailed within deadlines are presented to the Commissioners. The monthly MA 5-130 report is prepared by the computer, which has available and entered all cases mailed, appeal dates, dates mailed, the appellant and the result. Management can, as desired, get reports on any and all attorneys showing time lapse compliance, outstanding cases, etc. Clerical supervisors

can likewise track productivity of stenos.

k. Records Control and Closeout Procedure

Entering the mailing date and the result basically closes the book on a case. If the decision result is either an affirmation of or a jurisdictional dismissal of an appeal from the lower authority decision, the file is simply returned to the central appeals filing unit. If there is a change in the result, the file first goes to the lower authority processing unit, where the appropriate result is key entered into the claimant master file, which then either results in payment or ceases payment of claims, charges or protects the employer's account, etc., as required by the decision.

4. PROCEDURE IF FURTHER APPEAL IS FILED

If a party files a court appeal, the matter is not actually handled by the higher authority unit, Commission Appeals, but rather by the Legal Department. This 2.5 attorney unit among other things coordinates all court appeals with the Attorney General's office, which represents the agency. Files are moved from the general appeals files to a separate court files system. Relevant documents are forwarded to the Attorney General's office. Even at this stage transcripts are not routinely prepared since the court's standard of review in Texas is a substantial evidence review after a trial de novo. If transcripts are desired, either the plaintiff or party defendant or Attorney General's office can have them prepared by court reporting services from the tape in the file.

5. CONCLUSION

Automation at all possible points has made it possible to do the work load which has arisen in the last few years. Word processors have every standard form and quotation canned, and allow for rapid modification and corrections. Likewise, the entry of all status information has allowed for instantaneous tracking and reports of all necessary types.

The system of assignments to attorneys who then have a set one week turnaround time has been of great assistance. Not only has it evened the workload among workers, it has eliminated any bickering over assignments, and turned the attorneys loose to do their work without having to give much thought to deadlines. It has allowed for individual work patterns and encouraged intra-staff cooperation with minimal management involvement. It has successfully replaced the unsuccessful honor system, which had none of these advantages and which had simply become unworkable as the staff and the workload rapidly increased.

For several years, during a period when appeals were rising rapidly and when contingency funds were available yet base

staff increases were not, the department hired a number of law students on a part-time basis to aid in the review of cases under the supervision of staff attorneys. Texas was fortunate that the University of Texas School of Law is located only ten blocks away. The program had more than adequate results and aided the department through the lag time between an unexpected increase in work load and the ultimate increase in base staffing without the creation of an insurmountable backlog. Many of the law clerks have eventually become staff attorneys or hearing officers.

Finally, the weekly batching of cases, the color coding system, has been of great importance since it was implemented. Simply by sorting the cases and doing them in deadline order rather than doing them in a strict FIFO order can increase promptness performance considerably without increasing the total units of work done by attorneys and stenos. The system takes into account the fact that appeals will come into the system at various points along the 45-day cycle, and it takes the necessary steps to batch cases in weekly units. It sets up specific deadlines at all points in the process, and thus all workers have specific goals or requirements. Any breakdowns on particular cases are easy to analyze. Why deadlines were missed can be easily ascertained. The system recognizes that perfection in the 45-day range may not be possible, but automatically recycles cases on to the 75-day track in an attempt to meet that deadline.

Any higher authority unit in which the ultimate decision makers meet less than daily would be well advised to adopt some form of this system. All that is necessary is to look backward from the deadline date. Subtract time needed for mailing, for the meeting, for open meeting notice, for review, for steno work, for attorney preparation, for assignment, and finally for acknowledgement and intake. Set realistic deadlines at each stage. Batch cases according to the interval between board meetings (weekly, every two weeks, etc.) Work cases as batched, by deadline order, not strictly in FIFO order. Have a fall back position, a 75-day track. Promptness performance will improve with the same amount of work being done.

6. DOES SIZE MAKE A DIFFERENCE?

There are certain inherent factors in a large, high volume, state which cannot be overlooked. In the case of Texas, the large number of local offices where appeals can be taken (over 100 full service local offices and numerous itinerant service points) and the distances involved in moving the appeals, cause some delay. However, since all higher authority functions are centralized, it is much less of a problem than at the lower authority level.

The rapid increase in the volume of appeals over the last several years has forced some changes in outlook. Especially at the clerical level, the organization has become more

structured, and the staff much more specialized. This has required strong clerical management, which the department has been fortunate enough to have had.

This in turn has allowed professional level management to focus on the legal aspects of the job, work one-on-one with the attorneys, and concentrate on the quality of the legal work performed.

The rapid increases in staff has made group hiring more of the norm than individual hiring. Training has had to become more formalized, as opposed to the former "watch and learn" method, and now consists of a combination of lectures, video tape presentations, and a raft of written materials.

PART THREE - SELECTED TOPICS

The authors of the materials in this part of the publication deserve special recognition. They have done much more than was originally contemplated in this project. Their extra efforts add considerable depth and scope to this publication.

This part is divided into a section on management and a section on automation. The management section begins with material on management theory, followed immediately by material by the same author describing some specific applications of management theories in his State. This section concludes with two additional State specific applications of some of the management theories. The automation section contains material on some of the things that have been done in automating appeals functions and material on UI automation in general, plus a look to the future.

PART THREE - SELECTED TOPICS

SECTION ONE - APPEALS MANAGEMENT

I. MANAGEMENT THEORIES

AUTHOR: Robert D. Sparks

A. INTRODUCTION

In recent years the growing public concern over the cost of government has forced a reexamination of alternate management techniques and general principles to discover more efficient and effective ways to deliver services and attain program objectives. The reordering of priorities to increase the importance of the cost of getting the government's job done requires a concomitant reordering of priorities by public administrators to effectuate the public's will. These priorities should be specifically enumerated, shared with the staff responsible for achieving the objectives, monitored, and incorporated into a performance evaluation system.

Implementation of any program requires a decision on (1) the degree of control exercised by management; (2) the degree of delegation of authority; and (3) a method of motivation. This paper will examine some of the alternatives available with specific emphasis on the traditional, bureaucratic and more modern participatory management approaches and analyze the application of these principles to specific goals.

B. SURVEY OF THE LITERATURE

At the risk of over simplification, the literature on the various management styles mirrors the philosophical preferences of each style's adherents and may be divided into two major components.

One reflects the belief that management must strictly control and direct the organization since the basic nature of mankind is indolent and employees will not perform to expectations by their own initiative but must be directed. Furthermore, only management has the skill and knowledge to make the numerous decisions necessary to implement the organization's goals. This theory is often referred to as the traditional or classic bureaucratic management model or Theory X.

Contrasting Theory X is Theory Y. Its adherents emphasize the need for people to self-direct their action. Under this theory, employees can be given wide latitude in performing their job tasks and are, potentially, as capable of decision making as higher management. Employee input into how to best accomplish organizational objectives should be sought and considered within the factual matrix utilized by top management

in its decision-making process. Theory Y stresses reliance on the positive (reward), the carrot portion of management, versus the stick, negative (discipline) portion.

