



MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL

FINAL REPORT
FISCAL YEAR 1988


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Chairman


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INTRODUCTION

This report is issued by the Workers' Compensation Advisory Council in completion of its responsibilities for reporting upon the Massachusetts workers' compensation system during the 1988 fiscal year. As outlined in the prior volume of the 1988 annual report submitted to the Secretary of Labor and to the General Court on June 30, 1988, a new reporting timeline is established with this report which will be followed in the annual report's future editions. The annual report will henceforth be submitted in October in order to allow complete coverage of the entire fiscal year in a single document. The present report supplements the June report by providing summary information on the workers' compensation system and the Department of Industrial Accidents from the 1988 fiscal year which was not available at the time of the June 30 submission date.

The majority of this report is devoted to providing final fiscal year statistical information on the various divisions of departmental operation. The inspection and submission of this information on an annual basis will provide some means for monitoring the agency's performance, and thereby assessing the strengths and weaknesses of the workers' compensation system.

Additional attention is devoted to several important issues which have come into focus since the submission of the

employers were assessed as part of the billing process for their premium each year, with assessments used to reimburse the state throughout the year for the money appropriated for the system.

It was widely believed that making the agency a revenue-neutral entity, and thereby removing it from economic fluctuations, would assure the department of a steady source of funding that would facilitate achievement of the reform bill's goals. Even though the budget itself was subject to a vote in the legislature, it was anticipated that minimal change would be made in departmental budget requests since the source of funding lay with the business community.

Unfortunately, the theory behind the funding change was not followed in practice in the recent 1989 fiscal year budget process. The Advisory Council reviewed the department's proposed budget prior to its submission to the legislature. This budget provided for a total of 329 positions and operating expenses of \$13,921,252--a sizeable increase above the fiscal year 1988 appropriation of \$10,068,038 for a total of 236 positions. The proposed expansion had three components: a backlog elimination project estimated to cost \$786,870 and which was to include 20 positions; an increase in staff for FY'88 in order to address the large influx of "new law" claims²; and an additional increase of 24 positions to be included in FY'89 in order to meet the increasing case flow in the department. Funding for

) the first two projects was included as part of the reform bill passed by the legislature and signed by the Governor on January 6, 1988.

The Governor submitted a request, in House 1, for a budget of \$13,930,724 for a total of not more than 305 positions. Included in this amount was a cost of not more than \$790,000 for the backlog elimination project, which would not be reimbursed from assessments levied pursuant to section 65 of chapter 152.

Subsequently, the final action in the House of Representatives recommended a budget of \$12,409,178 for a total of not more than 282 positions. A total of \$775,000 was designated for the backlog elimination project, including a total of twenty positions which would be funded by direct tax revenues by the Commonwealth. The Senate, while recommending the same personnel cap and total for the backlog project, approved a total of \$12,630,105, of which \$670,000 was subject to an outside section of the budget (section 100) which tied spending to revenues received during the fiscal year. The final budget for fiscal year 1989 was signed on July 17, 1988, and the amounts and figures which were approved were the same as those reported out by the House of Representatives.

The larger budget requested by the department, and supported by the Advisory Council, addressed the concerns of the department's administration regarding the serious delays

that existed within the system. Department projections emphasized the need for additional support staff by the last quarter of fiscal year 1988. In taking account of these projections, the bill signed in January of 1988, and supported by the department and the Council, included an appropriation for the necessary staff as part of the bill.

In actuality, the hiring process could not be completed until the beginning of the new fiscal year. This meant that the vast majority of the support staff and administrative judges began on the payroll almost four and one-half months after the department called for immediate action to mitigate the increase in new cases requiring conferences and hearings. The final administrative judge did not begin until the latter part of September. By that time, unresolved appointment and confirmation procedures required the department to take two experienced administrative judges "off line" from conducting any additional hearings and conferences. This was done to allow them enough time to resolve all of their existing cases. In effect, even prior to the start dates for the new administrative judges, the department was not running at full strength. This situation continues at the time of this writing due to continuing delays in the confirmation process.

The large increase in the volume of incoming cases has created a backlog of "new law" cases which is distinct from the backlog of pre-November 1, 1986 cases. It is reasonable

to presume that the delays in the hiring process can only exacerbate the problems endemic in waiting for a case to be adjudicated.

The administrative difficulties currently experienced by the department have been obviously compounded by the decrease in the budgetary request during the deliberation process, despite the fact that the ultimate burden for paying the operating costs rests with the employer community in the Commonwealth. The reduction in the 1989 fiscal year budget request is a matter of serious concern to the Advisory Council because it clearly breaches the purposes of the new funding mechanism. The efficiency of the workers' compensation system is largely contingent upon the ability of the Department of Industrial Accidents to respond to emerging or changing developments, and the funding mechanism advanced by the reform sought to provide the flexibility to meet this end. It is the opinion of the Advisory Council that future budget proceedings should more carefully follow the spirit of the 1986 reform in considering the budgetary requests of the department.

B. Legislative Changes

As noted in the June report, a bill was enacted in January of 1988 that is intended to further augment the

reform process. New rules have been promulgated as a result of the statutory changes.

Since the publication of the June report, a major change in the workers' compensation statute involving passage of the supplemental budget must be noted. This change deserves notice not just for its substantive impact, but also for the manner in which it was implemented and the conclusions which it appears to promote.

During the last year, the Council was active both in discussions concerning the proposed legislative amendments to the law and in the budgetary process which seeks to fulfill the "beneficent design" of the law, as so noted by the Supreme Judicial Court of the Commonwealth.³ The Council urged passage of the legislation through direct testimony at the Joint Commerce and Labor Hearings and expressed its concern over the delays in the hiring process of the new staff. In addition, Advisory Council members exercised their individual rights to express their concerns to the members of the General Court concerning the cuts in the department's proposed budget.

The Council's actions reflected an understanding that an open forum for the discussion of differences, while not necessarily providing consensus, nevertheless enhances communication and promotes careful and reasoned action. In fact, it is the provision of an open forum for discussion

among interested parties that the Council sees as one of its primary goals.

This role was undermined by the supplemental budget request submitted by the administration for FY'88 (see House Bill 6026 dated June 28, 1988), a number of changes in the existing assessment process were proposed and ultimately adopted (See Appendix A attached). These changes amended section 65 of Massachusetts General Law chapter 152 to allow the costs of fringe benefits and expenses incurred by the department to be allocated into the assessment process. The changes amend the definition of the special fund budget, and were attached as outside sections of the supplemental budget. Therefore, they negated any opportunity to duplicate the open and constructive dialogue that took place during the legislative changes or during the budgetary process.

The costs of fringe benefits and expenses were not included during the initial two years of the assessment process. Assessments are included as part of the insurance premium paid by employers, and carriers remit the money to the department, which then transfers the funds to the State Treasurer. The Advisory Council has found the assessment process to be an efficient mechanism for providing the department with necessary revenues.

Because many insurance policies expire on the date that marks the onset of the Commonwealth's fiscal year, the

legislature mandated that each insurer report to the department on or before May 1 of each year the assessment base amount for employers subject to the law. The department is directed to finalize the assessment process for submission to the Secretary of Labor by July 1st. Assessment rates for insured employers apply to standard premiums for policy years beginning on or after July 1st. The department has employed an actuary to review the assessments and provides the Advisory Council with an opportunity to review the calculations for its input prior to approval of the rates.

