

1951

Ous P. Lexes, Ralph M. Garner, Peter John Kanon
and Thomas L. Anderson v. The Industrial
Commission of Utah and American Smelting and
Refining Company : Petition for Rehearing and
Brief in Support Thereof

Utah Supreme Court

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Rawlings, Wallace, Black, Roberts & Black; Dwight L. King; Attorneys for Petitioners

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IN THE SUPREME COURT
of the
STATE OF UTAH

GUS P. LEXES, RALPH M. GARNER,
PETER JOHN KANON and THOMAS
L. ANDERSON, Employees of the
American Smelting & Refining Company,
Petitioners,

— vs. —

THE INDUSTRIAL COMMISSION OF
UTAH, Department of Employment
Security and AMERICAN SMELTING
AND REFINING COMPANY,
Defendants.

PETITION FOR REHEARING AND BRIEF IN
SUPPORT THEREOF

F I L RAWLINGS, WALLACE, ROBERTS
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Clerk, Supreme Court, Utah

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THE INDUSTRIAL COMMISSION OF
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Security and AMERICAN SMELTING
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Defendants.

Case No. 7623

PETITION FOR REHEARING AND BRIEF IN
SUPPORT THEREOF

PETITION FOR REHEARING

COME NOW petitioners and respectfully petition this Honorable Court for rehearing in the above-entitled case and to vacate the order of the Court herein affirming the denial by the Board of Reviews of the Industrial Commission of petitioners' application for unemployment compensation.

This petition is based on the following grounds:

POINT I.

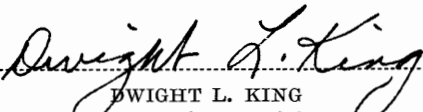
THIS COURT HAS DECIDED THE MATTER APPEALED ON GROUNDS NOT CONSIDERED IN THE DECISION OF THE INDUSTRIAL COMMISSION IN ITS ORIGINAL FINDINGS OF FACT.

POINT II.

THIS COURT HAS PLACED UPON THE EVIDENCE A CONSTRUCTION WHICH IS NOT JUSTIFIED AND IS IN FACT A MISTAKEN INTERPRETATION OF THE EVIDENCE.

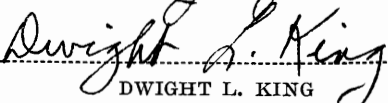
Accompanying this Petition and filed herewith is a brief in support thereof.

RAWLINGS, WALLACE, ROBERTS
& BLACK and DWIGHT L. KING


DWIGHT L. KING
Attorneys for Petitioners

I hereby certify that I am one of the attorneys for the Petitioners herein, and that in my opinion there is good cause to believe the judgment objected to is erroneous and that the case ought to be re-examined as prayed for in said Petition.

Dated this 1st day of July, 1952.


DWIGHT L. KING

RECEIVED four copies of the foregoing Petition
and Brief in Support Thereof this day of
....., 1952.

Attorney for the Defendant
American Smelting & Refining Company

Attorney for the Defendant
The Industrial Commission of Utah,
Department of Employment Security

BRIEF IN SUPPORT OF PETITION FOR
REHEARING

POINT I.

THAT THIS COURT HAS DECIDED THE MATTER
APPEALED ON GROUNDS NOT CONSIDERED IN THE
DECISION OF THE INDUSTRIAL COMMISSION IN ITS
ORIGINAL FINDINGS OF FACT.

It is stated in the majority opinion of the Court and
also in each of the concurring opinions that there was
an executive board decision of the Steelworkers' Union,
Local 4347, to honor any picket line established at the
A. S. & R. Co. during the strike by the Switchmen's
Union. This statement is without foundation in fact and
is based upon an erroneous interpretation of the evidence
by the Court.

In the Findings of Fact the Appeals Referee made no such finding of fact that the executive board had made such a decision and, as a matter of fact, there was no evidence that the executive board considered the question of whether or not the union should recognize a picket line by the Switchmen's Union of North America, if one was established. In Point II evidence which was before the Appeals Referee will be recited and its possible interpretation discussed.

