10-15-1988

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Paul Wyler

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SHOULD THE STATE PAY THE FEES OF CLAIMANT REPRESENTATIVES IN UNEMPLOYMENT INSURANCE HEARINGS?

Hon. Paul Wyler 1/

The following materials are presented to members of the Unemployment Insurance Committee, and other interested persons, for comment. Replies should be addressed to the chair of the Committee at the address set forth below.

AB-1195, as amended, 2/ has, pursuant to a report, died for the 1987-1988 Legislative Session in California. I believe the

1/ Chair, Unemployment Insurance Committee, NAALJ, 1300 W. Olympic Blvd., 5th Floor, Los Angeles, CA 90015, Tel. (213) 744-2250.

2/ An act to amend Section 1586 of, and to add Section 1957.1 to, the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1195, as amended, M. Waters. Unemployment insurance claims: representation fees.

Under existing law, the counsel or agent of any individual claiming benefits in a proceeding before the Unemployment Insurance Appeals Board may charge the individual a fee for services rendered in that amount approved by the appeals board.

This bill would authorize the appeals board or an administrative law judge of the board to award reasonable representation fees to a prevailing party payable from the Contingent Fund pursuant to regulations adopted by the appeals board. Amounts for the fees would be continuously appropriated from the Employment Development Department Contingent Fund, thereby making an appropriation.


(Footnote Continued)
concept behind this bill remains meritorious. I previously sent to you a statement of the reasons for the bill and if this was not done, a copy is enclosed herewith. Certain facts must be accepted in considering the basis for the concept of this bill.

(Footnote Continued)

Text of Bill

The people of the state of California do enact as follows:

SECTION 1. Section 1586 of the Unemployment Insurance Code is amended to read:

1586. All amounts in the Contingent Fund are hereby continuously appropriated without regard to fiscal years for refund of amounts collected and erroneously deposited therein, for interest payable under this division on refunds and judgments, for representation fees pursuant to Section 1957.1, and for the administration of the department.

SEC. 2. Section 1957.1 is added to the Unemployment Insurance Code, to read:

1957.1. In any proceeding before the appeals board or an administrative law judge thereof, the appeals board or administrative law judge, respectively, in its, his, or her discretion, and upon timely application made thereto by a party, may award reasonable representation fees to the prevailing party, be it claimant or employer, but not to the department. The appeals board shall adopt regulations prescribing guidelines for the awarding of representation fees, including a definition of a "prevailing party". In no case shall a representation fee exceed the lesser of the amount of the benefit in dispute or two hundred dollars ($200).

In determining whether to award representation fees, the following factors shall be taken into consideration:

(a) The financial ability of the party applying for fees to pay for representation.

(b) The experience and legal expertise of the representation.

(c) The results obtained by the representative.

(Footnote Continued)
The first fact is: Many claimants or small employer entities lose unemployment insurance cases they could have won due to ignorance of the law and procedure and due to failure to present their cases properly.

Fact number two: Studies have shown that competent representation improves chances for success in administrative proceedings.

Fact number three: Representation is motivated by the obtaining of a fee and a fee-generated mechanism is necessary for this purpose for a claimant and small employer who cannot afford to hire a lawyer.

Although some opposition to the bill developed in the 1987-1988 Legislature as to the funding problem and the possible costs of the program, I propose that a modified version of the bill be introduced in the next session of the Legislature along the lines of a "Pilot Project" so that the approach of the bill be limited to a definite period of time in certain geographic counties or communities and possibly under limited circumstances on an experimental basis. Since I believe you truly support the concept of Equal Access to Justice in the unemployment insurance system, I request that you send me, or, To Whom It May Concern, a letter of support of the basic concept or of the proposed modification.

The State of Illinois has passed legislation in December 1987 (SB-484) providing for a similar program to that provided for by AB-1195 or the variation thereof to be considered as a pilot program. The fact that this was adopted by another state indicates that there is a movement afoot now in the United States in this direction. Please consider this in making your decision to support the California effort. A copy of the Illinois statute is appended, together with an additional note on funding considerations.

(Footnote Continued)

(d) The effectiveness of the representation.

