

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MUNICIPAL LABOR COMMITTEE, on behalf of :
the employees it represents, KETTELY :
LARAQUE, MICHAEL WERNHAM, CHARLES ROSA, :
SOSO LIANG LO, JOAN MILLER, :
JOHN PAULSEN, ESPERANZO POLANCO and :
JOYCE GLOTZER, individually and on :
behalf of all others similarly :
situated, :

Plaintiffs, :

-against- :

LOUIS SITKIN, individually and as :
Chairman of the New York State :
Unemployment Insurance Appeal Board, :
JAMES R. RHONE, ARTHUR STRAUSS, :
HARRY ZANKEL, G. DOUGLAS PUGH, as :
Members of the New York State :
Unemployment Insurance Appeal Board, :
PHILIP ROSS, as Industrial Commissioner :
of the State of New York, and NEW YORK :
STATE DEPARTMENT OF LABOR, :

Defendants. :

CONSENT JUDGMENT
AND DECREE

79 Civ. 5899
(RLC)

NIDIA BARCIA, individually and on behalf :
of all others similarly situated, :

Plaintiffs, :

-against- :

LOUIS SITKIN, individually and as :
Chairman of the New York State :
Unemployment Insurance Appeal Board, :
JAMES R. RHONE, ARTHUR STRAUSS, :
HARRY ZANKEL, and G. DOUGLAS PUGH, :
individually and as members of the :
New York State Unemployment Insurance :
Appeal Board; PHILIP ROSS, individually :
and as Industrial Commissioner of the :
State of New York; NEW YORK STATE :
UNEMPLOYMENT INSURANCE APPEAL BOARD; and :
NEW YORK STATE DEPARTMENT OF LABOR, :

Defendants. :

79 Civ. 5831
(RLC)

JUAN ESPINOSA, individually and on
behalf of all others similarly situated,

Plaintiffs-Intervenors,

-against-

79 Civ. 5831
(R.L.C.)

LOUIS SITKIN, individually and as
Chairman of the New York State
Unemployment Insurance Appeal Board,
JAMES R. RHONE, ARTHUR STRAUSS, HARRY
ZANKEL, and G. DOUGLAS PUGH,
individually and as members of the
New York State Unemployment Insurance
Appeal Board; PHILIP ROSS, individually
and as Industrial Commissioner of the
State of New York; NEW YORK STATE
UNEMPLOYMENT INSURANCE APPEAL BOARD; and
NEW YORK STATE DEPARTMENT OF LABOR,

Defendants.

NEW YORK STATE UNITED TEACHERS,
AMERICAN FEDERATION OF TEACHERS,
AFL-CIO on behalf of the employee it
represents, THE UNITED FEDERATION OF
TEACHERS, LOCAL 2, AMERICAN FEDERATION
OF TEACHERS, AFL-CIO on behalf of the
employees it represents, DOLORES
CANTRELL, CHARLOTTE GAETA and MAUREEN S.
McARDLE, individually and on behalf
of all others similarly situated,

Plaintiffs-Intervenors,

-against-

79 Civ. 5899
(RLC)

LOUIS SITKIN, individually and as
Chairman of the New York State
Unemployment Insurance Appeal Board,
JAMES B. RHONE, as a Member of the
New York State Unemployment Insurance
Appeal Board, ARTHUR STRAUSS, as a
Member of the New York State
Unemployment Insurance Appeal Board,
HARRY ZANKEL, as a Member of the
New York State Unemployment Insurance
Appeal Board, G. DOUGLAS PUGH, as a
Member of the New York State
Unemployment Insurance Appeal Board,
PHILIP ROSS, as Industrial Commissioner
of the State of New York, and NEW YORK
STATE DEPARTMENT OF LABOR,

Defendants.

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INTRODUCTION

This class action comprises four class actions challenging the practices and procedures of the Unemployment Insurance Appeal Board ("Appeal Board" or "Board") with regard to its relationship with unemployment insurance claimants.*

These actions include:

- Municipal Labor Committee, et al. v. Louis Sitkin, et al. (filed November 1, 1979), which represents the broad class ("MLC");
- Nidia Barcia v. Louis Sitkin, 79 Civ. 5831 (filed October 26, 1979) and Juan Espinosa v. Louis Sitkin, et al. (filed August 14, 1980), which represent Spanish-speaking claimants ("Barcia"); and
- New York State United Teachers, et al. v. Louis Sitkin, et al. (filed October 30, 1980), which represents teacher claimants ("NYSUT").

The actions alleged that defendant Appeal Board had deprived plaintiffs of unemployment insurance benefits without fair and impartial hearings in violation of the Social Security Act, 42 U.S.C. § 503(a)(3) and the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution. In addition, Barcia and Espinosa alleged a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) and New York State United Teachers alleged violations of the "when due" provision of the Social Security Act, 42 U.S.C. § 503(a)(1), and the Federal Unemployment Tax Act, 26 U.S.C. § 3304(a)(6)(A)(i) as amended by Public Law 94-566, § 115(c)(1)(i).

* The New York State Department of Labor ("Department") is also a defendant in these actions.

