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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 : Brief of Respondents

Utah Supreme Court

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In the Supreme Court of the State of Utah

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

Petitioners,

vs.

THE INDUSTRIAL COMMISSION OF
THE STATE OF UTAH, ITS BOARD
OF REVIEW, APPEALS REFEREE,
AND CLAIMS SUPERVISOR.

Respondents.

Clerk Supreme Court, Utah

Case No. 8444

BRIEF OF RESPONDENTS

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AND CLAIMS SUPERVISOR.

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Case No. 8444

BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

On July 27, 1955, a representative of the Utah Department of Employment Security of the Industrial Commission of Utah issued a decision denying unemployment compensation benefits for certain claimants who were employees of the Kennecott Copper Corporation, Utah Copper Division, at Bingham Canyon, Magna, and Arthur, Utah. Employees to whom unemployment compensation benefits were denied were the Petitioners

and Appellants, members of the Operating Engineers, Local Union No. 3 of the International Union of Operating Engineers. The employees were denied benefits on the grounds that their unemployment was due to a stoppage of work which existed because of a strike involving their grade, class, or group of workers at the establishment where they were last employed.

After due notice and hearing, the Appeals Referee of the Department of Employment Security, on the 9th day of September, 1955, affirmed the decision of the Department representative. On the 14th day of October, 1955, the Board of Review of the Industrial Commission of Utah affirmed the decision of the Appeals Referee and denied any further hearing on appeal. The matter is now before this Court on a petition for review of the decision of the Board of Review, which was filed on the 4th day of November, 1955.

STATEMENT OF FACTS

On or about June 30, 1955, a number of the contracts between the unions and the Kennecott Copper Corporation were due to expire. In order to facilitate negotiations for the new contracts, the following unions in May of 1955 met and organized what was termed the "Unity Council": (R-10)

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

Operating Engineers, Local No. 3 of the International Union of Operating Engineers (Petitioners)

The purpose of the establishment of the Unity Council was to provide a medium through which the aforementioned unions could jointly negotiate with the company on the subject of wages. All other issues involving the several local unions were to be negotiated separately between the locals and the company. After these locals (R-11) had agreed to negotiate jointly on the economic issues (wages), they elected one H. B. Egbert of the Machinists Union as chairman. The members of the Unity Council met and determined what wage requests were to be presented to the company, and Mr. Egbert was directed to inform the company as to those demands (R-11). These demands were submitted to the company in writing. The Unity Council then proceeded to negotiate with the company on the wage issue after it was agreed that any proposed settlements would be first submitted back to the several locals for their approval (R 12-13).

The record appears to be clear that at no time prior to July 1 did all of the members of the Unity Council meet and discuss the matter of whether or not a strike would be called to enforce the formal demands of the Unity Council regarding

wages (R 13-14). Negotiations were still in progress on the night of June 30-July 1 when representatives of the two International Unions of Mine, Mill and Smelter Workers, Locals 485 and 392, International Association of Machinists, Lodge 568, Office Employees, International Union 286, and Brotherhood of Locomotive Firemen and Enginemen, Local 844, appeared at the negotiating meeting and informed the representatives of the other local unions of the Unity Council that the five unions immediately listed above had called a strike against the company and had, on about 2:00 a.m. or 2:30 a.m. on July 1, already posted picket lines (R-14). At the time the strike was called by the five members of the Unity Council, all of the original Unity Council members were still members of the Council and none had withdrawn (R 12). Effective with the work shift which began on 7:00 a.m. July 1, there was no work at the employer's establishment, except for those maintenance men who had been previously agreed upon between the company and the unions (R 21-22).

POINTS RELIED UPON

POINT 1.

THE FACTS AND CONCLUSIONS AND DECISION
ARE SUPPORTED BY THE EVIDENCE.

POINT 2

THE UNEMPLOYMENT OF THE CLAIMANTS WAS
DUE TO A STOPPAGE OF WORK WHICH EXISTED
BECAUSE OF A STRIKE INVOLVING THEIR GRADE,

CLASS, OR GROUP OF WORKERS AT THE FACTORY OR ESTABLISHMENT AT WHICH THEY WERE LAST EMPLOYED.

ARGUMENT

POINT 1.

THE FACTS AND CONCLUSIONS AND DECISION ARE SUPPORTED BY THE EVIDENCE.

The counsel for petitioners does not indicate any disagreement with the Findings of Fact of the Referee 1 through 7. Counsel's argument appears to be directed primarily to the question of whether or not the conclusions and decision based on those facts are valid pursuant to the provisions of the Utah Employment Security Act. The basis for the conclusions and decision will be discussed in Point Number 2.

POINT 2

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

The facts as shown by the record are clear and certain. The eleven local unions, including the union to which the claimants in this matter belong, i.e., Operating Engineers Local No. 3 of the International Union of Operating Engineers, did

in May of 1955 join together and organize what they designated as a Unity Council to act for all of the eleven members as the bargaining unit on the economic issues, i.e., wages.

At no time prior to the establishment of picket lines in the early hours of July 1, 1955, and the commencement of the strike at that time did any of the eleven locals withdraw from the Council. In fact the members were in actual negotiations on the wage issue when the striking unions, which were five in number, notified them that a strike had been called.

