

1955

# International Brotherhood of Teamsters, Chauffeurs, and Helpers of America, Locals No. 222 and 976 v. The Industrial Commission of the State of Utah et al : Brief of Respondents and Appellees

Utah Supreme Court

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E. R. Callister; Fred F. Dremann; Attorneys for Respondents and Appellees;

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# In the Supreme Court of the State of Utah

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INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS,  
AND HELPERS OF AMERICA, LO-  
CALLS NO. 222 and 976, for and on  
behalf of membership,

*Petitioners and Appellants*

vs.

THE INDUSTRIAL COMMISSION OF  
THE STATE OF UTAH, ITS BOARD  
OF REVIEW, APPEALS REFEREE  
AND CLAIMS SUPERVISOR, INTER-  
MOUNTAIN OPERATORS LEAGUE,  
ORANGE TRANSPORTATION  
COMPANY and INLAND FREIGHT  
LINES,

*Respondents and Appellees*

Case No. 8428

FILED  
FEB 8 1956

Utah Supreme Court, Salt Lake City

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## Brief of Respondents and Appellees

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E. R. CALLISTER  
*Attorney General*

FRED F. DREMANN  
*Special Assistant Attorney General*  
*Attorneys for Respondents and*  
*Appellees*

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## Brief of Respondents and Appellees

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### STATEMENT OF THE CASE

The petitioners and appellants, local unions 222 and 976, International Brotherhood of Teamsters, Chauffeurs, and Helpers of America, represent members of those two unions

who filed claims for benefits for the period commencing with the 19th day of May, 1955, and ending the 11th day of June, 1955. These claimants were 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 Department representative. The matter was duly heard by the Appeals Referee, who, on the 26th day of July, 1955, affirmed the decision of the Department representative. Parties were notified of the Appeals Referee's decision, and on August 5 the said duly designated representatives of the claimants, locals 222 and 976, filed an appeal with the Board of Review of the Industrial Commission of Utah. On the 30th day of August, 1955, by a majority decision, the Board of Review upheld the decision of the Appeals Referee and the Department representative. The matter is now before this Court on a petition for review of the decision.

## STATEMENT OF FACTS

For a number of years truck companies operating in Utah and Idaho, including Interstate Motor Lines, Utah-Arizona Freight Lines, Garrett Freight Lines, Inc., Gallagher Freight Lines, Consolidated Freightways, Inc., Ringsby Truck Lines Co., Pacific Intermountain Express Co., Inland Freight Lines, and Orange Transportation had been organized into the Intermountain Operators League, and as such had bargained for

the individual employers in labor negotiations with the four local unions of the International Brotherhood of Teamsters, Chauffeurs, and Helpers of America (in Utah and Idaho). The Intermountain Operators League bargained as a unit for the employers and the teamsters bargained as a unit for their respective local members.

As a result of the previous bargaining by these collective units, a Master Labor Agreement for the years 1952 to 1955 had been negotiated. This agreement by its terms ended on May 1, 1955. On February 25, 1955, Mr. Fullmer H. Latter, Secretary-Treasurer of the Teamsters, Chauffeurs, and Helpers of America, local union 222, directed a letter to the Intermountain Operators League in which he stated: "In accordance with the terms and conditions of that certain Master Labor Agreement between our Local Union and your League dated May 1, 1952, and each of the Supplements and Addenda thereto, it is the desire of our Local Union to terminate said Agreements. We have authorized and instructed Joint Council #67 to compile our requests with the other Local Unions of the Joint Council and submit them to you as a proposal for modifications and changes to take the place of the present Agreement." (R 23).

On February 28 (R 24) Mr. Latter informed the Intermountain Operators League in writing that he had been authorized and instructed by the affiliates of the Joint Council to submit to the League certain enclosed proposed changes to take the place of the 1952-1955 Master Labor Agreement and Supplements and Addenda thereto. These proposals included demands for a wage increase, improvement in some

working conditions, improvement in vacations, health, and welfare plans, a pension plan, and certain other improvements in the contract (R 46).

On February 26 Mr. Louis H. Callister, on behalf of the Intermountain Operators League, notified the members of the union Joint Council that the League and the members thereof, as it pertained to a new agreement, wished to eliminate the paragraphs of the Line Wage Agreement Supplement (Utah-Idaho Intrastate and Interstate) 1954-1955 as follows:

"Section 8. That portion which provides for additional compensation for mileage in excess of 250 miles.

