

2495.

UNEMPLOYMENT COMPENSATION ACT—BENEFITS PAID TO INDIVIDUAL — “FIRST EMPLOYER” — “COMPLETED CALENDAR QUARTER” — “BASE PERIOD” — CHARGES, SECTION 1345-4 G. C. — WHERE INDIVIDUAL WORKED FOR MORE THAN ONE EMPLOYER—EACH EMPLOYER CHARGEABLE WITH MAXIMUM AMOUNT AUTHORIZED — HOW LIMITATION APPLIES—STATUS, WHERE TOTAL CHARGES AGAINST TWO OR MORE EMPLOYERS FOR QUARTER MAY EXCEED \$65.00.

SYLLABUS:

1. *Under Section 1345-4, General Code, the first employer to be charged for benefits paid to an individual is the employer who last employed such individual in the three consecutive calendar months which ended on the date of March 31, June 30, September 30 or December 31, as the case may be, next preceding the first day of such individual's benefit year, against whose account the maximum charges under said section have not previously been made. Charges shall then be made in the inverse chronological order in which each employment of such individual occurred by quarters, until the amount of the benefit payment is exhausted, or the first employer in the individual's base period is charged; charging only employers against whose ac-*

counts the maximum charges under the section have not previously been made.

2. *When an individual has worked for more than one employer in a given completed calendar quarter, each such employer is chargeable with the maximum amount authorized by the act, as the limitation applies to the portion of the completed calendar quarter the individual worked for each employer, even though the total charges against the two or more employers for the quarter may exceed \$65.00.*

Columbus, Ohio, July 5, 1940.

Honorable H. C. Atkinson, Administrator,
Bureau of Unemployment Compensation,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your recent inquiry which reads as follows:

“The Bureau of Unemployment Compensation is preparing to inaugurate the reporting to employers of charges made against their accounts in accordance with experience rating provisions of the Ohio law.

This undertaking is as comprehensive and as far-reaching in its effects as the two principal operations now in progress, i. e., contributions and benefit paying.

A serious question arises as to whether the Bureau is required under the Ohio law to charge employers on the basis of wages earned by the worker for all employment up to the beginning of the benefit year. We are also concerned as to the proper charging procedure when the worker is employed by two or more employers in one calendar quarter.

My specific questions, therefore, are:

1. Which employer, in relation to time, is to be charged first?
2. Where a worker is employed by two or more employers in one calendar quarter, how should the charge be made with respect to each employer?”

The sections of the General Code, or the parts thereof in so far as they are pertinent, are as follows:

Section 1345-1:

“ * * *

j. 'Contributions' means the money payments to the state unemployment compensation fund required by this act.

* * *

o. 'Based period' means the first eight of the last nine completed calendar quarters immediately preceding the first day of an individual's benefit year.

p. 'Benefit year' with respect to an individual means the fifty-two week period beginning with the first day of the first week with respect to which benefits are first payable to him, and thereafter, the fifty-two consecutive week period beginning with the first day of the first week with respect to which benefits are next payable to him after the termination of his last preceding benefit year.

q. 'Calendar quarter' means the period of three consecutive calendar months ending on March 31, June 30, September 30 and December 31, or the equivalent thereof as the administrator may by regulation prescribe, excluding, however, any calendar quarter or portion thereof, which occurs prior to January 1, 1938.

* * * "

Section 1345-4:

" * * *

(c) (1) The commission shall maintain a separate account for each employer, and shall credit his account with all the contributions which he has paid on his own behalf. * * * Benefits paid to an eligible individual shall be charged against the account of his most recent employers against whose accounts the maximum charges hereunder have not previously been made, in the inverse chronological order in which the employment of such individual occurred, but the maximum amount so charged against the account of any employer shall not exceed one-sixth of the wages payable to such individual by such employer for employment occurring on and after the first day of such individual's base period, or \$65 per completed calendar quarter or portion thereof, whichever is the lesser, but this provision shall not be construed to limit the duration of benefits payable pursuant to sections 1345-8. * * * "

It will be noted that the above statute provides that the charges shall be against the account of the most recent employers and limits the amount of such charges against any one employer to one-sixth of the wages payable by such employer or \$65 per completed calendar quarter or portion thereof, whichever is the lesser.