C. TRADITIONAL APPROACH (THEORY X)

In the late nineteenth century, Max Webber, a German sociologist, classified organizational administrations into three categories: charismatic leader, traditional, and bureaucratic. Charismatic leader is characterized by absolute authority. Everything that the organization does is a product of or subject to the particular will and whim of the leader. The leader may delegate duties and responsibilities. He may even delegate substantial authority, but it is always the leader who decides. Under the traditional organizational administrative structure, the administrative positions are established and assigned on the basis of custom. Who one is, not what one can do, determines just what one will do. Under bureaucratic administration, posts are created and handed out on the basis of fixed principle and functional capabilities. Traditional custom and leader intervention play little role in handling of specific cases.¹ Max Webber discussed the bureaucratic organizational structure in terms of a pyramid, with each level of management reporting to a higher level of authority. Authority in such an organization is usually closely held, arranged to follow the patterns of the hierarchy and concentrates in the top levels. Decisions and policy formation occur at the apex and are transmitted down. Management often views employees as production tools rather than people. To varying degrees and most often not officially stated, such management believes that humans naturally dislike work, must be coerced to perform adequately, want security above all else, and will avoid responsibility whenever possible². In an autocratic environment the managerial orientation is formal. Authority is the tool with which management works and the context in which it thinks, because it is the organizational means by which power is applied. Management implicitly assumes that it knows what is best and that it is the employee's obligation to follow orders without question. Employees have to be persuaded and pushed into performance, and this is management's task. Combining this attitude with the value of efficiency and belief in a "one best way" to accomplish any task lead to Frederick W. Taylor's concepts of scientific management. Though Taylor's writings³ show that he had worker interests at heart, he saw those interests served best by a manager who scientifically determined what a worker should do and then saw that he did it. The worker's role was to perform as he was ordered. Taylor's concepts and the many time management studies which followed overemphasized the mechanical functions of work and were later often equated with dehumanization.

Although we often have a tendency to condemn the autocratic model of organizational behavior, it was an efficient way to accomplish work. It was successfully applied by the empire

builders of the 1800s, efficiency engineers, scientific managers, factory foremen, and others. It helped to build great railroad systems, operate giant steel mills, and produce a dynamic industrial civilization in the early 1900s.

The high human costs associated with the autocratic model were held subordinate to the efficiency it fostered and the counterbalancing influence, if one was contemplated, would come in the form of a "benevolent autocrat" who had a genuine interest in his employees. Although Webber would probably support such an idea, reliance on a benevolent autocrat was a precarious safety net. Thus, a reliance on a system of objective rules rather than individuals was a natural alternative which would capture the benefits of efficiency and minimizing the human costs. Such thoughts may lie behind Webber's push to establish a "bureaucratic", founded upon rules, system of management although his predominant and reported desire was to improve the efficiency of the organization.

Webber believed that administrative mechanisms which evolve from the precepts of bureaucracy compared with other administrative devices in the same way that a machine compares with a nonmechanical method of production. The bureaucratic mechanism should further and foster such praise-worthy administrative qualities as continuity, discretion, utility, strict though impartial subordination, reduction of friction, reduction of material and personnel costs, and knowledge of the files.⁴

D. PARTICIPATORY MANAGEMENT (THEORY "Y")

Webber's views and his supporters overlooked the importance of the individual within the organization and were not without their critics. As early as 1937, H. H. Carey suggested a more participatory approach. Carey described his alternative as a procedure whereby supervisors and executives consult with employees or their peers on matters affecting employees' welfare or interest prior to establishing policies or initiating action. Although Carey's alternative, which would develop into the theory of participatory management (Theory Y), had its followers from the start, its advocates did not launch a frontal attack on the negative aspects of bureaucracy until some 25 years later. Ironically, just as the world began to accept the benefits of bureaucracy, the antiorganizational movement of the 1960s gained momentum in a world of increasing complexity and change. Files, which Webber praised as a wholesome advancement in administration, were deemed a waste because they overshadowed the individual and depersonalized the transaction of business. The formalized and systemized procedures of bureaucracy also came under fire for promoting delay and inflexibility, qualities which were held unacceptable in a dynamic technological society.

One of the first prominent advocates of a new approach which stressed the importance of the individual and his needs was

Abraham Mazlow, who claimed that human needs were ordered into a hierarchy and as lower needs are satisfied, the desire to satisfy the higher needs gained in intensity.⁵ Mazlow claimed that at the first level of need, psychological and physical needs are prominent. These are basic needs which must be met before attending to all others, yet physiological and psychological needs have little motivating effect on behavior. After such needs are met, man shifts his attention to safety needs. Once the needs of food, shelter and clothing are satisfied, man shifts his focus of attention on his social needs, those of fellowship, warmth and human contact. Immediately above these needs, man's ego needs come into play. He seeks to improve his esteem in the eyes of his fellows and himself through acquiring competence and registering achievement. The satisfaction of the ego needs opens the door to the highest plateau of need, the need for self-fulfillment. At this level, man's drive centers on the development of his potentials and the utilization of his creativity in the fullest sense of the word.⁶

Mazlow⁷ accused organizational management of failing to recognize that satisfied needs were not an impetus to behavior. Once certain needs are met, other needs must be answered. Management by direction and control fails because direction and control are useless methods of motivating people whose psychological safety needs are reasonably satisfied and whose social, egotistic and self-fulfillment needs are predominant.⁸

E. REFINEMENTS TO THEORY Y

Douglas McGregor enunciated an expanded philosophy of the new order and compared it to the then existing theories of administration by participatory management in "The Human Side of Enterprise." In this work, McGregor contrasts the classic bureaucratic approach advocated by Webber (Theory X) and the more modern, humanistic, more dramatic (Theory Y) leadership models and suggests a correlation between management philosophy of human nature, the organization structure, and its leadership style. According to McGregor, classical leadership theory (Theory X) rests on a set of leadership attitudes or assumptions which hold that man is basically indolent, self-centered, gullible, and resistant to change. Given these attitudes or assumptions, Theory X prescribes autocratic leadership practices, emphasizing tight, unilateral control. On the other hand, McGregor suggests, more modern leadership concepts (Theory Y) rests on a set of underlying attitudes or assumptions which hold that:

1. The expenditure of physical and mental effort in work is as natural as play or rest. Depending upon controllable conditions, work may be a source of satisfaction or a source of punishment.
2. Man will exercise self-direction and self-control in

the service of objectives to which he is committed.

