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Olof Nelson Construction Company, Vincent-Peterson Construction Company, Groneman & Company, Young & Smith Construction Company, Utah Construction Company v. The Industrial Commission of Utah et al : Brief of Utah State Federation of Labor in Support of Appellees

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

OLOF NELSON CONSTRUCTION
COMPANY, VINCENT- PETER-
SON CONSTRUCTION COM-
PANY, GRONEMAN & COM-
PANY, YOUNG & SMITH CON-
STRUCTION COMPANY, UTAH
CONSTRUCTION COMPANY,

Petitioners and Appellants,

vs.

Case No.
7633

THE INDUSTRIAL COMMISSION
OF UTAH, and THE BOARD OF
REVIEW, APPEALS REFEREE
and CLAIMS SUPERVISOR of
its DEPARTMENT OF EMPLOY-
MENT SECURITY, and JOSEPH
B. ALLMAN ET AL.,

Respondents and Appellees.

BRIEF OF UTAH STATE FEDERATION OF
LABOR IN SUPPORT OF APPELLEES

The Utah State Federation of Labor appear here
as amicus curiae by permission of the Court.

The Statement of Facts set out in Respondents
Brief is adopted.

ARGUMENT

At the outset we especially invite the court's attention to the following factors which we deem of importance.

The claimants, for unemployment compensation herein, at no time were employed by the Associated General Contractors, and bore no relationship to them as such. The Associated General Contractors were and are in no sense employers in this matter. The claimants herein for unemployment compensation were at no time employed by or were working at a struck plant or job. The claimants at all of the time herein mentioned were ready, able and anxious to work at their jobs. There is no dispute, that such claimants were the victims of the opposite of a strike, that is to say, they were deliberately and unilaterally locked out from their jobs by their employer, against their will and without their consent. The Industrial Commission found that claimants did not foment a strike; that there was no strike at the job or the job-establishment at which they worked. The precipitate of the philosophy of the Statute and the question here to be resolved rests almost entirely on the involuntary unemployment status of these employes seeking relief from lost wages.

The Petitioners freely admit, but in a sort of confession and avoidance manner, the simple and precise issue herein involved when they say on page 13 of their Brief:

“In recent years the increased frequency of large scale industrial controversies has sharply

accentuated the problem of the applicability of disqualification provisions to claimants whose unemployment, while resulting from a labor dispute or strike is *wholly involuntary*. Claimants in the instant case received the benefit of the wage increase resulting from their strike, their duly appointed representatives called the strike against the two members of the bargaining unit, and for that reason their unemployment was, *perhaps*, not involuntary." (Emphasis ours.)

Petitioners may not rely on subsection (d) of 42-2a-5, Utah Code Annotated, 1943, as amended, because that statute by explicit language and by express legislative intent deals exclusively with a *strike* or struck plant. It reads:

"an individual shall be ineligible for benefits or for purposes of establishing a waiting period:

(d) For any week it is found by the commission that his employment is due to a stoppage of work which exists because of a *strike* involving his grade, class or group of workers at the factory or establishment at which he is or was last employed." (Emphasis ours.)

These claimants apparently had just the opposite intention of quitting their jobs voluntarily, and that obviously is the very reason why they so vigorously sought after their work and as a result of their evident intention to continue working at their jobs the employers arbitrarily and one-sidedly locked these claimants out. The economic coercion, the economic sanction and the economic squeeze was not on the part of the employees, but on the part of their employers. Hence, the reason becomes very evident why the Petitioner argues

and relies upon subsection (1) of subsection (d) of 42-2a-5, Utah Code Annotated 1943, as amended, which reads as follows:

“(1) If the commission upon investigation, shall find that a strike has been fomented by a worker of *any* employer, none of the workers of the grade, class, or group of workers of the *individual* who is found to be a party to such plan, or agreement to foment a strike, shall be eligible for benefits; * * *.” (Emphasis ours)