By eliminating some of the clauses of the pertinent sentence of the section which in no way changes its meaning as to whom the last employer is, it would read as follows:

Benefits paid shall be charged against the account of his most recent employers in the inverse chronological order, but the maximum amount so charged any employer shall not exceed one-sixth of the wages or \$65 per completed calendar quarter or portion thereof, whichever is the lesser.

It now becomes necessary to ascertain the meaning of the adjective "completed" as the same is used in connection with the words "calendar quarter or portion thereof".

"Completed" means: Brought to an end, finished, concluded, terminated, ended. The Act defines "calendar quarter" as the period of three consecutive calendar months ending March 31st, June 30th, September 30th and December 31st.

A "completed calendar quarter", therefore, means a calendar quarter as defined by statute, which is past and ended in point of time; the last day of which has expired. It does not mean a current calendar quarter or a period of three consecutive months in the future.

The Legislature must have used the words "completed calendar quarter" for a purpose. There was no need of inserting "completed" if it wished the periods to be limited as to amount for any calendar quarter. It could have said only "calendar quarter", or a full, entire or whole calendar quarter, which would have meant any calendar quarter as defined by the Act, past, current or in the future. Even had it used "complete" calendar quarter, as distinguished from "completed", this would have applied to any period of three calendar months ending on March 31, June 30, September 30 or December 31. October, November and December, 1940, is a complete calendar quarter but it certainly at this time is not a completed calendar quarter and will not be until January 1, 1941.

The Art (Section 1345-1, supra), in defining "base period", used the phrase "completed calendar quarters", namely, the first eight of the last nine completed calendar quarters immediately preceding the first day of an individual's benefit year. No other meaning can be given to the phrase "completed calendar quarters" in this definition other than calendar quarters which have passed and are ended or concluded, and, in the words of the statute, "completed".

Section 1345-4, supra, contains the words "or portion thereof". Ob-

viously the above words are to be applied to the phrase immediately preceding, which is of course "completed calendar quarter". Thus the words "portion thereof" mean a part of a completed calendar quarter and therefore cannot be construed to mean a portion of an uncompleted calendar quarter or the expired portion of the current quarter which has not yet ended.

The Act in other parts shows that the Legislature recognized the necessity for creating a period of time for the Bureau to collect and assemble the necessary data from the employers so as to administer the act. It provides that the base period shall be the first eight of the last nine completed quarters; it defines "annual payroll" as the total wages payable during the twelve months period ending "the last day of the third calendar quarter of any calendar year"; and the section dealing with merit rating provides that such rating shall be determined for the calendar year commencing January 1, 1942, and each year thereafter, upon the record of the employer, "up to the beginning of the calendar quarter immediately preceding such calendar year." Obviously, the Legislature intentionally used the word "completed" in reference to charges of benefits paid, to be made against the employer's account, so as to create the "lag" period extending from the end of the last completed quarter to the beginning of the individual's benefit year.

The Act provides the maximum amount which may be charged against any employer per completed calendar quarter or portion thereof, and thus directs the charges for benefits paid to be against employers in completed calendar quarters or portions thereof, and "most recent employers" is thereby limited to employers within completed calendar quarters, or portions of completed quarters.

The charge is limited to the lesser amount of one-sixth of the wages or \$65 per completed calendar quarter *or portion thereof*. So if an individual works for two or more employers in a given completed calendar quarter, he works for each a portion of a completed calendar quarter and each such employer should be charged with the maximum amount allowed under the statute in the inverse chronological order of the employment, to-wit, one-sixth of wages payable to such individual by each employer, or \$65, whichever is the lesser.

It is therefore my opinion that in making your charge back for benefits paid to an individual, you should start with his last employer in the cal-

endar quarter completed in point of time immediately preceding the first day of the individual's benefit year, against whose account the maximum charges under Section 1345-4, General Code, have not previously been made. Then proceed in the inverse chronological order in which each employment of such individual occurred by quarters, until the amount of the benefit payment is exhausted, or the first employer in the individual's base period is charged, charging only employers against whose accounts the maximum charges under the section have not previously been made.

When an individual has worked for more than one employer in a given completed calendar quarter, each such employer is chargeable with the maximum amount authorized by the Act, as the limitation applies to such portion of the completed calendar quarter that the individual worked for each employer, even though the total charges against the two or more employers for the quarter may exceed \$65.

Respectfully,

THOMAS J. HERBERT,
Attorney General.