

April 2017

Unemployment Compensation

Rev. Austin P. Bennett

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Catholic Studies Commons](#), and the [Insurance Law Commons](#)

This Diocesan Attorneys' Papers is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

UNEMPLOYMENT COMPENSATION

REV. AUSTIN P. BENNETT

Good morning to you all. I am always very happy to speak with Catholic lawyers. I am a firm devotee of Thomas More, who, I think, is one of the greatest saints of the Church. He was a lawyer, layman, good family man, and a most constant upholder of the rule of law. My own family is replete with lawyers. I thought I would escape the burden by entering the cloth, but the Church caught up with me, and I am a canon lawyer.

Be that as it may, we have had a peculiar experience in the Diocese of Brooklyn—in fact, a very happy one—and we have been asked to share it with you. I am most pleased to do so.

First of all, as lawyers working with the Church, you are well aware of the occasional weaknesses of human nature within the Church. One of the weaknesses which, from time to time, has cropped up is the unhappily distinct dichotomy between our teaching on social justice and our concrete application of this teaching. For a long time, we spoke loudly and did little. The old saying of the Indians applies—we spoke with “forked tongue.”

Unemployment insurance is a case in point. I am sure we are all aware of many cases when someone, say a housekeeper, was most faithful in her work in the parish. She fed the troops in the rectory and, in general, tried to keep some semblance of domestic order. When the pastor who hired her retired or was changed, the lady was summarily dismissed with no benefit whatever. To be frank about it, many cases of rank injustice have occurred; the persons dismissed frequently worked for low pay and depended on this income for their sustenance and their family needs. Frequently they were widows who needed this income to educate their children and live in decency.

Many times such employees have been fired without warning and without justice. This also can be said about several groups of our employees—maintenance people and secretaries of our schools and churches. I have seen cases myself where a person had given many years to the Church, at a very low wage, almost as a service. A shift of command took place and he was out in a week with no help, no recourse, and no money. So, when we talk about unemployment insurance, I must speak first as a priest rather than the Diocesan Director of Finance. We have offended many times against justice to our own employees. Now, we all know that occasions arise when persons must be terminated, whether because of budgetary constraints, efficiency, or whatever. However, justice must be part of our process if we are to be true to our commitment to Christ.

We in New York State accept unemployment insurance as a form of social justice in which we can contribute on a reasonable basis toward

sustaining our terminated employees until they find other work. It is no great pay that they receive, but they can live with it. In our discussions, we went into this most thoroughly. We do not consider this a real tax on the Church, in the area of state taxing church. We consider it, as I have said, as a form of social justice, quite in conformity with the social teaching of the Church. In fact, this appears to be a rather clear example of this teaching being applied in a concrete form of protection for the employee.

In return for a contribution to a pooled fund, we enable our own employees to be sustained for a while when they are out of work. One effect of this is also of economic good to the community. It fosters the sustenance of a labor pool within the area. While the unemployed workers are searching for new work, they stay in the neighborhood and, quite possibly, can even find work in another of our own agencies. It does afford them that degree of time to sustain themselves where they live and hope to work. In New York, we have had this coverage for seven years. No question about it, there were objections on the part of some. Administrators were tempted to look upon unemployment insurance as an unwanted expense. At the same time, it was not unknown that the same objectors were frequently not loath to fire employees without recourse.

As I have said, you, as Diocesan attorneys, are not blind to the occasional evidences of human frailty within the Church administrative process. We also know, with equal clarity, that the same human tendencies are frequently observable on the employee's side as well. There have been and continue to be cases in which a claim for unemployment benefits is made without justification or even falsely. Part of our program has been a very tight policing system. With all due regard for justice and propriety being maintained, we have effected savings of many thousands of dollars by screening all claims for unemployment benefits.

Mr. During is here with me. He is the Controller of the Diocese, and I must say that, without Ted, this whole program might well have never materialized. In 1971, New York State gave us an option for reimbursement and a very short time to recoup some of our costs. This demanded an immense amount of research in a terribly narrow time frame. Through Ted's inspiration and persistence, we did it. The time we had was one month. The result was a returned fund of about \$150,000. With this, we immediately started an unemployment benefits escrow fund. Ted will go into its details, but one of the key factors is a highly capable examination of every claim which is submitted. Every claim in the Diocese is checked by our office or, in the case of very large agencies, such as the hospitals or Catholic Charities, by their own staffs. Every claim is questioned and verified. As a result, remarkable savings and refunds have been effected. Just for example, two weeks ago we received a credit of \$3,000. This is just one of many cases. From this process, we have increased our unemployment escrow fund to about \$900,000. When we reach the one million dollar mark, we will be able to furnish this coverage at a most inexpensive rate for those participating in the fund. This fund is entirely our own, and we are able to increase it by proper investment of the available monies.