The language used in this section may be unhappy and the result of many compromises in legislative committees, but the intention is quite clear. The subsection is supposed to take care of what is sometimes known as the quickie, wildcat or unauthorized strike, where some individual in a plant starts agitating for better conditions or wages, and to achieve the results foments dissension and unrest among his fellow servants, so quite naturally, when a worker of “any employer” who is a fellow worker of the “individual” and is a party to such plan, foments a strike he is not eligible for unemployment compensation; for the very simple and underlying reason, that such fellow servant of such fomenter of such strike does not occupy an involuntary status; under the provisions of the statute he is an integral part and parcel of the plan or agreement to foment the strike, hence, ineligible to benefits. It is quite plain, this last section of the statute, upon which Petitioners principally rely, bears little or no relationship to the issues here to be determined, respecting these claimants application for unemployment compensation, and actually is of rela-

tive unimportance, because the fact is, that there was no claimant fomenting a strike, and there was no strike at the locked out job. There was no fellow worker available that could plan or agree or conspire to foment a strike unless he wanted to defeat his own welfare. The best evidence of what the claimants intended is from what they did—they tried to head off a strike instead of causing a strike by eagerly presenting themselves for work.

Petitioners say on page 14 of their Brief:

“The Unions in this case ordered a strike at only two construction firms hoping to be secure in the knowledge that such a course would as effectively induce a complete work stoppage as would a strike against all members of the bargaining unit and that state benefit payment of all non-striking members would appreciably lessen the drain upon the union’s treasury by requiring the union to finance only a small scale strike. As a matter of fact the Unions knew and had been notified several times during negotiations that a strike against one would be considered a strike against all.”

Now assume we go one step further and add to this hypothesis, of the Petitioner, that the various Unions involved planned to raise themselves up by their own boot straps through assessing all of the employees who were left working at the non-struck plants, and to supplement the benefits received by the striking employees for unemployment compensation. How, and in what manner, does that concept change the obvious intention of the Statute, which provides in substance, that a worker

is only ineligible for unemployment compensation when and if a work stoppage is a result of a strike at the establishment at which he was last employed. Not a single one of these applicants for unemployment compensation was involved in a strike or working in or at or connected with a struck plant. The theory that any individual union, here under consideration, caused a work stoppage or strike to be brought about at the Paul and Barker jobs, and may have or may not have intended to assess the members of their respective unions, remaining at work and thus to contribute supplementary benefits to unemployment compensation benefits to the strikers; and may have intended to demonstrate economic sanction to the employers; or may have intended to pick one employer off at a time; or may have intended to divide the employers; or may have intended to soften the demand on their treasuries, adds nothing to a determination of this issue pursuant to this statute, for the reason that if some employer locks out his employees and such employee finds himself out of a job as a result of an involuntary status on his part he is entitled per se to unemployment compensation benefits under the statute.

The action of the employers in this matter was wholly arbitrary, wholly one-sided and so far as the locked-out claimants are concerned, wholly uncalled for and a downright intention on the part of the employer to coerce the claimants into submitting to wages and conditions fixed and arbitrarily dictated by the employers.

Why are the employers here seeking to block and obstruct these locked-out claimant employees from recovering what the statute says they are entitled to. If they prevail, is it not obvious, that they serve notice here and now, that the next time the employers have an occasion to lock out their employees under similar economic circumstances such employees will be without unemployment compensation and will be softened up to come crawling back and glad to work, seeking the status quo. If these employers can defeat the statute by reversing the process of striking first then they would indeed have a mighty economic weapon over their employees and this may be precisely what they are maneuvering for. There is a slogan in military affairs, that the best defense is a good offense, hence it is conceivable that in the future, if these unemployment compensation benefits are unavailable under such unilateral technique we may be hearing more about lockouts than we do strikes.

Assume that the Petitioners here were to win this case upon some circumloquitous theory or legerdemain doge, that these locked-out claimants were somehow eager and avid strikers and not involuntary lockouts, and thus ineligible for unemployment compensation under the wording of subsection (1) of subsection (d) of 42-2a-5, and in some strange and indirect manner connected in with some individual of the grade, class or group of workers who fomented a strike. The difficulty then to be encountered, under such hypothesis, is that no matter how much fomenting was thought or surmised to have been done, actually no strike ensued at the last

place of claimants employment, and still the further difficulty to be encountered is that the Industrial Commission has already found, as a matter of fact, that there was no strike at the last place of employment of claimants and that claimants unemployment status was involuntary.

