EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 168

TO: R. F. Martin, Director

FROM: W. D. Holoman, Chief Counsel

RE: Interpretation of Section 96-8(6) a of the Employment Security Law of North Carolina -Employment, Employer and Employee – On-the-job Training under the Division of Vocational Rehabilitation of the North Carolina Department of Education

The question has arisen as to the status under the Employment Security Law of training taking "on-the-job training" under a program carried on by the Division of Vocational Rehabilitation of the North Carolina Department of Education. To be more precise, are these trainees employees of the trainer? To answer this question, it must be determined whether the common law relationship of master and servant exists between the trainer and the trainee.

The section of the law that is involved is Section 96-8(6)a, which defines employment in part as follows:

> "'Employment' means service * * * performed for wage or under any contract of hire, written or oral, express or implied, in which the relationship of the individual performing such service, and the employing unit for which such service, the legal relationship of employer and employee. * * *"

The common law relationship of master and servant contemplates a contract of hire.

In reviewing this subject, and from the information obtained in respect to the Vocational Rehabilitation program, it appears that the training program is usually from four to eight months, depending upon the particular trade being taught. The courses that are given are usually arranged because the Division does not have regular schools for these subjects in this state. They include such things as radio and television, automobile mechanics, shoe repairing, cleaning and pressing, sewing, etcetera. The Division does not pretend to make a person a first-class mechanic in the short period allowed but tries to get him to the point where he is a first-class apprentice and able to start drawing a wage that would enable him to earn his living while he continues to master the trade.

The Division has two basic tuition contracts; one is a straight contract where the Division pays the trainer or employing unit $20.00 a month. The other is a sliding scale contract under which the Division pays the trainer $60.00 tuition for the first month and the trainer agrees with the Division to pay the trainee $6.00 as spending money. Please note that the contract or agreement is between the Division and the trainer as distinguished from a contract between the trainer and the trainee. Under the sliding scale contract, the second month the Division reduces its payment to the trainer by $8.00, and the trainer increases his payment in the same amount. In neither case does the Division consider the handicapped person to be employed, and the trainer does not pay a wage. If the trainee needs assistance with his subsistence, the Division pays for it. There may be variations in these two types of contracts. If any case, any sum paid by the trainer to the trainee is considered a gratuity by both the trainer and the Division of Vocational Rehabilitation as there is no obligation, contractually or otherwise, on the part of the trainer to pay the trainee any sum.

There is no contractual relationship between the trainer and trainee, and there must be a legal obligation on the part of the trainer or employing unit to pay remuneration to one for services rendered, or there must be a contract of hire, written or oral, express or implied, before the relationship of employer and employee is created. Such relationship does not exist in the case of these trainees taking on-the-job training under the contract between the Division of Vocational Rehabilitation and the employing unit or trainer. The spending money that is paid by the trainer to the trainee under one type of contract is paid as a result of the contract between the Division and the trainer, and the trainee has nothing to do with such contract and has no contract of hire with the trainer.

Under the circumstances related above, we do not feel that the employer-employee relationship exists between the trainer and the trainee. Any amount paid by the trainer to the trainee outside of the tuition agreement would be purely a gift on the part of the trainer and is not a stated wage agreed to between the trainer and the trainee by negotiation. We are of the opinion that these trainees are not employees in the accepted sense of the relationship as construed by the courts at common law. Anything paid above the tuition agreement is purely a gratuity.

We should not consider trainees under this program as being in employment. Consequently, they should not be counted in determining an employing unit's liability. If the trainer is already an employer, any sums paid by such employer to such trainees would not be wages and, therefore, would not be taxable.

This same interpretation would apply to a similar educational program where there appears to be no contract of hire between the trainer and the trainee and where the governmental agency sponsoring such program pays tuition and provides subsistence to the trainee.

This interpretation is in line with the opinion of the Attorney General on the same subject as expressed in a letter dated January 18, 1960, to the Honorable Charles F. Carroll, Superintendent of the Department of Public Instruction, and the letter from the Attorney General to me under date of December 18, 1961. It is also in line with Interpretation No. 60 which involved veterans taking refresher or training courses under the G. I. Bill of Rights. Since that program is no longer in existence, it appears that this interpretation should cancel and replace Interpretation No. 60.

Adopted as an official Interpretation of the Commission on January 2, 1962.
This Interpretation cancels and replaces Interpretation No. 60, adopted May 29, 1945.