One aspect of this is interesting and, for us, most important. New York State allows us to shift any entity from a reimbursement basis to a tax basis. This choice is made once a year. Some employers will be on reimbursement, others on the tax basis. At the end of the year, we determine which of those on the tax group had good experience and we place them on the reimbursement list. They come into the escrow fund. Some of those on the reimbursement basis may have gone quite sour. They go on the tax basis. All the time, the unemployment fund is protected and is, in fact, quite healthy. The rate is quite low for those who are careful in their employment practices. It all results from a highly competent policing of the experience and the claims. This is the general basis and the background of what we have in the Brooklyn Diocese. As I said before, the major credit goes to Ted During. Without him it would not have functioned as well as it does. All I had to do was give my blessing to the whole plan and make sure that it kept moving. My main role is to deal with the occasional recalcitrant administrator who is eventually persuaded by a friendly little talk.

This, in brief, has been the Catholic experience in New York State. It is not a tax infringement by the State but, rather, a definite implementation of social justice. It is a benefit extended to our employees, with which I do not think that we, as Catholics, can really argue.

At this point, I will cease and desist. I will turn to Ted During, who is a C.P.A., had his own private firm, taught at Brooklyn College, and whose background was of profound depth when he joined us. I do not think that he bargained for the complexities he met when he signed on but he has not languished for lack of challenge ever since. The Brooklyn Diocese is a challenge if ever there was one. I have the pleasure of introducing our Controller, Mr. Theobald During.

QUESTIONS TO GERALD TOBIN, TED DURING, REV. BENNETT

Q. I am addressing this to either Ted During or Father Bennett. Given the experience which Brooklyn has had, which they were more than happy to share with everyone else, how long would you estimate it would take a diocese to establish a functional system?

A. Mr. During: I think, depending on the personnel available at the Finance Office of the Diocese, it would not take any time at all. You can take it in stride. It is not a monumental job. It has a certain volume and detail that's required, but if there is someone there who can supervise the operation properly, the actual work is essentially a clerical task.

Q. A second question that I have. Do the institutions controlled by the religious orders participate in your reimbursement program?

A. To the extent that they have chosen to be part of our system they are in, but the choice was theirs. I might add, when they see how the rates are going, sometimes their choice is a little quicker.

Q. That is the next question I was going to ask. What is the current rate that you are paying in the reimbursement plan, as distinguished from

the comparable rate in the tax?

A. In New York State, if you have not had any claims against your account for, let us say, eighteen to twenty-four months, you could expect a 1.5 to 1.8% rate. Our rate for the organizations we have on a reimbursement basis is 2.4%. It is that merely because this past year our experience has not been exactly great. However, New York State, for those organizations that would have had the experience for whom we charge 2.4%, or even sometimes a supplementary rate on top of that, New York State charged somewhere between 5.3 and 5.7%.

Q. I am Bernard Huger, from St. Louis. Did you cover in this fund a variety of organizations, some that would be covered under the law and some that would not be covered under the law?

A. No, only the ones that are required to be covered in our setup.

Q. But you do not cover employees like a janitor of a church or something like that?

A. Oh, yes. We are covering all the employers, and employees in turn. We, I mean the Diocesan Finance Office, essentially act as the agent for all the churches, for all the parochial schools. Not for the high schools, because they are handled by the School Office. And such other organizations as are individually too small to handle the reimbursement process, they are in our system.

Q. I guess I do not have an understanding of the law.

A. Mr. Tobin: New York has a somewhat different system from some of the others. Churches are not excluded there. Back in 1970, when the Federal government made the changes we talked about, they decided in New York to go further, and now just exempt a few employees.

Q. Churches are not exempt?

A. Churches are not exempt, and charities are not exempt.

Q. You are compelled to do it whether you like it or not. I got the impression you were going out and doing a benefit.

A. My point is the law is a benefit that is good. I am agreeing with the law.

Q. Where we are, the law does not cover churches.

A. I think it should.

Q. But I thought your law did not either, and you went out.

A. No, we did not fight it, we were for it. I will agree that you are a very unusual group.

Q. Well, that is a very important point because when you are talking to your pastor, they either join up with you or go directly to the state. You are not asking them to go into a program they would not otherwise go into.

A. No, we are not, but it is surprising how many would not have gone whether they were required to or not. Some of them are not too altruistic. We were obliged to go in where certain types of employees were exempt, namely, the teachers. But now they are in.

Q. There are other types that are exempt, priests and other employees of the Church?

A. A so-called sexton was exempt, but we do not really have a sexton—he is a fellow who puts the vestments on and does nothing else.