"Section 12. Eliminate this section entitled 'Check and Fuel Time.'

"Section 19. Eliminate this section entitled 'Division Points.' " (R 26).

On February 24, 1955, Mr. Callister, by letter, notified the members of the Joint Council that the Orange Transportation Company, Inc., desired to bargain as an individual and was willing to meet at any time convenient to the parties (R 25). It is indicated by the record that there was no reply by the unions or the Joint Council to this letter.

Prior to May 1, 1955, the members of the Joint Council negotiated with the Intermountain Operators League at several meetings. As previously pointed out, the unions made demands and the League submitted counter proposals. Thereafter, meetings were held in Los Angeles between the union representatives and the employers of the eleven western states (R 44, 64, and 65).

On or about May 17, 1955, Mr. Latter advised Mr. Callister by telephone that the unions were going to establish picket lines at the premises of the Pacific Intermountain Express Company and the Consolidated Freightways, Inc. At that time Mr. Callister advised him that a strike against one would be considered a strike against all. On May 19 picket lines were established at the premises of the aforementioned two employers (R 45 and 64). The unions informed the companies (other than Pacific Intermountain Express Company and Consolidated Freightways, Inc.) that on and after May 19 the members would continue to handle all the freight in transit and on the docks indefinitely (R 48).

With possibly one or two exceptions, the employer members of the Intermountain Operators League notified the unions on May 19, 20, and 21 that the workers (members of the unions) were being laid off and being put on a standby basis (R 54). Deliveries of freight in transit at all but the struck plants were completed (R 55). Some work, mainly the handling of government merchandise (explosives, etc.) was done by some union members through the week ending June 13, 1955 (R 48). The pickets at the two struck plants were obtained from volunteer members of the several unions and included workers whose employment was for employers other than the struck employers (R 56).

Assisted by the Conciliation Division of the Department of Labor a Memorandum of Agreement was arrived at during the California meetings and submitted to the Utah-Idaho operators and the members of the unions. The members of the Operators League were advised through their representative

that there would be no differentiation between operators in that everybody would have to accept the agreement negotiated in California, and in the event they didn't, there would be a picket line in front of them (R 65).

The Orange Transportation Company and Inland Freight Lines informed the unions that they were unwilling to accept the Memorandum of Agreement, and on or about June 12, 1955, picket lines were established at Inland and Orange. These pickets were withdrawn on June 19 (R 47).

The record shows that companies operating in the eastern section of the United States or the Midwest out of Chicago had placed an embargo on freight coming into the West, with layoffs to take effect on or about May 1, and that there was a later embargo placed on the movement of freight immediately prior to May 19. There is nothing in the record to show that any of the claimants involved in this matter were unemployed prior to the strikes at P.I.E. and Consolidated Freightways due to those embargoes (R 45 and 49).

The claimants in this case are employees of members of the Intermountain Operators League (whose places of business were not subjected to picketing) who were "laid off" at the time of, or immediately after, the commencement of the strike at the premises of the Pacific Intermountain Express Company and the Consolidated Freightways, Inc. There is no claim for benefits by the employees of the Pacific Intermountain Express Company, Consolidated Freightways, Inc., Orange Transportation Company, Inland Freight Lines, or Milne Freight Lines for the respective periods of the strikes at the premises of those companies. At the time of the hearing before the Appeals

Referee, the members of the Intermountain Operators League and the local unions had orally agreed to accept the Memorandum of Agreement terms which were reached in Los Angeles but had not yet signed an agreement (R 47).

## STATEMENT OF POINTS

### POINT ONE

THE FINDINGS, CONCLUSIONS AND DECISION OF THE INDUSTRIAL COMMISSION ARE SUPPORTED BY EVIDENCE.

### POINT TWO

THE INDUSTRIAL COMMISSION MADE FINDINGS OF FACTS REQUIRED TO DISQUALIFY CLAIMANTS FOR BENEFITS UNDER AND BY VIRTUE OF SECTION 35-4-5(d).

### SUBPOINT A

THE CLAIMANTS' UNEMPLOYMENT WAS DUE TO A STOPPAGE OF WORK.