The outside sections of the supplemental budget did not come to the Council's attention until July 21, 1988. The Council's concerns regarding the timing of the notification are twofold. The first centers upon the understanding that the Council is to provide input and recommendations in continuing the partnership that was forged during the reform movement. Contrary to that participatory principle, these changes did not surface during the lengthy discussions that went into the legislative amendments last winter. There was no discussion involving the Advisory Council during the normal debate and budgetary process for fiscal year 1989. If a problem did indeed exist, one must wonder why it was never raised during the extensive budget debate for FY'89.

Further, even if the intended role of the Advisory Council is not to be fulfilled--and it must be acknowledged

that there is no formal requirement that mandates the Council's involvement in any proposed changes--it is remarkable that the Department of Industrial Accidents, which by statute must administer the law, was not provided with the courtesy of prior notification of the included changes in the supplemental budget. It is the understanding of the Advisory Council that the department was never contacted to discuss the potential impact of these changes on the current assessment formula.

A second concern relates to the costs of these changes. The fringe benefit and indirect cost calculation for fiscal year 1989, as based upon the State Wide Cost Allocation Plan, is \$2,728,000. It increases the assessment on standard premium from 1.1% to 1.3% for private employers. This must now be billed by the insurers. However, there is no provision in the changes to account for any additional billing costs. In light of the fact that there are well over 100,000 employers in the state, this cost may be substantial, and it will also create legitimate confusion among those employers already billed following the approval of assessments in July. Clearly, if these changes had been enacted earlier, reviewed by the actuary, and promulgated by the department, this problem would not exist.

At the invitation of the Advisory Council, a representative from the Executive Office of Administration

) and Finance met with the Council to discuss its concerns at one of its regularly scheduled meetings. Discussion took place on a variety of topics, including implementation of the budgetary changes. Additional responses to Advisory Council concerns are expected to be forthcoming.

In another legislative area, a bill (Chapter 130 of Acts of 1988) was signed on July 14, 1988 relative to the admissibility of hospital records and medical reports in any proceedings begun in any court, commission, or agency. The language of the amendment would appear to apply to the Department of Industrial Accidents. It may limit the scope of cross-examination in hearings inasmuch as the record will be admissible but the preparer of the report may not have to be present. It may also affect section 20B of the Workers' Compensation Act, which leaves the admission of medical reports of disabled or deceased doctors to the discretion of the judge holding the hearing. While this legislation obviously is not specifically directed at the adjudication of industrial accident claims, its impact on workers' compensation cannot yet be assessed.

C. Supreme Judicial Court

The Supreme Judicial Court issued a decision on July 19, 1988 concerning the appeal of the decision of the Commissioner of Insurance which approved an increase of 19.9%

in workers' compensation premium rates to be effective January 1, 1988. This decision was reached after a lengthy litigation process which was reviewed in the two previous Advisory Council reports. The decision upheld the refiling procedure adopted by the Commissioner of Insurance, and the Court, interpreting 53A of the Act, stated that it would be nearly impossible for the Commissioner to comply with the law if each modified filing was treated as an original general filing. It is likely that this decision will have an impact on the procedural strategy of parties in subsequent filings.

The Court also held that the Commissioner's authority under 53A(8) is limited to ordering prospective, and not retroactive, decreases in the rates. The Court adopted the evidentiary findings of the Commissioner. No further hearings have been held on the application of the unlimited payroll cap, which the hearing officer initially recommended be dealt with in a separate proceeding.

The law [53A(2)] requires that classifications of risks and premiums be filed at least every two years. Because the initial filing which began the last hearing took place in February of 1987, a new filing is expected early in the 1989 calendar year.

D. The Advisory Council

As noted in the June report, three new appointments were made to the Advisory Council during the fiscal year. One

addition had been vacant since March of 1988. Since the submission of that report, two new appointments have been made to the Council. Kevin Mahar, of Local 201 of the International Union of Electronic, Electrical, Technical, Salaried, and Machine Workers, AFL-CIO, was appointed to fulfill the unexpired term of Lillie Dias. His term will expire in 1992. In addition, Ronald Ferris, of Local 1365 of the Communication Workers of America, AFL-CIO, was appointed to a term on the Council that will expire in 1993. A list of all Advisory Council members and their corresponding terms is attached as Appendix B.

Also in June of 1988, in accordance with the statute, the Governor appointed a new Chairman and Vice-Chairman of the Council. Linda L. Ruthardt was appointed for the two year term to the position of Chairman and Arthur Osborn was appointed to the two year position of co-chair.

During the past fiscal year, the Council met twelve times. A copy of the Council's agenda is attached as Appendix C. Since the initial members were appointed in August of 1986, the Council has held 25 meetings and one sub-committee meeting through June 30, 1988.

OVERVIEW OF THE WORKERS' COMPENSATION SYSTEM

A. Case Backlog

The chronic existence of a large number of cases in the department's backlog has long been one of the most serious

and widely-discussed problems of the workers' compensation system in Massachusetts. The reform law was in large part designed to create a system capable of eliminating the existing backlog and preventing the recurrence of paralyzing delays.

The size of the backlog has changed frequently during the last few years. Until this past Spring, "backlog" referred strictly to those outstanding cases with an injury date prior to November 1, 1986. More recently, however, delays affecting the progress of new law (post-11/1/86) cases have created a new backlog.

These delays are defined as the additional time beyond the statutory timeframes for scheduling conferences following referral to the Division of Dispute Resolution. When the Advisory Council reported the size of the new law backlog in the June report, there were delays of six to seven weeks in the Boston office and approximately two weeks in the regional offices other than Lawrence. Delays have subsequently increased to nine weeks in all the offices except Worcester, which currently has a seven week delay. These delays began when 4,162 more cases were referred than could be scheduled before administrative judges.

There were 12,202 pre-11/1/86 cases in the department's backlog as of the date of conversion to the new computer system. This represents a decrease by 1,013 cases from the

total reported in June. These constitute the cases which the staff hired for the backlog elimination project are to address.

B. Cessation of Insurer Operations in Massachusetts

As noted in the June report, concern has developed in the last year over the intention of a number of insurance carriers to cease writing workers' compensation policies in the Commonwealth. Only Fireman's Fund insurance company had officially given up its license to operate in the state and was no longer renewing any of its policies when the June report was issued. In a more recent development, Fireman's Fund purchased an operating license from Warner Insurance Company, which does not have a license to sell auto insurance. While Massachusetts law requires an insurer to forfeit all of its licenses if it withdraws from the auto insurance market, it appears that Warner never had a license to operate in this area. As a result, the Commissioner of Insurance has filed a complaint in Suffolk County Superior Court alleging that the attempt to purchase the license of Warner violates a previous agreement between Fireman's insurance and the state in which the insurer agreed to pay \$45 million in order to withdraw from the auto insurance market.