IMPRACTICAL ADMINISTRATION OF THE ACT

What happens to the administration of the Unemployment Compensation Act when the minds, motives, and intentions of the respective leaders of all these respective local unions are sought to be explored—a rather strange and wholly impracticable application devolves on the Industrial Commission, for in each case they would find themselves required to go far beyond the objective standards set up by the Act, in such plain language, and resort to a guessing and speculating procedure, respecting the subjective motives and explore the thinking of the construction trade union officers and others and otherwise in order to fix the eligibility status of each claimant. This would create quite a Donnybrook Fair, for the employer would always claim, under subsection (1) of subsection (d) of the Act that a worker on some job conspired with another worker and he with another to the end that an attributed intention is superimposed on some imaginary strike action, and thus the apprehensive employer could claim an excuse to lock out his employees and contend, in the terms of subsection (1), that he is under strike status, and his employees

without benefit of unemployment compensation, a source of revenue under involuntary unemployment status, available when it is most desperately needed. There most always ensues a turgid melange of effusions emanating from partisan minds when representatives of labor and management gather around the bargaining table; they huff, they puff and they bluff down to the last penny of money and last minute of time, and sometimes they even tell their respective shareholders and membership how lucky they are to be so well represented—but is all this planning, scheming and maneuvering, on the part of agents of industry and labor, the business of the Industrial Commission in determining the merits of an unemployment compensation claim, where the worker took no part in a strike, but on the contrary presented himself for work—then finds himself locked out of his job, between vice and versa, bewildered and flabbergasted because his boss says he is on a non-existent strike. The fact that the claimant under these facts is a union member has no more bearing on the case than if he were a Republican or Democrat—because neither the organization or the claimant participated in anywise whatsoever in a strike at the employer's job-establishment; indeed the Industrial Commission so found that there was no strike at claimant's job-establishment and his unemployment status was involuntary, so how this Court can up-set such findings, predicated on such facts, is beyond our poor power to conceive.

ASSOCIATED GENERAL CONTRACTORS STATUS

The Associated General Contractors are not in the construction business, as such. It does not have an establishment, factory or plant, and it has no grade, group or class of employees. It was the Associated General Contractors who served a unilateral notice on all of the unions involved, that if a strike against one contractor be declared, it would be deemed a strike against all.

There was a strike at the Paul and Barker jobs, but the claimants, here under consideration, had absolutely no connection with such jobs, directly or indirectly. Their sole employment was at the job where there was no strike, but from which they were respectively locked out. We are not here dealing with labor relations, as such, or with a labor dispute, as such. We are here dealing with specifically one matter, to-wit: Unemployment Compensation. The Court may search the contract between the respective unions and the contractors and no where will appear one scintilla that a union or the unions collectively, must strike all or none of the contractors, and no where will one scintilla appear that the Associated General Contractors, the non-employers here, agree or are required to shut down all construction jobs when only one job is struck. This all or none business is an after thought; an arbitrary one-sided device of the contractors to defeat the Unemployment Compensation Act, and whip these claimants into submission. The Associated General Contractors cannot unilaterally con-

vert a strike on one job into a general lockout to defeat the Unemployment Compensation Act, any more than they can convert a sow's ear into a silk purse. Admittedly, the Associated General Contractors bargained for all of these contractors—but what of it—what right does that give them to step over into foreign territory, not under the National Labor Relations Act or the Utah Labor Relations Act, but into the field of the Unemployment Compensation Act, and defeat the obvious purpose of this Act, by declaring arbitrarily, without negotiation with the unions and strongly against their will and wholly outside the collective bargaining contract, that a strike against one job will be considered, by one side, a strike against all, and following up this device, they throw out the baby with the bath, by locking out all employees. That sounds too much like the Nevada Justice of the Peace, who held: "If the defendant didn't do this, mebby he done sumpin' else, so into the cooler he goes, anyway and besides the Sheriff's wife ain't got many boarders lately."

PURPOSE OF STRIKE BEARS NO RELATIONSHIP TO UNEMPLOYMENT COMPENSATION

Assume the work stoppage at the Paul and Barker Jobs was unlawful and in plain controvention of the contract, and in opposition to the provisions of the National Labor Relations Act, etc., etc. The Industrial Commission would not be concerned with all of these extraneous matters; that is to say, whether a strike was

legal or illegal at the Paul and Barker jobs makes no difference in the premises. All the Industrial Commission is concerned with, in the instant case, is whether these claimants were unemployed on an involuntary status in the absence of a strike, and that, it so happens, is just what the Industrial Commission did find.

