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Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

CLAIMANTS WHO ARE MEMBERS OF TEAMSTERS,
CHAUFFEURS AND HELPERS OF AMERICA

Plaintiff,

vs. Case No. 16690

THE BOARD OF REVIEW, THE INDUSTRIAL
COMMISSON OF UTAH, DEPARTMENT OF
EMPLOYMENT SECURITY, and THE INTERMOUNTAIN
OPERATORS LEAGUE,

Defendants.

DEFENDANT'S BRIEF

STATEMENT OF THE CASE

The Appellants, local unions 222 and 976, International Brotherhood of Teamsters, Chauffers, and Helpers of America, represent members of those two unions who filed claims for benefits for the period commencing with the 1st day of April, 1979, and ending the 14th day of April, 1979. These claimants where denied benefits because it was determined that their unemployment was due to a stoppage of work which existed because of a strike at the establishments of their employers which involved their grade, class or group. The claimants, through their authorized representatives, the aforesaid local unions 222 and 976, filed a written appeal from this determination of the

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Department Representative. The matter was duly heard by the Appeal Referee, who, on the 6th day of July, 1979, affirmed the decision of the Department Representative. Claimants, again through their union representatives, appealed to the Board of Review of the Industrial Commission. On the 21st day of August, 1979, by a majority decision, the Board of Review upheld the decision of the Appeal Referee and the Department Representative. The matter is now before this court on a petition for review filed by the claimants through their unions, pursuant to Section 35-4-10(i), Utah Code Annotated 1953.

STATEMENT OF FACTS

Respondents Board of Review and Department of Employment Security agree substantially with Appellants' Statement of Facts with respect to the identity of the parties involved in this appeal, their relation to each other and the facts leading up to the commencement of negotiations between Trucking Management, Inc. (TMI), representing approximately 2,700 employers (R.000135), although it may have been as few as 350 (R.00077), and the International Brotherhood of Teamsters, representing through its National Freight Industry Negotiating Committee its affiliated local unions. Appellants have included a number of conclusions and assertions in their Statement of Facts concerning the circumstances which led up to the strike. Because those conclusions and assertions are not necessarily supported by the record, the following summary is offered:

In 1976, the parties successfully negotiated a National Master Freight Agreements to cover the period from 1976 to 1979. (R.00060, 000131, 000135, 00140) It was due to expire at midnight, March 31, 1979 (R.000140). On December 11, 1978, IBT notified the employers of its desire to revise or change terms or conditions of the National Master Freight Agreement and *all area, regional, and local supplements*. (R.00068)

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The Agreement clearly establishes that the parties constitute a single multi-union, multi-employer collective bargaining unit. (R.00072)

Negotiations between TMI and the National Freight Industry Negotiating Committee of the IBT began on January 23, 1979, (R.00131) and continued to March 31, 1979. (R.00142) On March 31, 1979, the national committee of the IBT notified TMI that it had determined to take economic action in support of its demands of all employers, commencing at midnight March 31, 1979. (R.00071; R.00123, 00124, 00125) On the same day TMI notified the IBT that any attempt to deal with the employers individually would be considered adverse to the integrity of the multi-employer bargaining unit. (R.00061)

Economic sanction was in the form of a strike against selected employers. (R.00077, 00125 — 00130) Only the National Freight Industry Negotiating Committee of the IBT could determine which employers would be struck. (R.00125, 00126) In Utah the employers struck were Consolidated Freightways, Garrett, Illinois; California Express; and Pacific Intermountain Express. (R.00128, 00129, 00131) After commencement of the strike by IBT, TMI determined to initiate a defensive shutdown of the other employers. (R.00059) In response to TMI's instruction, IML engaged their defensive shutdown. (00167) Consolidated Freightways also engaged in a defensive shutdown in response to TMI's instruction, but only after pickets were established at their plant. (R.00073, 00074, 00104, 00157, 00158)

The purpose of limiting the economic action to a selective strike against only certain employers was to avoid a Taft-Hartley injunction. (R.00125) Although "interim agreements" were offered by IBT to many employers, those agreements contained terms parallelling the demands of the IBT as of March 31, 1979, and did not constitute an offer to continue working under the prior contract until a new settlement could be reached. (R00105 through R.00122)