Certain protections are provided by the workers' compensation act in the event that a foreign insurer decides

to cease writing workers' compensation policies. Under section 62 of the law, any foreign insurer must deposit with a trustee at least twenty-five percent (25%) of its current or future obligations within five days of withdrawal from the state. An amount covering the remainder of the insurer's obligations must be deposited with the trustee within thirty days of the withdrawal.

When the early rumors of potential insurer withdrawals from the Massachusetts market began, the Council requested information from the department concerning the establishment of a trusteeship in the event that any withdrawing insurers were foreign companies. The department met with the Division of Insurance over a number of months and entered into an agreement to facilitate the enforcement of the appropriate sections of Chapter 152 and to ensure the provision of adequate protection to policyholders, and consequently workers, when foreign companies withdraw from the Massachusetts market.

While ensuring continued strict compliance with the current reporting mechanisms of the law, the agreement establishes a specific process for addressing situations involving the revocation or withdrawal of an insurer's license. When a company notifies the Division of Insurance of its intent to withdraw, or at the company's request, an actuary from or engaged by the division will review the

company's financial information to determine whether the amount of money the company has on deposit with the State Treasurer is sufficient to cover the existing and future obligations of the carrier. After notifying the Department of Industrial Accidents of its findings, both agencies will determine on a case by case basis whether any adjustment is necessary in the form and amount of deposit, and will undertake analysis before authorizing a release of any or all of the security deposits. If required by a company's individual circumstances, the agencies may establish different arrangements for ensuring compliance with the law.

Since this new process for administering the statute has just recently been established, its effectiveness cannot yet be assessed. Other outside forces, such as the strong movement to reform the auto insurance situation in the state, may also play a critical role in determining whether this process will be one that is used on a regular basis. Another factor which may prove to be significant is that the statute only addresses foreign companies. Finally, one of the factors cited by the agreement is the lack of a guaranty fund that protects Massachusetts Workers' Compensation policy holders. During the past legislative session, a bill to provide such protection was filed. The bill was passed to be engrossed by the Senate, and as of this writing is in the House Committee on Third Reading.

DEPARTMENTAL OVERVIEW

A. Office of Administration and Electronic Data Processing

Budget and Expansion: As previously noted, the budget for fiscal year 1989 is significantly higher than the department budgets which immediately preceded the 1986 reform. Physical expansion within the Department took place during the latter part of the summer, when an additional 9,097 square feet was rented in order to accommodate 49 new positions. Plans are also continuing on expansion of the Department's computer capabilities and for filling all of the positions allocated to the agency.

Section 65 Trust Funds: A number of different payments are incorporated under section 65 of the Act and are provided for by two separate trust funds, one for public employers and one for private employers. The assessment rate for each of the funds is reviewed annually by an outside actuarial firm and the Advisory Council and must be approved by the Secretary of Labor. During the 1988 fiscal year, the assessment rate for public employers was .0216 (up from .0162 in FY'87), and for private employers it was .0379 (up from .0373 in FY'87). This latter rate also includes the amounts necessary to finance the special fund, which provides the department's operating expenses (See Appendix I).

Benefits paid out of the private employer trust fund include benefits to those injured at work whose employers

) mandate coverage through a carrier or through self-insurance. During the first 23 months of operation of this section, 177 claims have been paid. Of this total, 24 claims have been paid since the mid-May total was reported in the June report. There are currently 67 cases with payments continuing, compared to 61 in June of 1988. Recent computerization of the system should allow for more complete information in the future.

B. The Office of Safety

The Office of Safety was established by the 1986 reform law to promote safe work practices and healthful work environments through training programs aimed at a variety of industries and audiences. The initial round of occupational safety and health programs funded by the office was completed at the conclusion of the 1988 fiscal year. While evaluation of the completed programs is still in progress, preliminary information on their final results is now available.

The Office of Safety provided funding to 14 programs during the 1988 fiscal year. Of the 14 vendors, 10 were non-profit organizations, 2 were trade associations, and 2 were educational institutions. The programs involved a total of 881 training hours and provided training to a total of 4,664 people. Total funds of \$330,531.88 were spent from an originally awarded total of \$372,540.97.

The programs varied markedly in the number of people trained, the avenues for training, the number of training hours provided, and the nature of the industry targeted by the program. This is evidenced by the fact that one grant recipient trained nearly 30% of all participants in the program while another recipient of two grants (nearly 20% of the money awarded) trained only 4% of the program's participants. The number of people trained by a program ranged from a high of 1431 to a low of 51. Seven programs trained between 100 and 200 people, and the remaining programs trained 351, 469, 508, and 637 people. It is too soon to know if comparison of these statistics is meaningful.

The number of training hours provided ranged from 12 to 327. In addition to the high total, two other programs provided over 100 hours of training. Two programs provided over 40 hours of training (41 and 53), and the eight remaining programs provided between 16 and 32 hours of training.

A number of programs purchased existing educational materials as part of their training effort, but funds were also used to produce videos, reference manuals, and fact sheets and to develop slide presentations.

C. The Office of Education and Vocational Rehabilitation

The Office of Education and Vocational Rehabilitation is the departmental unit entrusted with facilitating the return

to gainful work of injured employees in need of vocational rehabilitation services. The office also provides counseling to those employees seeking lump sum settlements in order to clearly identify the implications of such settlement. Finally, the office is responsible for providing information to the public on the workers' compensation law.

The rehabilitation section of the office stresses early identification of injured employee needs and, where necessary, preparation of a rehabilitation program that will enable the employee to return to suitable employment. In determining whether an employee is in need of vocational rehabilitation, the office may arrange to meet the injured employee. While an employee is not required to accept rehabilitation services, employees who refuse to meet with the office lose entitlement to weekly compensation during the period of refusal.

During the 1988 fiscal year, 29,995 referrals were made to the vocational rehabilitation unit. Contact was made with 16,342 injured employees, and mandatory meetings were subsequently scheduled for 2518 of them. Individual work rehabilitation plans (IWRPs) were developed for 364 employees, 162 of whom returned to employment. At the close of the year, 119 of those who returned to work were considered successfully rehabilitated after completing 60 days on the job.

The responsibilities of the office in reviewing lump sum settlements are carried out by disability analysts. Upon reviewing with the employee a number of factors which determine whether a lump sum settlement is in his or her best interest, the analyst submits a report to the Industrial Accident Reviewing Board, which has final approval over a settlement.

An extremely heavy workload for the office's staff reported in the June report has been eased somewhat with the provision of additional staff in the 1989 fiscal year budget. With the addition of a counselor in Fall River, the average caseload per counselor in that office has dropped from approximately 6000 referrals to 3000 referrals. (Note: approximately 10% of referrals eventually become cases). The office is also in the process of hiring another counselor for the Springfield regional office, which will thereby alleviate that office's caseload. In the Lawrence office, where one counselor was previously receiving approximately 5000 referrals, cases are being reassigned to provide coverage for an additional half caseload. No changes have been introduced in Worcester, where two counselors have handled 5000 cases in a relatively stable situation.

In discharging the office's lumps sum responsibilities, disability analysts heard a total of 4098 lump sum cases during the 1988 fiscal year. Of this total, 2147 were heard in Boston and 1951 were heard in the regional offices.