3. Commitment to objectives is a function of the rewards associated with their achievement. The most significant of such rewards, e.g., the satisfaction of ego and self-actualization needs, can be the direct products of effort directed toward organizational objectives.
4. The average human being learns, under proper conditions, not only to accept but to seek responsibility.
5. The capacity to exercise a relatively high degree of imagination, ingenuity and creativity in the solution of organizational problems is widely, not narrowly, distributed in the population.
6. Under the conditions of modern industrial life, the intellectual potentialities of the average human being are only partially utilized.⁹

Another proponent of a more humanistic approach to management was Frederick Herzberg.¹⁰ Herzberg divided production stimulus into two categories; hygiene factors and motivators. Under hygiene factors Herzberg placed such factors as pay, the attitude of the supervisor, and working conditions. Hygiene factors may cause enough dissatisfaction to destroy motivation, but improving hygiene will not of itself provide the sought-after motivation.¹¹ Like preventive medicine, which may help prevent illness but cannot cure it, good pay, considerate supervisors, and good working conditions, may prevent dissatisfaction but will not motivate employees to higher levels of performance. Positive motivation is only provided by a chance for self-actualization and achievement. Herzberg's theory rejects the common notion of a satisfaction continuum, with satisfaction and dissatisfaction at the extremes with gradations in between such extremes. Thus, avoidance of the oppressive elements of the traditional autocratic management style will not produce motivation and increase performance. Such a view compels management to actively seek motivators, including participatory management which can promote self-actualization and achievement.

Rensis Likert also advocated a different approach to the motivational tools used by autocratic leaders. Classifying management into: (1) exploitive authoritative, (2) benevolent autocratic, (3) consultive, and (4) participative group.¹² Likert hoped to differentiate management styles according to the degree of employee control. The essential rationale for lessening such control and allowing employees more self-direction rests on a belief that if employees understand objectives and have a chance to express their own opinions, perhaps see those opinions acted on in some cases, they will gain a feeling of participation in the business enterprise. As

they participate they have the opportunity for self-actualization. Herzberg, McGregor and Maslow's theories are totally compatible with this point of view. Likert's categories of management style may be defined as follows:

- (1) "Exploitive authoritative" means exploitive manipulation of employees without regarding them as human, only tools to accomplish the goal; the theory describes the worst form of bureaucratic administration; strict hierarchy of command, limited delegation of authority, little participation by and development of employees.
- (2) "Benevolent autocratic" means the traditional hierarchy of command as in exploitive authoritative but control is reasonably exercised in a benevolent way and avoids the worst forms of bureaucratic administration but still does not produce a totally humanistic environment.
- (3) "Consultive" means management places substantial confidence on employees' ability to decide for themselves on how to implement company policy.
- (4) "Participative group" means management places complete confidence in employees' ability to follow organizational policies and determine organizational goals to implement such policy. Such goals and the methods for their attainment are established by group action except in a crisis situation.

Although discussed in different terms, Maslow's self-actualization, Herzberg's motivators, and Likert's participative group, all recognize human individuality and the need for humanistic, individual development. All accept the proposition that management's job is to direct organizational resources to activate the human needs in a way which will accomplish both the organizational goals and satisfy the needs of the employees. Such theories also reflect a logical extension of the application of the democratic principles of representative government so prevalent in contemporary American thought. Perhaps it is this philosophical belief in the American method of government which provides, in addition to the current humanistic approach to solving world problems, these theories with their strong appeal. What must ultimately be decided, however, is whether or not these theories withstand the test of actual implementation.

F. CRITICISM

Critics of the new management methods have called attention to several shortcomings in the theory. Maslow's hierarchy, although reflecting a basic truth, oversimplifies the interplay of human needs and desires and does not allow for the vast range of human individual responses and preferences. While a

starving man's first priority is food, some people will starve themselves to gain or retain social status, peer acceptance or self-esteem. Such conduct does not fall squarely within the simplified explanations offered by Maslow, yet such conduct is not uncommon.

There is also disagreement and conflicting evidence on the validity of Herzberg's theory. Although a great many studies have confirmed his findings, participatory management has been found invalid in one or more respects by some.¹³ One of the biggest shortcomings is the simple fact that few studies of a broad scope have attempted to evaluate the extent of participation actually practiced by industry.¹⁴ The full set of relationships among leadership attitudes, leadership behavior, satisfaction, and performance suggested in the advocacy of participatory management has not yet been fully subjected to systematic analysis across organizations, and therefore, may prove to be invalid upon further examination. Furthermore, and probably of more practical importance, is the lack of acceptance and implementation of the theory on a large scale. Although participatory management is advocated by many executives, its use is not widespread.¹⁵

Private industry has been the site of a variety of these behavioral experiments and economic reward almost invariably improved performance. Economic reward is explicitly derived from incentive schemes, such as piece-rate systems, which directly link dollars paid to the number of units produced. Less direct are those systems which reward the individual economically for performance over some prior period, or for group effort, such as profit-sharing plans. An implicit economic reward is that which accompanies promotion for a job well done. In the environment in which research on participative concepts has been conducted, it is quite impossible to divorce the effects of participation from the explicit or implicit economic incentive, which accompanies it. While the participant may reap psychological benefits from participation, he is also well aware of the probability of economic reward.¹⁶

Some of the evidence contradicts the notion that participatory management yields benefits to the organization by creating more effective performance. A recent study of participative approaches in work groups concluded that productivity did not improve as the degree of participatory management increased. The researchers found that when the economic incentives are divorced from the situation, there can be no benefits from participation.¹⁷

John B. Miner¹⁸ has concluded from his observations that the push for greater participation by the younger administrators has often gone to the extreme and lost sight of the value of the existing structure. He, concurring with Felix Lopez,¹⁹ found such demands beyond the bounds of acceptance by many older, more established administrators.²⁰ Miner has found

that:

On the evidence available, it seems premature to conclude that the participative strategy will prove effective for most large organizations. There is little to indicate that participative management per se causes more effective organizational or individual performance. In where the two go together, the high performance levels cause the participative leadership behavior, rather than the participative leadership behavior causing the high performance.

* * *

The participative approach, when all is said and done, is often ponderous and slow; it may not serve organizational goal; it can severely undercut the coordination of efforts; and it is entirely possible that substituting the "tyranny" of the majority for the "tyranny" of higher management may actually prove to have very little value as a strategy for coping with new motivational patterns. We simply do not know.²¹

Such findings severely undercut the theory and may partially explain why participatory management has not been implemented by many organizations. One critic has gone so far as to call the approach unworkable except when utilized by a small minority of the companies. Robert M. McMurray, in "The Case for Benevolent Autocracy,"²² asserts the absence of widespread acceptance is rooted in several reasons. There is in almost any organization a group of workers who either dislike their work, have come without the expectation of producing, or are chronically dissatisfied.²³ Even without this impediment, participatory management must be adopted and supported universally within the organization to succeed and top management is by nature not sympathetic to the "bottom-up" philosophy of management. Top management consists of individuals possessing the skills necessary to climb the organization ladder; they are hard-driving, cherish their own power, or are veterans and victors in the give-and-take, no-quarter in-fighting for power.²⁴ Second, especially in the private section, the enterprise is delicately balanced, keen competition constrains the flexibility sought in bottom-up decision making and mandates uniformity of policies and practices.²⁵ Third, most large businesses, especially a large, secure, prestigious one, provide security and status for those seeking safety in employment. Such people make "excellent soldiers" and "organization men" but are designed for staff positions rather than line. Lastly, one who has climbed the ladder of success is not likely to hire a stronger more competent or more assertive subordinate. Thus, the tendency is to hire a weaker subordinate who will follow rather than lead.²⁶

McMurray concludes that many employees simply do not want the added responsibility which the theories claim they do. They simply want to be safe, secure and have someone to tell them what to do. This conviction is one of the important reasons why McMurray looks more sympathetically toward the case for benevolent autocracy rather than participatory management. His analysis concludes that the outlook for widespread introduction of genuine humanistic, democratic participatory philosophy of leadership in the near future looks dim, but while the benevolent autocracy is neither idealistic nor inspiring, it is practical. It accepts people for what they are and recognizes their shortcomings.