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The objective of the strike initiated by the IBT was to gain wage and benefit improvements for all employees covered by the National Master Freight Agreement. (R.00160)

Settlement was reached between the IBT and the employers on April 10, 1979, and the IBT pickets were removed. However, the work stoppage continued until April 14, 1979, when the Machinists' Unions removed their pickets and the Teamsters returned to work. (R.00131, 00159)

POINT I

THE BOARD OF REVIEW AND THE APPEAL REFEREE DID NOT ERR IN DENYING BENEFITS TO THE CLAIMANTS WHO WENT ON STRIKE

Appellants contend that the Board of Review and the Appeal Referee erred in not looking behind the strike to the reasons why the IBT felt it was necessary to call the strike. They assert on appeal that the strike was compelled by the bad faith bargaining of TMI.

This court has previously held that the party which first resorts to work stoppage will be held responsible in determining eligibility for unemployment compensation. *Olaf Nelson Construction Co. v. Industrial Commission,* 121 Utah 525, 243 P. 2d 951 (1952); *Kennecott Copper Corporation Employees v. Department of Employment Security,* 13 Ut. 2d 262, 372 P. 2d 987 (1962). By implication, this court has concluded that the Industrial Commission must consider the facts underlying any decision to engage in a strike or lockout. *Members of Ironworkers' Union of Provo v. Industrial Commission,* (Utah, 1943) 139 P. 2d 208; *Olaf Nelson Construction Co. v. Industrial Commission, supra, citing at p. 956 Bunny's Waffle Shop v. California Employment Commission,* 24 Cal. 2d 735, 151 P. 2d 224.

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Appellants rest their assertion of bad faith bargaining on an affidavit of an IBT attorney which contained only a conclusion of bad faith bargaining, but failed to set forth any facts in support of that conclusion other than a general statement that the last economic proposal of the industry were inadequate in the opinion of the union. (R.00102) The employers, on the other hand, asserted that their last offer prior to the strike was the maximum permitted under President Carter's pay standards. (R.00059) Based upon such evidence the Appeal Referee properly concluded that the facts failed to show that the employers' representatives refused or failed to bargain with the union. In so holding, the Appeal Referee said:

> The conclusion as to good faith can only be drawn from the facts in regard to what took place during the period of negotiations. Lack of good faith cannot be shown merely by a refusal to grant all requests and meet all demands. It is well understood that reasonable and well-intentioned men will differ where their various interests are in opposition. (R.00029)

Appellants content that another cause of the strike was government interference in the collective bargaining processes. (Appellants' Brief, page 9) Appellants again rely on the Affidavit of the Union attorney (R.00102) and a copy of the International Teamster, an IBT publication. (R.00075 - 00077) However, by Appellants' own admission government involvement was limited to asserting that labor abide by President Carter's Voluntary Wage and Price Guidelines, which labor was unwilling to do. (See Appellants' Brief, page 11) No credible evidence was offered by Appellants to show that government involvement in fact compelled the IBT to strike.

The finding of the Appeal Referee that the selective strike constituted economic action against all employers is supported by substantial competent evidence. Not only were the negotiations carried on betweeen all of the employers and unions acting as a single collective bargaining unit, (R.00072) but the negotiations centered on improved wages and benefits for all employees covered by the National Master Freight

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Agreement. (R.00071, 00123 - 00125) The wage and benefit package finally agreed upon did in fact benefit all employees so covered without regard to which employers were struck, as will be more fully discussed in Point II hereof.

POINT II

THE BOARD OF REVIEW AND APPEAL REFEREE DID NOT ERR IN DENYING BENEFITS TO THOSE CLAIMANTS LOCKED OUT BY THEIR EMPLOYERS.