STRIKE NOT CAUSE OF CLAIMANTS UNEMPLOYMENT

The strike at the Paul and Barker jobs, is not the sole or proximate cause of the lockout. That could not possibly have happened because of the sequence of events. The direct, sole and proximate cause of the lockout was just the opposite of the reason for striking the Paul and Barker jobs. It would seem that what the employers were seeking to do, by way of the lockout, was to eventually establish the economic status quo. Assume that all of the garages in this state from St. George to Logan formed a state wide automotive garage association, and thereafter said to the Machinists Union, who have them all organized, if you strike the garage in Smithfield, with whom you are having a labor dispute, we will close all other garages in the entire state. Now if by that device the garage employees at Kanosh, Kanab and Koosharem are locked out and such employees are forced, against their will, into an unemployed status—would this Court permit this garage association to substitute its interpretation and judgment for the interpretation and judgment of the Industrial Commission, as here the Associated General Contractors are at-

tempting to do. Obviously it was the affirmative, voluntary action of the employers which brought about these claimants application for unemployment compensation; sole employer conduct over which these claimants had no control, but on the contrary exercised diligence to forestall, and head off; so the end result, it would seem, is that the Associated General Contractors are attempting to take a premium from their own one sided imposition and at the same time "soak" their employees a penalty for being a peaceful unwilling victimized casualty.

NO VOLUNTARY STOPPAGE OF WORK BY CLAIMANTS

The undisputed evidence in this case shows that the employers closed down their jobs and laid off their workmen. See Appellants' Brief Page 7. This closing down by the employers, in the construction industry, was in accord with a predetermined agreement between the various employers comprising the Associated General Contractors. The claimants here had nothing to do with this closing down of the jobs, and this is further shown by the fact that they presented themselves at their respective jobs ready and willing to go to work.

The strike at the Paul and Barker jobs did not cause the other employers to close down their jobs. The construction industry is not an integrated production line business, with all of the employers contributing their part to a finished product, or where the closing of one job would force the closing of another because of lack of supplies, parts or services. On the contrary, each

of these employers were competitors, and had bid on the various jobs. The various contractors could have continued their operations indefinitely, and the strike at the Paul and Barker jobs would have had no effect whatsoever on their operations.

The lockout of the employees by their employers was not because of the strike at the Paul and Barker Jobs, rather such action was affirmative action taken by the employers to defeat the effect of the strike action of the unions. These employers, by throwing other union members out of work, obviously hoping to destroy the effect of this strike and thus force the unions to retreat from their demands. The Unions called a strike at two jobs, and the affirmative action of the employers closed down all other jobs, and these claimants became unemployed.

Assume that the strike against the Paul and Barker jobs was a strike against the entire bargaining unit, as contended by Appellant. Still this strike did not cause the other employers to close down their work. Even though the strike against the two employers may be considered against the whole unit, the facts show that no picket lines were established at the remaining employers of the unit, and the employees of these non-struck employers did not refuse to work. Even though the employers may want to, and in fact did, consider the strike as being against the entire unit, the fact remains that there was no strike in progress at the factory or establishment of these employers, to disqualify these claimants under subsection (d) of section 42-2a-5.

The Appellant would apply subsection (1) of subsection (d) of section 42-2a-5 to the facts present in this case. The obvious meaning of subsection (1) is that it is to be applied only to the employees of one employer. The applicable portion of this subsection is as follows: “* * * shall find that a strike has been fomented by a worker of any employer, * * *.” The only conclusion that can be reached from this language is the legislature only intended to cover the employees of that employer for whom the worker, who fomented the strike, worked, and not to cover any workers at any other factory or establishment. The claimants here were working for employers who had no connection with the employers against whom the strike was called, except their association in the Associated General Contractors unit, and there was no strike at their employers job-establishment. Had it not been for the action of the employers of these claimants, there would have been no unemployment for these claimants and thus no application for unemployment benefits.

