Traditions Unlimited

INDEPENDENT CONTRACTORS

Outside salespeople

Where outside salespeople working under independent contracts with a manufacturer's representative are not required to provide any special equipment or employ others to perform the work contemplated by their contracts, and do not, in fact, delegate their duties to others, the essence of their contracts is their personal labor. Under the negative three-pronged test set forth in *White v. Department of Labor & Indus.*, 48 Wn.2d 470 (1956) they are "workers" within the meaning of RCW 51.08.180. ***….In re Traditions Unlimited,* BIIA Dec., 87 0600 (1989)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: TRADITIONS UNLIMITED, INC.	)	**DOCKET NO. 87 0600**
	)	
FIRM NO. 389753	)	**DECISION AND ORDER**

APPEARANCES:

Appellant, Traditions Unlimited, Inc., by
KMG Main Hurdman, Certified Public Accountants, per
Steve A. Finley, Manager, and by Randolph O. Petgrave

Department of Labor and Industries, by
The Attorney General, per
William A. Garling, Jr., Assistant

An appeal was filed by the employer, Traditions Unlimited, Inc., on February 25, 1987 from a Notice and Order of Assessment of Industrial Insurance Taxes (No. 51501) issued by the Department of Labor and Industries on January 26, 1987. The notice and order assessed industrial insurance taxes for the period April 1, 1984 through March 31, 1986 in the amount of $1,485.51. **REVERSED AND REMANDED**.

ISSUE

Whether "personal labor" is the essence of the contracts entered into between Traditions Unlimited, Inc. and outside salespeople engaged by Traditions Unlimited, Inc. to market, within certain geographical subterritories, the various lines of manufactured goods represented by Traditions Unlimited, Inc.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the employer in response to a Proposed Decision and Order issued on July 25, 1988 in which the Notice and Order of Assessment of the Department dated January 26, 1987 was reversed and the matter remanded to the Department to issue a further Notice and Order of Assessment requiring premiums for the outside salespeople as workers, consistent with the Proposed Decision and Order, and reclassifying the showroom employees to the general office/clerical classification 4904, WAC 296- 17-653.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed and said rulings are hereby affirmed. Although the evidence presented by the parties is well set forth in the Proposed Decision and Order, we believe our own recitation of the evidence is crucial to the disposition of this appeal.

Traditions Unlimited, Inc. (Traditions) is a "manufacturer's representative" which represents approximately fifty manufacturers in the medium to high-end gift industry. It is involved in wholesale sales to retailers such as department and jewelry stores.

Ronald O. Leveridge, President of Traditions, described the contractual relationship between Traditions and the various manufacturers as follows:

> The manufacturer comes to us and asks us to provide several things for them. One being that we furnish them with a showroom facility to display their wares. One, that we act as a clearing house for the distribution of commissions that are paid to the independent contractors that we work with and one is that we furnish them with independent contractors to sell their goods to the field.

Dep. Leveridge at 3.

According to Mr. Leveridge, the territory covered by Traditions involves a total of ten states, including the Northwest, the Rocky Mountains, and Hawaii. Within the given area covered by a contract Traditions has an exclusive right to represent the manufacturer's products.

Mr. Leveridge testified that Traditions currently has contracts with seven individuals to represent its product lines within its territory. In describing the relationship between Traditions and any one of these independent contractors (whom we shall hereafter refer to as salespeople), Mr. Leveridge stated:

> Well, he actually represents, normally he represents us and represents other manufacturers as well. He will have sometimes contracts with the manufacturer that he is dealing with. These people that work with me are actually working for the manufacturers because they communicate directly with the manufacturer after we put them in touch with them. Some of the commissions are paid directly to these people, like if there is an incentive program, those monies go directly from the manufacturer to the contractor, but as far as the standard commission, that comes to us. We pay every fifteen days. The monies that are received, we split that out to the sales person for the job that they have done for that manufacturer.

Dep. Leveridge at 4-5.

Mr. Leveridge explained that Traditions exercises no control over the day-to-day activities of the salespeople. Any equipment, cars, telephones, or office space required in the performance of their contracts is provided at their own expense. He stated that 95% of the manufacturers represented provide their own order forms, but that if forms are not available, Traditions provides the salespeople with a form containing Traditions' logo. He indicated that Traditions does supply lists of customers to

its salespeople. These lists are actually computer printouts prepared by the manufacturers for Traditions, which are then forwarded to the salespeople. He explained that although Traditions does provide information to the salespeople, most of the time the manufacturers provide information to them directly.