-The four actions alleged, generally, that defendant

- Appeal Board:

- (a) maintained a different system for considering most appeals to the Appeal Board brought by claimants than for most appeals brought by other parties, to the detriment of claimants;
- (b) decided cases on factual and/or legal issues of which claimant had no notice or inadequate notice.
- (c) failed to enforce the procedural rights of claimants protected by the partial consent judgment in Pugh v. Ross, 75 Civ. 3607 (S.D.N.Y. 1977);
- (d) failed to provide Spanish-speaking claimants with adequate translation assistance;
- (e) established a rule of law in applying the "reasonable assurance" standard to teacher claimants so that such claimants were denied benefits regardless of the evidence submitted on their behalf;

This consent judgment and decree is entered into by the parties for purposes of settlement only and nothing herein shall constitute an admission or concession of the truth of any allegations made in the complaints. This consent judgment and decree may not be used in any trial, administrative hearing, legislative hearing or any other forum as evidence of wrongdoing or violation of any statutory or constitutional provision on the part of defendants.

This consent judgment and decree is without prejudice to any claim or defense of any party with respect to attorneys' fees.

Plaintiffs waive all damage claims against all the defendants.

SUMMARY OF PROCEEDING

On January 7, 1981, the Court certified the main class as "All claimants who are, will be or have been subjected to adverse determinations" by the Unemployment Insurance Appeal Board.

On February 6, 1981, the Court granted plaintiff Juan Espinosa's motion to intervene in Barcia v. Sitkin and certified a class "for all Spanish-speaking claimants who have received unfavorable determinations from the Appeal Board."

Finally, on March 25, 1981, the Court granted the plaintiffs' motion in Barcia to be consolidated with the MLC case. The class certified in Barcia was made a subclass of the MLC case. Additionally, in the same order, the plaintiffs in New York State United Teachers were granted their motion to intervene in the MLC case.

WHEREAS, plaintiffs have taken discovery and have engaged in settlement discussions with defendants; and

WHEREAS, all parties to these actions are concerned that the parties to the quasi-judicial process for determining unemployment insurance claims receive fair and impartial hearings; and

WHEREAS, the parties agree that the practices and procedures provided for herein will further the objectives of insuring that unemployment hearings and appeals are conducted in conformity with due process of law; and

WHEREAS, plaintiffs and defendants consent to the entry of this Judgment and Decree on the grounds that (1) it will further the objectives of the "fair and impartial hearing" and "when due" provisions of the Social Security Act, Title VI of the Civil Rights Act of 1964, and the federal Unemployment Tax Act; (2) it will resolve this matter without the time and expense of further litigation, and (3) it will adequately and fully protect the interests of the members of Plaintiffs' class and subclasses:

NOW, THEREFORE, upon the consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED AS FOLLOWS

JURISDICTION

This Court has jurisdiction over the subject matter of this action and of the parties hereto pursuant to 28 U.S.C. § 1331 and § 1343. The complaints state claims upon which relief may be granted under 42 U.S.C. § 1983, 42 U.S.C. § 2000(d), 42 U.S.C. §§ 503(a)(1) and (3), 42 U.S.C. § 1988, 26 U.S.C. § 3304(a)(6)(A)(1).

PLAINTIFF CLASS UNDER RULE 23(b)(2)

The class is comprised of "all claimants who are, will be or have been subjected to adverse determinations by the Appeal Board". The class has two subclasses: (1) "All Spanish-speaking claimants who have received unfavorable determinations from the Appeal Board as the result of lack of adequate translation assistance or notices"; and (2) "All teacher claimants who are, will be or have been subjected to adverse determinations by the Appeal Board as a result of its interpretation and application of New York Labor Law § 590.10".

This Court specifically finds that the entry of this Consent Judgment is in the public interest, is in furtherance of the objectives of the Social Security Act, 42 U.S.C. §§ 503(a)(1) and (3), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d), and Federal Unemployment Tax Act, 26 U.S.C. § 3304(a)(6)(A)(i) as amended by Public Law 94-566, § 115(c)(1)(i), and protects the rights of all interested class members. The Court further finds that the class has been adequately protected by the named plaintiffs and their attorneys.

PERMANENT INJUNCTIVE RELIEF

The Defendants, their agents, employees, successors, and all persons in active concert or participation with them, are hereby permanently enjoined and restrained from denying to claimants for unemployment insurance benefits, the rights and procedures established in this Consent Judgment.

I. PROCEDURAL RIGHTS TO BE AFFORDED ALL CLAIMANTS

A. Adequacy of Notice

1. The Notice of Determination shall state clearly the basis for the Department of Labor's denial of benefits so that the facts underlying the denial are readily apparent. Those factual incidents which are at issue will be stated with sufficient particularity to inform the claimant of what facts the claimant must be prepared to respond to at a hearing.