Throughout the majority opinion, repeated reference is made to the executive board decision to honor the picket line. On the first page of said decision the Court states as follows:

“* * * The Executive Board of the Steelworkers Union, Local 4347, had determined to honor such a picket line and the morning shift of A. S. & R. Co. employees stayed outside the plant upon encountering the pickets.”

Again on page 3 the Court sets forth its erroneous concept of what occurred at the executive meeting of the steelworkers:

“* * * Nevertheless, they voted to recognize the picket line and thereby add their own economic strength to the demands of the Switchmen's Union. In doing so, they not only participated in the work stoppage, but their action was the cause of it.”

The Court then following the quote states as follows on page 3:

"Insofar as claimant's eligibility for unemployment compensation benefits is concerned, it is immaterial whether claimant refuses to cross the picket line because of his own personal conviction that the Switchmen's Union picket line must be honored, or if his refusal to cross the picket line stems from his belief that his own union officials' (Executive Board Steelworkers Union, Local No. 4347) decision to honor the switchmen's picket line should be obeyed. In the final analysis, the Switchmen's strike only involves the claimant's grade, class, or group, *so as to cause his unemployment* when the claimant himself *obeys* his union officials' decision to honor the picket line."

Repeating again on the same page the erroneous idea that the steelworkers' executive board had made a decision to honor the picket line of the switchmens' union the court said:

"* * * The Union Executive Board's decision to honor the picket line was made five days prior to its establishment. The absence of violence or use of force by the pickets is shown by an incident which occurred on the morning of June 28th."

Judge Wade in his concurring opinion has apparently adopted the erroneous interpretation of the evidence which was made by the majority opinion and indicates that if there were no vote to honor the picket line by the executive board of petitioners' union, then in his opinion the employees were not voluntarily choosing to remain off the job. There never was any such vote. So under

the true facts the decision of claimants was not voluntary but was coerced and they would be entitled to compensation. As I view Judge Wade's concurring opinion he would, under the true state of facts, have held that the petitioners were entitled to compensation.

Judge Crockett in his concurring opinion states precisely, clearly and succinctly the argument which petitioners' counsel feels has compelling force, but he likewise in his opinion states the erroneous concept of the evidence to the effect that the executive board of the Steelworkers' Union voted to honor the Switchmen's Union picket line.

The final ground on which Judge Crockett's concurring opinion turns, to wit: that petitioners were engaged in a strike as that term is defined by Utah law was not fully presented to this Court in either petitioners' or defendant's briefs, and if a rehearing is granted, petitioners desire an opportunity to examine and present authorities concerning whether or not petitioners were actually engaged in a trade dispute or strike as defined by the statutes of the State of Utah.

As has been demonstrated herein throughout the opinions, both majority and concurring, there runs a misconception of the evidence and what occurred at the executive board of the Steelworkers' Union meeting.

The facts on which the Court's decisions turn were not found by the Appeals Referee. It is obvious that this Court feels that the executive board action was a basic compelling consideration brought to bear on the individual workers reporting for work on the morning of

June 28, 1950. Petitioners submit therefore that this case must be returned to the Appeals Referee for further evidence concerning what the executive board did and what considerations were brought to bear on the individual worker at the gate of the A. S. & R. plant on June 28, 1950.

The opinions of all of the justices indicate that there are certain circumstances which would make a decision not to cross an established picket line involuntarily within the meaning of Utah law. The majority opinion states that the decision not to cross the picket line was made under conditions allowing an opportunity for calm deliberation without force or coercion from any source. This is a fundamental and basic error on the Court's part. No such decision was made by the executive board. No calm and deliberate decision was ever made by the union leadership or membership to honor the switchmen's picket line. The only decision that was made by anyone concerning that matter was made on the morning of the 28th of June, 1950, by the individual membership of the union while standing in front of the gates of the plant confronted with a strong, active picket line.

The Appeals Referee's decision was made upon an entirely different ground than the Supreme Court opinions. The Referee thought and decided that a decision, regardless of what compelled it, to honor a picket line could not be classified as involuntary and as a consequence no unemployment compensation could be allowed to petitioners. Apparently this Court in its opinion does

not agree with that concept but decides that a decision not to cross a picket line may be involuntary.