) D. Office of Insurance

As outlined in the June report, one of the provisions of the reform bill signed in January of 1988 gives the department the power to issue "stop work orders" when employers are found to be illegally operating without workers' compensation insurance. The Investigation Unit within the Office of Insurance is principally responsible for determining whether employers are in compliance with the statute and generating the information necessary to issue stop work orders.

A coverage investigation begins when the department's Insurance Register receives notice of a termination or cancellation of an insurance policy. If records do not indicate a reinstatement of coverage, companies are asked to respond to the register within 10 days, and cases for which responses are not received are turned over to the Investigation Unit.

Once a company is determined by an investigator to have no valid coverage, the company is informed of its legal obligations and allowed reasonable time to obtain coverage. If no attempt is subsequently made to obtain coverage, the Chief of Investigation reviews the case and recommends to the Commissioner either further investigation or the issuance of a stop work order. Once a stop work order is issued, the investigator will return to the worksite with the county

sheriff in order to close the premises for business until the employer obtains and produces evidence of valid coverage.

Prior to the end of the 1988 fiscal year, the department had cause to utilize the new provision and issue a total of three stop work orders. One of the companies was a transportation company with eight employees which was already in the process of going out of business, and it did go out of business upon issuance of the stop work order. A second company, with 250 employees, voluntarily shut down and obtained workers' compensation coverage within seven days of the order. The third company was a small firm whose 20 employees were on strike when the stop work order was issued. The company subsequently obtained insurance.

E. Office of Claims Administration

Claims Processing

The June report noted concern with the high number of rejected forms returned by the department to the sender. It is difficult to pinpoint the causes of this problem, but it is obvious that the number of mailings required to complete many filings is a very costly matter. During a forty-six week period for which statistics are available over the last fiscal year, 59,248 forms were returned, an average of 1,288 per week. These forms were returned to the senders with instructions on proper filing. The postage cost (assuming a

cost of \$.25) of returning these documents is \$322 per week, or approximately \$16,744 per year. Since these figures are exclusive of the person hours involved on each end of the mailing, the cost to the system is still higher. If one assumes that the process is conducted entirely by the postal service, (at a cost of only \$.25 per mailing) it can cost over \$50,000 (3 X \$16,744) just to get these forms correctly on record at the department. (See Appendix D) While the average number of rejected forms appears to be decreasing, it still is a potential cause for concern.

The number of claims that are referred to conciliation is also decreasing and this may assist the Department in eliminating the backlog and delays in new law cases. Quarterly report totals for the fiscal year were 50,720, which indicates that a substantial number of employers were in continued non-compliance with the reporting requirements.

Using preliminary data, it appears that there has been an increase in the number of extensions of the pay without prejudice period since the effective date of the recent changes to the law. Statistics show a total of 555 extensions during the 1988 fiscal year. Of the yearly total, 210 extensions, or 38%, came during the last quarter (13 weeks) of the fiscal year. Projections suggest that there will be an increase in using this feature of the law through

the implementation of a standard form by the department in July of 1988.

Conciliation Unit

During the past fiscal year for which weekly figures are available, there was a 31.7% average weekly success rate for conciliations when the parties were present and prepared to go forward. A list of weekly totals is attached as Appendix E. These figures include a week during which section 36 cases were scheduled, as noted in the Appendix E. The figures therefore suggest that approximately one out of every three conciliations can be resolved without a referral to dispute resolution when both parties are present and prepared.

By the end of the year, most of the cases being handled were post-reform cases. It appears that about 80% of all matters filed are sent to conciliation after review. The Boston office received almost 50% of the referred cases. Over the course of the year, a higher than normal percentage of cases appear to have been referred to the Boston office. This development will bear watching since it could have implications for resource allocation if it becomes an established trend.

Regional Offices

During the last fiscal year, plans were made to move the Fall River office of the department. The department is also

continuing its search for an office manager in the Lawrence regional office. This position became open when the Worcester office manager was appointed to an administrative judgeship and the Lawrence manager was subsequently transferred to the Worcester regional office.

F. Division of Dispute Resolution

In September, the division was finally able to fill all of the administrative judge positions that were allocated as part of the most recent changes in the law and the department's budget. A total of twelve appointments were made, with seven individuals appointed to two year terms in order to eliminate the backlog of pre-reform cases still pending. These latter positions are paid through revenues generated by the Commonwealth, not through the assessment process. The remaining five administrative judges have been appointed to full six year terms. They increase the total number of judges to twenty-one.

While the appointments were long awaited, other variables will have to be considered in any future analysis of the performance of the administrative judges' unit as a whole. Two of the twelve positions were filled by two recalled judges, so in fact there was an increase of ten new individuals over last year. Additionally, as noted earlier, two experienced administrative judge have not been assigned

any new conferences and hearings pending certain confirmation proceedings. This means that at the current time there are nineteen available judges for post-reform cases, four of whom are new employees. Seven administrative judges are available for the backlog elimination project, six of whom are new employees. It was initially hoped that by this time of the year, each of these new judges would have five months of experience, and that significant improvement would have been made in the resolution of cases. Unfortunately, no conclusions can yet be drawn concerning the impact of the appointments on resolving the backlog.

Another matter pertinent to this division concerns the timeframes set forth in the law and the schedules followed by administrative judges. While the law refers to mandated timeframes, it should be understood that the Supreme Judicial Court, interpreting the mandate for meeting specific standards in the issuance of decisions at the Industrial Accident Board, rejected a claim to vacate an order where an decision was filed beyond the statutory timeframe [Monico's Case, 350 Mass 183 (1966)]. The Court stated that until the legislature made an express declaration that the single member would lose jurisdiction by failure to issue a decision within the time prescribed, it could not adopt the claim to vacate. This decision has recently been followed by the

Review Board. This decision has not been reversed on appeal as of yet, and since no such language exists in the statute, it appears reasonable to construe the timeframes as advisory.

During the past year, there were 280 (or 3%) more hearings scheduled than conferences. As noted in the July report, the vast majority (88%) of backlog requests were for conferences, not hearings. Many of these conferences will result in hearings. One of the goals of the informal conference process is to reduce the number of hearings, which are far more technical and usually entail more substantive issues. In theory, one would hope that there would be a significantly higher number of conferences than hearings, yet the converse is true. This places an additional burden on the administrative judges, as well as administrative law judges if hearing decisions are appealed. In light of the recent Supreme Court ruling in Lettich's Case, which expands the role of the review board in the fact finding process, this concern takes on still greater weight.

Administrative Judges

During the 1988 fiscal year, the department mailed out decisions, an average of 124 per month. This compares with an average of 126 per month reported in the June report and an average of 144 per month reported in the 1987 Annual Report.

This works out to a total average of 6.88 decisions per month, without a reduction factor (Total decisions/18 judges X 12 months). This figure increases to 6.98 per month when appointment delay factors, as noted in footnote 4 are taken into account (Total decisions/18 judges X 12 months - 3). This represents a decrease of almost 14% from the eight month period reviewed in the June 1987 report (See Appendix F).