Q. You say that the state sends all the claims to your office. Is that a special provision of the law, or what?

A. We have worked it out with the State and it is really to the State's advantage. They send it in bulk to us, which is much easier than having to send it individually. The arrangement was made between the New York State Catholic Conference and the Department of Labor of New York. It has been working fine for the past seven or eight years.

Q. Now you mention that by monitoring the claims very carefully you are able to save all sorts of money. Now, it seems to me that in the case of employers that we work with that are covered, such as hospitals, there are an awful lot of areas where the employer has no control of policing or not policing. For example, if someone quits voluntarily, then goes to work some place else, works the required amount of time and then is laid off, you have no control over that. Have you got any control in New York over that sort of situation?

A. No, we have not.

Q. Now, you have also got another situation where somebody is terminated for cause and they go in and apply for benefits. Now, what they do in Missouri—they start claiming immediately if they are on the reimbursement basis. That is one problem where you lose your first couple of weeks before they finally catch up with the people. Well, then when they do catch up with them, all they have is a disqualification period where you have to earn ten times your weekly benefit and then they can get right back on the system. Is that the way it is in New York?

A. Unfortunately.

Q. So I do not see, unless you just get St. Ann's in the Bronx as compared with St. Ann's in Brooklyn—maybe that could save you some money—but I do not see how the other ones could save you money.

A. Well, real savings come about in the similarity of names, where a charge is being made erroneously. Until just recently, the claims of teachers were charged. Certainly that has gone on since 1971. In addition to that, we have sometimes just an error on the part of the New York State Unemployment Insurance people who charge the employer's account for an employee that should in fact be on some other account number, but human error has brought it onto one that we are concerned with, and unless we are doing something about it, the State's unemployment insurance people are not. If the person is on a tax basis, let me just illustrate that. It adds an erroneous charge onto his account. If he is not careful, if he is in one of the churches where a notice like this comes in, is filed away or thrown away, what it really accomplishes is this: The experience of that particular employer is charged for something it has not really incurred and his rate is changed accordingly; upward, of course. So we do effect a saving on the one hand for we are avoiding having to pay out on others, and so on. In that context, monitoring helps.

Q. How are you handling teachers at this point?

A. At this point they are not covered for any benefit year that extends into 1978 until about September 1978. After that, most likely, we will find that the teacher has a right to be charged to our account from then on, but prior to that, it goes back to the state or to the special unemployment insurance fund, or whatever. It is not our employers that are concerned with it. You are talking about the particular teacher's experience year, the benefit year.

Q. John Markert from Minnesota. Let me ask, probably Jerry, about the exemption for church that we talked about. Minnesota has the exemption for church, except our school employees are mandatorily brought into the act. But that is not the question. We are finding that our state department is saying that it is not the identity of the employer *qua* church that grants the exemption, it is the character or identity of the act of employment. So while you may be a church and you have got someone who is employed by the church who is not engaged in what may be described as church-like activity, they are saying that the exemption does not apply. A classic example is that a church runs a bowling alley, and it hires a maintenance man to come in and run the bowling alley. The maintenance man is running the bowling alley, the church claims the exemption, and they say, "Well, we don't care whether you're a church or not, it's the character of the employment, and this guy isn't doing 'church work,' therefore the exemption is not granted." Now, could you comment on that, is there anything in the federal regulations?

A. Jerry Tobin: Well, as I said, every state is different, but federal law just states services performed for a church. Now, of course, reading into that, you would have to presume that they were services that the church wanted performed in its church activities.

Q. I guess I disagree with you because our law reads pretty much like the federal, and in the past we have always had the exemption granted because of the identity and the character of the employer, but not necessarily that of the employment. But apparently there is something coming up in the federal on that too?

A. Well, there is nothing, as I have read, in the legislative history or the law or the Department of Labor's commentary on that particular subject. They just did not think that someone would be claiming a bowling alley as part of the church. And so they presume over at the Department of Labor that definitely a bowling alley would not be covered under the church exemption. We are having enough trouble getting the parochial schools exempted. And I do not think they are going to extend it any wider, over at the Department of Labor.

Q. Four quick questions. 1. How many people are covered under the program? 2. What is the gross pay rate of the people that are covered? 3. How many people do you have on your staff policing this program? 4. What is the administrative cost in the diocesan area?

A. The number of employees that we are handling under this particular setup to which I have reference is probably between 8,000 and 9,000.

There are approximately 14,000 employees throughout the diocese, but we do not have the hospitals or institutions of higher learning or high schools or some of the larger diocesan organizations such as Catholic Charities in our system. As far as the number of personnel is concerned, I cannot really give an exact quote on the size of payroll. That I do not have readily available. I cannot recall, offhand.