### SUBPOINT B

THERE WAS A STOPPAGE OF WORK EXISTING BECAUSE OF A STRIKE INVOLVING THE GRADE, CLASS OR GROUP OF WORKERS OF THE CLAIMANTS HEREIN.

## SUBPOINT C

THERE WAS A STRIKE INVOLVING THE GRADE, CLASS OR GROUP OF WORKERS AT THE FACTORY OR ESTABLISHMENT WHERE CLAIMANTS ARE OR WERE LAST EMPLOYED.

## SUBPOINT D

THE INDUSTRIAL COMMISSION DID NOT ERR IN APPLYING THE LAW IN MAKING ITS CONCLUSION AND DECISION.

## ARGUMENT

### POINT ONE

THE FINDINGS, CONCLUSIONS AND DECISION OF THE INDUSTRIAL COMMISSION ARE SUPPORTED BY EVIDENCE.

Finding of Fact No. 3 (R 79) is supported by evidence in that the parties wanted certain changes in any operating agreement, which was to be effective after May 1, 1955. The finding was arrived at after due consideration of the exchanges of communications between the Joint Council and the Intermountain Operators League. On February 28 (R 24) Mr. Latter, for the Council, informed the Intermountain Operators League in writing that he had been authorized and instructed by the affiliates of the Joint Council to submit to the League "certain proposed changes to take place of the 1952-1955 Master Labor Agreement and Supplements and Addenda thereto."

On February 26 Mr. Louis H. Callister, acting for the Intermountain Operators League, notified the members of the union Joint Council that the League wished the new agreement to eliminate certain paragraphs of the Line Wage Agreement Supplement (Utah-Idaho Intrastate and Interstate) 1954-1955 (R 26).

The referee did not find that the 1952-1955 Master Labor Agreement continued in force and effect after May 1, 1955. He did reasonably conclude that as a matter of practical fact both parties were, in effect, saying that they wanted a new agreement effective on or about May 1, 1955, which would include some and delete others of the provisions of the 1952-1955 Master Labor Agreement.

After examining all of the evidence surrounding the relationship of the Orange Transportation Company, the referee reasonably concluded that although that company had expressed a desire to negotiate separately, it did not, in fact, accomplish its desires (Finding No. 5) (R 79). On February 24 Mr. Callister notified the members of the Joint Council that the Orange Transportation Company, Inc., desired to bargain as an individual and was willing to meet at any time convenient to the parties (R 25). Nowhere in the record does it appear that the letter of February 24, 1955, was answered by the unions or considered by the unions to have accomplished the purpose expressed by the letter. It appears to be obvious from the record that the unions considered and announced that all members of the Intermountain Operators League would be compelled to accept the same agreement which was ultimately to be reached, and that there would be no individual nego-

tiations with members which had as their purpose the changing of the terms of said agreement.

The consequent strike which was called by the union at the operations of the Orange Transportation Company, the Inland Freight Lines, and the Milne Freight Lines was obviously for the purpose of compelling those three employers to accept the Memorandum of Agreement which applied uniformly to the other members of the Intermountain Operators League. The referee could not have reasonably concluded that there was a withdrawal in fact by the Orange Transportation Company from the joint negotiations. The mere statement of a desired withdrawal does not in any sense necessarily accomplish that desire.

The referee in Finding No. 6 (R 79) properly found that the unions had informed the League that they intended to call a strike against Pacific Intermountain Express and the Consolidated Freightways, Inc. He also properly found that the League representative, Mr. Callister, informed the union representative, Mr. Latter, that the membership of the Intermountain Operators League would consider that a strike against one member of the League was a strike against all members of the League. On or about May 17, 1955, Mr. Latter advised Mr. Callister by telephone that the unions were going to establish picket lines at the premises of the Pacific Intermountain Express and Consolidated Freightways, Inc., and, in fact, on May 19, picket lines were established at those premises (R 45 and 64). Mr. Callister testified that at the time of said telephone call he informed Mr. Latter that a strike against one would be considered a strike against all.

There is no dispute over the fact that negotiations were moved to Los Angeles, California, and that the unions and employers of the eleven western states participated therein.