G. THEORY Z

As a partial response to both Theory X and Theory Y, and a reexamination of the cause and effect relationship between management style and employee performance, Theory Z accepts the basic tenets of Theory Y but focuses on reinforcement psychology. Reinforcement dictates success or failure based upon the organizational structure for feedback and corrective actions, according to Theory Z, rather than the more generic attitude discussed by Theory Y adherents.

Considered from the Theory Z viewpoint, Theory X is replete with negative reinforcements, while Theory Y stresses positive reinforcement. Consider Theory X; coercion and punishment are clearly negative. This causes the individual to dislike and avoid work (avoidance behavior), and promotes the shunning of responsibility and ambition. Also, because of the negative reinforcement, an employee fears loss of his job and thus desires job security. Theory X is based on negative reinforcements.

Theory Y rests on positive reinforcement, since under positive reinforcement an individual needs less external control and exercises greater self-direction. He becomes more ambitious and seeks responsibility both to receive the rewards of positive reinforcement and because positive reinforcement increases energy level.²⁷

Reexamined through a Theory Z perspective, Maslow's needs are essentially an organized listing of positive reinforcements. The various levels of motivation in Maslow's hierarchy of needs are various forms of positive reinforcement. "Theory Z analyzes both positive and negative reinforcement. It also studies specific situations such as error correction, emotions, conflict, feedback, performance appraisal, and adapts reinforcement for use in those situations. Thus, Maslow creates a classification, whereas Theory Z attempts to create an operational system."²⁸

Similarly, from the viewpoint of Theory Z, Herzberg's hygiene

factors and motivators may be construed as positive reinforcement or negative reinforcement, with the dissatisfiers generally being sources of negative reinforcement, while the motivators are generally positive reinforcers. "Theory Z explains Herzberg's thesis that eliminating a dissatisfier need not motivate. Eliminating a negative reinforcement merely keeps a behavior from being negatively conditioned. To motivate requires positive reinforcement. Therefore, since it is a negative reinforcement, stopping a dissatisfier need not motivate."²⁹

McGregor postulated Theory X and Theory Y as assumptions. Theory Z adherents accept the importance of reinforcement but go further and explain that performance is the direct result of negative reinforcements and positive reinforcements.

One other major point on which Theory Z disagrees with McGregor is in the realm of external control. "Control and structure need not be deleterious, but can be beneficial if they reduce confusion or otherwise aid the individual in his job. A certain amount of organization and order is required. The question is, how is the control applied? As a means to promote improvements (positive), or as means to penalize deviations (negative)? ... Only when the system is associated with negative reinforcements will the oppressive atmosphere of Theory X result. Couple it to positive and the opposite can occur."³⁰

"... [O]ne must also be aware of goals, reinforcements, and feedback. Maslow's hierarchy of needs was a classification of positive reinforcements Herzberg specified certain motivators, which are positive reinforcements, and certain dissatisfiers, which are negative reinforcements. McGregor suggested Theory X which is a negative reinforcement environment. Theory Z attempts to go beyond this to create an operational system for managers. To achieve this requires not only reinforcements, but goals, feedback, and a variety of procedures for the vast number of circumstances a manager must face."³¹

H. SUMMARY

The literature shows a development from an older, mechanical approach with a top-down rigid chain of command to a more fluid, dynamic bottom-up orientation of management. This trend which appears to develop relatively chronologically also parallels the growth in an American preference for a more individualistic, fluid, and participatory, i. e., responsive, government and society in general. Also, certain authors have found fault with Theory "Y" claiming it will not work except under limited circumstances, Theory Z adherents assert that Theory Y is inadequate because it is not the degree of control within the organization which is the primary agent to controlling employee performance, but rather, the psychological nature of mankind and the human response to the type of reinforcement dispensed which determines the employee's

performance.³² Thus, the controversy as to which approach would best serve the needs of current management continues.

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PART THREE - SELECTED TOPICS

SECTION ONE - APPEALS MANAGEMENT

II. MANAGEMENT PRACTICES - ARIZONA, PENNSYLVANIA, AND
SOUTH CAROLINA

A. ARIZONA

AUTHOR: Robert D. Sparks

PERFORMANCE MEASUREMENT AND EVALUATION

Selling and Designing a System

By rewarding superior performance with recognition, self-actualization, and monetary adjustments, desired conduct can be encouraged. Occasionally, when an individual remains unaffected by positive reinforcement, disciplinary actions must be explored. The foundation for this system is two-fold. First, the clear identification of the performance sought. Second, two-way communication on how current performance meets the expectations.

The manager's initial act consists of identifying and establishing priorities on the desired objectives. One must recognize the obvious, that only a few, preferably three or fewer, objectives can be given top priority. After the priorities are understood, they must be set forth in writing and distributed to all personnel responsible for implementing a program, as yet undefined, to achieve these goals. The establishment of the goal must be reduced to writing to force the author to clarify the goal as well as set priorities. Ancillary benefits which flow from this process include communicating management support, increasing the relevant importance of the goal, and initiating discussion. So far, these actions are exclusively managerial, as distinguished from the designing of a particular system and its implementation which requires group participation.

Turning to implementation, the various subsystems of intake, docket control, noticing, hearings, and decision writing must each be analyzed, tentative goals established, and the personnel responsible for the desired result consulted to review and modify relevant procedures. This process requires a genuine belief in the value of the suggestions made, and willingness to only guide the discussion without superimposing any particular solution. Lastly, measurable standards must be adopted to gauge the performance which moves the organization in the desired direction by realistically challenging the employee. Any objection that a particular significant function cannot be measured and quantified must be tactfully rejected because acceptance of this assertion means no accountability, and government action must always be accountable. The more direct the connection between standards and performance evaluations, the better. Frequent and specific feedback further increases the likelihood of reaching the goals.

In selecting a position to examine in detail, the hearing officer position was chosen for several reasons. First, this position is the chief source of direct case production which

must be accounted for in time (minutes per unit) and speed (timeliness) standards, and although not specifically measured, quality. Second, the technical nature of the work sometimes raises strong opposition on the basis that the job cannot be quantified, and/or the variation in cases precludes simple standards. Third, there sometimes exists a belief that, as a professional, this type of review is unnecessary. Fourth, often not verbalized, a belief that the system will be used against the employee.

