

THE CITY UNIVERSITY OF NEW YORK

Office of the General Counsel and Vice Chancellor for Legal Affairs

535 East 80 Street, New York, N.Y. 10021

212/794-5382




MEMORANDUM

August 7, 1990

Briefing Memorandum 1-90

To: THE CHANCELLOR
COLLEGE PRESIDENTS

From: VICE CHANCELLOR ROBERT E. DIAZ 

Re: Matter of the Claim of SCOTT FLAX

A recent court decision has held that a college assistant was ineligible for unemployment insurance benefits during a period designated as a scheduled vacation for the liquidation of accrued annual leave pursuant to the collective bargaining agreement between CUNY and District Council 37.

The claimant had been employed part-time at York College during fiscal 1987-1988. During that period he worked twenty-one hours per week and earned thirty-nine hours of annual leave entitlement, all of which remained unused at the end of the fiscal year. His employment was continued on the same basis in the next fiscal year. In the next fiscal year, a lump-sum payment for the accumulated annual leave pay was included in the claimant's first pay period check. As he had been doing all along, the employee claimed unemployment insurance benefits based upon partial unemployment during the period designated as the accumulated annual leave (i.e. vacation) pay period.

The Unemployment Insurance Appeal Board allowed him to collect the benefits on the ground that the period was not a vacation within the meaning of the law, since the claimant continued to work part-time, without a break from his regular work pattern. CUNY appealed this decision to the Appellate Division of the New York State Supreme Court, which held that the Appeal Board's interpretation of the law led to the absurd result of an otherwise ineligible claimant becoming eligible solely because he was employed. "Had claimant actually been unemployed during the disputed period," the Court wrote, "he concededly would not have been eligible for benefits since that period would have been a vacation period." A copy of the Court's decision is attached hereto.

There are approximately five thousand employees of the University in the college assistant title, all of whom could have been affected by the Appeal Board's interpretation of the statute.

Nicholas R. Santangelo, of the Office of the General Counsel, prepared the appellate brief in this matter.

cc: Deputy Chancellor Laurence Mucciolo
Vice Chancellor Ira Bloom