

1951

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 Industrial Relations Council, Intervenor, Heretofore Appointed Amicus Curiae

Utah Supreme Court

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**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

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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.

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.*

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BRIEF OF INDUSTRIAL RELATIONS COUNCIL,  
INTERVENOR, HERETOFORE APPOINTED  
AMICUS CURIAE

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Amicus Curiae.

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Clerk, Supreme Court, Utah

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7633

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BRIEF OF INDUSTRIAL RELATIONS COUNCIL,  
INTERVENOR, HERETOFORE APPOINTED  
AMICUS CURIAE

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## STATEMENT OF THE CASE

The Industrial Relations Council, by leave of this Honorable Court first had and obtained, files herewith its brief as Amicus Curiae.

The questions raised by petitioners and appellants

are of first impression before this Honorable Court. The questions involved are of great importance in this area. There is a great divergence of opinion among these groups as to the application of the Utah law pertaining to the question involved.

The respondents and appellees and the petitioners and appellants have set forth the facts pertaining to this case, and this intervenor will not, therefore, at this time make any statement of facts, but will refer to the facts in this case as they apply to the argument presented.

The petitioners and appellants have set forth two points in their brief. However, we believe that the point as set forth in the brief of the respondents and appellees clearly sets forth the point in question, and we will, therefore, adopt that point of the respondents and appellees and present our argument in relation thereto.

## ARGUMENT

THE CLAIMANTS WERE UNEMPLOYED DUE TO A STOPPAGE OF WORK WHICH EXISTED BECAUSE OF A STRIKE INVOLVING THEIR GRADE, CLASS, OR GROUP OF WORKERS AT THE FACTORY OR ESTABLISHMENT AT WHICH THEY WERE LAST EMPLOYED.

For the convenience of the court we quote herewith Section 42-2a-5(d), Utah Code Annotated 1943, the particular statute in question, which provides in part as follows:

“An individual shall be ineligible for benefits or for purposes of establishing a waiting period:

“(d) For any week in which it is found by

the Commission that his unemployment 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." (Italics ours.)

It is the position of this intervenor that for the claimants to be eligible to the benefits of the Utah Employment Security Act, it must be conclusively shown that the unemployment of the claimants herein was not due to a stoppage of work which existed because of a strike involving their grade, class or group

It is our further position that it must be shown that the claimants were not a part of the group that was involved in the strike. The mere fact that the claimants and those employees who went out on strike did not have a common employer does not, because of this fact, alter or change the situation. In interpreting the Utah Employment Security Act, the question arises, were the claimants unemployed due to a stoppage of work which existed because of a strike involving their grade, class or group?

It is our position that there is only one answer, and that answer is "yes."

In labor relations, Labor Boards many times determine groups or bargaining units to include employees of many employers, which is commonly referred to as a multi-employer unit; that is, units or groups in which the employees do not have a common employer. However, such groups are appropriate units and are so determined by Labor Relations Boards.

For assistance to this Honorable Court, we will set forth decisions and instances where Labor Boards have determined that multi-employer groups or bargaining units, for the best interests of all parties involved and for the purpose of maintaining industrial peace, are necessary and essential for the purposes of collective bargaining. That is, to have groups in the same industry, job classifications, etc., but not the same common employer.

As we understand the facts in this case, the Associated General Contractors of America, Intermountain Branch, bargained for certain contractors who were signatories to the agreement between the contractors and the union. That the unions included various crafts, which were known as the six basic crafts, to-wit: The International Hod Carriers, Building and Common Laborers Union; the United Brotherhood of Carpenters and Joiners of America; the International Union of Operating Engineers; the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; the Operative Plasterers and Cement Finishers Association; and the International Association of Bridge, Structural, and Ornamental Iron Workers, all affiliated with the American Federation of Labor and representing the local unions of the state.

For many years the unions, that is, the six basic crafts, have bargained as a group, with the contractors as a group, and when a contract has been arrived at, an identical contract is executed with the contractors being signatory thereto.



The pattern of collective bargaining history has been that the Associated General Contractors has been the representative of the contractors as a group, and the employees of that group have been and did constitute an appropriate unit for the purposes of collective bargaining, notwithstanding that they did not have a common employer, with the six basic crafts acting as a unit.

It is our opinion from the facts in this case—that is, the collective bargaining history—that the employers herein constitute a multi-employer bargaining unit. Such a group constitutes an appropriate unit for the purposes of collective bargaining. The decisions of the National Labor Relations Board would sustain our position with respect to this matter.