Information on the number of cases resolved was not available for the 1987 report. A direct total of 6,663, or an average of 666 per month, was reported in June. The gross total per judge per month ($6,663/18 \times 12$) averaged 30.8 apiece, while the net total per month ($6,663/18 \times 12 - 3$) averaged 31.3. The latest figures for the full fiscal year (see Appendix G) average almost 694 per month. The gross total per judge averages 38.6 per month, while the net total monthly average is 39.1. This is an increase in the average totals resolved per month of 25%. A breakdown on the number of conferences and hearings scheduled is listed on Appendix H.

Review Board

The June report outlined the composition and the statutory role of the Review Board. The board handles appeals of decisions from administrative judges and decides many issues of first impression under the revised workers'

compensation act. A brief synopsis of the outcomes of the decisions issued by the board included a cursory analysis of the dispositions based upon the decisions received by the Council. Unfortunately, not all of the board's decisions had been received, and there was a significant discrepancy between the numbers reported and number of decisions actually issued by the board. Publication of the number of decisions was not intended to reflect the board's performance. Corrections have been implemented in order to ensure that all of the Review Board's decisions are received in the future.

During the last fiscal year, the review board issued 192 decisions, in addition to 210 cases which were resolved by memoranda of disposition. This latter category relates to cases which were reviewed on an individual basis by board members before the issue matters were resolved without full decisions. See Appendix H for statistics on the Review Board caseload. At the end of the fiscal year, there were also 18 cases pending before the Massachusetts Court of Appeals. In addition, the Board certified the record of 10 other cases to the courts, two of which were accepted sua sponte by the Supreme Judicial Court. Some of these matters were disposed of by the courts after the fiscal year, but a brief review of those dispositions may be informative.

At the Court of Appeals, decisions of the board were affirmed in five of eight cases. Of these affirmances, one

was recommitted and another required a further hearing on attorney fees. Two of the matters were remanded to the administrative judge, while one was lump summed prior to oral argument. Of the two matters before the Supreme Judicial Court, one is awaiting decision while the other, Pospisil's Case, 400 Mass 820 (1988) addresses the application of the standard of review that was to be applied by the Review Board. The Court, affirming the Review Board, held that section 11C is procedural and therefore applies to cases decided by the reviewing board after 11/1/86 even though the date of injury and/or the proceedings took place prior to that date.

The Review Board has recently followed the precedent set by the Supreme Judicial Court--which interpreted similar timeframes incorporated in the pre-amendment statute--and determined that the timeframes in the law are not mandatory in nature, but rather are advisory (Rapo's Case, Board NO. 001835-87, filed October 14, 1988). This decision, and the precedent that it follows, clearly raises questions concerning the efficacy of analyzing the timeliness of issuing decisions. Also included on Appendix H is a brief update on the analysis of the review board outcomes which we initially put in our June 1988 report.

Departmental estimates indicate that the review board devotes approximately fifty percent of its time to the more

than 12,000 lump sum conferences heard annually. Discussions have taken place at developing more efficient means of resolving lump sum cases.

The review board has experimented with the number of cases assigned for each argument, with twelve to fifteen being the usual number. The method of scheduling has been to take the oldest matters first, with the inclusion of post-11/1/86 cases when the issues require prompt determination. The board has also experimented with the scheduling of pre-review conferences before individual members in an attempt to reduce pre-11/1/86 cases. While the board feels this process was well received by the parties, it generated a large number of cases ripe for decisions without oral argument.

CONCLUSION

A. State of the Workers' Compensation System

It has been over two years since the Massachusetts workers' compensation system was thoroughly overhauled by the Workers' Compensation Reform Act of 1985. The manifest problems which presaged the reform, as well as the lengthy and intensive efforts of the reform movement, have already been well documented and do not require detailed elaboration here. Suffice it to say that the thoroughness of the reform brought with it high expectations for improved performance in those areas where the system had historically proven so inadequate. Indeed, the reforms were widely billed as

marking a new era in the Commonwealth's workers' compensation system. This optimism was shared by virtually all the parties with an interest in workers' compensation--labor, employers, insurers, the medical and vocational rehabilitation communities, and the legal community.

In assessing the new system's first year of operation, the Advisory Council's initial annual report, issued in June of 1987, offered a very guarded evaluation of the performance of the system in light of its expected improvements. While it was recognized that administrative and technical difficulties during the start-up process had not allowed a true test of the new system, concerns were nevertheless raised regarding its shortcomings in several areas, notably in the failure to make any progress in resolving the backlog and in the scarcity of available data for monitoring performance. The Council expressed hope that plans for making improvements which were then under discussion would serve to finally resolve the continuing shortcomings.

The performance of the workers' compensation system during the past fiscal year has done nothing to alleviate the Advisory Council's concerns. In the June report, the council pointed out that serious problems were developing which were not merely a carryover from the previous system. Most ominously, the Department of Industrial Accidents was beginning to fall behind on post-reform law cases, creating a

new backlog existing alongside the massive pre-reform backlog. The council did credit the department's administration with initiating discussion early in the year on the causes of the problems and ways to resolve them. Those discussions were instrumental in the formulation of further proposed reforms and the request for additional staff which, while modified by the legislature as indicated earlier in the report, were largely fulfilled with the passage of the reform bill in January, 1988. Notwithstanding this action, however, it had become clear by the end of the year that it was in the day-to-day operation of the system that greater improvement was most needed.

The latest reforms make this a very critical time for the workers' compensation system, and place a heavy burden on the system to begin to perform up to expectations. While the introduction of additional changes so soon after the 1986 reform indicates a certain vigilance in monitoring performance, it also represents a careful assessment of improvements needed to make the system work properly, and it calls for immediate dividends.

This is not to say that there is now, or ever was, any anticipation that the process of implementing and managing the new workers' compensation law would be free of problems. In this regard, the very reason for establishing an Advisory Council was to create a mechanism that could monitor the

) system and make recommendations for maintaining or facilitating its effectiveness. The legislature--as well as the various parties to the reform--thus recognized that adjustments would have to be made in response to developing conditions. But the Advisory Council is nevertheless extremely concerned that the absence of noticeable improvement represents the establishment of a pattern which could continue for an indefinite period. Such a situation would prove unacceptable to the entire range of interest groups in the workers' compensation system. More importantly, it would breed a skepticism towards the system which could only further hamper the department's ability to serve the citizens of Massachusetts.

At this time, there are no specific legislative proposals which the Advisory Council is prepared to offer as necessary to further refine the workers' compensation system. It is thought that a more appropriate time to make specific recommendations will follow the completion of the year-long audit. It may also be appropriate at that time to review all of the law's provisions to ascertain whether any sections have become obsolete. The finalization of the Council's special reports may include particular recommendations in select areas.

One area which was the focus of Advisory Council discussions during the latter part of the year, and which

will continue to engage the Council's attention, is the prospect of alternative methods for funding the workers' compensation system. Exploration of alternative funding was prompted by the budgetary difficulties described in this report and has not yet resulted in any concrete conclusions. However, concerns in this area have been heightened by a recent discovery that audits of the Section 65 trust fund will be done every other year, rather than every year. Since review on an annual basis was intended to ensure that assessments on employers were properly spent, this change potentially signals another compromise of the reform process.