2. In search for work cases claimants shall be informed at the local office what steps they must take in order to become eligible and maintain eligibility for benefits. In carrying out this obligation the local office shall follow the guidelines contained in the New York State "Search for Work" Special Bulletin, A-710-23 (Revised), November 17, 1981 and the procedures set forth in Sections 5060-5099 of the New York State

U.I. Manual, Procedures III, annexed hereto as Appendix A. Should the Department desire to change such guidelines or procedures or if they must be changed for any other reason(s), the Notification and Consultation provisions of this consent judgment must be utilized.

3. The basis for the denial or granting of benefits, as stated in the Notice of Determination, shall be binding on the deliberations of the ALJ (Appeal Board) except that the ALJ (Appeal Board) may, for good cause shown and in the interests of justice, permit evidence to be introduced pertaining to the basis for denying or granting benefits on grounds other than those stated in the Notice of Determination upon the ALJ (Appeal Board) setting forth the reason(s) on the record, informing the parties of his intention to accept the new evidence and provided that, after the parties are informed of their rights, an opportunity is given for an adjournment. If the hearing is adjourned, the Notice of Adjourned Hearing shall clearly set forth the new and/or additional factual circumstances and new issues, if any, to be heard and determined at the adjourned hearing. Defendants shall make a good faith effort to establish a promptness goal for an expedited hearing where an adjournment is granted, and shall report on this matter pursuant to the Notification and Consultation provisions of this consent judgment.

4. In those cases where claimant has been granted benefits by the local office and the employer requests a hearing by filing an objection, the employer shall state clearly all the grounds on which it contends claimant should be denied benefits and specify the factual basis or specific events upon which it intends to rely at the hearing. Claimant shall be sent the employer's objection, by the local office, within five business days of its receipt by the local office.

5. If at an ALJ or Board hearing the employer desires to present any new factual basis or specific events as grounds to deny benefits to claimant which were not contained in the employer's objection, the ALJ (Appeal Board) may, for good cause shown and in the interests of justice, permit such evidence to be presented. However, the ALJ (Appeal Board) will set forth his reason(s) on the record, inform the parties of his intention to accept the new evidence and, after explaining claimant's rights, offer an adjournment to claimant. If the hearing is adjourned, the Notice of Adjourned Hearing shall clearly set forth the new and/or additional factual circumstances and new issues, if any, to be heard and determined at the adjourned hearing. Defendants shall make a good faith effort to establish a promptness goal for an expedited hearing where an adjournment is granted and shall report on this matter

pursuant to the Notification and Consultation provisions of this consent judgment.

B. Contents of Decisions

6. Every ALJ and Appeal Board decision shall contain a concise statement of facts which were relied upon in reaching the decision. The recognized guidelines for decision writing by ALJs and the Appeal Board shall be the Manual for Hearing Officers in Administrative Adjudication in the State of New York, Revised Manual No. 16 (1972), Section on "The Decision" at pages 85-96 annexed hereto as Appendix B.

C. Employer Defaults

7. Where a claimant has been granted benefits by the local office and a hearing results from an employer objection, if such employer fails to appear at the hearing the ALJ (Appeal Board) shall enter a default decision in favor of the claimant.

D. Dissenting Opinions

8. In the event a member of the Appeal Board is assigned a case for decision and the member disagrees with the opinion of any other member who has prepared a decision on the appeal, the dissenting member may prepare an opinion setting forth his position and said opinion shall be included in and made part of the decision of the Appeal Board in that case. Full Board consideration in any case is the prerogative of the

Board. The Appeal Board Manual shall be amended to delete any reference to a mandatory requirement that the full Board must review all cases where one or more members desire to render a dissenting opinion.

E. Evidentiary Principles

9. The ALJ (Appeal Board) shall not sustain determinations denying benefits to a claimant where the Unemployment Insurance Division has failed to follow its own procedures or guidelines and where such failure results in a denial of benefits.

10. The local office shall advise all claimants that the Summary of Interview form may be used at a hearing. The claimants shall be informed that they have the right to correct their statements or refuse to sign them. The Summary of Interview form shall include a statement that this information has been communicated to the claimant.

11. The ALJ (Appeal Board) must afford claimant an opportunity to explain adverse statements in or omissions from the Summary of Interview form.

12. Statements made to the local office are to be given the weight such statements deserve on their own merits without any attached presumption.

13. The claimant may testify to the conditions under which the statement was taken. A prior inconsistent statement may be used as evidence against a party.

F. Hearing Record

14. The hearing record upon which the Appeal Board renders its decision shall consist of only the hearing transcript and those documents properly put into evidence pursuant to the provisions contained in paragraphs 4 and 6 of the Pugh consent judgment. (Annexed hereto as Appendix C).

15. The ALJ shall mark, in a manner to be determined by the Appeal Board, all documents introduced pursuant to paragraphs 4 and 6 of the Pugh consent judgment. The ALJ shall identify each document, on the record, at the time such document is marked and accepted.

16. The Appeal Board shall not consider, refer to or rely upon any document that is not marked into evidence. However, if the document is otherwise identified in the record, and paragraph 4 of the Pugh consent judgment, and Section I of the Operational Guidelines for paragraph 4 annexed hereto as Appendix D, have been complied with, the document is properly part of the record and the Board member assigned to the case shall mark it as part of the official hearing record.