Appellant contends that management was the real and fundamental cause of the work stoppage, at least with respect to the employees of IML and CF. However, by Appellant's own admission CF was first struck by the union on April 1, before any lockout occurred. (Appellant's Brief, page 13). CF was on the list of employers to be struck on April 1, 1979. (R.00127, 00128) and, in fact, it was the first employer in Utah at which picket lines were established. (R.00146, 00157, 00158) The order to strike was received in Utah by the local Teamsters union about 2:00 a.m. on April 1. (R.00146) The picketing of CF occurred before CF notified Local 222 of its intent to engage in a defensive shutdown (R.00158) which notice wasn't issued by CF until 9:45 p.m. on April 1, 1979. (R.00104) Thus, there can be no question that the labor union initiated the use of economic sanctions against CF.

On the other hand, the facts are clear that IML was not struck by the union. However, after it received notice from TMI that a selective strike had been called against some of the employers IML commenced a defensive shutdown pursuant to instructions from TMI. (R.00167)

"Appellant challenges the right to the employer group represented by TMI, including IML, to consider a strike against one as a strike against all. This court faced

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that very question in the case of *Olaf Nelson Construction Co. v. Industrial Commission*, supra and concluded:

> Our conclusion in this case is that the sounder view is to recognize these large scale bargaining units as the groups involved within the meaning of the Employment Security Act. Both labor and management have seen fit to resort to such a device for a uniform, expedient means of negotiating their agreements. There is no dispute that the economic sanction of the A.F. of L. in this case was directed against the entire employer association. The strike was called for and on behalf of every employee covered by the agreement. It therefore directly involved all these claimants, at each particular place of employment at which they were last employed. The strike was fomented by claimants through their duly authorized union representatives. They are members of the group which gained a raise in wages because of the strike and are parties to the scheme or plan to foment it. (243 P. 2d, at p. 959)

In accord with the above is this court's decision in the case of *Teamsters, Chauffers, etc. v. Orange Transportation Company, et al,* 5 Ut. 2d 45, 296 P. 2d 291 (1956), involving the same union and some of the same employers. The court there held:

> Our review of the record, as outlined above, indicates that there was evidence from which Appeals Referee could find that the action of the Union was aimed at the Intermountain Operator's League as a group with which it was negotiating, that Orange and Inland were members of that group, and that the strike was initiated for the purpose of forcing capitulation of all members of the Employers' Group. Such findings may not be disturbed by this court so long as they are supported by substantial evidence. (296 P. 2d, at p. 294)

Respondents readily concede that in order for the disqualification to apply to IML employees there must be an affirmative showing that the group is engaged in a plan of concerted action and that the action is in fact done for the group as part of the plan. *Teamsters, Chauffers, etc., v. Board of Review, etc.,* 10 Ut. 2d 63, 348 P. 2d 558, 561 (1960).

Appellant argues there is no evidence that a strike against one employer was a strike against all. (Appellant's Brief, page 11) Yet, Appellant agrees that for a number of

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years the Teamsters and the Intermountain Operators League have been parties in their representative capacities to the 1976 - 1979 National Master Freight Agreement and that negotiations for modification of the Agreement were undertaken by the parties, through their representatives, on a national basis. (Appellant's Brief, pp. 2, 3; R.00068; 00140, 00141) By virtue of the terms contained in the National Master Freight Agreement the employees, through their unions, constitute one bargaining unit, and the employers and their associations constitute a single national multi-employer bargaining unit. (R.00072) The negotiations on behalf of the employees was under the direct and exclusive control of the National Freight Industry Negotiating Committee of the IBT, (R.00155) and only the national committee of the IBT could determine whether to take economic action and the nature of such action. (R.00125)

As shown from testimony in the hearing, a uniform settlement was eventually reached by the parties, which applied to all of the carriers:

> Fullmer: Isn't it a fact, Mr. Haslam, that the ultimate settlement of the 1979 National Negotiations resulted in an economic package which was applied uniformly to all of the carriers by that agreement?
>
> Haslam: That is true.
>
> Fullmer: And that your members were working for Garrett, P.I.E., Consolidated Freightways, ICX, received the same wage increases as employees working at IML Freight?
>
> Haslam: That is correct.
>
> Fullmer: And it was the intention of the Union Negotiating Committee throughout, that a uniform settlement be achieved, isn't that true?
>
> Haslam: Well, naturally because of the...that's what it's always been, labor. (R.00160)

Appellants' contention that the employers were at fault or caused the strike by not signing the Interim Agreement is wholly without merit. The great majority of courts of the various states have consistently held only that an employer or labor group which offers to continue working under an old contract pending settlement of a new contract will not

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be responsible if the other party refuses to accept the offer. Cases on this subject are collected at 62 ALR 3rd 437. and 63 ALR 3rd 88.