B. Outstanding Concerns

Section 37- Second Injury Fund

One potentially serious concern with the section 65 fund is the effect of second injury claims that precede the effective date of the new law. The primary purpose of the fund is to provide financial incentives for rehiring previously injured workers by allowing for a portion of the payments for any subsequent injury to be reimbursed to the insurer and, ultimately, to the insured employer. Prior to the new law, resources available for reimbursement from the second injury fund were often non-existent, particularly

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during the latter half of any fiscal year. This situation often discouraged filings seeking reimbursement after the statutory waiting period.

Legal questions have arisen concerning cases that were agreed upon prior to the effective date of the new law. As noted the June report, a law suit has been filed which seeks a resolution to this issue. Interested parties have also held discussions in seeking to forge a mutually satisfactory solution, but no agreements have yet been reached as a result of such discussions. The Council has placed the issue on its agenda a number of times and representatives from both the department and the Attorney General's Office have been invited to update the Council on the status of the issue. As of November of this year, the statutory waiting period of 104 weeks will have expired, and therefore new law claims against the fund will become ripe.

The economic impact of this question on the solvency of the section 65 trust funds could be extremely significant. It involves an interpretation of the statute and the intentions of the legislature, and is an issue that the Council intends to follow very closely in the next few months in order to monitor any forthcoming outcome.

Publication of Review Board Decisions

The bidding process for the publication of the review board decisions is finally underway. Since the June report,

) the Department was invited to a Council meeting to discuss the failure to publish decisions, as mandated by the reform law. It is imperative that representatives and practitioners be aware of the "state of the law". This is especially true when the law is amended and naturally gives rise to new interpretations. Since the law was passed in the latter part of 1985, parties and the judges have been without the benefit of an accessible source of decisional law to guide them for nearly three years. It is unclear whether the absence of this information has affected the filing of appeals, but it is apparent that the need for this publication increases as the law is constantly interpreted and the intent of the legislature is construed by the review board. This is one area that should have been resolved by now.

Appointment Process

One area outlined above that presents concerns from a human resource perspective is the impact of delays in the confirmation/appointment process upon the rest of the system. Failure to adjudicate cases because judges are unable to hear them is unfair to the parties involved, and no individuals should be prevented from planning their futures due to administrative delays. It is also clear that in effectively reducing the size of the active administrative judge staff, appointment delays have exacerbated the very case backlog

which the new appointments are intended to help resolve. The transition to the new judges should take into account the urgent needs of the system and, while ensuring careful review procedures, expeditiously move to keep appointment delays to an absolute minimum.

In addition to its broader impact upon the day-to-day operation of the workers' compensation system at the present time, the appointment process merits careful attention as an important procedure in its own right. The review of judges' performance prior to reappointment is an extremely sensitive and important matter with potentially widespread human relations and technical consequences for the system. The current review process, as the initial review of administrative judges under the new workers' compensation statute, offers instructive insights for considering how the appointment process might best function.

One concern that the Advisory Council has with respect to the review process is that decisions on reappointment be based upon carefully considered criteria. Since judges serve for six year terms, these decisions are of some lasting consequence to both the department and the overall workers' compensation system and must not be taken lightly. It is incumbent that the information upon which such decisions are based be adequate to the task at hand and be specified in

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advance. In this regard, it is not clear that the current review process is operating with sufficient information to make an informed decision, just as it is not clear precisely what information concerning performance is being utilized. The Advisory Council is therefore concerned that the provisions in chapter 23E of the statute governing the reappointment process be carried out in full in order to safeguard the integrity and purposes of judicial review.

This point concerning overt specification of evaluation criteria is important not only as a safeguard for the system, but also as a means for informing judges of the standards by which they will ultimately be evaluated. It would seem unfair to evaluate the performance of judges without providing them with information concerning those aspects of their performance that will enter into the review process. From a human resources perspective, it is essential that judges have advance knowledge of evaluation criteria so that they can conduct their work accordingly. Further, the establishment of specific and consistent performance criteria is necessary to establish a norm and to set standards for reappointment proceedings.

Backlog

Although the case backlog has already been singled out as a source of concern in the body of this report, the very real

dangers which this problem poses to the credibility and viability of the workers' compensation system cannot be stressed too greatly. The emergence of a second backlog over the course of the last year raises frightening possibilities for a system whose reforms were designed to improve efficiency, not reproduce old problems in a new form. It is not simply idle speculation to attach a special urgency to this issue. The Advisory Council is well aware that in the wake of the 1985 reform, the number of pre-reform cases which had accumulated was so large that an administrative decision was made to concentrate on incoming cases in order to give the new system a chance to work. In reflecting an apparent understanding that both sets of cases could not be resolved simultaneously, the decision essentially consigned an inactive status to the oldest cases in the system.

The department's tacit acknowledgment that attention to one set of cases detracts from attention to another makes the new backlog especially worrisome. There are now three sets of cases which must be adjudicated--cases in the original pre-11/1/86 backlog, cases in the post-11/1/86 backlog, and incoming claims. The department thus faces a competing set of imperatives that are compounded by delays in incoming claims. Old claims must be resolved without causing delays in new cases, and new cases must be adjudicated without further delaying the resolution of old claims. It is

absolutely essential that case flow be maintained without further resort to inactivity on claims in either of the backlogs.

Budget Process

Another issue which merits reemphasis in order to prevent future misunderstandings and to encourage coherent actions is the process for determining the department's budget. There are at least two issues raised by the 1989 budget process that will have to be resolved if the workers' compensation system is to accord with the purposes of the 1985 reform.

Firstly, and on a technical side, there is an absolute need for clarification regarding the special funding mechanism for the Department of Industrial Accidents. The Advisory Council has followed other observers in believing that the assessment process was designed to free the department's budget from the fluctuations and contingencies imposed by traditional appropriation methods. If this observation is incorrect, or if the principle is not to be followed in practice, then explicit recognition must be made of this fact. It is especially important that clarification be made at this early juncture in the operation of the new workers' compensation system. Employers and the Department of Industrial Accidents should certainly know the conditions

under which proposed budgets--and the employer contributions comprising them--might be subject to change by the legislature. It is incumbent that employers, legislators, the Department of Industrial Accidents, and the Advisory Council share a common understanding of the budget process if the formulation of future budgets is to have any coherence.

A second issue stemming from the past budget process which demands clarification has to do with the manner in which decisions are to be made. As previously stressed, one of the core elements in the creation and maintenance of the new workers' compensation system is the emphasis placed upon openness and dialogue in policy formulation. It is the firm belief of the Advisory Council that respect for this fundamental principle provides the system with its ultimate strength. Indeed, members of the Council have directly witnessed the advantages of openly airing different viewpoints in their own meetings, and many can trace the viability of this approach to similar experiences with the Governor's Task Force. It must be recognized, however, that the benefits of open discussion are limited when they do not extend throughout the system. To this end, the failure of the legislature to inform the Department of Industrial Accidents or the Advisory Council of changes in the supplemental budget is an apt example of a precedent which should not be followed. Such actions seem certain to raise

suspensions and undermine cooperation between interest groups, and they will contribute nothing to establishing a positive climate for the future. The Advisory Council remains hopeful that the participatory ethic underlying the new law will serve as a continuing example of cooperative institutional development in Massachusetts.