17. Where a party appeals an Appeal Board decision to the courts, only the hearing record shall be transmitted to the Court by the Board.

G. Reopening By the Appeal Board

18. The Appeal Board has statutory authority to reopen any case. However, the Appeal Board shall state in the decision the specific reason(s) for reopening the case.

H. Adjournments

19. An ALJ shall not adjourn a case solely because it extends beyond one hearing session. Where adjournments are ordered the case shall be scheduled on an expedited basis.

I. Incorporation of Pugh v. Ross

20. The terms of the Partial Consent Judgment in Pugh v. Ross, 76 Civ. 3607 (S.D.N.Y., 1977), annexed hereto as Appendix C, are incorporated herein and made part of this consent judgment, and shall be applied in all Appeal Board hearings.

21. The Appeal Board shall follow the operational guidelines for the implementation of the terms of the Pugh consent judgment (Appendix D) in its use of the consent judgment Checklists established in paragraphs 39 and 43 of this consent judgment.

22. To the extent that Part II of this consent judgment, regarding Spanish-speaking claimants, requires any notice provision in the Pugh consent judgment to be changed to conform to the rights provided herein, such provisions in Part II supercede the Pugh notice language.

II. PROCEDURES FOR SPANISH SPEAKING PARTIES

A. Translation Assistance at ALJ and Appeal Board Hearing.

23. Where the ALJ (Appeal Board) has Spanish-language translator staff at the hearing location, there shall be assignment of translators at all ALJ and Appeal Board hearings where Spanish-speaking parties request translators, or where form LO 420 indicates that a translator is necessary or, in the absence of either of these, the ALJ or Appeal Board determines that translation assistance is necessary.

24. In all cases where the local office determines that a Spanish translator will be necessary at the hearing, the local office shall so indicate on form LO 420 and a translator will then be provided at the scheduled hearing. In addition to the criteria for conducting needs assessment contained in paragraph 32 of this consent judgment, in completing form LO 420 each Spanish-surnamed or Spanish-speaking claimant will be asked whether a translator is desired for the ALJ hearing.

25. If it does not appear on form LO 420 that a translator is necessary but a claimant requests or requires translating services at the hearing and no translator is present, the ALJ (Appeal Board) shall adjourn the hearing to obtain a translator. A new hearing shall then be scheduled in an expedited manner at which time a translator shall be present.

B. Adequacy of Translation Assistance

26. In all ALJ or Appeal Board hearings where translators are used, they shall be required to translate the entire proceeding and all relevant parts of documents introduced in evidence. Those relevant parts which are translated will be identified for the record. This procedure may be reviewed after six months from the date of this consent judgment and may be changed pursuant to the Notification and Consultation provisions of this consent judgment.

C. Review of Claim of Language Difficulties

27. Where claimant asserts that benefits were denied or terminated because of inability to understand the local office personnel, procedures, forms or notices because of language difficulties, or that the claimant was not understood by the local office personnel, or where it becomes apparent that this has occurred, this may be valid grounds for reversal and must be considered by ALJs and the Appeal Board for appropriate action. Where the ALJ or Appeal Board determines that although

claimant may have had some language difficulty, benefits were properly denied so that an overruling of the determination is not warranted, the decision shall set forth the specific reason(s) for that conclusion.

D. Translation of Notices, Appeal Board Files and Decisions

28. All printed parts of notices and instructions given to claimants will be prepared in Spanish and English, either on one form or on separate forms. Defendants will periodically, not less than once a year, review such forms to insure that they are in compliance with this provision. Where notices or instructions contain handwritten entries, they shall be translated into Spanish for Spanish surnamed claimants in those local offices that have adequate Spanish-speaking staff. For all other local offices, all Spanish language notices or instructions which contain handwritten entries in English will contain a legend that the claimants can obtain translation assistance at the local office in accordance with the procedure in paragraph 30.

29. Where a claimant files a Notice of Appeal and requires translation assistance in order to prepare the appeal from an ALJ decision to the Appeal Board he shall receive a copy of the minutes of the ALJ hearing upon making such a request, upon signing a form to certify his need for translation assistance and upon payment of \$1.00. When the Appeal Board

informs the claimant that the minutes are available, it shall also advise claimant of the procedure for obtaining the minutes for translation assistance. Claimant shall have 21 days from the time that the minutes are ready and available to file his papers on appeal. The Board may extend this time period upon a showing of good cause. This procedure may be reviewed after six months from the date of this consent judgment and may be changed pursuant to the Notification and Consultation provisions of this consent judgment.

30. The Local Offices will translate ALJ and Appeal Board decisions for Spanish-speaking parties on the day the party appears at the Local Office requesting such assistance or within a reasonable time thereafter. The time for filing any appeal shall be tolled until such translation is provided.