The appellant contends that the sole reason for the strike against Pacific Intermountain Express and Consolidated Freightways, Inc., was over the insistence of those two companies on the question of terminal changes. There is nothing in the record to show that the union at any time advised the members of the Intermountain Operators League, prior to the strike of May 19, that the unions' only remaining disputed issue was the issue of terminal change. It will be noted that the matter of terminal change, otherwise titled "division points," was one of the subjects in Mr. Callister's letter of February 26 in which he set forth the paragraphs which the League desired to be eliminated (R 26). The issue of "division points" was only one of a number of issues which were involved in the negotiations. At the time of the strike at Pacific Intermountain Express and Consolidated Freightways, the terms of the Memorandum of Agreement had not yet been referred to the unions or to the members of the Intermountain Operators League for approval. The issue of "division points" was the subject matter of the general demands in the same manner as were those dealing with wage increases, improvements in working conditions, etc., and as such affected the entire membership of the unions and the entire membership of the Intermountain Operators League. The mere fact that there may have been more insistence on the part of the employers on this issue is immaterial. The appellants would certainly not argue that the issue of "division points" was one to be con-

sidered separately and apart from the proposed new Master Agreement.

The controlling factor in this case is that the strike at Pacific Intermountain Express and Consolidated Freightways was actually called to enforce union demands which were the subject of joint negotiation between the unions and the members of the League.

In Finding No. 8 (R 79) the referee properly found that the unemployment of the claimants was due to the action of the employers. It must be noted that the layoffs by the employers took place coincident with the May 19 strike at Pacific Intermountain Express and Consolidated Freightways. It must also be noted that the periods covered by the claims for benefits in this case are with reference to the period which began on or about May 19, 1955. It is apparent that the members of the League in a concerted action laid off their workers in consideration of the fact that a strike against one was a strike against all.

The referee's Finding No. 9 (R 80) appears to contain substantially the same statement of facts as is set forth by the appellants in their brief on Page 13 in their comments regarding the Findings of Paragraph 9.

## POINT TWO

THE INDUSTRIAL COMMISSION MADE FINDINGS OF FACTS REQUIRED TO DISQUALIFY CLAIMANTS FOR BENEFITS UNDER AND BY VIRTUE OF SECTION 35-4-5(d).

The referee in Finding No. 7 (R 79) found that the unemployment of the claimants in this matter was due to a stoppage of work. By means of Findings Nos. 1, 2, 3, and 7, the referee found that the stoppage of work existed because of a strike involving the grade, class, or group of workers of which the claimants were members.

Specifically, the referee found in Finding No. 1 that the claimants were members of the teamster union belonging to local unions No. 222 and 976. In Finding No. 2, the referee found that in negotiating for the 1952-1955 Master Labor Agreement the several local unions bargained as a unit and that under the specific terms of that agreement they notified the members of the Operators League that they desired to terminate the Master Agreement effective May 1, and that they desired to negotiate for certain changes. Article XVII, "Term of Agreement" of the 1952-1955 Master Labor Agreement provides:

"This Agreement shall be in effect from and after May 1, 1952. This Agreement shall remain in effect until May 1, 1955, and thereafter until sixty (60) days notice, in writing, shall be given to either party by the other of a desire to terminate, change or modify the terms therein. Such notice shall specify in detail the desired changes and all matters not specifically referred to are automatically renewed. Negotiations shall be commenced within ten (10) days after such notice. Changes or modifications thereafter made shall be effective retroactively to May 1, 1955.

"It is expressly understood by the parties hereto that supplemental agreements covered by the terms of this Master, open for negotiations and modifications of their terms, through proper channels or notifications,

are not subject to the arbitration provisions of this Master Agreement.”

The signatories to that agreement included the local teamsters unions who notified the Intermountain Operators League that they wished to terminate the agreement effective May 1 and negotiate for changes.

The Joint Council for those unions entered into negotiations on behalf of their entire membership with the Intermountain Operators League. All of the claimants in this case were represented, therefore, for the purposes of negotiations by the Joint Council or, in other words, by the several locals operating jointly. All of the claimants, therefore, became involved in any action taken by their representatives operating as a unit.

The referee in his conclusion found that the unemployment of the claimants was due to a strike involving their grade, class, or group of workers at the factory or establishment where they were last employed.