Petitioners respectfully submit that this Court should either reverse the decision of the Appeals Referee or should return this case for further evidence on the question of whether or not the conduct on the part of petitioners was coerced by the forces confronting them on the morning of June 28th, or whether their decision was made voluntarily and deliberately.

POINT II.

THIS COURT HAS PLACED UPON THE EVIDENCE A CONSTRUCTION WHICH IS NOT JUSTIFIED AND IS IN FACT A MISTAKEN INTERPRETATION OF THE EVIDENCE.

In Point I we have quoted recitals by the majority opinion, to the effect that the executive board of the Steelworkers' Union, Local 4347, had determined to honor the picket line of the Switchmen's Union if one were established. This is contrary to fact and places upon the evidence an unjustified interpretation.

Attached to this Petition and made a part hereof by this reference are the affidavits of President C. F. Keith, Vice-president E. E. Matthews, and Financial Secretary W. J. Madill, three of the members of the Executive Board of the Steelworkers' Union who were involved in the Executive Board Meeting held on June 23, 1950. The affidavits clearly indicate that the question of honoring a picket line established by the switchmen's

union was not the subject of discussion and no decision on that matter was made by the executive board at any time. As is indicated by the affidavits, the business before the executive board at that time was to consider the request by the company management that the steelworkers take over the jobs held by the switchmen's union members within the A. S. & R. plant. The board decided to take over the switching operations, replacing switchmen's union members on those jobs. The only evidence concerning this matter before the Appeals Referee is the following from Mr. Cornelius F. Keith's testimony:

"Q. Mr. Keith, I haven't come to that yet. Was there anything said about the picket line being there?

"A. No.

"Q. Was there anything said about the picket line—that it would be crossed or it would be respected?

"A. No.

"Q. It wasn't even mentioned?

"A. Mr. Rouillard was told by the union executive board when they started to do their own switching that if the picket line was placed at the plant gates, that the workers wouldn't cross it.

"Q. When did that conversation take place?

"A. On the 23rd of June.

"Q. And where did it take place and who was present?

"A. The executive board met and discussed the company's proposal to take over the switching jobs in the event the D. & R. G. workers left the plant.

"Q. When you say the executive board—you mean the union?

"A. That's the local union executive board.

"Q. And that was on the 23rd?

"A. That's correct.

"Q. Was there any other company official present—with the exception of Mr. Rouillard—when this conversation took place?

"A. No, I gave Mr. Rouillard the information over the telephone after the board meeting.

"Q. And what did you say to him—as near as you now recall?

"A. I told him the executive board had considered the company's request and that they would accept the switching jobs and try to keep the plant running with the Kennecott equipment there but that if the picket line was placed up there, that was something that we wouldn't cross.

"Q. Was that what you said to him, in effect—to Mr. Rouillard?

"A. Yes.

"Q. Now,—

"THE REFEREE: The union, then, had no objection to the arrangement the company had to take care of the switching then, it was understood that they said they would go ahead and try to keep the plant operating but if the picket line was established, they would honor the picket line.

"MR. KEITH: We said we wouldn't cross it.

"Q. That was on the 23rd of June?

"A. Yes."

It will be noted in the testimony of Mr. Keith as quoted that there is a definite opportunity for misinterpretation of the executive board action. As the testimony appears, there could be no doubt but that Mr. Keith was stating to the management that it was his opinion that the workers of the American Smelting & Refining Plant

would not cross a switchmen's picket line if one were established. It will be noted, however, that in said testimony the only topic which Keith stated was discussed by the executive board was the company's proposal that the steelworkers take over the switching jobs in the event the D. & R. G. workers left the plant.

There is not one scintilla of evidence that at the executive board meeting the union officers considered the question of whether or not a picket line would be respected. As is stated in Mr. Keith's affidavit, Exhibit "1," page 13, when he spoke concerning a picket line he was admonishing and advising the management of the plant that it must keep the entranceways to the plant clear so that the employees would have free access to their place of work. It appears from the testimony when carefully read that he was not giving any executive board decision or union membership decision concerning the respecting of a picket line. It will be noted that when Mr. Keith was asked by the Referee whether or not it was understood that *they* would honor the picket line Mr. Keith specifically said, "We said *we* wouldn't cross it." It will be noted in Mr. Keith's affidavit that he again states, as was understood by the Referee and by all at the hearing, that when Mr. Keith spoke about the picket line he was merely telling the company that he personally would not cross a picket line if one were established.