E. Spanish Language Needs Assessment

31. The Unemployment Insurance Division of the Department of Labor (the Division) will conduct, once every two years commencing 30 days after entry of this consent judgment, a survey to determine the number of interpreters or bilingual claims examiners needed to adequately serve Spanish-speaking claimants at local offices. The local offices covered by this survey will be all New York City, Long Island and Suburban offices, all offices located in Albany, Amsterdam, Utica,

Syracuse, Rochester (2), Buffalo, Poughkeepsie, Spring Valley, Kingston and any other local offices the Division considers appropriate. A copy of the survey data and results of the needs assessment will be provided to plaintiffs' counsel within 30 days of its preparation.

32. The needs assessment will be conducted by initially noting each Spanish-surnamed or Spanish-speaking claimant filing for benefits during the period of one month and then assessing whether an interpreter or bilingual claims examiner is needed. Criteria which will result in classification of a claimant as limited English proficient ("LEP"), thus requiring assistance in Spanish, include ability to understand or respond to questions during the interview, bringing an interpreter to the interview or requesting an interpreter during the course of the interview. Any doubts will be resolved in favor of classifying the claimant as an LEP.

33. A deficiency in bilingual staff occurs when the percentage of LEP claimants at a local office (i.e., the total number of LEP's filing original claims during the one month period divided by the total number of claimants filing such claims) is greater than the percentage of bilingual staff at the local office (i.e., the total number of bilingual staff divided by the total number of staff). When such deficiencies occur in a local office, the Division will, as soon as practicable and to the extent it is within its authority to do so, augment the

number of bilingual staff at that office by doing the following in the order listed:

- a. If a surplus of bilingual staff exists in other offices, reassign such staff to the office or offices with unmet needs.
- b. Attempt to hire additional bilingual staff.
- c. Designate such additional number of positions for bilingual employees.

Within 30 days after any such action is taken by the Division, it shall inform plaintiffs' counsel in writing.

III. PROCEDURES FOR TEACHER CASES

34. The party claiming at a hearing that a teacher has been given a "reasonable assurance" of employment pursuant to the requirements of New York State Labor Law § 590.10 must demonstrate that the teacher has been given such assurance. Evidence that a teacher has been placed on a per diem substitute teachers' list is to be treated as evidence in any other case, with no attached presumption, and the claimant may challenge or rebut the bona fides of the educational institution's assurance.

IV. RELATIONS BETWEEN THE APPEAL BOARD AND THE PARTIES.

35. The Appeal Board or any employee of the Department of Labor subject to the supervision of the Appeal Board shall not give any notice, advice or assistance to any party that is not also available to all parties.

36. Appeal Board cases shall be assigned to Appeal Board members at random. The practice of color coding of files by the Appeal Board shall be discontinued.

37. There shall be no ex parte dealings or contact between ALJs or Appeal Board members, and any parties or their representatives with respect to pending cases. This provision does not preclude ex parte contacts between the Appeal Board members and the Commissioner of Labor otherwise permissible under law.

38. Employers and organizations representing employers, claimants and organizations representing claimants shall not be provided with any office, telephone or other services or facilities by the Department of Labor, Appeal Board or employees thereof, which is not also available to all parties on a routine basis.

V. REVIEW

A. File Review Checklist for Prospective Relief

39. The agreed file review checklist, which is annexed hereto as Appendix E, shall be included in the file of every Appeal Board case. An Appeal Board member shall have this checklist form completed for every case.

40. Where a procedural right has been found to have been violated, the Appeal Board shall note on the checklist what

action was ordered. If no action were ordered, a statement shall be included setting forth why no action was taken and how the parties' rights were adequately protected. A mere statement of de minimus or inconsequential impact is not a sufficient explanation.

41. A copy of every file review checklist shall be maintained in a Master checklist file. Plaintiffs' counsel shall have access to the Master file once each month, upon a reasonable notice to the Appeal Board.

42. Plaintiffs' counsel shall have the right to inspect the file of any Appeal Board case in question upon reasonable notice to the Appeal Board and shall have the right to inspect the files of 600 random cases per year for a period of three (3) years. The random inspections shall take place three times a year at regularly scheduled intervals. Any individual case file that is inspected pursuant to the first sentence of this paragraph shall be included in the total number of inspections permitted each year. However, nothing herein shall preclude plaintiffs from making an application to the court to extend the expiration date or to have the provisions reinstated after the expiration date.

B. Reopening Checklist

43. The agreed upon reopening checklist for determining retroactive relief in individual cases is annexed hereto as Appendix F. Plaintiffs' counsel will review the use of the reopening checklist in the following manner:

a. The Training Committee, provided for herein at Part VI, will review the first 100 cases in which the reopening checklist has been used;

b. Plaintiffs' counsel will be provided with a random selection of cases, every six months, where the number of cases provided will achieve a confidence level of 95% and a margin of error no greater than 10% as determined by the Director of Research of the Department of Labor, subject to review by plaintiffs' counsel.

c. Plaintiffs' counsel will be able to review, once each month, a copy of the reopening checklists maintained in the master file. Plaintiffs' counsel shall be provided specific full case files upon request; however, the number of files looked at shall be deducted from the number of files provided for in the semi-annual random file review.

