1980

Claimants Who Are Members of Teamsters, Chauffeurs And Helpers of America v. The Board of Review, The Industrial Commisson of Utah, Department of Employment Security, and the Intermountain Operators League : Brief of The Respondent Intermountain Operators League

Utah Supreme Court

SUPREME COURT OF UTAH

STATE OF UTAH

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CLAIMANTS WHO ARE MEMBERS OF TEAMSTERS, CHAUFFEURS and HELPERS OF AMERICA LOCAL 222 and 976,

Appellants,

v.

Case Number: 16690

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

Respondents.

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BRIEF OF THE RESPONDENT INTERMOUNTAIN OPERATORS LEAGUE

Petition for Judicial Review
from a Decision of the Board
of Review of the Industrial Commission

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TABLE OF CONTENTS

AUTHORITIES CITED

STATUTES CITED

NATURE OF THE CASE

This is an original proceeding to obtain judicial review of a decision of a Board of Review of the Industrial Commission of Utah which involved unemployment compensation benefits.

DISPOSITION BY THE BOARD OF REVIEW

By its decision dated August 21, 1979, the Board of Review of the Industrial Commission of Utah adopted the findings of fact and conclusions of law and affirmed the decision of the Appeal Referee which denied unemployment compensation benefits to the claimants.

RELIEF SOUGHT ON APPEAL

Appellants seek to reverse the decision of the Board of Review and obtain unemployment compensation benefits for all of the claimants. Respondents seek to affirm that decision.

INTRODUCTION

This brief is submitted by the INTERMOUNTAIN OPERATORS LEAGUE, one of the Respondents named herein, on behalf of its members named below. The League is a non-profit voluntary association of companies engaged in the business of transporting freight by motor vehicle in Utah and elsewhere. Its members include Consolidated Freightways, Inc., Garrett Freightlines, Inc., Illinois-California Express Inc., IML

Freight, Inc., and Pacific Intermountain Express Co., which companies employ the employees herein involved.

Since we have been informed that counsel for the other Respondents will address the legal issues involved herein we will direct our comments primarily to the factual matters.

STATEMENT OF FACTS

The Statement of Facts in the brief of the Appellants contains many inaccuracies, distortions, half-truths and outright misstatements, and we do not accept it. We submit that the record very clearly establishes beyond dispute the following basic facts:

1. All of the employers and the employees involved herein were subject to and bound by a collectively bargained labor agreement between the trucking industry and the Teamsters Union known as the National Master Freight Agreement for the period of April 1, 1976, through March 31, 1979, which agreement clearly establishes a single multi-employer, multi-union collective bargaining unit (R. 00027, 00072).

2. Negotiations began early in January of 1979 for changes and modifications to renew that agreement which expired at midnight on March 31, 1979. Those negotiations were conducted on behalf of the Union by the Teamsters National Freight Industry Negotiating Committee,

Frank E. Fitzsimmons (General President of the International Brotherhood of Teamsters), Chairman; and on behalf of the Employers by Trucking Management, Inc., (TMI), J. Curtis Counts, President and Chairman (R. 00067, 00131, 00134, 00141, 00143, 00155, 00156).

3. Teamsters Locals No. 222 and 976, two of the Appellants herein, gave their written power of attorney to the Union's Negotiating Committee to represent them and their members involved in those negotiations (R 00068-70, 00131, 00143, 00155).

4. Similarly, the Employers involved submitted "Authorizations to Represent" to TMI to represent them in the negotiations (R. 00062-66, 00131, 00135, 00161).

5. On March 31, 1979, prior to the expiration of the old agreement, Union Chairman Fitzsimmons notified the Employer Negotiating Committee, in writing, that due to the failure of TMI to agree with the Union Committee in the negotiations "the National Master Freight Committee on behalf of the Local Unions which it represents has determined to take economic action in support of its demands commencing at midnight March 31, 1979" (R. 00067, emphasis added).