The representation fees shall be paid solely from the Contingent Fund pursuant to Section 1586 and shall not in any event be paid from the General Fund.
AMENDED STATEMENT IN SUPPORT OF AB 1195

Paul Wyler 3/

("Ye shall do no injustice in a case of law, neither showing partiality to the poor, nor favoring the rich and powerful, but in righteousness shalt thou judge thy fellow man." -- Hebrew Talmudic Literature)

I

Introduction

This statement is being made by myself, an Administrative Law Judge of the California Unemployment Insurance Appeals Board as an individual and it does not reflect necessarily or at all the views of the California Unemployment Insurance Appeals Board or the California Employment Development Department.

II

Equal Access To Justice

This measure reflects a nationwide concept endorsed by Bar Associations throughout the country and in effect made the law of the land by the federal Equal Access to Justice Act, to provide greater and equal access to the justice system by all, no matter how situated, rich or poor, black or white, man or woman, employee or employer, government or private individual or private entity; each is entitled to equal access and status in the justice system.

The federal Equal Access to Justice Act (Public Law 96-481) stated in its introduction, findings and purpose that the Congress finds that certain individuals, partnerships, corporations and labor and other organizations may be deterred from seeking review of or defending against unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings and it is the purpose of this Act to diminish the deterrent effect of seeking review of or

3/ Administrative Law Judge, California Unemployment Insurance Appeals Board.
defending against governmental actions by providing in specified situations an award of attorneys fees, expert witness fees and other costs against the United States.

The unemployment insurance system is part and parcel of the system of justice above referred to. It involves a distribution of financial resources in the nature of an insurance system and determines who is entitled to unemployment insurance benefits, how much and for how long and who shall pay for that and how much in the way of payment shall be made.

III
Reasons For The Bill

Although originally designated as an informal procedure, the unemployment insurance appeals process has become complicated as a result of numerous court decisions, administrative interpretations, statutory changes, and regulations. A lay party may often be at a disadvantage in this process. This applies to individual claimants and employers alike. Competent representation should be encouraged to the end that parties do not lose cases due to ignorance of unemployment insurance law or procedure or due to the inability to marshal favorable evidence. Neither indigent nor middle class claimants on the one hand or small employers on the other hand can usually afford competent counsel or representatives. The contingent fund is an appropriate fund for this purpose. Under this statute, the contingent fund will be utilized to pay fees only: (1) to a prevailing party; (2) at the discretion of the administrative tribunal in question; (3) upon application timely made; and (4) after consideration of the financial ability of the party applying for fees to pay for counsel.

As an Administrative Law Judge in the process for almost 20 years, almost every day, I observe parties appearing before me who lose cases they should not have lost. Although I am obligated by law and do my best to obtain all the facts by interrogation on my part of the parties, nonetheless parties often lose cases they could possibly win if they had been represented by competent representatives. Statistics show that by and large competent representation increases the probability of success in litigation and administrative proceedings. Attached to this statement as Exhibit A is a draft paper I have prepared in the past, showing examples of cases where parties have lost cases which they could have won.

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IV
Not A Political Issue

This is not, I repeat, not, a political issue, nor should it be. The Congress enacted the federal Equal Access to Justice Act in 1980, which was signed into law by a Democratic President (Carter) and the act was renewed in 1985 and 1986 by Congress and the provisions thereof liberalized and the law was signed by a Republican President (Reagan). The federal Equal Access to Justice Act provides for payment of litigation expenses to a party prevailing against the United States Government in courts and administrative agencies where the Government's position was without substantial justification.

V
The Bill Favors Neither Claimants Nor Employers

This is not a pro-claimant issue nor a pro-employer issue, but involves an issue of fairness. The measure aids both indigents and middle class claimants on the one hand and small business entities on the other hand. It is neutral by its terms.

VI
Not A Budgetary Issue

This is not a budgetary issue, nor should it be. The federal Equal Access to Justice Act provides for payment of litigation expenses to prevailing parties against the federal government (where the government's action is substantially unjustified) payable out of the federal budget. While the federal budget has a substantial deficit, as we all know, that factor was not an obstacle to enactment and continuance of the federal Equal Access to Justice Act program which provides substantial payment of fees to parties.

The measure in question (AB 1195) provides only modest fees to parties. We do not know what the eventual cost of this program will be, but we must obey the axiom "Thou shalt not ration justice!" This program can be monitored from time to time by the legislature to determine the outlays thereof and, if necessary, modifications can be made further on if warranted. If we are fearful of spending monies on this program set forth by this bill, we must recognize that by doing so we are rationing justice and we are denying equal access to the unemployment insurance system to many persons and entities and denying to significant numbers of claimants benefits to which they may be rightfully entitled or denying to employers relief from unnecessary or excessive payment of taxes.
VII
Cost-Effectiveness

It has been suggested that a program, such as proposed by this bill, would be cost-effective in the following ways:

A. Claimants and employers who consult competent representatives will be advised of the probability of success of an appeal, discouraged from pursuing appeals without merit, and in this fashion there will be a "screening" of potential appeals. Appeals without merit will more likely not be filed or if filed, will be withdrawn or voluntarily dismissed. The effect, if the system works well, will be to reduce the number of appeals heard and thus cut administrative costs.