VI. TRAINING

44. Training programs for ALJ's and the Board's legal staff and other personnel involved in case reviews or in the decision making process shall be conducted by defendants in order to facilitate compliance with this consent judgment. An advisory committee shall be appointed by The Chairman of the Appeal Board to guide this training. The advisory committee shall be composed of but not limited to a Chairman who shall be a member of the Appeal Board, a representative of the ALJ's who conduct hearings, a representative of the ALJ's who is acting as the Appeal Board's legal staff, a representative of the Commissioner of Labor and a representative of the plaintiffs.

45. The Training Advisory Committee (Committee) shall have its first meeting within 20 days after entry of this consent judgment. The Committee shall establish a curriculum and training program designed to, among other things, inform the ALJ's, Appeal Board professional staff and other persons involved in the decision making process, of the terms of this consent judgment and how the checklists, attached hereto as appendices E and F, are to be utilized. As part of the training program, the Committee shall prepare at least 3-5 examples, insofar as is practicable, of the procedural problems for each item on the checklists. The training will include suggested acceptable resolutions or remedial options for each example. The training will also include full case files selected by the

Committee which shall contain one or more problems which would appear on the checklist. The training program will include instruction on utilization of the checklists. Group discussion of the utilization of the checklists between the participants in the training and the Committee will be a significant part of the training.

46. The concept of the training set forth in paragraph 45 shall be incorporated in the regular, ongoing training for all new professional employees (including ALJs) of the Board.

47. The advisory committee shall meet a minimum of twice a year for a period of three (3) years from the date of entry of this consent judgment.

48. The initial training sessions shall take place as soon as is practicable but in no event later than 90 days following the entry of this consent judgment.

VII. GENERAL COMPLIANCE PROCEDURES

A. Amendments to Procedures

49. The Appeal Board shall amend administrative instructions, including the Appeal Board Manual, and its rules and regulations to conform to the terms of this consent judgment. The proposed amended instructions and rules, if any,

shall be submitted to plaintiffs' counsel prior to implementation and within 120 days of the entry of this consent judgment, pursuant to the Notification and Consultation section of this consent judgment.

B. Distribution of Consent Judgment and Instructions

50. Within 30 days after the entry of this consent judgment by the Court, (1) the Commissioner of Labor shall provide to all executive staff in the Unemployment Insurance Division of the Department of Labor; and (2) the Chairman of the Appeal Board shall provide to all ALJs and other professional staff under the jurisdiction of the Appeal Board, copies of the consent judgment and any further order(s) entered by the Court.

51. As soon as is practicable, but no later than 90 days after entry of this consent judgment, the defendants shall deliver to plaintiffs' counsel copies of instructions for the implementation of the terms in the consent judgment. The instructions shall be subject to the Notification and Consultation provisions of this consent judgment. Such instructions shall be sent to all the forementioned personnel.

52. During the review period of this consent judgment, the Appeal Board will provide to counsel for plaintiffs, copies of written material and memoranda generally distributed to ALJs or senior ALJs which deal with any aspect

this consent judgment. Subsequent to the review period, the Appeal Board will make such materials and memoranda available for inspection by plaintiffs' counsel on request.

C. Notification and Consultation.

53. Where sections or paragraphs of this consent judgment permit the defendants to make changes in the procedure set forth herein, or mandate new procedures or standards to be designed which are not already provided for in this consent judgment, the defendants shall, insofar as the changes in procedures or standards deal with this consent judgment, inform plaintiffs' counsel of the proposed changes, new procedures or standards to be designed which are not already provided for in this consent judgment. The defendants shall inform plaintiffs' counsel of the proposed changes, new procedures or standards at least thirty (30) days prior to their implementation. If plaintiffs' counsel objects to all or any part of the proposed changes, new procedures or standards, counsel shall provide written notification to the Appeal Board, the Department of Labor and to defendants' counsel no later than 21 days after being so informed. Should an objection be made, the parties shall meet in an effort to resolve their differences. If there is no resolution, plaintiffs' counsel may apply to the court to stay or enjoin the changes, new procedures or standards only after counsel has requested mediation. The Board shall take no

action to implement its proposal while mediation is pending or occurring. In the event that the mediation efforts fail to resolve the parties' differences, the implementation of the proposals will be delayed for ten days. Any changes or new procedures which are required by state law or by federal directives to be implemented without delay may be put into effect by defendants without prior notice to plaintiffs' counsel. However, defendants shall immediately give notice thereof to the plaintiffs' counsel which shall include reference to the state law or federal directive relied on. If plaintiffs' counsel objects to the change or new procedure, the Consultation and Mediation provisions shall apply except that the change or new procedure will be in effect throughout this period.

D. Mediation.

54. In the event that the parties are unable to resolve disputes arising from the interpretation or implementation of any part of this consent judgment, the parties may by mutual consent request the assistance of a mediator(s) to be chosen by plaintiffs and defendants to aid in mediating the dispute.

55. The provisions of paragraphs 53 and 54 shall expire three (3) years from the date of entry of this consent

judgment. However, nothing herein shall preclude plaintiffs from making an application to the court to extend the expiration date or to have the provisions reinstated after the expiration date.

