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Operating Engineers, Local Union No. 3 of the International Union of Operating Engineers v. The Industrial Commission of Utah et al : Petitioner's Brief

Utah Supreme Court

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IN THE SUPREME COURT

UNIVERSITY UTAH

of the

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Clerk, Supreme Court, Utah

OPERATING ENGINEERS, LOCAL
UNION NO. 3 OF THE INTERNA-
TIONAL UNION OF OPERATING
ENGINEERS, for and on behalf of
members,

Petitioner,

vs.

No. 8444

THE INDUSTRIAL COMMISSION
THE STATE OF UTAH, ITS
BOARD OF REVIEW, APPEALS
REFEREE, AND CLAIMS SUPER-
VISOR.

PETITIONER'S BRIEF

FRED L. FINLINSON

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No. 8444

PETITIONER'S BRIEF

Petitioners and Appellants, Operating Engineers, Local Union No. 3 of the International Union of Operating Engineers, are here representing their various members who have been denied unemployment compensation benefits under Chapter 4, Title 35, U.C.A. 1953. During the period in question a strike was in progress at Kennecott Copper Corpor-

ation, Utah Copper Division, Mine and Mill Operation, located at Bingham Canyon, Magna and Arthur.

STATEMENT OF FACTS

In May of 1955, a representative of the Kennecott Copper Corporation requested of the various local unions, in negotiating a new wage contract that the unions and the company do so jointly, rather than separately, as they had for the past several years (R.10). The negotiations were to be carried on jointly as to wages only, leaving issues independent thereof to be negotiated by each union separately (R-10). This was agreed to by the following locals:

International Brotherhood of Electrical Workers, 1845

International Brotherhood of Electrical Workers, 1081

International Union of Mine, Mill and Smelter Workers, 485

International Association of Machinists, Lodge 568

Brotherhood of Locomotive Firemen and Enginemen, Local No. 844

Office Employees International Union, Local 286

International Brotherhood of Electrical Workers, Local 1438

System Federation, Local 155

Non-Ferrous, Clerical and Technical Workers

International Union of Mine, Mill and
Smelter Workers, 392

Petitioner, Operating Engineers, Local
No. 3 of the International Union of Operat-
ing Engineers;

and these unions set up a council to conduct the negotiations jointly (-11). Each local union presented demands as to wages to the council and the council in turn negotiated from these demands (R-12). The council had no power to bind the various local unions or to make any decision whatsoever for them, the local unions having reserved the sole right to make decisions on the matter of the ultimate wage contract (R-12, 13). Furthermore, each union reserved to itself the sole right to determine whether it should call and participate in a strike (R-13).

On July 1, 1955, while the negotiations were in progress, without notice to the petitioners, five of the local unions went out on strike (R-1). They were as follows:

The two International Unions of Mine,
Mill and Smelter, Locals No. 485 and 392
International Association of Machinists,
Lodge 568

Office Employees International Union,
286, and

Brotherhood of Locomotive Firemen and
Enginemen, Local 844.

On June 30, the day before the strike action

was taken by the above named unions, the petitioners held a meeting at which its representatives reported the progress of the negotiations, at which time they were instructed to continue them. No strike action was either contemplated or discussed at this meeting, nor had the union voted on the question as to whether it should strike or participate in any strike action. The Petitioners had negotiated in good faith, were negotiating in good faith and expected to negotiate a new contract without any loss of time (R-13, 14, 15).

The company, upon the setting up of the picket lines by the six striking unions, shut down its operations. The petitioners were refused work by the Company (R-15, 27).

POINTS RELIED UPON

POINT 1.

THAT THE FINDINGS AND CONCLUSIONS AND DECISION OF THE INDUSTRIAL COMMISSION ARE NOT SUPPORTED BY THE EVIDENCE.

POINT 2.

THAT THERE WAS NOT A STOPPAGE OF WORK EXISTING, THE RESULT OF A STRIKE INVOLVING THE GRADE, CLASS OR GROUP OF WORKERS OF WHICH THE PETITIONERS WERE MEMBERS.

ARGUMENT

This appeal is from the findings and decision of the Industrial Commission, Department of Em-

ployment Security, of the State of Utah, which denied the petitioners' claims for unemployment benefits on the grounds that their unemployment was the result of a stoppage of work at the claimants' place of employment, the result of a strike involving petitioners' grade, class or group, and it is from these findings and decision this petition for review is taken (R. 25-29, 47-49, 52-53).

The question for determination is whether the stoppage of work was the result of a strike involving the petitioners' grade, class or group, the determination of which will dispose of both points relied and both points will be considered together.

Basically the question is whether the petitioners fall within the provision of 35-4-5(d) U.C.A. 1953.