When an order is placed by a customer the order is forwarded by the salesperson directly to the manufacturer. The orders are shipped directly from the manufacturer to the customer. When the order is shipped the commission is then paid by the manufacturer to Traditions. According to Mr. Leveridge, the salesperson receives a full commission on any sales made from his or her territory, regardless of whether the salesperson actually writes the order. This would include sales made from Traditions' showroom by Traditions' employees. The salesperson also exercises a right to approve any orders made in the showroom involving customers from his or her territory. Mr. Leveridge indicated that Traditions does not exercise any approval or disapproval of orders placed by the salespeople.

In exchange for its share of the commission, Traditions supplies the salesperson with the showroom facility and a computer to track orders, invoices, and commissions. Salespeople are not required to use the showroom, although they are asked to attend trade shows which occur two to three times per year.

Traditions itself does not impose any goals or sales quotas. However, the manufacturers do provide goals, which the salespeople are expected to meet. On the other hand, the failure of a salesperson to meet the expected sales volume does not necessarily mean he or she will be terminated. The sales goals of the various manufacturers are provided to the salespeople by a continuous report which is broken down by the month.

Mr. Leveridge testified that Traditions' salespeople can, and most do, represent lines other than those represented by Traditions. Traditions has no right to any commissions received by the salespeople from the sale of any other lines. Referring to the other lines which the salespeople may represent, Mr. Leveridge stated "we don't even know who they are."

Mr. Leveridge conceded that his contracts with the various salespeople could be performed by them without the aid of other people. He also stated that when he contracts with a salesperson he is contracting for his or her ability to sell. He indicated, however, that he considered the salespeople to be selling for the manufacturers -- not for Traditions.

The contract between Traditions and the individual salespeople is included in the record as Exhibit 2. This contract, identified as an "Independent Contractor Agreement", provides that the salesperson will represent Traditions in selling and servicing all products under contract with Traditions in a particular territory. Under the contract the salesperson agrees to regularly service all assigned accounts; work all gift shows at locations to be assigned by Traditions; personally prepare all paper work and documentation for orders written and presentations made; solicit new business for and on behalf of Traditions; pay his or her own travelling and entertainment expenses; evenly share travelling and expenses with Traditions when travelling together for business; pay for all personal equipment and supplies except for items which Traditions will provide; and maintain an auto liability insurance with minimum policy limits of $500,000.00. Traditions agrees to pay any showroom expenses; association dues and special assessments; gift show fees and materials; and copying and printing costs during shows and market days.

The contract calls for a commission structure under which the salesperson will receive one-half of the commission received by Traditions from a supplier. Suits for commissions are to be brought only in the name of Traditions. The salesperson is considered to be a sub-agent of Traditions only with respect to clients, customers, suppliers, and accounts. Otherwise, the salesperson is deemed to be an independent contractor and not an employee. Expenses incurred by Traditions in collecting any commission are to be deducted from commissions received.

The contract provides that it can be terminated at any time by either party upon notice to the other. The salesperson also agrees that, for a period of one-year following termination of the contract, he or she will not compete with Traditions by attempting to obtain the business of anyone with whom Traditions had an agreement during the period of the contract.

Robin M. Brown described himself as self-employed during the period October 1984 through September 1986, and working under a written contract with Traditions. He stated that he had contracted with Traditions for the exclusive right to sell in a specific geographical area. He previously had seven years experience as a retail buyer for the Bon Marche and was therefore familiar with the giftware industry. However, he had not been involved in sales. He stated that he continued his contract with Traditions until January 1986, when he quit to start his own company. He is currently in competition with Traditions, representing some lines once held by Traditions. He stated that he currently has a business license, although he had no business license at the time he worked under contract with Traditions.

Mr. Brown explained that during the period of his contract the number of Traditions' lines which he represented ranged from 12 to 32. He also explained that he represented lines other than those represented by Traditions. Some of Traditions' lines sold better than others, but Traditions had no requirement that he promote any line over another. Traditions imposed no sales quotas, although some manufacturers had sales expectations.