The affidavits of Keith, Matthews and Madill, Exhibits "1," "2" and "3," pages 13-20, also reveal that it was not within the power of the executive board of the steelworkers' union to decide whether or not membership

of the union should honor or disregard a picket line. That decision is one which the union membership individually, or meeting as a body, must decide for themselves.

From the affidavits it appears clearly that this Court has misconstrued the evidence and is under a misapprehension as to the facts. Its decision is based upon a false premise. The evidence before the Appeals Referee did not indicate any executive board decision that the union membership should respect the picket line. It not only fails to show such a decision but fails to indicate that any action by the officials of the steelworkers' local was communicated to the membership. This Court will note that not a single one of the claimants who testified said that his reason for not crossing the picket line was an executive board decision.

CONCLUSION

Petitioners respectfully submit that this Court because of the erroneous interpretation which it has placed upon the testimony before the Appeals Referee must grant a rehearing and in the light of the true fact make a decision in accordance with law and equity.

Respectfully submitted,

RAWLINGS, WALLACE, ROBERTS
& BLACK
DWIGHT L. KING
Counsel for Petitioners

530 Judge Building, Salt Lake City, Utah

EXHIBIT "1"

IN THE SUPREME COURT
of the
STATE OF UTAH

GUS P. LEXES, RALPH M. GARNER,
PETER JOHN KANON and THOMAS
L. ANDERSON, Employees of the
American Smelting & Refining Company,
Petitioners,

— vs. —

THE INDUSTRIAL COMMISSION OF
UTAH, Department of Employment
Security and AMERICAN SMELTING
AND REFINING COMPANY,
Defendants.

AFFIDAVIT
Case No. 7623

STATE OF UTAH,

COUNTY OF SALT LAKE,

ss.

C. F. KEITH, being first duly sworn, upon his oath,
deposes and says as follows:

That he is the President of the Steelworkers' Union,
Local 4347; that he is the Connie Keith who was a witness
at the hearing before the Appeals Referee of the Indus-
trial Commission and testified before said Referee on the
21st of August, 1950.

That he is now, and was on the 23rd of June, 1950,

the President of Steelworkers' Union, Local 4347; that on the 23rd of June, 1950, affiant, together with E. E. Matthews, Vice-president of Local 4347, and W. J. Madill, Financial Secretary of Local 4347, met together with the other members of the Executive Board of Local 4347; that said meeting was called for the purpose of discussing the request of the management of the American Smelting & Refining Company that the Steelworkers' Union take over the switching jobs which had been filled by the members of the Switchmen's Union when the Switchmen's Union went out on strike. At said Executive Board meeting no discussion occurred concerning the action of the Executive Board or the union membership in case a picket line was established by the switchmen's union membership.

Whether or not a picket line should be honored or disregarded is not a decision which the Executive Board of Local 4347 is empowered to make. Such decisions are the prerogative of the union membership and can only be made at a meeting of the membership. As a consequence the question of honoring a picket line was not discussed and no decision of the Executive Board was made or contemplated at the meeting of said board on the 23rd of June, 1950.

In stating to the management of the American Smelting & Refining Company that "we would not cross a picket line" I spoke only as an individual expressing my own personal convictions. It was also my opinion that the membership of Local 4347 would not cross a bona fide

and legitimate picket line established at the American Smelting & Refining Plant.

I did not intend to communicate to the management any idea that an executive board decision had been made or voted upon to honor a picket line should one be established by the switchmen's union and I am sure that Mr. Rouillard, with whom I talked concerning the executive board meeting of June 23rd, understood that I was not speaking for the executive board or the union membership in saying that I would not cross a picket line. I am also sure that he knew that I was merely expressing my own personal opinion, admonishing and advising the company to be sure that no picket line was established around the plant to bar access of the American Smelting & Refining Company Steelworkers' Union members from their place of work.