E. Distribution of Appeal and Hearing Rights to Claimants

56. Whenever a claimant requests a hearing on a local office determination denying benefits, or a claimant is informed by the local office that an employer has objected to a grant of benefits, the local office shall provide the claimant with a written explanation, in simple language, of the claimant's rights and obligations in the hearing process. The Notification and Consultation provisions of this consent judgment shall apply.

F. Review of the Checklist

57. The parties agree that two six-month evaluation periods are necessary to determine the feasibility of the checklists attached hereto as Appendix E and F. During this period the Appeal Board shall advise plaintiffs' counsel of the application of the checklists so that they may be modified or refined as experience may indicate. However, the confidentiality of the deliberative process shall be maintained.

at all times and the Appeal Board and its staff shall have the exclusive right to apply the checklists.

58. The first six months of the evaluation period shall be a trial period dealing with the first six months of case file reviews. During this period, the Appeal Board may propose changes in the checklists upon notice to plaintiffs' counsel. Such notice shall advise plaintiffs' counsel of the specific problems with the checklists and set forth an alternative approach. If plaintiffs fail to object within ten days of receipt of such notice, the Board may implement its proposed checklist(s). If an objection is made the Notification and Consultation and Mediation paragraphs of this consent judgment shall apply.

59. At the conclusion of the first six months, the parties shall fully evaluate the effect of the checklists in achieving the goals of the consent judgment. Based upon that evaluation, the parties shall prepare any new checklist(s) or modifications of the checklist(s) established herein if it is necessary. The parties will make a good faith effort to complete this process within thirty days of the end of the first six month period.

60. The review of the second six months period, dealing with the second six months of case file reviews, shall

commence upon completion of the revised checklist(s). The parties shall evaluate the checklist(s) following the second six months in the manner it was evaluated after the first six month trial period.

61. Any disputes between the parties on the checklist(s) shall be handled pursuant to the procedures set forth in the Notification and Consultation and Mediation paragraphs of this consent judgment.

VIII. CLASS RELIEF

A. Rule 23(e) Notice

62. Notice shall be sent to all class members apprising them of the terms of this Consent Judgment and Decree and that they have a right to object to these terms.

B. Retroactive Relief

63. The members of the class, and all members of the subclasses thereto, shall be entitled to relief from March 1, 1978. The relief shall be the reopening of all cases, within the class definition, from March 1, 1978 up to and including the day following the initial training session. The cases shall be reopened for periods of six(6) months at a time until all cases within the class definition have been reopened up to and including the day following the initial training session.

64. The terms of this consent judgment shall apply to all reopened cases except as to the standards for "search for

work" cases from March 1, 1978 until October 1, 1979. As to that period of time, search for work cases shall be evaluated pursuant to the terms of the New York State Department Special Bulletin File No. A-710-23 (Revised), February 18, 1957, and A.B. #215,032 SUA, December 31, 1975. (Annexed hereto as Appendix G). The parties agree that the guidelines set forth in Special Bulletin A-710-23 (Revised), November 17, 1981 are the proper guidelines for applying to February 18, 1957 Special Bulletin. Subsequent to October 1, 1979, retroactive relief search for work standards shall be based upon Unemployment Insurance Manual Procedures III, §§ 5060-5099 and the guidelines contained in the November 17, 1981 Special Bulletin. (See Appendix A).

C. Notice of Reopening to the Class Members

65. Every class member whose case was decided between March 1, 1978 and the day following the initial training session shall be sent a Notice(s) of Reopening which has been agreed upon by the parties to this consent judgment and is annexed hereto as Appendix H.

66. The mailing addresses for the Notice shall be the last known address in the possession of the Department of Labor.

67. In those cases where the Rule 23(e) Notice or a claimant's Reopening Notice is returned "address unknown", defendants shall deliver those names with the last known address and social security number to plaintiffs' counsel. Within 10 days of receipt, plaintiffs' counsel will forward this information to the Social Security Administration with a request for the most current address of claimant and claimant's last employer. Within 10 days after plaintiffs' counsel has received claimant's most current address, they will forward the information, if any, to the Department of Labor, which will mail the respective Notice to the new address.

D. GUIDELINES FOR REMEDIAL ACTION BY THE APPEAL BOARD

68. The Appeal Board shall review those cases covered by this consent judgment where the claimant has responded to the Reopening Notice and shall apply to those cases, and to all prospective cases, the agreed to checklists. (See Appendices E and F). The Board shall take such action which it deems necessary and where no action was deemed necessary, the Board shall state on the checklist and it shall specify the reason or reasons for such decision.

IX. JURISDICTION OF COURT

69. The Court shall retain jurisdiction over this case after entry of a final judgment. Subject to the mediation

provision of this consent judgment the court may, among other things, entertain any motion or application involving any alleged violation of the consent judgment's terms, entertain any application involving the interpretation or implementation of any provision of the consent judgment, or entertain such other motions or applications that may be made regarding the consent judgment.