A LABOR DISPUTE IS MORE THAN A STRIKE

We are not, under the Utah Statute, dealing with the wide and broad subject of a trade or labor dispute, as set out in the statutes of other jurisdictions, for instance England and California; where a trade or labor dispute bars an employee from unemployment compensation. Perhaps no one knows, or at least no one has written a satisfactory definition of a labor or trade dispute. Probably because no one understands what

the limitations of a labor dispute are. The facts of a labor dispute are legion and its area as broad and sweeping as industrial economics. In industry a trade or labor dispute can and does mean most anything, and if, as is frequently admitted, the most efficient worker is the one who is constantly agitating for better conditions, there are thousands of labor disputes to every strike. In a country where 500 contracts are signed, that the public never hears about, to every strike, that gets the headlines; the strike is well understood by most everyone, both in and out of industry. Therefore to compare out Utah Statute, that bars compensation "because of a strike * * * at the establishment at which he is or was last employed.", with another statute from another state which bars unemployment compensation because of a broad, sweeping, complex and far reaching labor dispute is overdoing analogy, over simplification and speeding the train of circumstances so fast it runs by the station.

Suppose the Associated General Contractors had kept their lockout strategy secret and sprung it without notice, when the Paul and Barker jobs were picketed—would there be any indubity respecting the favorable applicability of our statute to these claimants—of course not—but the principal involved would be exactly the same. With or without notice of the lockout, the unions did not agree to it, the collective contract was silent respecting it and the motive, the strategy, and the conduct pursuant thereto on the part of the contractors were all arbitrary and one-sided in terms of the statute, respect-

ing a grade, class or group of workers at an independent establishment. There was no relationship between the balance of the jobs and the Paul and Barker jobs. Those jobs did not interfere one scintilla with the operation of the numerous other jobs of the contractors. So to contend that these claimants voluntarily and willingly left their work because the Paul and Barker jobs were picketed is untenable and does violence to words and deeds; for let us again invite the Courts attention to the words of our statute, "an individual shall be ineligible * * * for any week * * * that his unemployment is due * * * because of a strike * * * at the establishment at which he is or was last employed." Hence, there being no strike, picket, walkout or any concomitant of a strike at the claimants' establishment where they were last employed; obviously entitles them to unemployment compensation.

Suppose these respective claimants did not want the union to represent them and were opposed to labor unions, but were compelled into submitting to being represented by the union because of a National Labor Relations Board authorization election, in which election these claimants voted against the union; and further suppose, the union that so represented these anti-union claimants, because they had no other choice, so long as claimants worked on a job where a National Labor Relations Board authorization election has been held, called a strike at a plant which is represented by an association which represents 1000 other similar plants; and thereafter such association said to the union, "you call

off this strike or we shall shut down every plant in the Association, where we find non-union men working," and suppose that the Association did just that. Would it not be ridiculous to say that the union, representing the non-union claimants, which called the strike at a single plant, which provoked the association into unilaterally closing all other plants, where non-union men worked and were thrown out of work, and were therefore not entitled to unemployment compensation because the union forsooth represented locked out non-union employees. This analogy may seem far fetched but the collective principal is exactly the same circumlocutory theory to which the Association clings in its hypothesis to connect these claimants with the Paul and Barker strike through their bargaining agent; and the principal would still be the same if 499 out of 1,000 voted against the union at a plant National Labor Relations Board authorization election, and the same 499 out of 1,000 voted in exactly the same way against the union in a strike authorization election; just a sample of the difficulty encountered when one attempts to confuse the broad subject of collective bargaining in labor disputes with the rather simple and uncomplicated conduct known as strike action, as contemplated by our legislature, in the Utah Unemployment Compensation Act.

FINDINGS OF COMMISSION CONCLUSIVE

The Industrial Commission has conducted hearings and made investigations in this case, and after these proceedings were completed, it entered its finding of fact

and conclusions of law herein. In these findings of fact it found that there was no strike at the factory or establishment at which these claimants are or were last employed, and thus the claimants were not disqualified for compensation under the act. Section 42-2a-10 (i) of the Utah Code Annotated 1943, provides that in any judicial proceedings the findings of the commission as to the facts, if supported by the evidence, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Manifestly, sufficient evidence is present herein to sustain the findings of the commission, that no strike existed at the factory or establishment of these claimants. This is determinative of the decision in this cause. Since the Commission has found evidence showing that there was not a strike present, the Court should not, in our humble opinion, disturb this finding.

All of which we respectfully submit.

UTAH STATE FEDERATION OF LABOR

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