## SUBPOINT A

THE CLAIMANTS' UNEMPLOYMENT WAS DUE TO A STOPPAGE OF WORK.

Section 35-4-5(d), Utah Code Annotated 1953 provides:

“5. 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.”

The appellants in their brief at page 13 state: “The unemployment of these claimants is because of the acts of the employers in putting out an embargo against business, and *voluntarily closing down rather than to the lack of business or the effect of the strike*” (Emphasis ours). And again on page 21 of their brief, the appellants state: “Hence, the unemployment which existed from the 19th of May to the 12th of June, 1955, was due to the lack of business and voluntary suspension of operations on the part of the employers.”

In discussing the meaning of the words “stoppage of work” in the Michigan unemployment act, the Court held:

“Section 29 (c) of the 1936 Act disqualified an employee for benefits if his unemployment was ‘due to a labor dispute . . . actively in progress in the establishment.’ The 1941 amendment of said section disqualified an employee for benefits if his unemployment is ‘due to a stoppage of work existing because of a labor dispute in the establishment.’

“In making the 1941 amendment the legislature intended to change the meaning of the existing law. The amendment was intended to disqualify an employee for benefits only when his unemployment resulted from a stoppage or substantial curtailment of the work and operations of the employer establishment because of a labor dispute. The phrase ‘stoppage of work’ refers to the work and operations of the employer establishment and not to the work of the individual employee.

“Hence, employees who were discharged when they stopped work and went on strike were held to be en-

titled to benefits where the employer's hiring of new employees prevented a stoppage of work, except for a period of about 15 minutes, from taking place because of the strike.—Lawrence Baking Co. v. Mich. UCC, 308 Mich. 198, 13 N. W. (2d) 260 (1944)".

"Stoppage of work" is generally construed by the several state agencies to mean a complete or substantial curtailment of the work and operations of the employer. Only in a few cases is the work stoppage a complete stoppage due to the practical aspects of operating a business of any size. In most cases, it is necessary to maintain a limited crew of workers as maintenance employees to prevent the deterioration of the plant and equipment. In some cases, as in the instant case, there was a certain amount of what might be called emergency freight (government and otherwise) which necessarily had to be handled. The big bulk of the employees of the employers in question were laid off and a substantial, if not complete, work stoppage existed.

It appears that the referee, the appellants, and the respondents in this matter are agreed that there was a stoppage of work during the period for which the claimants were filing for unemployment compensation benefits. On this point, there remains the question as to whether or not the stoppage of work was caused by a strike involving the grade, class, or group to which the claimants belonged.

## SUBPOINT B

THERE WAS A STOPPAGE OF WORK EXISTING  
BECAUSE OF A STRIKE INVOLVING THE GRADE,

## CLASS OR GROUP OF WORKERS OF THE CLAIMANTS HEREIN.

The appellants in their brief at page 26 state: "The stoppage of work which caused the unemployment of the claimants herein was not due to a strike, but to the planned, arbitrary, unilateral plan of the employers to lockout their employees." We agree that the claimants herein were unemployed because they were laid off by their employers.

The question presented herein is, "Did the strike at the Pacific Intermountain Express Company and the Consolidated Freightways, Inc., cause the unemployment of the claimants herein?" In the case of the Olof Nelson Construction Company vs. the Industrial Commission, 243 P 2d 951, the Utah Supreme Court ruled that in controversies where workers are represented by their unions arrayed on one side against management in multiple unit bargaining organizations on the other, the party to first use the weapon of its economic pressure against the other side is the one chargeable with the responsibility of the work stoppage, and if a work stoppage occurs as a result of a strike by any of the employees for the benefit of all aimed at all the employers, then all of the employees are ineligible for unemployment compensation benefits under the provisions of the Utah Employment Security Act. In that case the Court stated:

"Thus, the critical fact to be determined is whether the conduct of labor or management is the primary and initiating cause of the work stoppage, or as phrased by Mr. Justice Schauer in the McKinley case: ' . . . It was proper to relate responsibility for the work stoppage to the party who created its actual and directly impelling cause.'