We feel that it would be enlightening to this Honorable Court to refer to the Utah Labor Relations Act, Title 49, Chapter 1, and particularly Section 17, Subsection (b), as well as the same comparable section of the Labor Management Relations Act of 1947, known as Title 29, Section 159, Subsection (b), which provides in part as follows:

Utah Labor Relations Act:

“49-1-17 — Collective Bargaining—Representatives. (b) The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.”

Labor Management Act of 1947, as amended:

“Title 29, Sec. 159, Subsection (b) USCA.  
(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of sections 151-166 of this title, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.”

The Utah Labor Relations Board, as far as this intervenor can ascertain, has not yet had the occasion to make a finding of what is referred to many times as a multi-employer unit. However, the National Labor Relations Board, on many occasions, has done so under and by virtue of the provisions of Title 29 above referred to.

For the convenience of this court, we think it would be enlightening to refer this court to National Labor Relations Board decisions on the appropriateness of multi-employer bargaining units. The Board has held that certain groups or units constitute an appropriate unit for the purposes of collective bargaining, notwithstanding the fact the employees do not have a common employer.

For illustration, just recently the National Labor Relations Board directed that an election be held in seven dairies and ice cream plants in the State of Utah. These plants distributed ninety percent of the milk and ice cream in the State of Utah. In conducting this election the employees were treated as though having one

common employer, notwithstanding the fact that the seven dairies and ice cream manufacturers involved had plants from Ogden on the north to Cedar City on the south. In conducting the election among the employees for the purpose of determining whom they desired to represent them for the purpose of collective bargaining, the election was conducted as though all of these employees worked for one employer, and the Board directed that the union to be designated must receive a majority of the votes of the employees voting, without regard to their places of employment.

This case has not yet come out in the *Advance Sheets of the Labor Relations Manual* and, therefore, does not have a reference number.

The National Labor Relations Board's decisions on the appropriateness of multi-employer bargaining units make it clear that the controlling factor in such cases is the factual existence of a history and pattern of joint bargaining. *Bunker Hill and Sullivan Mining and Concentrating Company*, 89 NLRB No. 8 (1950); *Brewery Proprietors of Milwaukee, Wisconsin*, 62 NLRB 163 (1945); *Waterfront Employers Association of the Pacific Coast*, 71 NLRB 80 (1946). The Board summarized its position on this point recently in the *Bunker Hill* case as follows:

“The Board has held that the essential element for establishing a multi-employer unit is participation by a group of employers, whether members or non-members of an association, either personally or through an authorized representative, in joint bargaining negotiations. *We have*

*found such units appropriate although the particular employers involved did not belong to a formal employer association, each employer had its own representative present during negotiations, and the negotiations resulted in the execution of separate, but identical contracts."*

Past bargaining history has been ruled conclusive by the National Labor Relations Board in numerous cases upholding multi-employer units against attempts to carve out single-plant units. *Rayonier, Incorporated*, 52 NLRB 1269 (1943); *Hazel-Atlas Glass Company*, 59 NLRB 706 (1944); *Kalamazoo Stove and Furnace Company*, 61 NLRB 1041 (1945); *Springfield Plywood Corporation*, 61 NLRB 1295 (1945); *Richard Young Co.*, 64 NLRB 733 (1945); *Waterfront Employers Association of the Pacific Coast*, 71 NLRB 80 (1946); *Cloth Laying Appliances Corporation*, 78 NLRB 785 (1948); *Geo. J. Renner Brewing Company*, 79 NLRB 1449 (1948); *Pacific American Ship Owners Association*, 80 NLRB 622 (1948); *Furniture Firms of Duluth*, 81 NLRB 1318 (1949); *Air Conditioning Company of Southern California*, 81 NLRB 946 (1949); *New England Fish Company*, 83 NLRB 656 (1949); *Balaban & Katz*, 87 NLRB No. 133 (1949); *Bunker Hill and Sullivan Mining and Concentrating Company*, 89 NLRB No. 8 (1950); *Cleveland Builders Supply Co.*, 90 NLRB No. 136 (1950).

In the *Springfield* case, *supra*, both points are relied on as follows:

"This system of dealing which has become traditional among the group of plywood operators

and locals who have participated therein, has proved conducive to the orderly functioning of collective bargaining and has contributed to uniformity and stability of labor relations in a comparatively large portion of the plywood manufacturing industry. The record indicates that during the period covered by uniform labor agreements and joint collective bargaining on the part of both unions and employers, the plywood manufacturing industry as represented by members of the CIO group in the Employer Association, has been singularly free from major industrial strife.

