



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