The difficulty in satisfactorily resolving these concerns will naturally vary and be strongly influenced by the overall state of management/labor relationships. Notwithstanding the starting point, the initiative rests with management to facilitate the development of a mutually satisfactory system which maximizes efficiency. In designing an approach, do not underestimate the level of stress and anxiety that may be imposed, especially if this approach is a marked departure from the current system. Additionally, participatory management does not mean abdicating management responsibility; it does mean guiding the procedure to take advantage of positive suggestions.

Possible selling points to overcome objections include a recognition that the public is entitled to hold the agency accountable for the expenditure of public funds. One standard by which the agency will be held accountable is the volume of cases produced as measured by the minutes per unit criteria. Management could also stress that a superior product will result with minimal disruption and stress if the specifics of the measurable standards to be utilized in measuring performance are developed with their input rather than in a vacuum. Lastly, competing priorities are more likely to be satisfactorily reconciled if the individuals responsible for the production assist in designing the measurements to be applied to the various priorities of the agency,

Turning to the Arizona experience, the management team and affected employees (administrative law judges or hearing officers) mutually agreed upon a set of criteria that measured and balanced a desire for timely disposition of decisions and quality decision writing. The results of these negotiations formed the performance measurements for the administrative law judge position. This document required further explanation with regard to the terms "major rewrite", "minor rewrite" and "not Board ready". The hours charged to case production appears in a Weekly Case Report which can be compared to the number of cases issued that week written by that individual as identified by the weekly log. The ratio provides instant feedback on quantity of work as expressed by the hours-per-case ratio. Additionally, the quality factor appears in the margin as a "minor rewrite," "major rewrite," "not Board ready," or "discuss" notation. This feedback information also comprises a significant part of the periodic reviews and consultation sessions given during the evaluation period. The final

product, the performance evaluation form, addresses the need for volume production by indirectly placing the burden upon the drafter to exercise their professional judgment in allocating their work time to conform to the expected standards for quantity and balances this interest against the other key objective of quality to ensure fair and professional treatment of the clients. The evaluation's scope correlates directly to performance pay increases.

B. PENNSYLVANIA

AUTHOR: John Eckert

DECENTRALIZATION AND PERFORMANCE IN A LARGE STATE

Over the past several years, Pennsylvania has compiled an exceptional record of timeliness in release of lower authority appeals decisions. During the past three years, Pennsylvania has ranked third in the nation, and has been in the top ten for the past five years.

Yet, promptness does not seem to have come at the expense of quality. Appraisal results have been, and continue to be high; and 90% of the referee decisions are upheld on appeal to the Board, which has a similarly high success rate in the courts.

The primary credit for Pennsylvania's promptness achievement must go to the appeals system staff, who have universally committed themselves to prompt disposition of cases. Yet there is more to it than that. One of the chief means by which these committed people succeed is the complete control they exercise over each case from start to finish. The high degree of decentralization in Pennsylvania not only facilitates the work, but also reinforces commitment through personal responsibility.

The 32 referees in Pennsylvania are each provided with a separate office staffed generally with two support staff. The support staffs' major duties consist of filing, scheduling, reception of parties, handling inquiries, typing and mailing decisions, and transcription of hearing tapes on further appeals. Thus, the entire lower authority appeals process, from receipt of the appeal to mailing of the decision, is within the control of the local referee office. Even the timely forwarding of the appeal from the local office can be influenced by the referee's office - through a report on local office performance passed back to the Bureau Director responsible for the local offices.

1. SCHEDULING FOR PROMPTNESS

For Pennsylvania, success at promptness begins with the scheduling. Hearing notices are usually prepared within a day of a case's arrival at the referee office, so as to provide at least seven days notice of the hearing. On the average, cases are heard between 10 and 20 calendar days from the appeal date.

Because the referee staff works closely with the referee, they are able to tailor the schedule to best accommodate the type of case, the hearing location and even their referee's individual style. Each case is analyzed and time is allotted on the schedule based on the anticipated duration of the hearing. If a referee has a rural itinerary, for instance, the schedule can be adjusted to accommodate the varying travel times from home

to each hearing site, or to cover multiple hearing sites in a single day, or to arrange a special hearing location mutually convenient to the parties.

Tailoring also applies to adjustments in the schedule. Gaps in a schedule caused by a postponement or non-appearance, and instances where cases are received late can frequently be accommodated because of the local referee staff's control of the scheduling.

In the scheduling process imbalances in workload are usually identified. If a referee's caseload reaches the point where cases cannot be scheduled timely, this is a signal to call for help. The excess is transferred to a neighboring referee (or referees) who comes in to help. Similarly, staff work can be shifted among offices through the mail to address temporary imbalances in workload, vacation schedules and the like. In most cases, referees work this out among themselves, through the liaison work of their respective staffs. Cooperation between referees is high; rarely will a call for help not be answered, and occasionally at some considerable effort. In the Spring of 1988, several retirements combined with a sharp workload increase overloaded the referees in the western portion of the state. For two months, Philadelphia referees, 300 miles away at the opposite end of the state, commuted to Pittsburgh to help keep the cases moving.

2. STICKING TO THE SCHEDULE

Timely scheduling is of little use if the schedule is not followed. Sticking to the schedule is where a major effort is thus placed. The referees and their staff almost literally "do whatever it takes" to see that the scheduled hearings come off in time.

One threat to the schedule is the availability of the referee. However, with the scheduling under the complete control of the referee office, missing a scheduled hearing is utterly unthinkable for the referee. Referees rarely call in sick. Rather than cancel a hearing, they skip lunch, and even dinner. They drive through blizzards to remote hearing sites when even the locals won't venture out. And when they've forgotten their equipment, they've been known to buy replacements at the local store at their own expense. If the unthinkable does happen and the referee can't make the hearing, neighboring referees are contacted as a last resort before cancelling.

The other major threat to the schedule, unavailability of the parties, also gets close attention. With the scheduling responsibility entirely within the control of the referee, a wide range of options can immediately be employed to shift the schedule.

3. IMMEDIATE DECISIONS

The average decision is mailed in just under five calendar days from the hearing date. This process, like the others, is completely under the control of the referees and staff. And, like the other processes, there is a high sense of urgency associated with issuing decisions.

Although the decision format is similar, referees are completely free to use whatever techniques work best for them and their staff to get the decisions on paper and out. Some will dictate, some will record on tape, some will write it longhand, some have a combination of longhand and shorthand codes they have evolved with their staffs.

The timing of decision writing is also up to the referee and the staff. While some referees will set aside one day per week just for preparing decisions, others work decision writing in with their hearing schedules. In the latter case, this will occur after hearings at the end of the day, during the day between hearings, or when there is a "no show", or even in the car traveling between hearing sites. When caseloads demand, referees have taken their staff along to the hearing location and issued the decisions from the hearing site, using typing equipment brought along or borrowed from a nearby local office.