B. If appeals are heard with representatives, it is in the interest of the representative to reduce hearing time, because of cost factors. The amounts of fees proposed are modest. The representative has no motivation to extend the time of hearing merely because he can get a higher fee due to length of time spent in hearing. Further, the representative, being more familiar with law and procedure, can more easily zero in on relevant issues, than an unrepresented party, and thus also cut hearing time.

C. The argument that lawyers, by getting involved in these hearings, will complicate matters is subject to debate. The administrative law judges have power to move the hearing along and cut off attempts to complicate or prolong hearings. In any event, representatives are currently allowed in these hearings and it is unfair to allow a wealthy party to be able to afford a lawyer or representative (and potentially complicate the process) and to deny a poor or middle class claimant, on the one hand, or a small business employer, on the other hand, that opportunity merely because of inability to afford counsel or other representative. Also see the points raised above in paragraph VII B about lack of motivation to prolong hearings due to the modest fee schedule.
VIII
Pilot Project

It has been suggested that the cost of this proposal is unknown. With full regard to the above discussion that justice should not be rationed, a possible solution to the unknown cost problem is the enactment of this proposal as a pilot project, under limited conditions or circumstances.

*   *   *

I therefore urge that this committee and the legislature approve this bill and put into motion a concept and program that has been long overdue in this area.
Examples of Cases Where Unrepresented Parties Lose but Could Have Won if Properly Represented:

1. Where a party loses because he submits hearsay evidence or affidavits and the adverse party submits percipient witnesses. Theoretically a competent representative would tell him that although hearsay evidence is admissible in U.I. proceedings, Section 1952 U.I. Code and Section 5038(c), Title 22, California Administrative Code, the Appeals Board has consistently followed the doctrine that direct evidence under oath submitted by percipient witness, entitled to greater weight than the opposing hearsay evidence, provided that the testimony under oath is not inconsistent, unreliable nor inherently improbable.

2. A party selects the "wrong" reason either for quitting or for discharge. It has been held that where several reasons are presented for quitting, one of them may be determined to be the proximate cause of the quitting (see Benefit Decision 5653); conversely, when several reasons are presented for the discharge of an employee, one of them may be determined to be the proximate cause of the discharge (see Benefit Decision 4659). Without proper analysis of the law an employer may fail to recognize the significance of the above and may, either due to oversight, ignorance or a desire to not embarrass the employee, fail to disclose all facts as to the discharge. Conversely, an employee not having knowledge of the above ruling could, either due to ignorance, inadvertence or embarrassment, fail to disclose the most important reason for quitting. The result of such ignorance is frequently apparent in appeals cases.

3. An example of the above paragraph No. 2, but in a separate category, are such cases where claimants are discharged for alcoholism or being intoxicated at work, etc. It has been established that such behavior is normally misconduct unless there is a showing that the claimant is truly an alcoholic and unable to control himself (see the Jacobs case). Many claimants are embarrassed to report that they are alcoholics and thus will deny that fact which will result in the loss of their case if they have been discharged for intoxication-induced behavior at work. A competent representative would, of course, advise them of the significance of their answers in this respect.

4. Many a case has been lost by a claimant or employer because of failure to obtain necessary written documents to verify...
contentions. Many a claimant has lost a case involving a quit where he does not have a medical certificate and, although there are some cases stating that a medical certificate is not required, such a certificate is quite persuasive. On the other hand, employers have failed to bring to the hearing necessary papers such as warning slips, time cards, etc., which would establish their case for a discharge or whatever. A competent representative would alert the parties to whatever documents are needed.
RESOLUTION #1

ADOPTED BY THE COMMITTEE ON BENEFITS TO UNEMPLOYED PERSONS REGARDING IMPROVING EQUAL ACCESS TO JUSTICE IN THE UNEMPLOYMENT COMPENSATION SYSTEM THROUGHOUT THE UNITED STATES (PILOT PROJECT FOR AN OFFICE OF OMBUDSMAN/ADVISOR)