“That brings us down to the ‘brass tacks’ of the situation in this case. There is no dispute about the fact that claimants were all members of the Six Basic Craft Unions and that the Building Trades Council was their collective bargaining representative; that they all belonged to the ‘grade, class, or group’ of workers whose wages were being bargained for. We thus have the Building Trade Council, representing the entire group of workers of all of these employers, aligned on one side of the controversy, and on the other side were all 75 members of A. G. C. who were also bound together as a collective bargaining unit; the Unions and the Association had established a long practice of bargaining as a unit; the 1949 contract between them was still in force at the time of the strike; by its terms the employees as a group had agreed to bargain collectively with the A. G. C. representing all of the employers. The only dispute and the only negotiation between the parties was in regard to the wage scale for the entire group of workers and against the entire group of employers. There was no separate demand made, no dispute existed, and no separate negotiation was carried on or proposed with the Barker and Paul firms (the ones picketed). Even after the strike was called, negotiations were continued between the Building Trades Council and the A. G. C. as a group.

“Under the circumstances here shown, it is indisputable that, although this strike and picketing was actually carried on against two firms only, it was authorized by the Union as an economic weapon to put pressure on all of the employers for the benefit of all of the employees with respect to negotiations of the master contract.”

In the instant case, we have a similar set of facts. The claimants in this case are all members of the teamsters locals which were bargaining with the Intermountain Operators

League through the Joint Council of the locals. They were bargaining for a new contract to commence May 1, 1955, and to include provisions beneficial to all of the claimants. There was no separate demand made and no separate negotiation was carried on or proposed with Pacific Intermountain Express and Consolidated Freightways, Inc., (the ones picketed.) Even after the strike was called, negotiations were continued for a Master Labor Agreement affecting the employers in the eleven western states, which, of course, included the employer members of the Intermountain Operators League.

As in the Olof Nelson case the strike and picketing was actually carried on against two firms only. It was authorized by the union as an economic weapon to put pressure on all of the employers for the benefit of all the employees with respect to negotiation of the master contract. After the strike at Pacific Intermountain Express and Consolidated Freightways, negotiation continued in Los Angeles and resulted in a Memorandum of Agreement for a new master contract.

The Court in the Olof Nelson case, *supra*, stated:

"Once the entire group of employers, A. G. C., became bound in a contract for collective bargaining with the entire group of employees (Six Basic Crafts), then these two groups, insofar as their relationship to each other concerning bargaining for wages, hours and work conditions under the master contract was concerned, became as single units, one group to deal collectively with the other group. That is the negotiation which was being carried on and with respect to which the dispute arose which gave rise to the work stoppage we are concerned with. It is clear beyond a doubt that the Union was the collective bargaining representative of

these claimants; that it authorized and ordered this strike against the two employers as an economic weapon against all of the employers to force a wage increase for all of the workmen in the Six Basic Crafts; that the claimants were members of the 'grade, class or group' for whom the strike was called; that the strike was attended by success and that the claimants benefited therefrom along with the striking employees and all other workmen employed by the A. G. C."

In the instant case, the entire group of employers, the Intermountain Operators League, became bound in a contract for collective bargaining with the entire group of employees, the teamsters locals (Joint Council), and these two groups became as single units, one group to deal collectively with the other group. The union was the collective bargaining representative of these claimants, and it authorized the strike at Pacific Intermountain Express and Consolidated Freightways as an economic weapon to bring about the successful negotiation of a new master labor agreement from which all members of the teamsters locals stood to benefit. Although the appellants contend that the sole issue in the strike against Pacific Intermountain Express and Consolidated Freightways was the one involving the question of terminals or "division points" as defined in the Master Labor Agreement, it must be remembered that the issue of "division points" was raised immediately at the beginning of the negotiations between the Joint Council and the Intermountain Operators League at their first meetings concerning the subject matter of a new master agreement. There is no evidence in the record to indicate that at any particular point the union ceased to bargain with the employers as a collective unit and commenced bargaining with Pacific

Intermountain Express and Consolidated Freightways on the single issue of "division points." As a matter of fact the evidence is all to the contrary.

Since the major issue in the joint negotiations was that of the new Master Labor Agreement, the fact that the terminal or division point issue was of prime importance to the two aforementioned employers does not in any sense change the character of the relationships between the multiple bargaining unit of the employers and the multiple bargaining unit of the claimants.