POINT III

THE DECISION OF THE BOARD OF REVIEW DENYING UNEMPLOYMENT BENEFITS IS NOT VIOLATIVE OF APPELLANTS' RIGHT TO EQUAL PROTECTION UNDER THE CONSTITUTIONS OF THE STATE OF UTAH OR THE UNITED STATES

Appellants contend the volitional test as employed in the decision of the Appeal Referee violates the Equal Protection and Due Process clauses of the Constitutions of the State of Utah and of the United States on three grounds.

First, Appellants contend the volitional test is arbitrary and unrelated to the object of unemployment compensation legislation. Second, the volitional test is unsusceptible of definition or proof. Third, the volitional test violates public policy.

The volitional test is not set forth in the Utah Employment Security Act. However, contrary to Appellants' assertion that it is a judicial invention, the volitional test has its genesis in the Social Security Amendments of 1935, which established the basis for the unemployment compensation system now existing in every state. The essence of the unemployment compensation system was set forth by the Senate Finance Committee, which stated:

> "The essential idea in unemployment compensation is the creation of reserves during periods of employment from which compensation is paid to workmen who lose their positions when employment slackens and who cannot find other work. Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed. In all compensation systems the period during which compensation is payable is limited in some relation to the previous period of employment. Invariably there is a waiting period immediately following unemployment during which no compensation is payable. Thereafter, compensation is paid at a stated percentage of the previous wage,

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customarily with both a minimum and a maximum rate. Payment of compensation is conditioned upon continued involuntary unemployment. Beneficiaries must accept suitable employment offered them or lose their right to compensation. After a specified period of time the compensation is discontinued in any event." (Senate Report No. 628, 74th Congress, 1st Session, p. 11)

This court has previously held that the purpose of the Employment Security Act is to assist the worker and his family in times when he is out of work without fault on his part. *Kennecott Copper Corporation Employees v. Department of Employment Security,* 13 U. 2d 262, 372 P. 2d 987 (1962). Specifically, the declared public policy of the statute is to establish financial reserves for the benefit of persons unemployed through no fault of their own. *Olaf Nelson Construction Co. v. Industrial Commission,* 121 U. 525, 243 P. 2d 951 (1952). Thus it is evident that the volitional test is not arbitrary and that is is directly related to the purposes of the statute.

The volitional test in the context of a labor dispute has been simply defined:

"...the one who first resorts to the use of work stoppage as a means of putting on economic pressure to settle such a dispute must bear the responsibility therefor." *Kennecott Copper Corporation Employees v. Department of Employment Security,* supra, at 372 P. 2d, p. 989.

The reasoning underlying this definition of volition and its application in issues of labor dispute was succinctly explained by the court in its Kennecott decison:

Only by fixing responsibility in this way can the interest of all parties and of society be properly protected. The Employment Security Act was designed to ease the burdens of unemployment and multifarious evils which ramify from it. Its primary purpose is to assist the worker and his family in times when, without fault on his part, he is out of work. The secondary purpose is to provide stability for the general economy by assuring continuity of purchasing power. It is plainly apparent from the Act that it was not intended to be used as a weapon in labor strife. (Id, at p. 990) Undoubtedly one of the considerations prompting the prohibition against workers receiving benefits for unemployment resulting from being involved in a strike is the fact that it would be unfair to use funds built up by labor and management jointly to support labor in a contest wherein it was exerting economic pressure against management by striking or by participating in or supporting a strike so that it was in fact involved therein. (372 P. 2d, at p. 990)