X. PRELIMINARY AND FINAL APPROVAL OF
THE CONSENT JUDGMENT

70. On the basis of the facts and law presented at the hearing held March 1 1983, the Court gives preliminary approval to this Consent Judgment as set forth below. In the absence of any objections to the Consent Judgment after notice to the class is provided, the Court will give final approval on June 6 1983. If objections are timely filed, the Court will set a hearing for the final determination of the fairness, adequacy and reasonableness of this Consent Judgment, provide notice to all interested parties of the hearing, and further provide said parties with the opportunity to participate in the hearing through written statements or in person.

PRELIMINARY APPROVAL of the Consent Judgment is hereby entered the 1st day of March, 1983. The parties hereto

are herein authorized to commence implementation of this Consent Judgment this date.

BY THE COURT:

Dated March 21, 1983

Robert L. Carter

ROBERT L. CARTER
United States District Judge

JUDGMENT ENTERED 3/2/83

Raymond F. Buchheit
CLERK

AGREED TO:

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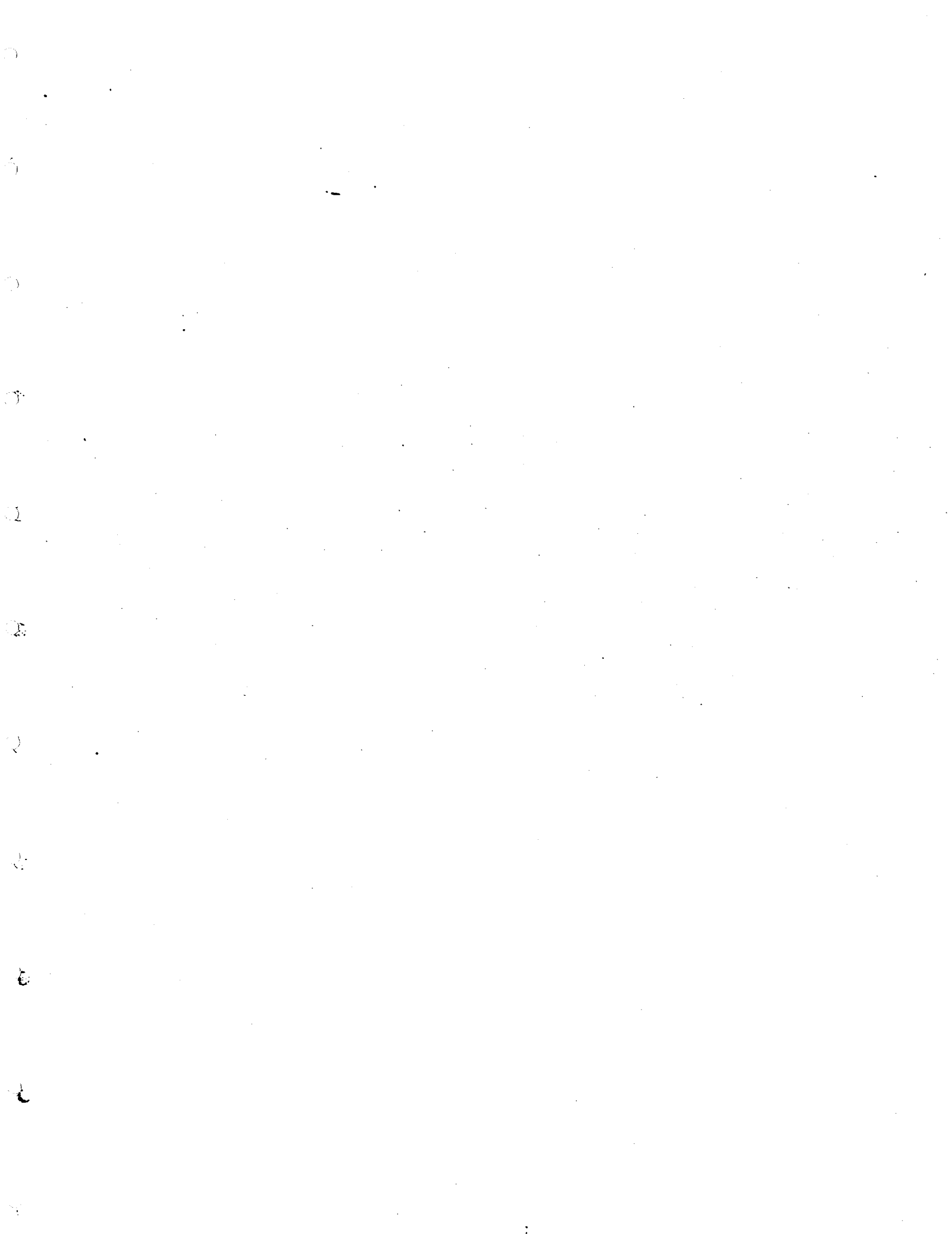
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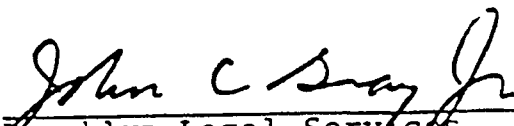
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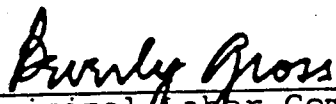
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