WHEREAS, the American Bar Association and a number of other state and local bar associations throughout the country have endorsed the concept of equal access to justice which states that everyone, no matter what the economic status, is entitled to equal participation in the administration of justice in court proceedings and the like; and

WHEREAS, the Congress has enacted in 1980, the Federal Equal Access to Justice Act which was signed into law by the President, which act provided for: litigation expenses including attorneys' fees to parties challenging the federal government in the courts and in administrative agencies where the actions of the federal government are not justified; and

WHEREAS, in 1986, the Federal Access to Justice Act was extended and broadened after being approved by the United States Congress and signed into law by the President; and

WHEREAS, the administrative process involving administrative agencies, administrative adjudication and administrative tribunals, both federal and state, are an integral part of the administration of justice; and

WHEREAS, the American Bar Association has endorsed the concept embodied in the Federal Equal Access to Justice Act and has recommended its enactment and extension; and

WHEREAS, the system of unemployment compensation proceedings, particularly at the appellate level, is an integral part of the said administrative process, conducted on the state level; and

WHEREAS, the unemployment compensation system of each state is monitored in certain respects by the federal government under the provisions of the Federal Social Security Act and each state must conform to certain provisions of said act in order to comply with federal law and for budgetary requirements to administer the system; and
WHEREAS, the right of parties to appeal decisions in the claims process of the unemployment compensation system is provided for in Section 303(a)(3) of the Social Security Act which provides that in order for each state to be eligible for funding of its administrative process, there must be not only the right to an appeal by the appropriate grieving party but also the right to a "fair hearing" before an "impartial tribunal"; and as a condition for the granting of administrative funding for each state it is required that each state provide "methods of administration ... as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due”.

NOW THEREFORE, The Section of Labor and Employment Law of the American Bar Association hereby resolves that, in the light of the foregoing, and that in order to establish equal access to justice in the unemployment compensation system, that the Secretary of Labor be required to establish a pilot project as follows:

(1) A pilot project be established in a number of states for the purpose of creating an office of ombudsman/advisor to provide counseling and assistance to claimants and employers involved in the unemployment insurance claims and appeals process;

(2) That the Secretary of Labor shall make available to the states administrative funding for this purpose to such states as are involved in this pilot project;

(3) The Secretary of Labor shall select the states involved based upon geographic, urban and rural balance and keeping in mind an equitable arrangement thereof;

(4) That in each state certain communities, considering said balance, be targeted for this pilot project as determined by the Secretary of Labor;

(5) That notice be given to the public involved of the existence and facilities provided for by said ombudsman/advisor office in the geographic communities involved in said project;

(6) This pilot project shall last for a specified number of years as determined by the Secretary of Labor and the Secretary of Labor shall then report to the United States Congress on the costs thereof and the results and benefits of said project;

(7) That said ombudsman/advisor office shall not be involved in representation of claimants or employers but may only assist and counsel claimants and employers (who meet the below set forth requirements) in the preparation of claims, and...
defenses against claims, for unemployment benefits and to assist and counsel and prepare the parties in question for participation in the claims and appeals process in the lower and higher authority as well as in any court proceedings involved therein, but without actual representation thereof;

(8) Said office of ombudsman/advisor shall assist and counsel any claimant or employer who is unable to afford private counsel or obtain legal aid or legal services assistance or other adequate representation;

IT IS FURTHER RESOLVED, if the Secretary of Labor is unwilling or unable to establish this pilot project, that appropriate legislation shall be urged in the United States Congress to amend the aforesaid provisions of the Social Security Act to provide for such a pilot project pursuant to statutory law.
RESOLUTION #2
ADOPTED BY THE COMMITTEE ON BENEFITS TO UNEMPLOYED PERSONS FOR EQUAL ACCESS TO JUSTICE IN THE UNEMPLOYMENT COMPENSATION SYSTEM THROUGHOUT THE UNITED STATES (PILOT PROJECT FOR OFFICE OF REPRESENTATION/OMBUDSMAN)

WHEREAS, the American Bar Association and a number of other state and local bar associations throughout the country have endorsed the concept of equal access to justice which states that everyone, no matter what the economic status, is entitled to equal participation in the administration of justice in court proceedings and the like; and

WHEREAS, the Congress has enacted in 1980, the Federal Equal Access to Justice Act which was signed into law by the President, which act provided for: litigation expenses including attorneys' fees to parties challenging the federal government in the courts and in administrative agencies where the actions of the federal government are not justified; and