“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.”

That is, were they members of the same grade, class or group involved in the strike. If not, then they are entitled to unemployment benefits.

The petitioners were innocent victims of a

strike, which they never voted on or authorized, and one in which they did not participate, either by assistance or refusing to cross picket lines. They were denied work by the company when it closed down its operations and they were deprived of employment through no fault of theirs. Thus they were not of the same group within the meaning of the statute.

In *Members of Iron Workers Union of Provo v. Industrial Commission*, 104 U. 242, 139 P(2) 208, the court said that where a group is engaged in a labor dispute with an employer and it strikes to enforce its demands, the striking employees have constituted themselves a group to achieve results for themselves, and the non-striking workers were not of the same group and they would be entitled to unemployment benefits. That is just the situation we have here. The petitioner, Operating Engineers, Local No. 3, were not of the same grade or class, and as a group were alien to the five striking unions. In the opinion written by Justice McDonough the court said:

“* * * We are not here confronted with a situation in which there are several groups or classes of workers in a plant, one of which engages in a labor dispute with an employer and as a result such group strikes to enforce its demands. In such case the striking employees have constituted themselves a class or group to achieve results for themselves.

The other workers at the plant, though they may be unable to work would not be ineligible for unemployment compensation, because the stoppage of work by the group in question necessitates closing the plant. Such non-striking employees forced out of work would constitute a group not "involved" in the strike within the meaning of the statute.

Appellant Iron Workers argue that by having no voice in calling the strike and not being participants therein they segregated themselves from the striking "group" by their action and thereby became a group or class separate from the strikers, who were not "involved" in the strike. Such argument fails to take into account the fact that as a result of the election referred to the union calling the strike legally represented the entire group of which the Iron Workers were a part; and that the action of the S. W. O. C. in calling a strike definitely "involved" them in the strike since it was their bargaining agent. The action of their bargaining representative was their action, quite as much as it was the action of the minority of the membership of the S. W. O. C. who voted against the strike."

In the foregoing case the Bargaining group were empowered to call a strike, and it was upon that basis the court held that the claimants *were* of the same group. The contrary was the case here. The negotiating council had no power to call a strike and it did not. The six striking unions took independent action without the knowledge, the consent

or the encouragement of the petitioners, and the petitioners did not strike, did not stay away from their work voluntarily, nor did they refuse to cross the picket lines. Thus they do not fall within *Lexes et al v. Industrial Commission et al* (Utah) 243 P(2) 964, in which the court held that refusal to cross a picket line placed such persons within the striking group. Nor do they come within the provisions of *Olof Nelson Const. Co. v. Industrial Commission*, 243 P(2) 951 (Utah) and *Teamsters, Chauffeurs and Helpers of America et al v. Orange Transp. Co. et al* (Utah) 296 P (2) 291, for there the claimants were all members of the striking unions and participants in the strike.

We recognize that it will probably be urged that the mills closed down because of a strike called by the six striking unions and that the company had no recourse but to close down its operation. Assuming that such was the case, should such deprive the petitioners, workers caught in the squeeze, from unemployment benefits? We think not. The legislature never intended that workers, the innocent victims of others' acts should be deprived of the provision of the Unemployment Benefit Act. This is apparent from the Legislative history of our Act. The original Employment Security Act of this State was passed in 1935 and the disqualification provision then read:

An employee shall not be entitled to benefits: (3) if he has left or lost his employment due to a trade dispute involving the employer by whom he was employed so long as such trade dispute continues * * *.” (1935 Session Laws P. 44 Sec. 8(3).)

In 1936 the Utah Legislature rewrote the section entirely, removed the reference to trade dispute, and the statute now requires that a strike be present. In general, the various states have adopted two general types of statutes requiring strikes involving labor difficulties. Some of the states adopted the type which Utah passed in 1935 which makes a disqualification where the claimant has left or lost his employment because of or due to a trade or labor dispute involving his employer. The second type which has been adopted in many western states disqualifies the claimant only where there is a finding that the 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 where he or they were employed.

The distinction and difficulties in the requirements to be found in these two types of statutes are of utmost importance in the decision in this matter. A study of the language of the provision of Section 35-4-5(d) U.C.A. 1953 makes it apparent that the legislature did not intend that a worker be disqualified for unemployment benefits unless he was

a member of the grade, class or group causing or participating in the strike.

In changing the law, our Legislature unquestionably recognized the inequitableness of depriving a worker of unemployment benefits where he was not involved in a strike and his unemployment was the result of someone else's overt act against the employer. Apparently the change in the law was brought about to protect workers who find themselves in the same position the petitioners were in.

We respectfully submit that the writ be granted and that the Industrial Commission be directed to honor the petitioners' claims.

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