

JUNE 15, 1949.

HONORABLE HARRY C. HARPER, *Commissioner*,
Department of Labor and Industry,
State House,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 63.

DEAR COMMISSIONER :

You ask whether in your capacity as Commissioner of Labor and Industry you have the authority and the duty of deciding or disposing of some three hundred and fifty cases involving applications for refund under the Unemployment Compensation Law, which the former Unemployment Compensation Commission had under consideration. In some of the cases, the Unemployment Compensation Commission received the testimony, transcripts of which are available. You inquire whether it is within your power to delegate the determination of such cases to another person or tribunal. Further, whether you have the duty and the power to make a decision from a reading of this testimony.

Chapter 446 of P. L. 1948, Section 1, provides :

“There is hereby established in the Executive Branch of the State Government a principal department which shall be known as the Department of Labor and Industry. * * *”

Section 2 (in part), provides :

“The administrator and head of the department shall be a commissioner, who shall be known as the Commissioner of Labor and Industry, * * *”

Section 5 provides :

“There is hereby established in the Department of Labor and Industry a Division of Labor, a Division of Workmen's Compensation, and a Division of Employment Security.”

Section 6 (in part), provides :

“All of the functions, powers and duties of the existing * * * Unemployment Compensation Commission, and of the respective bureaus and divisions therein, and of the executive director of such commission are continued, but such functions, powers and duties are hereby transferred to the Department of Labor and Industry established hereunder.”

Section 4 provides :

“The commissioner may delegate to subordinate officers or employees in the department such of his powers as he may deem desirable, to be exercised under his supervision and direction, and shall, by order, rule or regulation filed with the Secretary of State, designate one or more officers or employees in the department who may act for him and on his behalf in the event of his absence or disability.”

It is my opinion that in the cases where the former Unemployment Compensation Commission received the testimony and transcripts thereof are available, the Commissioner of Labor and Industry is the sole authority who may now decide the issues. The exercise of the power of final decision in quasi-judicial proceedings is nondelegable. The pre-existing Unemployment Compensation Commission, having assumed jurisdiction and, by statute, its duties and powers having been transferred to the Commissioner of Labor and Industry, he is the only person who may now act. Cases which were not heard by the Unemployment Compensation Commission may be completed by designated assistants acting in behalf of the Commissioner of Labor and Industry, but again his power of determination may not be delegated. As an administrative function, the Director of the Division of Employment Security may hold any necessary hearings, and grant or deny applications for refund and if there is any disagreement, the Commissioner of Labor and Industry is required to afford the persons affected a hearing and decide the issues. Any person intending to seek a review in our courts of an administrative determination must secure a final decision of the agency involved by exhausting all available administrative remedies. (Superior Court Rules 3:81-14.) Thus, the Commissioner of Labor and Industry, as the administrator and head of the department, is vested with the final authority to grant or deny any application for refund.

The Court of Errors and Appeals in the case of *Horsman Dolls, Inc. vs. Unemployment Compensation Commission*, in its opinion, in part, stated as follows:

“Any power of decision invested in or exercised by such hearer, examiner or ‘referee’ is ultra vires.”

The delegation by regulation to a referee of the power of determination granted by the statute to the Unemployment Compensation Commission and its Executive Director was declared invalid by the court. Likewise, the power of final determination conferred upon the Commissioner of Labor and Industry is an investiture which may not be delegated to any other person or tribunal and any such attempted delegation is void.

Where the property rights of individuals are being weighed and a person is denied some of his rights by an administrative determination, which he is required to forfeit to the benefit of another or the general public, the administrative process takes on a judicial aspect and this is referred to as the “quasi-judicial” function of such administrative bodies. This official function is to be distinguished from the purely executive or administrative functions. An application for refund involves a property right. Where the denial of such application is involved, the opportunity for a “hearing” must be afforded before final decision. The Commissioner of Labor and Industry, however, may obtain the aid of assistants. They may hold hearings and the evidence so obtained may be sifted and analyzed for him.

The Unemployment Compensation Law (R. S. 43:21-14 (f)) specifically provides that any determination of an employer's right to refunds of contributions is solely and exclusively vested in the Commission or Executive Director. This duty and authority has not been limited or impaired by any statute, and in the absence thereof, the Director of the Division of Employment Security, who is in fact a counterpart of the Executive Director of the Unemployment Compensation Commission, may grant or deny applications for refund. His action, however, is at all times subject to the direction and supervision of the Commissioner of Labor and Industry. The director may grant or deny applications for refund as an administrative function solely

and, if there is any disagreement, the Commissioner of Labor and Industry is required to afford the person affected a hearing as indicated and thereafter decide the issues.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

TDP:NR

JUNE 10, 1949.

HON. HARRY C. HARPER,
Commissioner of Labor and Industry,
State House,
Trenton 7, N. J.

FORMAL OPINION—1949. No. 64, supplementing
FORMAL OPINION—1949. No. 42.

Re: Employment of Minors in Agricultural Pursuits.

DEAR COMMISSIONER:

Your request for a further opinion relating to Formal Opinion, No. 42 and raising additional matters has been received.

While the precise question propounded is whether or not the duties of a minor in selling the products of his employer are to be classified as agricultural or mercantile and are, therefore, an incident to ordinary farming operations as distinguished from manufacturing or commercial operations, the more fundamental issue is the distinction between the two classifications.

The so-called Child Labor Law (R. S. 34:2-21.1 (e)) defines "Agriculture" as follows:

" 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section fifteen (g) of the Agricultural Marketing Act, as amended) the planting, transplanting and care of trees and shrubs and plants, the raising of livestock, bees, fur-bearing animals or poultry, *and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market, provided that such practices shall be performed in connection with the handling of agricultural or horticultural commodities the major portion of which have been produced upon the premises of an owning or leasing employer.*" (Italics ours.)

It must be noted that the statutory definition by the use of the words ". . . and any practices (including any forestry or lumbering operations) performed by a farmer