Mr. Brown testified that any sales he made were generated strictly by himself. He identified potential customers by going out on his own and findings them or through leads obtained from the manufacturers. In explaining the sales process, he testified that he would write a customer's order and send the order to the manufacturer, who would then send his commission to Traditions. He considered the entire commission to be his, with the understanding that Traditions would take out a percentage for his right to sell in its territory. He testified that he received 53% of any commissions paid on his sales.

Mr. Brown agreed that under the contract he was to use his best efforts in representing the manufacturers. He noted that the manufacturer determined the level of "best effort" which was acceptable, but he, of course, had a financial incentive for using his best effort. Mr. Brown did state that he was able to perform all the functions under the contract himself.

Jerrold Rathbun is a Field Auditor II with the Department of Labor and Industries. He performed the Department's audit of Traditions in June 1986 for the audit period April 1984 through March 1986. He conducted his audit by reviewing, with Mr. Leveridge, Traditions' payroll records, commission registers, check register and other records. Mr. Rathbun ascertained that Traditions engaged a total of 22 outside salespeople during the audit period. Some were in other states, so he did not consider them covered Washington workers. He determined that there were only three salespeople subject to his audit.

Mr. Rathbun's understanding of the sales process -- as obtained from Mr. Leveridge -- was that the salespeople would write the orders, and then send the orders to Traditions. There the orders would be rewritten if necessary and then sent to the manufacturer. The manufacturer would then ship the goods directly to the customer.

Larry Brandon is a Field Auditor III with the Department. He reviewed Mr. Rathbun's audit of Traditions on August 20, 1986, concluding that it had been done correctly. Mr. Brandon was asked to explain the Department's policy for determining whether personal labor is the essence of a contract. He stated that:

> Basically, we would go in regards to the White case, and we also look to find out if the individual is truly in business for him or herself, which would then take them outside the scope of being a worker.

Dep. Brandon at 10.

From his review of the audit materials Mr. Brandon believed that very few of the salespeople, if any, had business licenses or Department of Revenue numbers. Mr. Brandon indicated that it was his impression that in all cases a sale went through Traditions' showroom before it went to the manufacturer. He conceded that if the orders were placed directly with the manufacturer, that might change his opinion as to whether or not the salespeople were workers covered by the Act.

In addition to the testimony presented, the parties entered into a stipulation of facts to be applied "where evidence is not to the contrary." Stipulation, May 4, 1988. That factual stipulation is as follows:

1. That the industry is the manufacturing and sale of gift or novelty items;
2. That the contract between the manufacturer's representative and the manufacturer is specifically between a manufacturer and a manufacturer's representative;
3. That one of the conditions of the contract between the manufacturer and the manufacturer's representative is that the manufacturer's representative is given exclusive rights to represent the manufacturer in a specific geographic area of the five Northwestern states;
4. That the subcontractors are not limited by their contract or otherwise to the exclusive representation of the manufacturer's lines represented by the manufacturer's representative;
5. That the subcontractors are not limited by their contract or otherwise to exclusive representation of a particular manufacturer's products;
6. That none of the contracts between the manufacturer's representative and the subcontractor requires a volume of sales or imposes a quota;
7. That the subcontractors are not limited by their contract or otherwise from engaging in any business or occupation concurrently with the performance of their contract;
8. That the manufacturer's representative provides a showroom for the display and sale of goods, and the subcontractor may use the showroom to solicit sales, but the subcontractor is not obligated to use this facility;
9. That the subcontractors are not reimbursed for the expenses incurred in the performance of the contract;

10. That the subcontractors submit orders directly to the manufacturer on forms supplied by the manufacturer or on generic forms provided by either the subcontractor or the manufacturer's representative;

11. And that upon shipment of goods to the buyer, the manufacturer forwards the payment, as agreed in the contract between the manufacturer and the manufacturer's representative, to the manufacturer's representative, and the manufacturer's representative divides the payment between the manufacturer's representative and the subcontractor pursuant to the terms of their contract, written or oral.