The referee staff play a critical role in getting decisions out on time - filling in, adjusting and compensating whenever needed. Working closely and continuously with the referee provides the opportunity for the staff to gain the expertise in the hearing and decisionmaking process. This depth of understanding allows them to both relieve and supplement the referee. Subpoena and postponement requests can be handled by the staff, both saving referee time and avoiding undesirable ex parte discussion. Staff conversant in the law can assist the referee in legal research. If a referee is in a remote hearing site, the decision can be dictated over the phone to the staff back at the referee office, where it is put on paper, proofread and mailed the same day without the referee even having seen the final product. Developing staff competency in the appeals process thus facilitates meeting program objectives, and is also personally and professionally rewarding to the staff.

4. REINFORCEMENT

The twin objectives of quality and timeliness are discussed in meetings, conferences and in inter-office communications. Several workgroups have been established to improve forms and procedures. Information sharing sessions are being implemented throughout the state to maximize the exposure and sharing of techniques, adding both to staff expertise and commitment.

Each month, results are distributed statewide showing the number of decisions issued, with a 30 and 45-day timeliness percentage for the month and year-to-year, by referee, letting

them each know where they stand.

Entrusting the referee offices with responsibility for the entire lower authority appeals process has helped to create a self-managing team in each of the Pennsylvania referee offices. Team members are mutually supportive and work well together toward their common goals. Working in this type of setting can be rewarding and achieving objectives is a matter of great pride. All of the credit for the outcome belongs solely to them.

C. SOUTH CAROLINA

AUTHOR: John M. Bundy, Jr.

MANAGEMENT PRINCIPLES

As you can see from having read the preceding papers, there are many ways to accomplish an objective and several approaches to management. However, regardless of what procedures are used or what style of management exist, one of the key elements to the successful achievement of any goal is the attitude of management and employees.

Whether or not we admit it, employees look to management as an example to follow. The manager's attitude toward policies, goal achievement, and treatment of others influences every employee. Therefore, the manager has the responsibility for developing and maintaining morale, enthusiasm, and team spirit.

There are specific steps which can be used to increase productivity and performance. Listed below are a few examples:

- (1) Closely examine current procedures to determine what must be done to accomplish the task or tasks.
- (2) Be flexible to make changes. Eliminate or incorporate procedures that would increase productivity and enhance performance.
- (3) Solicit and be open to suggestions from employees concerning methods to improve workflow.
- (4) Analyze the process to determine effectiveness.
- (5) Determine when a task must be accomplished and establish time limits or deadlines.
- (6) Establish the means whereby each task or tasks could be completed and assure that the appropriate personnel are assigned the responsibility for accomplishing each task.

After the procedural process has been reviewed and possible changes made, the manager can now begin to build team spirit. Each employee must understand the objective which, in this case, is to achieve or surpass the minimum promptness criterion of 60% case resolution within 30 days. Each employee must also fully understand the importance of their contribution to the achievement of the objective.

The individual and overall unit improvement goals must be both realistic and attainable. The goals must also be specific and measurable. It should be noted and taken into consideration that employees tend to be more committed when they are allowed

to participate in the goal setting process. Each employee should frequently be informed of their individual progress as well as the unit's progress toward attainment of the goal or objective.

Remember the "hot stove" principle and be impartial and fair when disciplining, or rewarding an employee.

Do not be afraid to delegate responsibility and the authority for task accomplishment to an employee who has demonstrated ability or expertise. By delegating, you as manager, are better able to monitor and control the overall performance of the unit and concentrate on those areas which require additional attention.

The above techniques are intended as suggestions and are not to be construed as "the right way" or the "only way" to accomplish a task nor should they supersede the better judgment of the reader.

PART THREE - SELECTED TOPICS

SECTION TWO - AUTOMATION

I. AUTOMATION - THE PRESENT - KENTUCKY, NORTH DAKOTA, AND OREGON

AUTHORS: Ron Marlette, Kentucky,
Terri Mathis, Oregon,
Jim Leinhart, North Dakota

First, we are not computer trained people! We still marvel at anything electronic - video games, microwave ovens, car dash boards, etc. We have learned a few "buzz" words and we know that computers are as smart as we make them. Our limitations in the use of the computer are only those set by our imagination. Those of us in the "middle age" group may be reluctant to enter the realm of magic of the computer. Yet, we all know some six year old whiz that works a computer as though he were born with the knowledge. And, haven't we all tried and even enjoyed video games? So, why are we apprehensive about bringing a computer into our work?

Five or six years ago we committed ourselves to eliminating as much paper shuffling as possible and expediting work in the appeals process. We began by putting decisions on word processing equipment and storing key phrases and paragraphs in the processors. To this we added parts of precedent decisions and a few "canned" decisions. Hearing officers were then able to dictate a factual situation plus some "canned" numbers, thus eliminating dictation time and typing time in issuing a decision. These decisions can be recalled and corrected without unnecessary time consuming typing. At the time, we thought we had entered, and become a big part of, the "electronic age." This did speed up the processing and retrieving of decisions but it left us wondering what else could be done. Our first disillusionment was when we found out that word processors were only very small computers that were unable to store all the information we wanted. In actuality we had only begun using bigger more expensive typewriters that stored some information for ready recall.

Our next step was to put all docketing and scheduling of cases on a bigger computer. Any information that we thought would ever be useful was programmed into the main frame computer. This required a programmer to work with us over an extended period of time. Since he or she knew nothing about the appeals process and spoke a language, "Computerese", which we had only laughed about, as opposed to "Appealese", which everyone knows, there was some difficulty in understanding each other.

During the process we learned a little "Computerese", the

programmer learned a little "Appealese", and we were finally able to reach a workable program. In the process of writing the program, we found that we were constantly wanting to add bits and pieces of information as we became aware that the computer could provide all the statistics that we asked. We also found with a little extra effort we could retrieve a lot of information that might be of interest.

By going to a larger or main frame computer we could retrieve information from other programs as well as provide information to unemployment offices. With the claimant's social security number entered into the computer program, each office in the State (Why not the United States?) is able to ascertain when and where a hearing is scheduled. Through the use of codes, the local office can find out the decision reached, who the hearing officer was, when the appeal was filed and released, and if the case has been appealed to higher authority and when. (Changes and additions to the information can only be done by a few individuals with special codes so there is no worry about someone accidentally or purposely making changes to the data). The setting up of this information takes no more time than was previously used on the typewriter to set up docket cards or sheets and more information is now more quickly obtainable.

The clerical staff can now merge this information into a format for obtaining hearing notices, subpoenas, and continuances by simply filling in some blanks on a screen and pressing a button. By accessing the computer, we know where any case is at any time and know what has occurred with the case. We can schedule or continue a case without actually touching the file. All the necessary information pertaining to the case is available at our fingertips. We have eliminated filing cabinets of docketing information and decisions, plus speeding up the releasing of cases.

We are also able to keep track of cases received and released by higher authority in nearly the same manner. Basically all this information is on one screen.