\* \* \* \* \*

“On the basis of the facts above referred to, and upon the entire record in the case, we are of the opinion that, notwithstanding evidence indicating the appropriateness, from a functional viewpoint, of a bargaining unit confined to one plant of a single employer, the course of collective bargaining, which since 1940 has been conducted on a multiple-employer or Association-wide basis, must govern the scope of the appropriate unit in the present instance. In reaching this conclusion, we find that the facts in the present proceeding are substantially similar to those in prior cases in which multiple-employer units have been found appropriate, where, notwithstanding the informal character of the employer associations therein concerned, the members of such associations have ‘established a practice of joint action in regard to labor relations by negotiation with an effective employee organization, and have, by their customary adherence to the uniform labor agreements resulting therefrom, demonstrated their desire to be bound by group rather than by individual action’.”

We believe that the Utah Employment Security

Act in some particulars is in pari materia with the Utah Labor Relations Act, although passed at different sessions of the Utah State Legislature.

It was the purpose of the legislature in enacting 42-2a-5d, Utah Code Annotated 1943, not to permit employees in their grade, class or group to be eligible for benefits if their unemployment is due to a stoppage of work which existed because of a strike.

The Utah Labor Relations Act was amended in 1943, and the legislature at that time added a provision with respect to strikes. We refer to Section 49-1-16, Subsection (c), which provides as follows:

“It shall be an unfair labor practice for an employee individually or in concert with others to cooperate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.”

The Utah Labor Relations Act empowers the Utah Labor Board to determine what constitutes an appropriate unit for the purposes of collective bargaining; and as we have quoted for the convenience of the court, the Utah Act is practically identical with that of the National Act.

As we have stated, a multi-employer unit does constitute an appropriate unit, and has been so held to be appropriate in many cases.

It will be noted from the above section of the Utah Labor Relations Act that it is an unfair labor practice for an employee, individually or in concert with others, to strike unless a majority in a collective bargaining unit has voted by secret ballot to call a strike.

It can be readily understood by the enactment of the above section, that the legislature wanted to avert strikes in every possible way. Experience has taught that many times strikes are prompted by a representative of labor placing a picket line in front of a place of business even though the employees themselves have not by majority vote, voted for a strike. The legislature no doubt intended to assure employers and the public alike that a strike would not be called until and unless a majority of employees in the unit for the purpose of collective bargaining voted by majority vote in favor of such a strike.

From the briefs filed in this case, it is apparent that the strike vote was not held in accordance with the Utah law; that is, in the appropriate unit, but held with two individual employers. The mere fact that they did not follow the Utah law does not have any bearing in the instant case.

For the purpose of argument, let us assume that they had complied with the law and had the strike vote conducted as the law intended; that was in the unit appropriate for the purposes of collective bargaining. If that were the case, then we have employees (the claimants herein) participating in strike action, and in furtherance of the use of strike action, using economic force

against two employers. We then have these employees who have put into operation strike action, and the economic weapons at their command to enforce such strike action, asking the benefits of unemployment compensation insurance. The Utah Employment Security Act did not intend that those employees participating in strike actions should be entitled to the benefits of the Act.

Could it be said that the claimants involved herein were not parties or participants in a strike action? We believe that they were in all respects.

These claimants and other employees caused, by their own action, the strike, and no doubt did so with the full knowledge of what its consequences would mean.

As we understand the facts, even after the strike was called, negotiations were continued with the employer group, thereby the representatives of these claimants recognizing that the multi-employer unit still existed and was in full force and effect.

We firmly believe that when strike action is put into effect as it was in this case in the appropriate unit, the employees in that unit, if they find themselves unemployed by virtue of using that strike action, are not entitled to the benefits of the Utah Employment Security Act.

Without any question, these claimants were a part and parcel of an employee group who was unemployed due to a stoppage of work which existed because of a strike involving their group, and which they put into effect. It certainly would be contrary to the intent of



the law to have employees put into effect strike action, and yet be eligible for the benefits of the Act.

## CONCLUSION

It has been our purpose in this brief to be of assistance to the court to treat several phases of the question involved which we feel have not been treated by some of the briefs. We have not attempted by this brief to cover all the phases of the question involved, but only those which we feel have not yet been treated by the various briefs.

Respectfully submitted,

LOUIS H. CALLISTER,

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Relations Council,  
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