

- DECISION -

EMPLOYER:

GREAT SOUTHERN PRINTING

DATE: March 27, 1997

DECISION #00899-BH-97

DETERMINATION #

EMPLOYER ACCT

Issue: The issue in this case is whether payments to certain individuals constitute covered employment or represent payments to independent contractors and are thereby excluded from unemployment insurance covered wages.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the *Maryland Rules of Procedure, Title 7, Chapter 200*.

The period for filing an appeal expires: April 26, 1997

- APPEARANCES -

FOR THE APPELLANT:

Sharon Snyder, Atty.
Philip Hammond
Erwin H. Hagy
George Randall

FOR THE SECRETARY:

John T. McGucken

STATEMENT OF THE CASE

Maryland Labor and Employment Article Section 8-205 sets forth a three prong test for determining whether an individual is an independent contractor or employee. In order for an individual to be considered an independent contractor for unemployment insurance purposes, it is the

burden of the employer to show it meets all three tests required by this section of the law. The employer must show (1) that the individual is free from control over the performance and direction of his/her work, (2) that the individual is customarily engaged in an independent business or occupation, and (3) that the work is either (a) outside the usual course of business of the employer or (b) the work is performed outside any place of business of the employer.

At issue in this case was whether persons who are contracted by Great Southern Printing for the personal service of delivering newspapers (the "carriers"), freelance writers (the "writers"), and outside salespersons (the "salespersons") were independent contractors within the meaning of Section 8-205. In this case, Great Southern Printing (the "employer" for convenience) had the burden of showing that it met all three prongs of this test in order to establish that these individuals are independent contractors and not its employees.

As the result of a routine audit, a field auditor for the Agency, Harold Sisler, determined, inter alia, that payments made to these individuals constituted covered wages to employees of the employer under the Maryland Labor and Employment Article. The Agency determined that the employer did not meet their burden under Section 8-205(1) and 8-205(2); that the carriers were not free from control, and they were not engaged in an independent business or occupation. The Agency determined that the writers and salespersons were not engaged in independent businesses within the meaning of Section 8-205(2).

It is not in dispute that these individuals worked outside any place of business of the employer; therefore, the employer has satisfied the requirements of the third prong of the test within the meaning of 8-205(3)(ii). In addition, it is not materially in dispute that the writers and salespersons were free from control and direction over the performance of their work within the meaning of Section 8-205(1).

The Agency determined that the independent contractors agreement which governed and defined the relationship between the employer and the carriers, exercised more than minimal control over the carriers. It based its determination upon the following: 1) the carriers could not alter or amend the employer's products; 2) the required standards of performance were the employer's standards; 3) the carriers could not assign their contract to another contractor; 4) the carriers could not set their own retail prices; 5) the employer controlled the accounting and collections of the carriers; and 6) the carriers were required to carry liability insurance.

The Agency also determined that individuals contracted as "writers" and "sales personnel" did not meet the statutory requirements of Section 8-205 of being engaged in an independently established business because they did not perform services for more than one employer.

The employer appealed the Agency's determination to the Appeals Division. The hearing examiner affirmed the decision of the Agency. Based upon the hearing examiner's decision, the employer timely appealed this case to the Board of Appeals.