FLYNN, J. While I concur with the majority that the board's ruling as to the defendant ITT Hartford should be affirmed, I respectfully dissent from the opinion of the majority as to the board's ruling concerning the defendant Aetna, and would reverse the board's ruling as to it.

The judicial construction of provisions of our Workers' Compensation Act is guided by long established principles. ''[T]he Workers' Compensation Act is remedial and must be interpreted liberally to achieve its humanitarian purposes.'' (Internal quotation marks omitted.) *Gil* v. *Courthouse One*, 239 Conn. 676, 682, 687 A.2d 146 (1997). Those general purposes are more specifically carried out by General Statutes § 31-348, the provision at issue in this appeal. Another long-standing principle has been that ''workmen's compensation is a peculiar type of insurance, and . . . to every policy each employee of the insured is in a very real sense a party . . . .'' *Rossini* v. *Morganti*, 127 Conn. 706, 708, 16 A.2d 285 (1940). Consequently, § 31-348 must be interpreted with the principle of protecting the employee in mind even though the dispute on appeal is between the insurer and employer.

I begin by setting forth the statutory scheme by which the provisions of § 31-348 requires compensation insurance companies to report their risks. ''The purpose of the statute requiring notice of insurance effected or cancelled to be filed with the board of compensation commissioners is to make an authentic record of the insurance policies in existence, so that any employee or prospective employee may ascertain whether the employer is insured and if so in what company.'' *Piscitello* v. *Boscarello*, 113 Conn. 128, 130–31, 154 A. 168 (1931). To accomplish that statutory purpose, § 31-348 first requires notice of when a policy goes into effect, to wit: ''Every insurance company writing compensation insurance or its duly appointed agent shall report in writing or by other means to the chairman of the Workers' Compensation Commission, in accordance with rules prescribed by the chairman, the name of the person or corporation insured, including the state, the day on which the policy becomes effective and the date of its expiration, which report shall be made within fifteen days from the date of the policy.'' The insurer is then estopped from denying that the terms of the policy extend coverage until the reported expiration date. *Rossini* v. *Morganti*, supra, 127 Conn. 708. If such a notice had been filed in this case, the worker for whose benefit the statute exists could have consulted the chairman's records and determined the expiration date. However, the commissioner made no finding that this initial report had ever been filed as the law requires.[1] A second requirement of § 31-348 mandates how a ''cancellation'' is to be effected as to ''any policy so written and reported.'' Section 31-348 provides in pertinent part that ''[t]he cancellation of any policy so written and reported shall not become effective until fifteen days after notice of such cancellation has been filed with the chairman. Any insurance company violating any provision of this section shall be fined not less than one hundred nor more than one thousand dollars for each offense.'' Under the statutory scheme, no such notice is required before a nonrenewal notice indicating that the policy will not be renewed on its expiration date can become effective. This is so because the employee is able to ascertain from the required original report filed with the commissioner the date on which the policy expires. ''As regards employees, the insurer is estopped to deny the truth of the formal record so made by it, whether or not the particular employee whose rights are in question examined the files where such records are kept.'' *Piscitello* v. *Boscarello*, supra, 131.

What was the formal record created by Aetna here? The commissioner made no finding that Aetna had filed a report of the policy's effective date with the chairman, as the law requires. The commissioner made no finding that Aetna had filed notice of the date of expiration, before which it would be estopped to deny coverage. Although the commissioner noted Aetna's argument

and expert testimony that coverage ended on February 26, 1993, a commissioner's recital of evidence or arguments is no substitute for findings of fact. *Grabowski* v. *Miskell*, 97 Conn. 76, 78, 115 A. 691 (1921) (discussing our Supreme Court's ''repeated injunction'' against reciting evidence in lieu of fact-finding); *Orsinie* v. *Torrance*, 96 Conn. 352, 354, 113 A. 924 (1921); *Marchiatello* v. *Lynch Realty, Co.*, 94 Conn. 260, 262, 108 A. 799 (1919) (''[w]e cannot find the facts from [recited] testimony and hence we cannot use it in any degree''). We are left to wonder whether Aetna created the required formal record and, if so, what that record was. The commissioner simply concluded that a document sent by Aetna to the insured was a ''notice of nonrenewal'' without finding the subordinate facts that legally and logically would justify that conclusion. ''[T]he commissioner ought to decide explicitly every material issue of fact on which his conclusions are based.'' *Orsinie* v. *Torrance*, supra, 354.

I turn to the commissioner's finding that a nonrenewal notice, and not a cancellation notice, had been sent by Aetna to the insured. This simply is clearly erroneous. The undisputed record before the commissioner included the following: Aetna created and sent a document to the insured that stated that it was a cancellation of Aetna's policy with the insured. The document contained a marked check box that stated: ''We are cancelling this policy. Your insurance will cease on the date of cancellation shown above.'' The document also contained a separate check box for indicating that the document is a nonrenewal, but that box was left blank. The form did, as the majority holds, include the phrase ''notice of cancellation or nonrenewal.'' However, at the top, in bold print, before setting out the check boxes designating the kind of notice being given, the document reads: ''The following is applicable only if marked.'' Thus, since ''nonrenewal'' was not checked, the form unequivocally stated to the insured that it was a *cancellation* notice. Having chosen to issue a cancellation rather than a nonrenewal, Aetna was required to comply with statutory requirements for notice before its cancellation could become effective. Although the majority states that this cancellation was a ''clerical error,'' the commissioner made no such finding, and it is not within our competency on appeal to find facts. Aetna offered no testimony of an employee indicating that he or she had made such an error. The majority points to a blank space on the form where the cancellation date could have been entered, presumably as a source of ambiguity, which they then choose to resolve in favor of the insurance company. Although I disagree that this is any source of ambiguity, this resolution of purported ambiguity in the notice runs against the rules established in our case law. ''Any uncertainty as to the meaning of a notice from an insurer to its insured must be resolved against the insurer and

in favor of the insured.'' *Travelers Ins. Co.* v. *Hendrickson*, 1 Conn. App. 409, 412, 472 A.2d 356 (1984).