By having the computer pull bits and pieces of information from the information we have given it, we come up with statistics for each month. These statistics provide the caseload manager with information about what and how each referee is doing monthly. Time lapse, number of cases, number of reversals, number of cases with attorneys and other assorted statistics are readily available on a print out. On the first and fifteenth of every month or every week, every day or whenever, we get a printout telling if any referee has any cases over two weeks old and which ones they are. The statistics that are provided to the Regional Office are also a part of the statistical gathering process. We are able to tell which Referees are hearing the most cases, who holds a case longest before writing a decision as well as who continues the most cases. Whatever information you want fed back to you can be

programmed into the computer. The secret to the whole program is your imagination and a good computer programmer.

Employee related statistics and printouts are not available to everyone. They are only given to those designated to receive them. Having now made all this hearing information available to the local offices, we wondered what they could do for us. Messages are sent daily from the Central Office to the local offices via the computer, why not have the local offices send us messages? Each local office at the end of the day sends us a listing of the appeals they have received. The next morning this list is taken by our office and the appeal is set up. We now have the appeal set and ready before we physically receive anything in writing. While we are waiting for the appeal to arrive at the central office by mail, the clerical staff can gather as much information as possible and have the file updated the moment it is received.

We now have an electronic case file at our finger tips. It generates notices, subpoenas, and information at a moments notice to the appeals unit and to local offices. It reduces the number of times papers must be shuffled and entries made. It increases the speed and accuracy of case processing. It provides immediate information on the status of cases and it further provides a variety of management reports. What else could we ask? Well, that is up to you. Whatever you can imagine can be done. No two States are alike, similar, maybe, but not alike. Keep in mind that programmers are not familiar with your needs and, consequently, they are not innovative. What works in Kentucky may not exactly fit the needs of Oregon or the law in North Dakota. Each State has some quirk that can not be adapted to your State or may need to be eliminated. But there are enough similarities that the main ideas can be adapted.

Kentucky is in the process of going to the main frame computer with all of its information. Oregon has three regional offices that link to a main computer and North Dakota uses one computer with word processing done by an outside source. One central thing that they all have in common is that they all think theirs is the best. (We are always in the process of stealing ideas from each other). It makes no difference the volume of cases handled or the size of the state, every jurisdiction can use this somewhat new machine called "computer" to increase and streamline their productivity. Our biggest drawback is our fear of something new and our lack of imagination in setting up something new.

PART THREE - SELECTED TOPICS

SECTION TWO - AUTOMATION

II. AUTOMATION - THE FUTURE - ARTIFICIAL INTELLIGENCE

Author: David E. Balducchi

Administration of Unemployment Insurance Programs:
Experimenting with Artificial Intelligence

As we journey into the twenty-first century, the emerging technologies developed today are going to reshape the administrative environment of tomorrow. This is especially true of artificial intelligence technologies, in which a solid foundation is being laid in unemployment insurance (UI) eligibility fact-finding and determination research. This research may provide the most significant breakthrough in the administration of State employment security agency (hereinafter State agency) programs made in the remainder of this century.

In time, artificial intelligence technologies could become as common to UI benefit, tax and appeals operations as telephones and word processors. This article explores past Federal UI automated initiatives and examines current UI research in the use of artificial intelligence technologies. Further, it unravels some of the mystery surrounding artificial intelligence and describes what employment security staff can expect from this research.

Unpapering of UI Operations

In the nineteen-eighties, the administration of unemployment insurance programs became inextricably linked to automated processes. Overall, the automation of State agency's UI operations has kept pace with parallel automated operations in the commercial banking and insurance industries. In large measure, technological advancements in UI operations were instituted to manage heavy workloads resulting from high worker unemployment experienced during the recessions of 1974-1975 and 1981-1982.

During the last 15 years, Federal funding has helped State agencies convert manual eligibility and payment systems to automated systems. Two significant funding sources developed by the U. S. Department of Labor's Employment and Training Administration (ETA) - the Employment Security Automation Project (ESAP) and the UI Automation Support Account (UIASA) - have played an important role in the unpapering of UI operations. Over the years, these automation efforts have been supplemented by other Federal and State automation projects.

Since the nineteen-sixties, State agencies have used computers to automate benefit payment and employer tax functions. However, not until 1975 did computers first become the workhorse of UI local offices. In that year, the Unemployment Insurance Service (UIS) began a pilot project in four States - Arkansas, Louisiana, Mississippi, and Missouri to develop, test, and implement on-line benefit systems with computer terminals in UI local offices. In May 1976, ETA announced an ambitious 5-year plan called ESAP to automate UI and employment service (ES) activities nationwide.

Between 1975 and 1981, ETA provided over \$200 million for automation of employment security activities in 28 State agencies. It was during this period, that the Texas Employment Commission, Iowa Department of Employment Services and other State agencies began developing automated UI nonmonetary determination systems.

In 1983, Ketron, Inc. of Philadelphia, Pennsylvania completed an evaluation of ESAP. The study was designed to examine the effects of automation on both UI and ES operations. The findings were based on field observations in eight State agencies conducted between May 1981 and January 1982. The Ketron, Inc. study concluded that, *inter alia*, "there is little question about the desirability of automating functions in benefit payments. Even essentially manual operations such as nonmonetary determinations and appeals have been improved by generating letters and by having terminals available for wage-record and claim status inquiry."¹

The following year, recessionary pressures and shrinking State agency administrative budgets prompted the institution a new automation funding source called the UIASA. The UIASA was established to assist State agencies in meeting automation needs that could not be financed from available administrative funds. From 1984 through 1989, the UIASA has provided approximately \$120 million to State agencies. During this six-year period, 49 State agencies received UIASA funds to automate UI operations. For example, \$50.2 million was granted to automate UI benefit payment systems. Beyond that, during this same period, \$5.5 million was granted to automate UI appeals functions.

During the last two decades, computer assisted procedures have become part of the permanent organizational landscape of UI local office operations. The unpapering of UI eligibility and payment functions has had a dramatic effect on the operational ethos of UI local offices. Throughout the nation, the era of manual UI eligibility and payment operations is coming to a close. Case in point, on May 13, 1988, UI local office staff in Delano, California "issued the State's last manually produced UI benefit check... (and thereupon) celebrated the occasion by whacking their old manual check writing machines into pieces."²

Today, a majority of State agencies has converted the preparation of their nonmonetary determinations from manual typing, posting and paying systems to computer-assisted determination and payment systems. Currently, in most State agencies, automated or so called "canned" nonmonetary determinations are generated from the State agency's computer system. These systems operate with minimal input of information through computer terminals located in local offices throughout a State. The maturity of the automated UI nonmonetary process resulted in its selection for testing artificial intelligence in day-to-day UI operations.