The appellants argue in their brief at pages 21, 26, and 27: "The strike against P.I.E. and Consolidated did not force the other employers to cease operation, for the evidence is that there was ample freight for them to operate, and some Trucking Companies did operate during the time. In other words, the Employers were in direct competition with the struck companies for freight and the strike against P.I.E. and Consolidated would have greatly increased the amount of business for the remaining carriers, and enhanced their operations."

This argument seems to indicate that the appellants are in agreement that the shutting down of operations by the employer members of the League (other than P.I.E. and Consolidated) was directly due to the strike which occurred at P.I.E. and Consolidated Freightways. As they pointed out, in effect, the equipment which had been running practically empty could have been used to a good advantage to carry the freight which would normally have been carried by Pacific Intermountain Express and Consolidated. The employers, however, chose to shut down their operations and lay off their

employees as a retaliation in response to the strike at Pacific Intermountain Express and Consolidated.

There is considerable mention by the appellants in their brief of the two embargoes which were placed on the movement of freight from the Middle West to the West and from the west coast eastward, but there is no direct evidence that total unemployment of any of these claimants was caused by these embargoes. There is evidence that the working hours of some of these individuals who later became claimants for the period commencing May 19 were reduced. There is also further evidence that much of the equipment of the employers involved in this matter was either returning empty or partially loaded. This evidence, of course, corroborates the position of the respondents herein that the employer shutdown on May 19 was due directly to the strike of that date.

Further evidence that the strike at Pacific Intermountain Express and Consolidated Freightways involved the entire membership of the teamsters locals represented herein is contained on page 56 of the record. At that point the union representative testified that the picketing was done by men who volunteered for such picketing and that these men came from the general membership of the unions and was not confined to those employees who normally worked at Pacific Intermountain Express and Consolidated Freightways. The testimony is that the picketing was not compulsory. It appears to us that there could be no surer way to involve the entire membership of several unions in a strike at the premises of one or more employers than the active participation by a cross section of the general membership of all the unions in the strike activities

(picketing) which took place at the struck plants. In this case we have members of the several local unions who were normally employed by employers whose plants were not "struck" or "picketed" actually performing picket duty on a scheduled basis at the premises where the strike had occurred.

### SUBPOINT C

THERE WAS A STRIKE INVOLVING THE GRADE, CLASS OR GROUP OF WORKERS AT THE FACTORY OR ESTABLISHMENT WHERE CLAIMANTS ARE OR WERE LAST EMPLOYED.

The appellants argue and quote numerous cases which define the words "plant" or "establishment" in support of their position that there was no strike at the plants or establishments of the claimants herein. We think the decision in the Olof Nelson case, *supra*, as it defines "plant" or "establishment" must prevail. In that case the Court said:

"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. Their number and scope are increasing. 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. Therefore they are not entitled to unemployment benefits. The order of the Industrial Commission is reversed. Costs are awarded to the plaintiffs." (Emphasis ours).

The Court further said:

"Inasmuch as claimants were members of the 'grade, class, or group' for whose benefits the strike was called: they were involved in the strike, and being so, they were involved wherever they were situated, including in their own plants or establishments . . . "

Industry-wide or area-wide bargaining was practically unknown at the time most of the state unemployment compensation laws were passed. The problems of definition of terms which later arose due to the establishment of collective bargaining practices were not, therefore, apparent. It became necessary for the courts to determine the scope of the words "plant" or "establishment" in relation to the scope of the issues and parties involved in the cases arising out of these collective bargaining matters.

The Utah Supreme Court, in effect, has in cases of multiple bargaining units extended the meaning of the words "plant" or "establishment" to include all of the places of work where workers for whom such bargaining is being carried out perform their services. In the Olof Nelson case, *supra*, the Utah Supreme Court has quoted freely from the decision of the California Court in the case of *McKinley vs. California Employment Stabilization Commission*, 34 Cal. 2d 238, 209 P 2d 602, and we quote:

"In *McKinley vs. California Employment Stab. Comm.*, supra, the employer association comprised all of the Sacramento Machine Shop baking industry. The Bakery and Confectionary Worker's Union struck the Butter Cream Plant, a member of the association. The association carried out their prearranged plan of retaliating against the strike by an association-wide lock-out. The California disqualification provision reads: 'An individual is not eligible for benefits . . . (a) If he left his work because of a trade dispute and for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed.' The court stated (page 606):

" 'At no time did the union purport to be directing any action solely against the Butter Cream Plant; instead, the union continued throughout to deal directly with the association for the purpose of obtaining a new master contract. To say, therefore, that the act of striking the one plant did not shut down work in other plants of the association which were subject to the labor negotiations for the purpose of obtaining a master contract is wholly unrealistic. Industry-wide negotiations had been established by these employers and consistently carried on for over 10 years.'