WHEREAS, in 1986, the Federal Access to Justice Act was extended and broadened after being approved by the United States Congress and signed into law by the President; and

WHEREAS, the administrative process involving administrative agencies, administrative adjudication and administrative tribunals, both federal and state, are an integral part of the administration of justice; and

WHEREAS, the American Bar Association has endorsed the concept embodied in the Federal Equal Access to Justice Act and has recommended its enactment and extension; and

WHEREAS, the system of unemployment compensation proceedings, particularly at the appellate level, is an integral part of the said administrative process, conducted on the state level; and

WHEREAS, the unemployment compensation system of each state is monitored in certain respects by the federal government under the provisions of the Federal Social Security Act and each state must conform to certain provisions of said act in order to comply with federal law and for budgetary requirements to administer the system; and
WHEREAS, the right of parties to appeal decisions in the claims process of the unemployment compensation system is provided for in Section 303(a)(3) of the Social Security Act which provides that in order for each state to be eligible for funding of its administrative process, there must be not only the right to an appeal by the appropriate grieving party but also the right to a "fair hearing" before an "impartial tribunal"; and as a condition for the granting of administrative funding for each state it is required that each state provide "methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due".

NOW THEREFORE, The Section of Labor and Employment Law of the American Bar Association hereby resolves that, in the light of the foregoing, and that in order to establish equal access to justice in the unemployment compensation system, that the Secretary of Labor be required to establish a pilot project as follows:

(1) A pilot project be established by the Secretary of Labor for the purpose of establishing in a number of states an office of representation/ombudsman to provide representation to claimants and employers involved in the unemployment insurance claims and appeals process as well as counseling and assistance thereto;

(2) That the Secretary of Labor shall make available to the states administrative funding for this purpose to such states as are involved in this pilot project;

(3) The Secretary of Labor shall select the states involved based upon a geographic, urban and rural balance and keeping in mind an equitable arrangement thereof;

(4) That in each state certain communities, considering said balance, be targeted for this pilot project as determined by the Secretary of Labor;

(5) That notice be given to the public involved of the existence of and facilities provided for by said office of representation/ombudsman in the geographic communities involved in said project;

(6) That this pilot project shall last for a specified number of years as determined by the Secretary of Labor and the Secretary of Labor shall then report to the United States Congress on the costs thereof and the results and benefits of said project;
(7) That the purpose of said office of representation/ombudsman shall be: (a) To assist and counsel claimants and employers (as below defined) to prepare unemployment insurance claims and defend against unemployment insurance claims and to assist and prepare the parties for participation in the claims and appeals process, including the lower and higher authority as well as any court proceedings relating thereto; (b) To provide representatives employed by said offices to appear on behalf of such claimants and employers in the unemployment compensation appeals process or in court proceedings relating thereto; and (c) That said offices shall provide assistance, counsel and representation to such claimants and employers as are unable to afford private counsel, or unable to obtain legal aid or legal services assistance or other adequate representation.

IT IS FURTHER RESOLVED, if the Secretary of Labor is unwilling or unable to establish this pilot project, that appropriate legislation shall be urged in the United States Congress to amend the aforesaid provisions of the Social Security Act to provide for such a pilot project pursuant to statutory law.

FUNDING CONSIDERATIONS

It should be noticed that the Illinois law provides for funding of both employer and claimant matters out of the Administrative Fund which appears to be similar to the California Contingent Fund (Section 1585, et seq. of the Unemployment Insurance Code). The latter fund is derived from penalties and interest from employers who have been delinquent in payment of unemployment taxes.

Another source of funding is the California Benefit Audit Fund (Section 1595 et. seq. of the California Unemployment Insurance Code) which derives from penalties paid by claimants who have been guilty of fraud or have received money from the Department wrongfully due to a wilful false statement. Part of this money is used to administer the anti-fraud program but the balance is available.

A possible consideration may be that if the employer prevails the source of his representative's fee is from the Contingent Fund whereas if the claimant prevails the source of his representative's fee is from the Benefit Audit Fund.
Chapter 48, Illinois Revised Statutes, paragraph 472 et seq.

Illinois adopted the aforesaid bill, SB-484, in December 1987, which legislation becomes effective January 1, 1989. A copy of this legislation is enclosed as pertains to this attorneys' fee program.