The Notice and Order of Assessment under appeal also assessed industrial insurance taxes for certain of Traditions' showroom workers as wholesale workers (Classification 6407, WAC 296-17-771). By stipulation the parties agreed that the showroom workers were clerical/office workers who should be classified under Classification 4904, WAC 296-17-653. Additional issues within our purview which were raised at the initial conference were whether executive officers of Traditions should have been excluded from coverage, and whether one clerical employee should have been assessed as a full-time employee as opposed to a part-time employee. Since no evidence was presented concerning these latter two issues and the Petition for Review does not object to the Department's determination with respect to these issues, we conclude that the employer has waived its objections to the Department's audit concerning those matters. The sole contested issue on appeal, therefore, is whether the salespeople working under contract with Traditions are "workers" within the meaning of RCW 51.08.180.

Due to the absence of any direct control on the part of Traditions Unlimited, Inc. over the manner in which these various salespeople performed the terms of the contract it is safe for us to assume that these salespeople are "independent contractors" and not "employees" of Traditions Unlimited, Inc. Hubbard v. Department of Labor and Industries, 198 Wash. 354 (1939); Apenese v. Department of Labor and Industries, 3 Wn.2d 45 (1940). If this case had arisen prior to 1937 that would end our discussion, since prior to that date independent contractors were not covered by the Industrial Insurance Act nor were the people with whom they had contracted required to pay industrial insurance taxes.

In 1937, however, the Legislature expanded the definition of workman (now "worker") to include within the terms of the Act independent contractors whose personal labor constituted the essence of the contract. Laws of 1937, ch. 211, § 2, p. 1030. The relevant statute, RCW 51.08.180, now reads, in part,:

> `worker' means every person in the state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, The essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment.

(Emphasis added).

The corollary to this definition of "worker" is the definition of "employer" as contained in RCW 51.08.070. That statute reads, in part:

> `employer' means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers.

(Emphasis added).

It is readily apparent that in modifying the definition of "worker" the Legislature was intending to expand the coverage of the Act to not only extend the protections of the Act to a greater number of individuals, but to also require the Department to assess industrial insurance taxes on the hours of work performed by such individuals. The 1937 amendment was, as stated by our Supreme Court in White v. Department of Labor and Industries, 48 Wn.2d 470 (1956):

> ...intended to protect workmen (and to make contracting parties for whom the work is done responsible for industrial insurance premiums) in those situations where the work could be done on a regular employer-employee basis but where, because of the time, place manner of performance, and basis of payment, it could be urged that the workman was an independent contractor rather than an employee. Prior to the 1937 enactment, the independent contractor, when injured, was not entitled to the protection of the Workman's Compensation Act, and the party with whom he had contracted was excused from paying premiums. It was felt to be desirable, and rightly so, to eliminate the technical issue of whether the workman was an employee or an independent contractor by giving him protection in either situation.

48 Wn.2d at 474.

Although the 1937 amendment expanded the definition of "worker", the expansion was not complete. As stated by the court in Haller v. Department of Labor and Industries, 13 Wn.2d 164, 167 (1942) the amendment evidenced a legislative intention "to extend industrial insurance protection to

some, but not all, independent contractors...." (Emphasis added). The White court, too, recognized that even with the 1937 amendment there would remain independent contractors who would not be subject to the mandatory coverage of the Act. It noted that while a person might be an independent contractor not covered under the Act, that did not prevent him or her from having the protection of the Act if he or she desired to qualify as a working employer, gave necessary notice to the director, and paid the necessary premiums. 48 Wn.2d 477-478; See RCW 51.12.115 and RCW 51.32.030.

Our analysis of whether these salespeople are independent contractors whose personal labor is the essence of the contract should be tempered by the Legislature's declaration of policy as contained at RCW 51.12.010. This declaration provides that:

> There is a hazard in all employment and it is the purpose of this title to embrace all employments which are within the legislative jurisdiction of this state.

RCW 51.12.020 goes on to provide a list of the only employments which are not subject to mandatory coverage.

Yet, while there is a presumption in favor of mandatory coverage, the Legislature did not intend to include all independent contractors within the mandatory coverage of the Act. RCW 51.12.020 excludes a number of employments from mandatory coverage, including "sole proprietors." RCW 51.12.020(5). Thus the Legislature contemplated that individuals who are engaged in a business for themselves, hold themselves out to the public as independent business people, or otherwise act and/or operate as independent entrepreneurs, should be excluded from the mandatory coverage of the Act. In a sense, the statutory framework creates a continuum, with independent contractors, who are covered pursuant to RCW 51.08.180, on one end and sole proprietors, who are excluded pursuant to RCW 51.12.020(5), on the other.

