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**THE LAW AND POLITICS OF THE ENFORCEMENT
OF FEDERAL STANDARDS FOR THE
ADMINISTRATION OF THE UNEMPLOYMENT
INSURANCE PROGRAM**

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I. THE PROBLEM OF NON-ENFORCEMENT

This Abstract and the Article which will follow derive their existence from the attempts of South Brooklyn Legal Services and other advocates to force the New York State unemployment insurance system to provide timely and fair administrative hearings to claimants in accordance with federal rules. These attempts have been made primarily through two lawsuits, which still are being actively litigated. *Dunn v. New York State Department of Labor*¹ deals with hearing timeliness and *Municipal Labor Committee v. Sitkin*² deals with hearing fairness. These modestly successful cases have been necessary not only because of the actions of New York State, but also because of the continuing failure of the United States Department of Labor (DOL) to enforce federal standards effectively.

The unemployment insurance program illustrates well the critical need for uniform federal standards. Without such standards, states compete with each other to cater to businesses and in the process, hurt relatively powerless unemployed people. On a more mundane but equally serious level, states which are not effectively subject to federal standards allow programs to be dominated by a combination of political appointees and entrenched civil servants, neither of whom may care much about the rights of the unemployed. This inaction of federal administrative creates a significant proportion of the work of Legal Services attorneys across the country.

This Article examines the reasons for the failure of DOL to effectively enforce federal standards, both in the specific instance

1. 474 F. Supp. 269 (S.D.N.Y. 1979).
2. 79 Civ. 5899 (RLC).

of unemployment hearings and as a paradigm of widespread failures by federal agencies; it then considers possible remedies for claimants.

II. REASONS FOR FAILURE TO ENFORCE

The federal standards for unemployment insurance hearings and other public benefit programs are particularly vulnerable to non-enforcement because (1) they primarily benefit people without organized political influence; (2) they involve enforcement against state agencies rather than private individuals; and (3) the standards to be enforced involve on-going administrative practices rather than the simpler issue of whether a particular legal rule has been adopted by a state.

Federal administrative agencies were created, however, to overcome exactly these kinds of problems. Federal agencies were intended to protect the powerless, to deal with state governments on at least an equal footing, and to have the specific experience and expertise necessary to find solutions to the practical problems of administering a particular program. In theory, therefore, they are the most appropriate institutions to enforce federal standards. In practice, however, many federal agencies are not performing their roles.

The key limit on the ability of DOL and other federal agencies to enforce their rules against states is political pressure. Political limits on enforcement are real but often are inappropriately seen by the staff of federal agencies as absolute. Unfortunately, agencies which *believe* they have no effective power to enforce have none in fact. One result is that where there should be administrative expertise, there is only the elaborate shuffling of papers. The Unemployment Insurance Service's Performance Measurement Review (PMR) Project supplies a recent example. Although data collection is crucial to enforcement, it is meaningless if it is not used to do effective enforcement.

DOL officials, like officials from many federal agencies, sometimes say that effective enforcement is impossible because their only remedy against the state agencies is to terminate funding, which is too harsh a sanction. They are wrong. The federal agency has many possible remedies short of termination, ranging from unfavorable publicity, to denial of discretionary grants, to delays in funding.

A final, but critical problem, which is clear in the PMR Project, is that the Unemployment Insurance Service sees its real clients as state agencies. As a result of this perception, the Unemployment Insurance Service responds to the needs of these agencies, rather than to the true intended beneficiaries of the federal law—the unemployed.

III. REMEDIES FOR CLAIMANTS

Since the federal agencies so often fail to enforce their rules, beneficiaries of government benefit programs must seek ways of enforcing the federal standards themselves. Our question is whether administrative law can be used effectively to prompt inert agencies into action to fulfill their statutory duty to enforce federal standards.

Individual unemployment insurance claimants denied federally protected rights can sue the state agency, if they have lawyers. Most claimants, however, do not have lawyers. The vast majority of claimants represented by lawyers or advocates get benefits, at least in New York. It is the unrepresented claimants who suffer. Lawyers for unemployment insurance claimants can help otherwise unrepresented people protect their federal rights through class actions, including class actions against DOL.

Technical legal rules can make it difficult to sue a federal agency for generalized failure to enforce federal law. DOL can be sued as part of a specific case against a particular state agency for violating federal rules, but suing the federal government may not add much. In general, plaintiffs would rather have a court order directly against the state agency itself than an order against DOL.

No court order is as likely to be as effective, however, as real oversight and enforcement by an expert administrative agency. The real solution is to require the federal agency to act so that the claimants will not have to sue anyone to have the standards enforced.

Methods to achieve this result must be at least partly political. One possible approach is to statutorily require the involvement of representatives of claimants at various stages of the administrative process. Even if this did not make a major change in the political balance, it would refocus the attention of federal administrators on the practical consequences for claimants of the agency's action or inaction. It also might bring into the spotlight problems otherwise invisible to the public.