Artificial Intelligence to Enhance Adjudication

In October 1987, the Kansas Division of Employment Security and the U.S. Department of Labor joined forces to explore the use of a form of artificial intelligence called expert systems to assist claims adjudicators in making nonmonetary determinations. This momentous experiment will provide the first national evaluation of the use of artificial intelligence technology in UI local offices. Today, in Kansas, UI claims adjudicators and appeals referees are becoming increasing conversant with this new technology and with the emerging computer applications associated with artificial intelligence.

The purpose of the two-year study is to design, test and evaluate a prototype nonmonetary expert system based on Kansas UI law. The result of this effort will be to provide claims adjudicators with consistent automated fact finding and decision making capabilities. In 1988, the design and development of nonmonetary expert software was completed. This year, rigorous testing and evaluation of the expert software has begun. These tests are not mere laboratory experiments. In fact, controlled experiments are being conducted under authentic UI local office conditions in Kansas City and Overland Park, Kansas. Live tests using real voluntary separation issues, actual claimants and experienced claims adjudicators are producing meaningful data that can be analyzed and evaluated. The possibilities for enhancing the accuracy, consistency and timeliness of UI nonmonetary adjudication are great. The results of the expert system project should be available by January 1990.

Development of Expert Systems

"Expert systems resulted from the initial artificial intelligence effort to develop computer problem solving systems."³ An expert system is a computer program that gathers information, usually by asking questions, draws conclusions and provides advice. It's not an electronic Frankenstein. In fact, Mr. Ed Leary, a leading computer specialist for the Social Security Administration, says that "the purpose of the expert system is to capture, in a computer system, the decision making process that an expert in a specific field goes through when making decisions."⁴ Simply

stated, an expert system is designed to emulate the human expert's reasoning process.

For many years, expert systems have been built to perform problem solving tasks. "In 1946, an electronic calculating machine was developed to help calculate ballistics information (for our national defense). It was with this development that artificial intelligence was born."⁵ After a slow start, experimentation with artificial intelligence has been on the rise. In 1987, the Social Security Administration began developing expert systems to approve benefit applications. In addition, expert systems have been used to target car defects at Ford Motor Company, diagnose diseases at major medical centers, and determine mineral deposits for energy exploration companies. The National Highway Traffic Safety Administration is experimenting with expert systems to "spot and analyze common defects found in vehicles of the same model."⁶

Demystification of Expert Systems

An expert system is a computer program that can provide a user with artificial access to an expert in some specific field. Here's how an expert system works. The expert system consists of two essential elements, a knowledge base and a inference engine. The knowledge base is the foundation of information which is possessed by an expert in a specific field. A rule interpreter, called an inference engine, combines the user's answers to questions posed by the expert system from a set of rules (i.e. UI law) in the knowledge base. It decides which rules apply and which consequences are true. In this way the computer program can make decisions and can justify the conclusions reached.

In the Kansas experiment, tests are underway to determine whether an expert system can replicate in a computer program the decision making process that the very best claims adjudicator would go through when making nonmonetary determinations. The Kansas agency system is being built using computer software called EXSYS PROFESSIONAL. This sophisticated computer software allows for the development of an expert system with a team consisting of a program expert, called a domain expert, and a software development specialist, called a knowledge engineer.

In the Kansas agency, experienced UI professionals such as Mr. William Clawson and Ms. Dorothe Wettstein are serving as the project's domain experts. Mr. Geoffrey Hopwood and Dr. Thomas Nagy of Evaluation Research Corporation are the project's knowledge engineers and work with the domain experts in building the expert system. In addition, a coterie of UI advisors headed by Mr. Wayne Zajac of UIS are painstakingly monitoring the project's content and progress. An expert system for UI nonmonetary adjudication must be built to enable less experienced claims adjudicators to utilize the expert system and arrive at the same facts, reasoning and

determination as senior claims adjudicators.

Evaluation of the Expert System

The primary goal of the research design is to evaluate the accuracy of advice given by the nonmonetary expert system versus advice given through both intuitive and applied expertise of human decision makers. Specific research objectives have been defined as follows:

- o Demonstrate whether nonmonetary expert system fact-finding and decision making can be built utilizing existing hardware at a reasonable cost. Both mainframe computer and personal computer approaches will be investigated.
- o Examine whether an expert system makes complete, accurate, and consistent decisions in accordance with State law and Federal oversight requirements.
- o Determine the degree of difficulty and optimum percent of expert system fact-finding and decision making that can be economically built.
- o Compare the results of nonmonetary expert system fact-finding to independent fact-finding done by UI claims adjudicators.
- o Analyze those voluntary quit issues that were determined with the assistance of the expert system and later reversed upon appeal.
- o Determine whether an expert system enhances UI nonmonetary adjudicative productivity, and thereby, frees senior UI claims adjudicators to handle the more complex separation disputes.

Since the enactment of the Social Security Act of 1935, the Federal-State unemployment compensation program has fostered a strong research component. This distinguished tradition of research continues with the Federal-State partnerships' investigation of artificial intelligence. The clarity of Kansas UI law and the maturity of the agency's automated nonmonetary process makes Kansas an ideal test site. Kansas agency officials are committed to exploring and evaluating the application of artificial intelligence in UI operations. ETA has contracted with Evaluation Research Corporation of Fairfax, Virginia to assist in the development, testing and evaluation of the Kansas agency's nonmonetary expert system.

Future of UI Expert Systems

According to Dr. Ray Eberts of Purdue University most people fear computer technology because they believe computer technology will make them look bad.⁷ However, during the

past year, those of us working on the nonmonetary expert system project have survived the learning curve. The technology of expert systems isn't that complicated. The language isn't any more sophisticated than the language of other professional disciplines.

At this juncture, the future of expert system technology in enhancing UI local office operations looks bright. In ETA's 1990 UIASA solicitation, for the first time, expert systems are listed among the criteria for evaluating State UI automation proposals. The overarching concerns for those of us in the business of unemployment insurance are the sheer reliability of the expert system, and its acceptance by employment security staff, employers and claimants.

In a 1987 study commissioned by the U.S. Department of Labor, entitled Workforce 2000, the writer points out that technological innovations (such as artificial intelligence) will be common in the workplace environment. Accordingly, employment security staff must begin exploring the manifold uses of expert systems in order to meet the turn-of-the-century work seeking requirements of the nation's unemployed.

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Footnotes

1. Ketron, Inc., Evaluation of Employment Security Automation (Philadelphia, Pennsylvania, 1984), p. 2-16.
2. "Delano Goes On-Line," Scene, California Employment Development Department, June 1988, No. 178, p.1.
3. Colonel Pat Clifton, Artificial Intelligence: A "User Friendly" Introduction (Air University Press, March 1985), p.17)
4. Ed Leary, "Social Security Administration Explores Artificial Intelligence," Government Data Systems, September 1987, p. 9.
5. Clifton, Artificial Intelligence: A "User Friendly" Introduction, p. 4)
6. Pamela A. D'Angelo, "AI to Target Car Defects for Agency," Federal Computer Week, May 4, 1987, p. 6.
7. Sid Kirchheimer, "Computer Phobia," Men's Health, Fall 1988, p. 23.

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