Our courts have not delineated a clear cut test for determining whether personal labor is the essence of an independent contract. In Haller, supra, which was only the second case decided under the 1937 amendment, the court stated that the determination must:

> depend upon the provisions of the contract, the nature of the work to be performed, the situation of the parties, and other attendant circumstances.

13 Wn.2d at 167.

The above quoted framework for analyzing whether personal labor is the essence of the contract has been reiterated by the courts on several occasions. Massachusetts Mutual Life

Insurance Co. v. Department of Labor and Industries, 51 Wn. App. 159, 163 (1988); Lloyd's of Yakima Floor Center v. Department of Labor and Industries, 33 Wn. App. 745, 749 (1982); Cook v. Department of Labor and Industries, 46 Wn.2d 475, 476 (1955).

Early cases dealing with the "personal labor" inclusion characterized the inquiry in terms such as whether the independent contractor's "personal efforts constitute the main essential in accomplishing the objects of the employment", Norman v. Department of Labor and Industries, 10 Wn.2d 180, 184 (1941), or whether the labor to be performed was "the vital sine qua non, the very heart and soul" of the contract. Haller, at 168. Where others could have performed the work under a contract to haul logs it was said that "[l]abor that can be done by others is not personal as the word is used in the statute." Crall v. Department of Labor and Industries, 45 Wn.2d 497, 499 (1954).

It was not until the Supreme Court's decision in White, supra, that a somewhat more workable test was developed to explain the results reached up to that time. In White the court analyzed the factual situations in its prior cases of Norman, Haller, Crall and Cook and concluded that the 1937 amendment:

> was not intended to cover an independent contractor (a) who must of necessity own or supply machinery or equipment (as distinguished from the usual hand tools) to perform the contract (the Crall and Cook cases, supra), or (b) who obviously could not perform the contract without assistance (the Haller and Cook cases, supra), or (c) who of necessity or choice employs others to do all or part of the work he has contracted to perform (the Haller and Crall cases, supra).

(Emphasis added)[1]

A recent case involved the question of whether personal labor was the essence of the contract between an insurance company and its various insurance agents. Massachusetts Mutual Life Insurance Co., supra. In Massachusetts Life it was noted that the insurance company had never disapproved a career agent's contract, that general agents and sales agents may and do delegate their duties to others (e.g. telephone solicitation) and that agents may represent up to 50 insurance companies at a time. Relying solely on the fact that the agents may and do delegate their duties to others, the court held that the insurance agents were not "workers" for purposes of the Act.

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[1] The court in White cautioned, in dicta, that the mere fact a person might own and use machinery and equipment in his or her work does not make him or her an independent contractor. If, in the operation of a truck, tractor or other equipment the person "is subject to the direction and control of the employer" the person is an employee, even though the amount paid for the use of the equipment may be much more than would be paid for the person's services as an operator of the equipment. 48 Wn.2d at 477.

By specifying instances in which personal labor is not the essence of the independent contract the White case provides a framework for resolving a number of cases involving similar facts. Yet the White test is incomplete. It does not further delineate the circumstances under which personal labor is the essence of an independent contract.

In reviewing the factual scenarios presented by the court cases as well as the applicable statutes there are a number of factors in addition to the White criteria which seem to be important to the determination of whether personal labor is the essence of the contract. These include:

(1) Right of Control. Does the employer exercise control over the time, place or manner of performance of the contract? Although technically the "right of control" test is for determining whether the individual is an employee or an independent contractor, it nevertheless continues to have a great bearing on whether the essence of the contract is personal labor. The more control exercised by the employer in the day-to-day performance of the contract, the more likely that personal labor is deemed the essence of the contract (See, e.g., Lloyd's);

(2) Spurious Independent Contracts. Although not cited as a reason in the case law, independent contracts established only as a guise or subterfuge to avoid industrial insurance premiums should not be condoned. See RCW 51.04.060;