DATED this 27th day of June, A.D. 1952.

(s) C. F. KEITH
President, Local 4347

SUBSCRIBED AND SWORN TO BEFORE ME
this 27th day of June, A.D. 1952.

(s) EMMA LEISHMAN
Notary Public
Residing at Salt Lake City,
Utah

My commission expires:
June 19, 1953.

EXHIBIT "2"

IN THE SUPREME COURT
of the
STATE OF UTAH

GUS P. LEXES, RALPH M. GARNER,
PETER JOHN KANON and THOMAS
L. ANDERSON, Employees of the
American Smelting & Refining Company,
Petitioners,

— vs. —

THE INDUSTRIAL COMMISSION OF
UTAH, Department of Employment
Security and AMERICAN SMELTING
AND REFINING COMPANY,
Defendants.

AFFIDAVIT
Case No. 7623

STATE OF UTAH,

COUNTY OF SALT LAKE,

} ss.

E. E. MATTHEWS, being first duly sworn, upon his oath deposes and states as follows:

That he is the Vice-president of Steelworkers' Union, Local 4347 and occupied said position on the 23rd of June, 1950; that he was present at an executive board meeting held on said date at the American Smelting and Refining

Company Plant at Garfield, Utah; that at said meeting a request of the management of the American Smelting and Refining Company that steelworkers take over the switching operations at the Garfield Plant when said job was vacated by members of the switchmen's union was discussed and it was decided that our membership should take over those positions; at the meeting there was no discussion concerning the honoring of a picket line if one were established by the switchmen's union. The question of whether or not a picket line should be honored or disregarded is not one which the executive board is empowered to decide. When such question is to be decided the membership of the union must meet and make that decision as a body. At no time was the question of honoring or disregarding a switchmen's picket line ever voted upon or decided either by the executive board or the duly called meeting of the union membership.

DATED this 27th day of June, A.D. 1952.

(s) E. E. MATTHEWS

SUSCRIBED AND SWORN TO BEFORE ME
this 27th day of June, A.D. 1952.

(s) EMMA LEISHMAN

Notary Public

Residing at Salt Lake City,
Utah

My commission expires:

June 19, 1953.

EXHIBIT "3"

IN THE SUPREME COURT
of the
STATE OF UTAH

GUS P. LEXES, RALPH M. GARNER,
PETER JOHN KANON and THOMAS
L. ANDERSON, Employees of the
American Smelting & Refining Company,
Petitioners,

— vs. —

THE INDUSTRIAL COMMISSION OF
UTAH, Department of Employment
Security and AMERICAN SMELTING
AND REFINING COMPANY,
Defendants.

AFFIDAVIT
Case No. 7623

STATE OF UTAH,

COUNTY OF SALT LAKE,

} ss.

W. J. MADILL, being first duly sworn, upon his oath deposes and states as follows:

That he is the Financial Secretary of Steelworkers' Union, Local 4347 and occupied said position on the 23rd of June, 1950; that he was present at an executive board meeting held on said date at the American Smelting and Refining Company Plant at Garfield, Utah; that at said

meeting a request of the management of the American Smelting and Refining Company that steelworkers take over the switching operations at the Garfield Plant when said job was vacated by members of the switchmen's union was discussed and it was decided that our membership should take over those positions; at the meeting there was no discussion concerning the honoring of a picket line if one were established by the switchmen's union. The question of whether or not a picket line should be honored or disregarded is not one which the executive board is empowered to decide. When such question is to be decided the membership of the union must meet and make that decision as a body. At no time was the question of honoring or disregarding a switchmen's picket line ever voted upon or decided either by the executive board or the duly called meeting of the union membership.

DATED this 27th day of June, A.D. 1952.

(s) W. J. MADILL

SUBSCRIBED AND SWORN TO BEFORE ME

this 27th day of June, A.D. 1952.

(s) EMMA LEISHMAN

Notary Public

Residing at Salt Lake City,
Utah

My commission expires:

June 19, 1953.