APPENDIX A

Chapter 236 of the Acts of 1988, Supplemental Budget

Section 48. Subsection (4) of section 65 of chapter 152 of the General Laws, as so appearing, is hereby amended by striking paragraph (a) and inserting in place thereof the following paragraph:

(a) The sum of the following two amounts shall be known as the special fund budget: (i) the total amount of funds appropriated each year to pay the operating expenses of the department pursuant to subsection (1); and; (ii) the total amount of funds estimated to be expended from the General Fund in the fiscal year for indirect and fringe benefit costs attributable to compensation of state personnel of the department, as determined by the commissioner of administration, who shall reduce, or increase, his estimate by the actual amount of such indirect and fringe benefit costs over-assessed, or under-assessed, by the department in the prior fiscal year.

Section 49. Subsection (6) of said section 65 of said chapter 152, as so appearing, is hereby amended by inserting after the word "commonwealth", in line 131, the words:- ; provided, however, that revenues received from assessments on account of indirect and fringe benefit costs determined pursuant to clause (ii) of paragraph (a) of subsection (4), and any interest thereon, shall be credited to the General Fund.

Section 50. Said subsection (6) of said section 65 of said chapter 152, as so appearing, is hereby further amended by inserting after the third sentence the following sentence:- For the purposes of determining the proportional shares of amounts to be deposited in the special fund and trust fund, the special fund budget and the total budget shall be reduced by the amount of said indirect and fringe benefit costs.

APPENDIX B

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

<u>Voting Members</u>	<u>Term Exp. Date</u>
Linda Ruthardt, Chairman	6/25/91
Arthur Osborn, Vice Chair	6/25/91
James Farmer	6/25/90
Paul Meagher	6/25/90
Joseph Coffey	6/25/89
Rick Brown	6/25/89
Samuel Berman	6/25/93
Ron Ferris	6/25/93
Douglas Mure	6/25/92
Kevin Mahar	6/25/92
<u>Non-Voting Members:</u>	
Evelyn Wedding (Rehabilitation)	6/25/90
Dr. Ruth Jordan (Medical)	6/25/89
Emily Novick, Esq. (Claimants' Bar)	6/25/93
John Antonakes (Insurance)	6/25/92
Secretary Paul Eustace Executive Office of Labor	Ex-Officio
Secretary Joseph Alviani Executive Office of Economic Affairs	Ex-Officio

APPENDIX C

ADVISORY COUNCIL MEETINGS FY1988: AGENDA TOPICS

July 15, 1987

Review Of Section 65 Trust Fund
John Harbison - Michael Simmons
Fy'89 Budget Update - Mary Piggott
Dispute Resolution Case Tracking - Martha Dunn
Strohecker
Update On Rules Hearing - Vice-Chair Ruthardt
Old Second Injury Fund - Commissioner Pressman
Uninsured Employers - Sanctions - Chairman Osborn

August 12, 1987

Proposed statutory changes
Uninsured employers
Discussion
Guests: Commissioner Pressman, John Harbison,
Walter Horn, Mary Piggott

September 16, 1987

Legislation
Budget
Judges Sub-Committee

October 14, 1987

Budget
Reports

November 4, 1987

Health Care Services Board
Commissioner Pressman and Dr. Walker
Office of Safety
William Russell

December 9, 1987

Vocational Rehabilitation
Second Injury Fund

January 13, 1988

Second Injury Fund
Discussion: Rate Filing Update - CM: Meagher
Legislation Update - Commissioner
Pressman

February 10, 1988

Insurance Rate Hearing
Lump Sum Scheduling

March 9, 1988

Medical Reimbursement Rates Under Workers'
Compensation

April 6, 1988

Department Update On Reform Implementation
Reports: Discussion

May 11, 1988

Section 45/8 of the Law (Suspension of
Compensation)
Annual Reports/Reports/Positions
Rate Setting Commission Hearing - Reimbursement
Rates

June 15, 1988

Medical Reimbursement Rates For Health Care
Providers Under Workers' Compensation
Departmental Update - Commissioner Pressman
Annual Report
Insurance Rate Hearing Rules
Research Analyst II

APPENDIX D

Claims Administration

Claims/Complaints entered calendar year 1986:

Total	21,817
Average per week	420

Claims/Complaints entered calendar year 1987:
(those referred to conciliation after review)

Total	29,618
Average per week	570

Percentage increase over 1986 36%

Claims/Complaints entered FY '88:

(those referred to conciliation after review)

Total	27,007
Average per week	519

Percentage decrease over calendar year 1987 8.9%

Claims/Complaints entered 1/1/88-6/30/88:

(those referred to conciliation after review)

Total	13,152
Average per week	506

Percentage decrease over FY '88 (Total) 2.5%

Rejections

Figures available for FY '88 show 59,248 rejections

Average total # of rejections per week: 1,288

Figures for 11/6/87 through week ending 4/29/88, as noted in our last report.

Average total # of rejections per week: 1,163

Rejections for first half of fiscal year-average per week: 1,535

Rejections for second half of fiscal year-average per week: 1,061

Referrals to Conciliation, FY 1988

Total	Boston	Fall	River	Lawrence	Springfield	Worcester
27,007	12,775	4238	3471	2678	3861	

APPENDIX E

Percentage of Successful Conciliations

Both parties present and ready to go forward.

Week Ending	%	Week Ending	%
7/3/87	29.2	1/1/88	29.3
7/10/87	33.7	1/8/88	33.7
7/24/87	32.3	1/15/88	27.9
7/17/87	28.3	1/22/88	35.8
7/31/87	30.3	1/1/88	29.3
8/7/87	30.1	1/8/88	33.7
8/14/87	59.2*	1/15/88	27.9
8/21/87	29.9	1/22/88	35.8
8/28/87	27.2	1/29/88	31.1
9/4/87	30.3	2/5/88	31.9
9/11/87	29.4	2/26/88	32.1
9/18/87	34.1	3/4/88	25.9
9/25/87	29.7	3/11/88	31.2
10/2/87	29.4	3/18/88	33.2
10/9/87	29.6	3/25/88	28.6
10/16/87	27.8	4/1/88	27.5
10/23/87	32.4	4/8/88	32.9
10/30/87	33.7	4/29/88	22.3
11/6/87	28.1	5/6/88	38.6
11/13/87	32.4	5/13/88	38.7
11/20/87	31.4	5/20/88	39.3
11/27/87	31.9	5/27/88	29.5
12/4/87	34.4	6/3/88	28.9
12/11/87	33.4		
12/18/87	31.7		
12/25/87	28.1		