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The above quoted statement finds considerable similarity in the decision of the U.S. Supreme Court in the case of *Ohio Bureau of Employment Service v. Hodory*, 431 U.S. 471, 52 L. Ed. 2d 513, 97 S. Ct. 1898 (1977). The claimant, Hodory, was employed in Ohio by U.S. Steel at one of its steel production plants. When the plant's coal supply was curtailed by a coalminers' strike at a mine owned by U.S. Steel, the claimant was laid off. The Ohio Bureau of Employment Service denied benefits to the claimant under a provision in the Ohio unemployment law which disqualified all individuals whose unemployment arises from a strike at any plant or establishment owned by the employer. The claimant filed suit in federal district court on the theory that his unemployment was involuntary and the denial of benefits was therefore in violation of the Equal Protection clause. The U.S. Supreme Court reversed the decision of the district court and held the denial of benefits to be constitutional. In so doing the court looked beyond the effect of the law solely on the recipient and explained:

> Appellee thus focuses on the interests of the recipient of unemployment compensation.
>
> The unemployment compensation statute, however, touches upon more than just the recipient. It provides for the creation of a fund produced by contributions from private employers. The rate of an employer's contribution to the fund varies according to benefits paid to that employer's eligible employees. Ohio Rev Code Ann §4141.25 (1973). Any action with regard to disbursements from the unemployment compensation fund thus will affect both the employer and the fiscal integrity of the fund. Appellee in effect urges that the court consider only the needs of the employee seeking compensation. The decision of the weight to be given the various effects of the statute, however, is a legislative decision, and appellee's position is contrary to the principle that "the Fourteenth Amendment gives the federal courts no power to impose upon the states their views of what constitutes wise economic or social policy." *Dandridge v. Williams*, 397 U.S. 471, 486, 25 L. Ed. 2d 491, 90 S. Ct. 1153 (1970)
>
> In considering the constitutionality of the statute, therefore, the court must view its consequences, not only for the recipient of benefits, but also for the contributors to the fund and for the fiscal integrity of the fund. (52 L. Ed. 2d, p. 528)

In determining whether or not the Ohio disqualification provision has a rational relation to a legitimate state interest, the court concluded:

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> Although the District Court was reacting to appellants' own hyperbole in speaking of financial crises and bankruptcy, it must be recognized that effects less than pushing the employer to bankruptcy may be rationally viewed as undesirable. The employer's costs go up with every laid-off worker who is qualified to collect unemployment. The only way for the employer to stop these rising costs is to settle the strike so as to return the employees to work. Qualification for unemployment compensation thus acts as a lever increasing the pressures on an employer to settle a strike. The state has chosen to leave this lever in existence for situations in which the employer has locked out his employees, but to eliminate it if the union has made the strike move. Regardless of our views of the wisdom or lack of wisdom of this form of state "neutrality" in labor disputes, we cannot say that the approach taken by Ohio is irrational. (Id, at p. 529)

Although Utah does not charge back to employers the benefits paid their former employees for purposes of determining the employer's contribution rate, the relation of the court's analysis to that of Mr. Justice Crockett in the *Kennecott* case is obvious and needs no further comment.

The *Hodory* decision clearly confirms the right of each state to determine its own approach to the labor dispute issue, so long as the approach selected has a rational relation to a state interest. The *Hodory* holding was reaffirmed in the more recent decision of the U.S. Supreme Court in *New York Telephone Company, et al., v. New York State Department of Labor, et al.,* 440 U.S. 519, 59 L. Ed. 2d 553, 99 S. Ct. 1328 (1979). In upholding the allowance of unemployment benefits to workers on strike, the court said:

> "The voluminous history of the Social Security Act made it abundantly clear that Congress intended the several states to have broad freedom in setting up the types of unemployment compensation they wish.

It is clear from the holdings of the *Kennecott* and *Hodory* decisions that the volitional test, as applied to labor disputes, has a rational relation to the purposes of the Employment Security Act, and is not therefore violative of the Equal Protection clause.