(3) Special Abilities of the Independent Contractor. If the independent contractor has special or superior abilities of critical importance to the employer, this tends to suggest that the essence of the contract is personal labor (See, e.g., Lloyd's and Norman.) On the other hand, if who performs the contract is a "matter of indifference" to the employer, this suggests the contrary (Haller, 13 Wn.2d at 164);

(4) Exclusivity of Contract. If the independent contractor is not limited in his ability to concurrently contract with others there is a likelihood that the courts will conclude that the essence of the contract is not personal labor. (See, e.g., Crall; Massachusetts Life);

(5) Indicia of Independent Business. Although personal labor of the independent contractor may be involved, the circumstances may suggest that he or she is simply engaged in an independent business or occupation. See, e.g., Camp v. Department of Labor and Industries, 55 Wn.2d 839 (1960); RCW 51.12.020(5).

(6) Work can be Performed Within an Employer/Employee Relationship. If the work could be done on a regular employer/employee basis but the parties have chosen to structure the relationship as an independent contract, then it is more likely that the essence of the contract is personal labor and that the independent contractor is a "worker". See, White.

(7) Nature of the Work. If the "employer" is getting its basic work done through the services of the independent contractor, then that person is more likely to be considered a "worker". Department of Labor and Industries v. Tacoma Yellow Cab Company, 31 Wn. App. 117, rev. denied, 97 Wn.2d 1015 (1982). The flip side of this test is set forth in RCW 51.12.020(3) which excludes from coverage "[a] person whose employment is not in the course of the trade, business, or profession of his or her employer. . . ."

(8) Furtherance of the Independent Contractor's Interests as Opposed to the "Employer's" Interests. RCW 51.08.180 includes independent contractors within the coverage of the Act if the essence of the contract is personal labor and if the contractor is acting in the course of employment. The latter term is defined in RCW 51.08.013 as "the worker acting at his or her employer's direction or in the furtherance of his or her employer's business. . . ." If the independent contractor is furthering his or her own business interests rather than those of an employer, then the independent contractor should not come within the statutory definition of "worker".

However, even though these additional criteria appear to be important to a determination of whether an independent contractor is a "worker", the most recent pronouncement from the Court of Appeals still relies almost exclusively on the negative White test. See, Massachusetts Life. In Massachusetts Life, the Court of Appeals noted that the insurance agents involved there "may and do" delegate duties to others and, on that basis, excluded them from coverage.

In the final analysis, the courts have frequently listed a number of factors, but have consistently turned to the three-pronged negative test of White for the resolution of the question of whether an independent contractor is a "worker." In the absence of clear guidance from the courts, we do not feel it is appropriate for us to expand the White test beyond the parameters which have been set by case law, particularly in light of the clear statutory preference for mandatory coverage.

Evaluating this appeal under the three guidelines articulated in White, there is no question but that the outside salespeople are covered workers. There is no showing that any special equipment is required by the salespeople or that the assistance of others is required to perform the work contemplated by the contract. Furthermore, while the contract does not preclude a salesperson from employing others, there has been no showing that any salesperson did, in fact, delegate his or her duties to other individuals.

We turn now to the question of whether any of the salespeople were sole proprietors excluded from coverage under RCW 51.12.020(5). This appeal is one of eight similar appeals which were consolidated for hearing, involving the relationship between outside salespeople and manufacturer's

representatives. It appears that, in at least some of these cases, the manufacturer's representatives were able to establish to the satisfaction of the Department auditors that certain salespeople were sole proprietors and the Department excluded those salespeople from coverage under the auspices of RCW 51.12.020(5). The manufacturer's representatives have not persuaded us by the evidence presented in any of these appeals that any of the remaining salespeople should be excluded from coverage by the terms of RCW 51.12.020(5). Thus, from all that appears in the record, the assessment of premiums for the remaining salespeople was appropriate.

After consideration of the Proposed Decision and Order and the Petition for Review filed thereto, the Department's Memorandum in Support of Proposed Decision and Order, and a careful review of the entire record before us, we are persuaded that the Proposed Decision and Order is supported by the preponderance of the evidence and is correct as a matter of law.

The proposed findings, conclusions and order are hereby adopted as this Board's final findings, conclusions and order and are incorporated herein by this reference.

It is so ORDERED.

Dated this 27th day of February, 1989.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/____
SARA T. HARMON Chairperson

/s/____
FRANK E. FENNERTY, JR. Member