6. On the same date, again prior to the expiration of the old agreement, Employer Chairman Counts notified

Union Chairman Fitzsimmons, in writing, that any attempts by the Union to bargain separately with individual Employers (divide and conquer) would be dealt with in order to protect the integrity of the multi-employer bargaining unit (R. 00060-61).

7. When the Negotiating Committees failed to reach an agreement the Union carried out its previously announced threat of economic action, and shortly after midnight of March 31, 1979, the Union struck those Employers on its "hit list," which included some 42 of the major motor carriers across the country, and all of the Employers involved herein except IML Freight, Inc. (R. 00059, 00123, 00131, 00142, 00144, 00157).

8. In response to the Union's strike, and in accordance with its previously announced intention to protect the integrity of its bargaining unit, TMI directed those of its members who had not been struck to shut down their operations in defense against the strike (R. 00059).

9. IML Freight, Inc. complied with that direction (R. 00167).

10. Although it was not on the Union's "hit list", IML Freight, Inc. was subjected to Teamster picketing at several of its key terminals across the country on

April 1, 1979 (R. 00165-67).

11. Approximately fourteen hours after the Union called its "selective strike" it sent notices to all of the Local Unions advising of a form of "Interim Agreement" to be utilized by the Local Unions to attempt to sign up individual Employers who had not yet been struck, and those who had been struck but were willing to surrender. The Interim Agreement would permit an Employer to operate under its terms (basically the Union's last economic offer prior to the strike) until the ultimate settlement with TMI, at which time that settlement would apply with full retroactivity if greater than the terms of the Interim Agreement (R. 00105-122, 00149). The Interim Agreement was not offered to any of the Employers in Utah (R. 00159, 00168).

12. Throughout the course of the negotiations, the work stoppage, and the ultimate settlement, it was the express intention of the Union that all of the employees in the entire collective bargaining unit or group would receive the same wage increases and other benefits of the final settlement, and that is exactly what happened. The employees of the companies who were struck (all but IML herein), those of the companies who shut down their operations (such as IML herein), and those who continued

to operate (such as Rio Grande Motorway and Sundance) all received the benefits of the ultimate settlement (R. 00160).

Although the parties may argue about other factual matters, we submit that the basic facts are as set forth in the twelve numbered paragraphs above, and are not in dispute. Those basic facts are determinative under the applicable Utah Statutes and decisions of the Utah Supreme Court.

ARGUMENT

POINT ONE

THE APPEAL REFEREE AND THE BOARD OF REVIEW CORRECTLY DENIED PAYMENT OF UNEMPLOYMENT COMPENSATION BENEFITS TO ALL OF THE CLAIMANTS HEREIN.

This case actually was decided by the Utah Supreme Court twenty-four years ago. The applicable Utah Statute prohibits the payment of unemployment compensation benefits to an individual:

> 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. (Section 35-4-5(d), UCA 1953, as amended, emphasis added.)

This Court applied that provision in denying benefits to

employees under substantially identical facts in the case of Teamsters Locals 222 and 976 v. Orange Transportation Company (Utah 1956) 5 Utah 2d 45, 296 P.2d 291. There, as in the instant case, a multi-employer group of motor carriers, members of the Intermountain Operators League, engaged in collective bargaining as a group with the Teamsters Union, including Locals No. 222 and 976. There, as here, the Teamsters struck some, but not all, of the Employer group, contrary to the assertion on page 4 of Appellants brief that the Teamsters Union had never before engaged in a "selective strike". There, as here, Consolidated Freightways, Inc. and Pacific Intermountain Express Co., two of the major carriers in the country, were on the Teamsters "hit list". There, as here, those carriers in the group who were not struck shut down in support of those carriers who were. There, as here, the wage increases and other improvements being sought by the Teamsters would apply to all of the employees in the group, not just to those who went on strike. There is no rational basis to distinguish the Orange Transportation case from the instant case.