*Special Section 36 Case Project

APPENDIX F

ADMINISTRATIVE JUDGE DECISIONS MAILED OUT BY MONTH FY 88

NAME	SUMMARY OF NUMBER OF DECISIONS MAILED OUT												TOTAL
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	
Brooker	0*	0*	1	4	5	19	16	9	13	2	10	7	86
Cleary	7	5	3	3	5	1	3	6	4	7	5	6	55
DaDalt	5	2	4	5	6	6	5	2	6	3	7	3	54
Demeter	10	5	6	1	3	3	7	8	3	8		5 4	63
Fischel	10	8	10	9	8	6	6	9	12	5		9 2	94
Gallo	0*	6	10	9	7	10	11	9	11	11		9 9	102
Heffernan	6	3	3	4	6	9	6	6	7	6		7 7	70
Jackson	4	3	9	5	5	3	4	3	2	3		6 6	53
Jennings	5	14	8	12	15	7	14	7	14	12		4 12	124
McGuinness	9	15	8	6	7	7	11	6	15	8		2 4	98
McKinnon	8	15	5	10	6	11	8	4	13	4		9 7	100
Pickett	5	3	7	3	7	7	7	9	5	7		8 5	73
Rogers	7	9	13	5	12	7	12	16	5	11		10 7	114
Romm	10	5	6	6	16	8	5	7	12	7		3 5	90
Ryan	2	5	10	6	6	7	5	11	7	9		12 8	88
St. Amand	7	10	10	10	10	10	6	9	12	8		7 9	108
Scannell	12	8	6	3	13	0	7	2	6	10		18 1	86
Vergados	2	3	2	6	3	2	3	2	2	3		1 0	29
<u>Totals</u>	109	119	121	107	140	124	136	125	149	124		132 102	1487

Qtr. Tot. 349 372 410 358

Qtr. Avg./Mon 116.3 124 137 119.3

Monthly Average 1487/12=124

* See Footnote 4

APPENDIX G

CASES RESOLVED BY ADMINISTRATIVE JUDGES FY'88

(lump summed, withdrawn, adjusted, others)

	7/8 - 12/87	1/88	2/88	3/88	4/88	5/88	6/88	Total
Brooker	183*	27	49	67	17	62	44	449
Cleary	123	44	30	56	31	40	93	417
DaDalt	190	21	47	37	53	55	13	416
Demeter	131	51	7	20	22	43	49	323
Fischel	184	32	39	28	37	25	54	399
Gallo	457*	82	24	87	70	66	85	871
Heffernan	148	55	28	55	24	27	31	368
Jackson	237	38	26	89	50	36	63	539
Jennings	129	35	14	53	23	44	23	321
McGuinness	207	16	62	67	49	69	11	481
McKinnon	195	20	58	49	42	42	48	454
Pickett	313	30	38	73	41	84	65	644
Rogers	197	28	17	37	40	73	77	469
Romm	208	49	27	44	86	36	75	525
Ryan	208	49	53	41	61	36	31	479
St.Amand	242	31	28	40	42	95	22	500
Scannell	203	23	41	36	35	35	35	408
Vergados	219	7	5	22	4	10	1	268
Total	3,774	638	593	901	727	878	820	8331

* See Footnote 4

APPENDIX H

Fiscal Year 1988

Single Appeal

Appellant	Prevails	Partially Prevails	Doesn't Prevail	Remand to DDR
Employee	11 ^a	3	28	6
Insurer	9 ^b	4	24*	3
Self Insurer	5 ^c	4	12*	1
Other	1 ^d	0	2	0

a. 2 remanded, b. 3 remanded, c. 1 remanded
d. 1 remanded

Multiple Appeal

Employee	2	2	9	2*
Insurer	4	0	11	1*
Self Insurer	1	1	4	2*
Other				

* one case involved insurer and self insurer

Scheduled Cases Fiscal Year 1988 - Administrative Judges

Conferences:

Total	Boston	Fall River	Lawrence	Springfield	Worcester
9,836	4,388	1,473	1,426	1,171	1,378

Hearings:

Total	Boston	Fall River	Lawrence	Springfield	Worcester
10,116	4,742	1,424	1,385	1,247	1,318

Totals:

19,952	9,130	2,897	2,811	2,418	2,696
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Review Board - FY 1988

Claims For Review Filed

Pre 11/1/86 Injuries

1st half FY'88	201
2nd half FY'88	149

350 Total

Post 11/1/86 Injuries

1st half FY'88	43
2nd half FY'88	104

147 Total

497 Total Filed

Scheduled For Review	403
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Decisions Issued	192
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Memoranda Of Disposition	210
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(cases individually reviewed before being resolved
without full decisions)

Review Board Decisions Appealed	29
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APPENDIX I

TOTAL COLLECTIONS FY '88

	<u>FY '88</u>
SPECIAL FUND:	
ASSESSMENT:	11,614,770
FILING FEES:	366,661
1ST REPORT FINES:	<u>68,100</u>
TOTAL	12,049,531
PRIVATE TRUST FUND:	
ASSESSMENT:	12,606,770
SEC. 65 REIMBURSEMENT:	<u>13,246</u>
TOTAL	12,620,016
PUBLIC TRUST FUND:	
ASSESSMENT:	<u>857,706</u>
TOTAL COLLECTED ALL	25,527,253
COLA Reimbursements	
Private Employer Trust Fund	\$7,052,778
Public Employer Trust Fund	\$1,364,992

These totals are adjusted totals after the close of the fiscal year.

Section 65 - Information on payments to employees of uninsured employers.

1. Total claims paid to date - 177
2. Payments discontinued 110
3. Payments continuing 67
4. Average weekly wage FY '88 \$191.81
5. Average number claimants weekly 50

The first three figures are derived from data from 12/10/85. A new claims tracking system has recently been installed and by the FY1989 Annual Report should be able to provide information on a fiscal year basis.

APPENDIX I (cont'd)

FY'88 expenditures - section 65 cases for uninsured employers.

Indemity \$1,208,344

Medical 266,536

Legal Fees 138,819

Section 36 75,170

Total: \$1,688,869

Total: Private Trust Expenditures (including COLA'S)
\$8,741,647

State Treasurers report pursuant to M.G.L. A. § 65(9)

	Public Trust(1)	Private Trust(2)	Special Fund(3)
7/1/87 Balance	\$ 541,465	\$5,437,801	-0-
7/1/87 - 6/30/88 Collections	857,706	12,641,672	12,049,532
<u>Total</u>	<u>1,399,171</u>	<u>18,079,473</u>	<u>12,049,532</u>
7/1/87-6/30/88 Expend- tures	1,364,992	8,741,647	-0-
<u>TOTAL</u>	<u>\$ 34,179</u>	<u>\$9,337,826</u>	<u>-0-</u>

- (1) This Trust Fund is utilized for Public Entities (the Commonwealth and its political subdivisions).
- (2) This Trust Fund is utilized for private employers.
- (3) Pursuant to M.G.L. c152, all revenues collected for the Special Fund are deposited into the General Fund.

FOOTNOTES

1. Benefits provided under Section 65 are: 1) cost of living adjustments to certain benefits; 2) reimbursements for second injuries; 3) rehabilitation compensation; 4) approved claims against uninsured employers; 5) approved claims resulting from an injury caused by activities of a fellow worker; and 6) compensation to disabled war veterans.
2. The official definition of backlog is the number of pre-Nov. 1, 1986 cases requesting conferences and hearings received prior to the date of conversion, June 27, 1988.
3. Young v. Duncan, 218 Mass 346, 349 (1914)
4. The Department had been granted the authority to recall 2 judges , pursuant to section 7 of M.G.L. 23E. Finalization of the contracts for the recalled judges, at that time, was not completed until September for Judge Brooker and August for Judge Gallo.