One subordinate factual finding, among several, that the commissioner should have made before concluding that an insurance company has not violated the cancellation provisions of § 31-348 is the finding that the initial notice provisions had been followed. The qualifying phrase, ''any policy *so written and reported*,'' in the provision describing proper cancellation can indicate nothing less by plain meaning. A restrictive reading of that phrase to mean that only policies properly recorded are subject to the cancellation notice safeguards would yield a result never intended in the statute. Suffice it to say that the purpose of § 31-348 is not to reward noncomplying insurers with the ability to blindside employees by canceling without the usual record notice. As stressed earlier, our Workers' Compensation Act is to be construed liberally to achieve its humanitarian purpose of *protecting* the employee. A reading of the phrase to mean that compliance with the formal record notice requirements is immaterial to cancellation would render the phrase surplusage and also create a perverse incentive not to record the terms of the policy. Under § 31-348, the commissioner is required to make the factual finding that the insurer has honored all of the formal record requirements before determining whether a cancellation has been effected properly. The commissioner did not. Thus, his determination that Aetna was not liable is a conclusion ''illegally or unreasonably drawn'' from insufficient subordinate facts. Cf. *Adzima* v. *UAC/Norden Division*, 177 Conn. 107, 117–18, 411 A.2d 924 (1979).

The term ''cancellation'' is normally used in the insurance business to signify the termination of ''a policy prior to its expiration . . . .'' 2 G. Couch, Insurance (3d Ed. 1995) § 30:1, p. 30-2. In contrast, the term ''nonrenewal'' generally is applied when an insurer elects not to continue the policy at the expiration of its ordinary term. See id., § 29-1 et seq.

The sole indicia of the date of expiration in the record was expert testimonial evidence from a state investigator that he had checked computer records of the National Council on Compensation Insurance, Inc. (NCCI), and had found that an Aetna policy had expired on February 26, 1993.[2] The commissioner must not rely on testimony as to a report from an NCCI database, rather than a formal record of an insurer's direct report in the commission chairman's files. The ease with which he could assess this secure record and the relative unreliability of witness testimony about an NCCI database renders such reliance unjustifiable.[3] The date on record itself, as unreliably indicated by the testimony of an NCCI report, is insufficient as a matter of law to determine the date of expiration of the policy if it is to be used against the insured. The purpose of the central

notice filing provisions in § 31-348 is to protect the insured employee against, and to *estop the insurer* from making, a denial of coverage if the dates on record indicate coverage. In sum, the commissioner's conclusion was illegally and unreasonably drawn from insufficient subordinate factual findings. As noted by the majority, ''the conclusions drawn'' by the commissioner will not stand if ''they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them.'' *Adzima* v. *UAC/Norden Division*, supra, 177 Conn. 117–18.

I respectfully dissent from the opinion of the majority.

[1] General Statutes § 31-348 provides for a fine of up to $1000 per violation if an insurance company fails to report a date of expiration for a workers' compensation policy. Thus, failure to comply with § 31-348 is treated as an ''offense'' under the Penal Code of our General Statutes. See General Statutes § 53a-24.

[2] Despite the requirements of General Statutes § 4-167, requiring the adoption of regulations with respect to an agency's organization, operation, methods and procedures, I find no such regulation in which the chairman of the workers' compensation commission designates NCCI to be his recipient for notices or reports that he is obligated to accept under the provisions of General Statutes § 31-348.

[3] General Statutes § 31-348 provides in relevant part that ''[e]very insurance company writing compensation insurance . . . shall report . . . to the chairman of the Workers' Compensation Commission . . . the day on which the policy becomes effective and the date of its expiration . . . .'' It does not provide for reports by the insurer to a third party.

The majority opines that the commissioner had ample circumstantial evidence from which he could infer that the notice given by the insurer was a notice of nonrenewal despite the fact that the form used stated that it was a cancellation and that it was not a nonrenewal. It supports this view on the basis that the record indicates that the NCCI receives notices on behalf of the chairman under contract with the commission. However, the statute requires, not that an insurer like Aetna notify a database operator in some different state, but instead that Aetna file a report with the chairman of the commission. There simply is no evidence that it did so and nothing from which this could be inferred. Our Supreme Court has recognized the need for strict compliance with this statute to protect the worker. *Piscitello* v. *Boscarello*, supra, 113 Conn. 130–31.

The case of *Thibodeau* v. *Rizzitelli*, 3373 CRB-4-96-7 (October 14, 1997), provides a good example of why the direct reporting requirement of the insurer to the chairman of the commission, for which the General Assembly wisely provided, should be upheld by courts of law. In *Thibodeau*, the insurer generated a report to NCCI on *August 8, 1994,* on magnetic tape to reinstate a policy with an effective date of May 15, 1994, almost three months in the past. The next day, on August, 9, 1994, the insurer generated a report canceling the same policy, with an effective date of cancellation identical to the date of reinstatement, May 15, 1994. This was all done purposely ''so that the agent's commission could be adjusted'' by manipulating the corporation's computers. This demonstrates the confusion and litigation that can result from reliance on such a database to determine what policy is in effect on a particular date.