Sensing their untenable position in seeking benefits for all the claimants, including those whose Employers were struck, the Appellants, in Point Two of their brief,

attempt to hedge their bet by urging payment to those employees whose Employers were not struck, but engaged in TMI's defensive shutdown, particularly IML Freight, Inc.

Appellants also urge that Consolidated Freightways, Inc., although on the Teamsters "hit list" and actually picketed by Teamsters Local 222, thereafter locked out its employees (who were already on strike, R. 00158) thereby entitling them to benefits. The CF employees are not eligible for benefits under the express language of the statute, since their status as strikers never changed.

The position of the IML employees is not any better. Although not picketed by Teamsters Local 222, and apparently not on the "hit list", IML was subject to Teamster picketing elsewhere in its system (R. 00165-6). Also, it is undisputed that the Teamsters intended that all employees, including those at IML, would receive the benefits won by the Teamsters in their strike. The chief executive officer of Teamsters Local 222, Grant Scott Haslam, testified:

> Q. 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 covered by that agreement?
> A. That is true.
> Q. And that your members [who] were working

for Garrett, P.I.E., Consolidated Freightways, I.C.X., received the same wage increases as employees working at IML Freight, Inc.?

A. That is correct.

Q. And it was the intention of the Union Negotiating Committee throughout, that a uniform settlement be achieved, isn't that true?

A. Well, naturally because of the--that's what it (sic) always been, labor.

Q. And that, in fact, is what happened?

A. That is, in fact, what happened.

The IML employees are clearly ineligible for benefits under the Orange Transportation case, supra, and the Appeal Referee and the Board of Review correctly so held.

POINT TWO

THE RECORD FAILS TO ESTABLISH THAT THE EMPLOYERS, RATHER THAN THE TEAMSTERS UNION, CAUSED THE WORK STOPPAGE.

The Appellants assert "that the real and fundamental factual cause of the work stoppage and resulting unemployment for all claimants was the conduct of management and the government, not labor." In support of that assertion Appellants allege: (1) that TMI was guilty of bad faith bargaining; (2) that the Teamsters engaged in only a little harmless "selective strike"; and (3) that the Teamsters offerred "Interim Agreements" to those carriers who would rather surrender than take the strike.

In support of their charge of "bad faith" the Appellants rely exclusively on an affidavit of one of the Teamster lawyers prepared and signed in Washington, D. C., on May 24, 1979, the same day that the hearing in this matter was held before the Appeal Referee in Salt Lake City, Utah. The affidavit on its face constitutes only the opinion of its maker, who was not present at the hearing and not subject to cross examination. In substance he alleges that by refusing to accept the demands of the Teamsters Union the Employers were guilty of bad faith.

The affidavit ridicules the Employer's counter proposal and conveniently ignores the fact that the TMI offer "was the absolute maximum permitted under the administration's revised Pay Standards and, in terms of actual cost to the companies and benefits to the employees is more accurately measured in terms of a 30 percent increase over three years." (R. 00059). While the offer did not satisfy the Teamsters Negotiating Committee it can hardly be classified as "bad faith".

With regard to this "bad faith" contention, the Decision of the Appeal Referee stated:

> In this respect, the facts fail to show that the employer representatives at any time refused or failed to bargain with the Union which repre-

> sented the various companies' employees. 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 (R. 00029, emphasis added).

The Appeal Referee made no finding of bad faith, nor was he obligated to do so. As this Court stated in the Orange Transportation case, supra,

> However the Appeals Referee did not make any such finding, nor was he obligated to do so. The only instance in which he would be required to so find, or where we would interfere with his refusal to so find, would be where the evidence was uncontradicted and pointed so unerringly to one conclusion that reasonable minds could not remain unconvinced of the fact, so that it would be manifest therefrom that he had acted arbitrarily or capriciously in disregard of such evidence (296 P.2d at p. 293).

