

## **N.D.A.G. Letter to Hagen (Feb. 13, 1992)**

February 13, 1992

Honorable Craig M. Hagen  
Commissioner of Labor  
State Capitol  
600 East Boulevard  
Bismarck, ND 58505

Dear Mr. Hagen:

Thank you for your January 2, 1992, letter asking whether the portions of N.D.C.C. ch. 28-32 concerning the conduct of administrative hearings apply to your consideration of wage claims under N.D.C.C. ch. 34-14.

For the reasons discussed below, it is my opinion that the administrative hearing procedures found in N.D.C.C. § 28-32-05 et seq., do not apply to the North Dakota Commissioner of Labor's determination to accept or refuse an assignment of a wage claim for collection under N.D.C.C. ch. 34-14. The activity undertaken by the Commissioner of Labor under N.D.C.C. ch. 34-14 does not constitute a contested case, does not result in a dispositive enforceable administrative order concerning the rights of the parties, and is not undertaken as part of quasi-judicial power. Furthermore, the employee and employer do not have a right to a hearing under N.D.C.C. ch. 34-14, and if the Commissioner determines to accept an assignment, the parties are accorded full due process in a judicial civil proceeding. Even if the Commissioner determines not to take a wage claim assignment, the employee still may commence his own civil action for the collection of the claimed wages.

Under N.D.C.C. ch. 34-14 the Commissioner of Labor has the duty to ensure compliance with the chapter, to investigate violations of the chapter, and to institute or cause to be instituted actions for the penalties and forfeitures provided. "The commissioner or his deputy may hold hearings to satisfy himself as to the justice of any claim, and he shall cooperate with any employee in the enforcement of a claim against his employer in any case whenever, in his opinion, the claim is valid." N.D.C.C. § 34-14-05.

If the Commissioner of Labor determines an employee is entitled to the services of the Commissioner and has a valid and enforceable wage claim, the Commissioner has the power and authority to take an assignment of that wage claim without being bound by technical rules concerning assignment of claims. N.D.C.C. § 34-14-08. If the Commissioner determines that a wage claim is enforceable in the courts, the Commissioner shall take an assignment of that claim if requested by the employee, and may bring the legal action necessary to collect the claim, and with the consent of the assigning employee, may settle and adjust the claim to the same extent as could the assigning employee. N.D.C.C. § 34-14-09.

Although the word "hearing" is mentioned in N.D.C.C. § 34-14-05, it is only in the context of the Commissioner's discretion to hold such a "hearing" if he deems it necessary, and no other person has the right under the chapter to any hearing during the Commissioner's investigation of a claim. The end result of the Commissioner's investigation is to either accept or refuse an assignment of the wage claim, and, for those assignments accepted, to commence a civil action in court to collect it. The Commissioner has no authority to enforce orders for or against either the employer or the employee, and can only collect the dollar amount of the wages claimed to be due by the commencement of a civil action.

N.D.C.C. § 28-32-05, et seq., relates to procedures for the conduct of contested cases that result in the issuance of an agency order. Under N.D.C.C. ch. 28-32, the terms "contested case" and "order" are defined as follows:

4. "Contested case" means a proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

....

7. "Order" means any agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, but does not mean an executive order issued by the governor.

N.D.C.C. § 28-32-01(4) and (7).

If administrative action does not involve a complaint and a specific-named respondent or if the action is not a contested case, the provisions of N.D.C.C. § 28-32-05(1) do not apply. N.D.C.C. § 28-32-05(3)(a).

The resolution of a contested case by an administrative agency concerns the agency's quasi-judicial power. Quasi-judicial power has been defined as "[t]he power of an administrative agency to adjudicate the rights of persons before it." BLACK'S LAW DICTIONARY (6th ed. 1990). The Labor Commissioner's procedures in determining whether he believes a wage claim to be valid and enforceable, and whether to take an assignment of that wage claim, does not constitute a contested case, does not result in the issuance of an order, and does not involve the use of the Commissioner's quasi-judicial power. This is so because the resolution of the issue does not actually determine the legal rights, duties, or privileges of any party nor does it involve an adjudication. The legal rights of both the employee and the employer under chapter 34-14 are determined in a court of law in the effort on the part of either the Labor Commissioner or the employee to collect a money judgment by means of a civil action. The investigation conducted by the Labor Commissioner under N.D.C.C. ch. 34-14 does not involve quasi-judicial power because the Labor Commissioner has no authority under the law to enforce any of the

beliefs he may develop as a result of the investigation other than to commence a civil proceeding to collect a money judgment.

Even if the Labor Commissioner refuses to take an assignment of a wage claim because he believes it not valid or enforceable, the employee's ability to commence his own lawsuit on the claim in the effort to collect a money judgment from the employer is not foreclosed. No matter who commences the civil action to collect the wages, both parties are accorded full due process in the adversary proceeding in the court hearing the action.

It is therefore my opinion that the requirements of N.D.C.C. § 28-32-05, et seq. do not apply to your conduct of investigations of wage claims under N.D.C.C. ch. 34-14. N.D.C.C. § 34-14-10 allows you to adopt administrative rules specifying your procedures under that chapter.

Sincerely,

Nicholas J. Spaeth

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