Appellants' contention that the volitional test is not susceptible to proof by the parties is totally without merit. The labor unions and management have a unique insight into what transpires in such negotiating sessions and, therefore, are best able to

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provide meaningful evidence on the questions of which party first initiated the use of economic sanctions and the reasons therefor. The *Olaf Nelson* decision has been a matter of public record for approximately 26 years. Both labor and management are or should be well aware of its requirements in proving which party is at fault for initiating the use of economic sanctions. Both parties are well aware of the refining of the *Nelson* requirements by the decisions of this court in *Teamsters, Chauffer's, Etc. v. Orange Transportation Company*, 5 Ut. 2d 45, 296 P. 2d 291 (1956) and *Teamsters, Chauffers, Etc. v. Board of Review*, 10 Ut. 2d 63, 348 P. 2d 558 (1960), which cases involved these same litigants. Both parties are sufficiently privy to the actions of their representatives in the negotiations that it is within their power to provide proper evidence for the administrative hearing. The volitional test is not based upon assumption or presumption, but only upon the evidence presented by the parties and the resultant facts as determined by the Appeal Referee.

The volitional test is clearly consistent with the public policy underlying the Employment Security Act, as stated in the prior pronouncements of this court cited at the beginning of this Point III. It is also consistent with the public policy of the state as to employment relations and collective bargaining, which recognizes the three major interests involved: the public, the employee and the employer, and which concludes that:

> Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. (Section 34-20-1(2), U.C.A. 1953.)

The final point of Appellants' Equal Protection argument is that unemployment benefits were denied to the claimants on the basis of their union membership. The Referee concluded, however, that all claimants in the case were unemployed due to a stoppage of work involving their grade, class or group. (R.00031) There is no evidence whatsoever that any claimant was denied benefits because of union membership.

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POINT IV

THE DECISION OF THE BOARD OF REVIEW DENYING UNEMPLOYMENT BENEFITS IS NOT VIOLATIVE OF APPELLANTS' RIGHT TO DUE PROCESS UNDER THE CONSTITUTIONS OF THE STATE OF UTAH OR THE UNITED STATES.

Appellants suggest that use of the volitional test constitutes a denial of due process on the grounds that it is based on a presumption having no rational basis in fact. Apparently, the presumption referred to by Appellants is that of fault. However, by definition he who first resorts to the use of economic sanctions is considered at fault. The Appeal Referee specifically found that labor was the first to engage in a work stoppage, and that the economic sanction thus employed was directed against all of the employers for the benefit of all workers represented by the union and thereby party to the National Master Freight Agreement.

Appellants also allege they were denied a meaningful hearing in that the Appeal Referee did not rule on the questions of constitutionality raised by Appellants. In affirming the denial of benefits the Referee in effect refused to find the statute unconstitutional. The refusal is proper in that such a finding could only be tentative at best and only the courts can make a binding decision on a question of law. *Utah Hotel Co. v. Industrial Commission, et al.*, (Utah, 1944) 151 P. 2d 467, 470. There is no denial of due process in such a procedure because Appellants have a meaningful remedy in their right of review by this court, where a binding decision can be made.

CONCLUSION

Appellants became unemployed on April 1, 1979, due to a stoppage of work which resulted from a strike of the grade, class or group to which they belonged. The strike was selective against only some of the employers involved in negotiations over a new

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National Master Freight Agreement, but was undertaken as part of a concerted plan of action directed against all employers on behalf of every employee covered by the agreement. The use of the volitional test in labor dispute cases is rationally related to a legitimate state interest—that is, the payment of unemployment benefits to claimants who are unemployed through no fault of their own. Under the facts of this case the claimants were properly denied benefits and the decision of the Board of Review should be affirmed.

ROBERT B. HANSEN,
Attorney General

FLOYD G. ASTIN
K. ALLAN ZABEL
Special Assistants
Attorney General

BY: ______________________________
K. Allan Zabel

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CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that I mailed two copies of the foregoing Defendant's Brief to Stephen W. Cook, Attorney for Claimants, Littlefield, Cook, and Peterson, Suite 666 Boston Building, Salt Lake City, Utah; and Nathan J. Fullmer, Attorney for Intermountain Operators League 500 American Building, 61 South Main, Salt Lake City, Utah, this ________ day of January, 1980.

BY: ________________________________
K. Allan Zabel

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