Clearly, a finding of "bad faith" is not mandated by evidence that TMI limited its pre-strike economic proposal to the maximum then permitted by the President's Wage Guide Lines. While it may be argued that the Employer could have avoided the strike by agreeing to the Teamsters demands which exceeded those guidelines prior to April 1, 1979, a refusal to do so does not constitute bad faith.

The Teamsters utilization of the "selective strike" and the Interim Agreement were a part and parcel of their intent to divide and conquer. The tactic of striking some Employers and permitting and encouraging others to operate puts tremendous pressure on those who are struck to capitulate and accept the Union's demands, thereby setting a pattern which is then imposed on the others. To counter this divide and conquer tactic on the part of the Union, Employers have the legal right to engage in a defensive shutdown. Such defensive action on the part of Employers does not change the fact that the Union instigated the work stoppage. See Olof Nelson Construction Company v. Industrial Commission (Utah 1952), 121 Utah 525, 243 P.2d 951; and Teamsters v. Orange Transportation, supra.

POINT THREE

THE STATE OF UTAH HAS THE RIGHT TO REGULATE THE PAYMENT OF UNEMPLOYMENT BENEFITS IN LABOR DISPUTE SITUATIONS.

In Ohio Bureau of Employment Services v. Hodory, 431 US 471, 52 L Ed.2d 513, 97 S Ct 1898, an employee attacked the provisions of the Ohio Unemployment Compensation Act which disqualified him from benefits in a labor dispute situation. He urged that Title IX of the Social Security Act established a federal unemployment compen-

sation scheme which required payment of benefits to all persons involuntarily unemployed. The United States Supreme Court rejected his contention, stating that the several States have broad freedom in setting up the types of unemployment compensation that they wish.

In the more recent case of New York Telephone Company v. New York State Department of Labor (U.S. Sup. Ct. 1979) 440 U S 519, 59 L Ed.2d 553, 99 S Ct 1328, the Supreme Court re-affirmed the proposition that the States have considerable freedom in fashioning their own policies concerning the payment of unemployment compensation benefits in labor dispute situations. There an employer was attacking a provision in the New York Act which provided for the payment of benefits to striking employees. The employer contended that the payment of such benefits to strikers conflicted with federal labor policy. The Court rejected this contention and again announced that the States were free from federal pre-emption in determining their own unemployment compensation policies in labor dispute situations.

Under the Utah Statute, as construed and applied by this Court in the Olof Nelson and Orange Transportation cases, supra, the claimants in this case are not eligible for unemployment compensation benefits. That has been

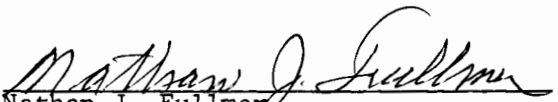
the law in Utah since Olof Nelson was decided in 1952. If the Teamsters Union feels that it is entitled to financial assistance from those who pay for unemployment compensation benefits in order to strengthen the effectiveness of its strikes then that appeal should be addressed to the Utah State Legislature and not to this Court.

CONCLUSION

Although the Teamsters Union contends that the Employer offer was so miserly that the Union was forced to strike, TMI contends that the offer was the maximum permitted by law. However, the relative merits of the positions of the parties in the negotiations and the ultimate settlement are not at issue in this proceeding, and should not be argued here. The basic facts are not in dispute. The law is clear. There is no rational basis to distinguish the Orange Transportation case, supra, and no valid reason for the Court to overrule it. The decision of the Appeal Referee and the Board of Review in denying the benefit claims, not only of the em-

ployees whose Employers were struck, but also of the employees whose Employers shut down in defense against the strike, must be affirmed.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies each of the foregoing Brief of the Respondent Intermountain Operators League to: K. Allen Zabel, Department of Employment Security, 1234 South Main, Salt Lake City, Utah, 84115, attorney for Respondents Board of Review, the Industrial Commission, and to Stephen W. Cook, Littlefield, Cook & Peterson, 426 South Fifth East, Salt Lake City, Utah, 84102, attorney for Appellants, postage prepaid this 28th day of January, 1980.

Nathan J. Hult