The legislation was an agreed bill, agreed between labor, management and the legislature and signed by the governor. In return for other concessions which are part of the bargaining process for unemployment compensation bills this provision was adopted. The proposal was first made by AFL/CIO and was initially opposed by management until it was agreed that the initial proposal providing for payment of fees for claimants should also be extended to "small employers".

The legislation provides for an outlay of $1,000,000 each to claimants and to small employers. Note that "small employers" is a term to be defined by administrative regulation.

The fees are to be paid out of the Administration Fund under Illinois law which Administration Fund is identical to, in most respects the California Contingent Fund, namely, penalties and interest paid by employers.

Note that the Illinois law only provides a payment of fees to attorneys. The legislation is extremely simple and skeletal and provides for a study to be made by some administrative agency, namely, the Director of the Employment Security Agency, based upon some consultation with others as to how it should be implemented, namely, the funding and other questions not addressed by the bill.

It is not determined, among other things, as follows: (1) the amount of fees to be provided for each case; (2) whether it is only to be paid to prevailing parties or any party; (3) whether the lawyers are to be employed by the state or to be private lawyers; (4) if it is to be an ombudsman office or any attorney may qualify for the fee; (5) if lawyers can charge their clients other fees over and above the amounts provided for by law from the fund in question; and (6) if indigency is a factor to be considered with respect to claimants.
Illinois Statutes (P.A. 85-956)

(Ch. 48, par. 472) (S.H.A. ch. 48, par. 472)

Sec. 802. Appointment of referees and providing legal services in disputed claims. [Additions made to text.]

A. To hear and decide disputed claims, the Director shall obtain an adequate number of impartial Referees selected in accordance with the provisions of the "Personnel Code" enacted by the Sixty-ninth General Assembly. 4/ No person shall participate on behalf of the Director or the Board of Review in any case in which he is an interested party. The Director shall provide the Board of Review and such Referees with proper facilities and supplies and with assistants and employees (selected in accordance with the provisions of the "Personnel Code" enacted by the Sixty-ninth General Assembly) necessary for the execution of their functions. [Addition made to text.]

B. As provided in Section 1700.1 5/ effective January 1, 1989, the Director shall establish a program for providing services by licensed attorneys at law to advise and represent, at hearings before the Referee, the Director or the Director's Representative, or the Board of Review, "small employers", as defined in rules promulgated by the Director, and issued pursuant to the results of the study referred to in Section 1700.1, and individuals who have made a claim for benefits with respect to a week of unemployment, whose claim has been disputed, and who are eligible under rules promulgated by the Director which are issued pursuant to the results of the study referred to in Section 1700.1. [Addition to text.]

(Ch. 48, new par. 610.1 (S.H.A. ch. 48, par. 610.1)

Sec. 1700.1. Study of legal services. The Director shall study the funding and implementation of subsection B of Section 802. 6/ [Addition to text.]

4/ Chapter 127, par. 63b101 et seq.
5/ Paragraph 610.1 of this chapter.
6/ Paragraph 472 of this chapter.
Sec. 2101. Special administrative account. Except as provided in Section 2100, all interest and penalties collected pursuant to this Act shall be deposited in the special administrative account. The amount in this account in excess of $100,000 on the close of business of the last day of each calendar quarter shall be immediately transferred to this State's account in the unemployment trust fund. However, such funds shall not be transferred where it is determined by the Director that it is necessary to accumulate funds in the account in order to have sufficient funds to pay interest that may become due under the terms of Section 1202 (b) of the Federal Social Security Act, as amended, upon advances made to the Illinois Unemployment Insurance Trust Fund under Title XII of the Federal Social Security Act or where it is determined by the Director that it is necessary to accumulate funds in the special administrative account in order to have sufficient funds to expend for any other purpose authorized by this Section. The moneys available in the special administrative account shall be expended upon the direction of the Director whenever it appears to him that such expenditure is necessary for: [Additions made to text. Footnotes omitted.]

G. Beginning January 1, 1989, for the payment for the legal services authorized by subsection B of Section 802, up to $1,000,000 per year for the representation of the individual claimants and up to $1,000,000 per year for the representation of "small employers". [Addition to text. Footnotes omitted.]

H. The payment of any fees for collecting past due contributions, payments in lieu of contributions, penalties, and interest shall be paid (without an appropriation) from interest and penalty monies received from collection agents that have contracted with the Department under Section 2206 to collect such amounts, provided however, that the amount of such payment shall not exceed the amount of past due interest penalty collected. [Addition to text. Footnotes omitted.]