Q. A ballpark figure? I do not want to pressure if it is confidential.

A. No, it would not be. We publish our financial data; really, it is not a problem at all. I really cannot quote exactly. But the point is that the administrative cost in the course of a quarter may be three or four days of my time. And it may be a week of a clerk's time. Based on that, depending on what Father Bennett says I receive, and what we are paying the clerk, this is our administrative cost. Because beyond that, except for reproducing the memoranda quarterly, mailing them and so on, we do not have any administrative costs.

A. Father Bennett: I just have one point here, that we publish a financial report. I do not believe in confidentiality of this type. Numbers should be public, that is why I am concerned. The exact figure in the back of my mind is \$16,000,000, but that is a real guess. But as far as I am concerned, you can know it. Just give us a letter and you will get the exact dollar amount.

Q. I am Chuck Reynolds from Albuquerque. We are interested also in the startup costs. Mr. During, you indicated that it was not a monumental task. Is it not desirable or necessary to develop some kind of personnel manual? Do you not have to get all your employers together and educate them about the type of employees that they are going to want to hire and not going to want to hire?

A. Well, I can briefly describe how we started it up. In 1970, when New York State indicated that we would be on, we had meetings by vicarates. The Diocese of Brooklyn is divided into five vicarates. We had five meetings. All the employers had representation there. They were briefed on what the implications of the impending law were. They were given forms that the State needed in order to start up and identify them and satisfy itself that they were, in fact, nonprofit organizations. We made extensive reference to the Official Catholic Directory for that purpose, in order not to have to supply them with charters or copies of the charter and other paraphernalia that they had in their form. They accepted the fact that we were listed in the Official Catholic Directory. After that, it was really quite easy. We acquired from every employer a power of attorney so that the refunds (when we started out, quarterly contributions were paid to the state) could be processed. Within the first year, toward the end of the year, it was probably in October, they returned to us all the amounts that were paid in, except the claims that were paid. That was our starting point for our escrow account. We got powers of attorney from every employer to endorse these checks, rather than having to send them out and hope they would come back. Some of them would have gone astray, I am sure. But this was our starting point, and from there on it was relatively

easy. We guided the employers quarterly by providing them with a memorandum and practically walking them through the process of how to accomplish the form. Simple as it is, it can seem a little complex when someone has not done it before. Monitoring and making certain that they filed on time, in other words, trying to teach them good habits in a very short time, worked pretty well.

Q. These habits refer, though, to the administration of the program. I am real interested in the actual employment practices. Have you monitored your rate of turnover, for instance? Has that improved?

A. Well, the rate of turnover fluctuates, and, if anything, it has at best held its own or gotten somewhat worse, because when I take the experience of the unemployment insurance operation, it has gotten somewhat worse for some of the reasons I alluded to when I was at the rostrum. There has been a certain amount of sophistication which has latched on to the idea that there is a way to get dollars without having to work for them.

Q. What about the case of the appeal of an employee? For instance, the employee who is discovered taking money out of the cash register, is fired, and goes down and then applies for unemployment in a case where it is obviously a termination for cause, but the appeal procedure is invoked, and you may have to go the whole distance with that employee and incur attorneys' fees. Have you accounted for attorneys' fees?

A. In these particular cases, we only had a few of them. The only ones we can possibly process are the ones which come to our attention. But there, the employee was barred from receiving benefits. And it is not a long, drawn out process, so long as you have good documentation, good evidence.

Q. Do you use your archdiocesan attorneys for that, or do you represent the employers through your office?

A. Actually, the employer is represented by the accountant, or a curate is going there, or another employee of the church or school is going there. Sometimes, if the case is somewhat more serious, the diocesan attorneys are called in.

Q. I am Tom Dupray, Ogdensburg, New York. Mr. During, would you comment on the coverage for seasonal workers or anybody who is not employed on a full-time yearly basis?

A. A seasonal worker or anybody else, whether they work for you four weeks, or eight weeks, or three weeks, if that particular person becomes unemployed, in New York State, the last employer is charged first, and then the next to last, and so on, backward to the earlier employers, regardless of the conditions.

Q. But you do not provide coverage for people who have an expectation of reemployment, like your cafeteria workers, etc.?

A. The cafeteria workers in high schools, for instance, have done the following: They have used every religious holiday to go to the Unemployment Insurance Office and get in their one day of absence, so that when

they have their five days built up, every day thereafter they are entitled to benefits and claim them.

A. Father Bennett: That is the human nature I spoke about. We would like very much to acknowledge John Kearney's help in all of this. He is the Diocesan attorney. It was most skillfully done, particularly when it came to the legal turnover of the funds by the parishes to the main fund.

John Liekweg: Before breaking, on behalf of the Association, we would like to thank the members of the panel for their excellent presentation this morning.