"Other quotations which emphasize the California position are:

" 'It seems clear that under such industry-wide single contract negotiation, economic action by either side, whether strike or lockout would be considered by each of the parties as action against the entire group struck or locked out . . . The selection of a certain plant or plants for a shutdown by strike at a particular time was a mere matter of strategy in the conduct of the trade dispute which equally involved all of the bakeries and their employees. This,

in effect, applied the union's economic sanctions against each employer and brought about the unemployment of all of its members. Had the association acted first by closing down one of the members plants and the union followed with a strike against all of the remaining plants, it would be equally clear that the volitional act causing the unemployment was the initial shutdown.'

"Thus, as Mr. Justice Schauer stated in his concurring opinion at page 608, the court held '*that it was proper to relate responsibility for the work stoppage to the party who created its actual and directly impelling cause.*' "

In the Olof Nelson case, *supra*, the Utah Court said:

"Our conclusion is that the various disqualification provisions of our Employment Security Act reveal that the underlying legislative intent is for the commission to determine the claimant's eligibility by adhering to the volitional test as announced in the Bodinson, Bunny's Waffle Shop and McKinley cases in California . . . ."

## SUBPOINT D

THE INDUSTRIAL COMMISSION DID NOT ERR IN APPLYING THE LAW IN MAKING ITS CONCLUSION AND DECISION.

The appellants in their brief, Page 33, argue that this Court in the Olof Nelson case, *supra*, did not lay down a mandate that action taken against two of the group must be deemed to be action against the whole group and the claimants be denied benefits. We disagree. In this case, as in the Olof

Nelson case, there was an established pattern of collective bargaining between the Intermountain Operators League and the teamsters locals. This is further evidenced by the fact that there was in existence at the time this action started a Master Labor Agreement affecting the members of the League and the several locals involved herein. It is further evidenced by the fact that the announced and accomplished purpose of the collective bargaining at the time this instant matter arose was a new master agreement covering, for all intents and purposes, the same parties. The terms of the Master Labor Agreement 1952-1955 also made it clear that the parties intended to bargain collectively either for changes in the old Master Labor Agreement or for a new agreement.

There certainly can be no dispute but that such collective bargaining took place in this instance. The fact that, after the preliminary negotiations in Utah had occurred, the negotiations were then transferred to Los Angeles does not alter the picture. The plants in Utah which were struck (i.e., Pacific Intermountain Express and Consolidated Freightways) were signatories to the Utah Master Labor Agreement 1952-1955 as were the striking unions.

The issues as originally developed in the early negotiations in the State of Utah did, as we have previously pointed out, include the matter of "terminals" or, as defined in the Master Labor Agreement, "division points." The issue, therefore, of the matter of "division points" was within the scope of the negotiations as they were carried out from beginning to end. While there may have been more difficulty on the part of the unions in obtaining results they wanted with refer-

ence to "division points," this does not make that issue any less a part of the subject matter involved in the area-wide negotiations. As a matter of fact, the record indicates that for all practical purposes all of the teamsters locals in the eleven western states became involved in the collective bargaining activities. The involvement of the claimants in the instant case is made much more definite by reason of the fact that the pickets performing picket duty at the struck plants were recruited from the general membership of the teamsters locals involved in the collective bargaining. This participation in the picketing by the general membership also involved all of the claimants in the strike.

## CONCLUSION

In conclusion we wish to point out that the instant case arising under similar facts and circumstances as those of the Olof Nelson case, *supra*, falls squarely within the volitional rule laid down by this court in that case.

The decision of the Industrial Commission should, therefore, be affirmed.

Respectfully submitted,

E. R. CALLISTER  
*Attorney General*

FRED F. DREMANN  
*Special Assistant Attorney General*  
*Attorneys for Respondents and*  
*Appellees*