

## OFFICIAL OPINION NO. 124

December 6, 1945.

Honorable Ralph F. Gates,  
Governor, State of Indiana,  
State House,  
Indianapolis, Indiana.

My Dear Governor Gates:

I am in receipt of your letter of November 28, 1945, in part as follows:

"The General Motors strike at Anderson has brought to my attention a situation which I feel should be submitted to your office, and I ask that you give me an official opinion on the matter.

"At the present time, when a soldier is discharged, he is entitled to draw Veteran's Readjustment Allowance, based upon his service. This continues until he secures employment, at which time it terminates.

"It now develops that many veterans returned to Anderson and took employment in Delco-Remy and Guide Lamp. Some of them worked only a matter of a few hours or a few days when the strike was called. Because of this employment, they can no longer draw the Veterans' Readjustment Allowance, and cannot be established on the rolls of the federal government for the purpose of drawing this allowance.

"Although the funds come from federal sources, our Employment Security Division has been designated by the federal government as the agency to disburse this fund. \* \* \*

"It seems to me that there is a great deal of justice in their contention, in that they are being deprived of their employment through no fault of their own. They were not members of the union which called the strike, but when the strike became operative, they of course lost their employment. In other words, I cannot see why they should not be in the same status that they were at the time they took the employment.

"I wish you would give me an opinion as to whether the Employment Security Division can make payments to these men who find themselves in the situation which I have described.

"I would appreciate it if you would get this opinion to me at your earliest convenience."

Under Section 1100 of Public Law 346, Chapter 268, 2d Session of the 78th Congress, cited as the "Servicemen's Readjustment Act of 1944," the Congress provided for Readjustment Allowance payments to veterans by the Administrator of the United States Veterans of Administration and authorized the Administrator to enter into mutual agreements to utilize existing facilities of Federal and State departments or agencies for the administration of such function. Said Section reads in part as follows:

"The Administrator of Veterans Affairs is authorized to administer this title and shall, insofar as possible, utilize existing facilities and services of Federal and State departments or agencies on the basis of mutual agreements with such departments or agencies. Such agreements shall provide for the filing of claims for readjustment allowances with the Administrator through established public employment offices and State unemployment compensation agencies. Such agencies, through agreement, shall also be utilized in the processing, adjustment and determination of such claims and the payment of such allowances. To facilitate the carrying out of agreements with State departments or agencies and to assist in the discharge of the Administrator's duties under this title, a representative of the Administrator, \* \* \* shall be located in each participating State department or agency.  
\* \* \*

Under authority of the above-cited section the Administrator of Veterans' Affairs entered into a written agreement in August, 1944, with the Indiana Employment Security Division, whereby the state agency became the agent of the Administrator of Veterans' Affairs in the filing, processing, adjustment, and determination of such claims and the payment

of such allowances. Paragraph II (A) of this agreement reads as follows:

“In the performance of the authority and functions herein provided, the Agency” (the Employment Security Division) “shall abide by and conform to the provisions of the Readjustment Allowance Act, *as interpreted by the Administrator*, and the Rules and Regulations adopted thereunder.” (Our emphasis.)

It should be remembered that the State makes the payments but is reimbursed by the Veterans' Administration from funds of the United States Treasury appropriated for such purposes.

Section 800 (b) of the Servicemens' Readjustment Act of 1944 (the Federal G. I. law) reads in part as follows:

“Notwithstanding the provisions of Section 700, a claimant shall also be disqualified from receiving an allowance for any week with respect to which it is found that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: *Provided*, That this subsection shall not apply if it is shown that—

“(1) he is not participating in or directly interested in the labor dispute which causes the stoppage of work; and

“(2) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute; \* \* \*”

The agreement between the Employment Security Division and the Administrator of Veterans' Affairs further sets out that claims of veterans shall be filed, processed, adjusted and paid according to the procedures of the State agency in performing its own functions. The Indiana Employment Security Act provides that when a claimant's unemployment compensation claim involves a labor dispute the initial determina-

tion on allowance or disallowance of the claim shall be made by a Claims Referee. The Division's procedures require that such Referee make such initial determination only after notice and hearing.

In accordance with the above requirements it is my opinion that when a veteran is unemployed because of a labor dispute the initial determination as to his right to Readjustment Allowance must be made by a Referee, after notice and hearing, in conformity with the state statute, but that the determination of the Referee must be made under and pursuant to the provisions of the Federal law and shall be governed by the terms of the Federal Servicemens' Readjustment Act of 1944, *as interpreted by the Administrator of Veterans' Affairs*. An appeal from the decision of the Referee of the State agency will go to the Veterans' Readjustment Allowance Agent located in the State office. A further appeal may be taken directly to the Veterans' Administrator himself.

It is my further opinion that the State agency is without authority, jurisdiction, or discretion to determine the rights of veterans to Readjustment Allowance except in accord with Federal law *as interpreted by the United States Administrator of Veterans' Affairs*. In this instance, I am without authority to interpret the terms of the Federal statute.

I am informed, however, that Mr. Noble R. Shaw, Director of the Indiana Employment Security Division, has recently telegraphed the Veterans' Administrator in Washington for comprehensive interpretation of the circumstances under which Readjustment Allowances may be paid to veterans unemployed because of a labor dispute. A reply to that telegram has not yet been received.