We have in this case, therefore, a single employer, a multiple bargaining unit composed of several local unions, and the situation wherein only a part of the members of the bargaining unit were engaged in strike activity against the employer. There appears to be no dispute but that a work stoppage occurred. The primary question for this Court is that of determining whether or not the entire group of local unions and their members comprising the Unity Council were, by virtue of their joint negotiations, involved in the strike which was caused by only a part of such members. We think that the Department representative and the Appeals Referee properly concluded that the actions of the striking locals involved all of the members of the locals which comprised the Unity Council even though they were members of locals which did not take strike vote or strike action.

The Legislature in adopting the provisions of the Utah Employment Security Act apparently recognized the principle that workers could become involved in strikes in a number of ways. Section 35-4-5(d)(1) of the Act 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.

"(1) If the Commission, upon investigation, shall find that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to such plan, or agreement to foment a strike, shall be eligible for benefits; provided, however, that if the Commission, upon investigation, shall find that such strike is caused by the failure or refusal of any employer to conform to the provisions of any law of the State of Utah or of the United States pertaining to hours, wages, or other conditions of work, such strike shall not render the workers ineligible for benefits.

"(2)"

In the case of *Members of the Iron Workers' Union of Provo vs. the Industrial Commission of Utah* (Utah), 104 U. 242, 139 P. 2d 208, this Court discussed the meaning of the term grade, group, or class of workers and the meaning of the word "involved". We would like to quote at some length from the Court's decision in that case:

"In our opinion there can be no question as to the fact that the strike involved the 'grade, class, or group of workers' at the factory or establishment at which members of the Iron Workers' Union were employed, and to which 'grade, class or group' they belonged. The strike was not called to affect S.W.O.C. members only; it was called to shut down the operations of those de-

partments in which S.W.O.C. members were working, whether all employed were members or not. Membership in the S.W.O.C. was not limited to a certain kind or kinds of employees of the plant. The same is true as to membership in the Iron Workers' Union. The election held was to determine which union should represent the whole group. The workers at the plant, insofar as the results of the labor dispute would affect them, constituted a single group. We are not here confronted with a situation in which there are several groups or classes or grades 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.

"If a strike involves his 'grade, class or group' of workers, an employee is ineligible to unemployment benefits when stoppage of work is 'caused' by members thereof. The words 'grade' and 'class' have reference generally to the type of work being performed, as to skills or as to expertness in those skills. The word 'group' may be synonymous in a given instance with 'class or grade', but it may include several classes or grades or even involve the workers of an entire plant. A strike involves the 'grade, class or group' of an employee within the meaning of the statute if the dispute which results in the strike is with reference to wages, hours or conditions of employment of a group of which he is a member. True, a 'class, grade or group' may be coextensive with a particular union membership, but this is not necessarily so. In the instant case the members of the Iron Workers' Union were dissident members of a 'group' involved in the strike; nevertheless they were members of the 'group' which was involved in the strike. The provisions of (d) (1) hereinabove quoted, providing that where a strike is fomented by an employee, the workers who are of his 'grade, class or group' are ineligible for benefits serves to make clear that the construction here given of the quoted words voices the legislative intent. It is not only those who foment the strike or bring it about who are ineligible, but the group to which such persons belong—however inclusive—the group for whose benefit the strike is called."

In the instant case the members of the eleven local unions constituting the Unity Council organized and constituted themselves a class or group to achieve results for themselves. The claimants, Petitioners in this case, and members of a non-striking union, argue, as did the Iron Workers, that they had no voice in calling the strike and that they, therefore, became a group separate and apart from the striking group and were

not, therefore, involved in the strike. To say that a strike by one member of a multiple bargaining unit would immediately dissolve the group represented by the bargaining unit and thereby not involve the other members would result in saying that the group acts jointly for the purpose of negotiations which would benefit all of the members but that the members could act separately to enforce the demands set forth in the negotiations. Under such reasoning the strike pressure exerted by one of the members would in fact benefit all of the members without resulting in the disqualification of any except the striking group. The Employment Security Act, however, makes it clear that the act intends to disqualify all of the workers of a particular grade, group, or class when any member or members of the grade, group, or class either strike or carry on activities, the purpose of which is to foment a strike or bring it about.

As quoted above, the Court said in the Iron Workers' case:

“The provisions of (d) (1) hereinabove quoted, providing that where a strike is fomented by an employee, the workers who are of his ‘grade, class, or group’ are ineligible for benefits serves to make clear that the construction here given of the quoted words voices the legislative intent. It is not only those who foment the strike or bring it about who are ineligible, but the group to which such persons belong—however inclusive—the group for whose benefit the strike is called.”

In the case of Olof Nelson Construction Company vs. the Industrial Commission of Utah (Utah), 243 P. 2d 951, this Court referred to its decision in the Iron Workers' case, *supra*, with approval. In the Olof Nelson case, *supra*, the Court rec-

ognized the principle that where several unions join together for the purposes of bargaining with their employers, the resulting bargaining unit becomes the "group involved." 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."

In recognizing the multiple bargaining unit as the "group involved," the Court was fully aware of the fact that such group did not assume or acquire the rights of the individual union locals, such as the right to strike. Strike votes and strikes remain the prerogative of the local union. To gain the objectives of the group negotiations, the locals are free to act singly or in combination to call a strike and thereby add pressure to the union demands. It is not necessary in bringing about a plant shutdown, where operations are integrated, that all of the

workers go on strike. As a practical matter, at times not every local of such a group of locals will have members employed at the particular plant where a strike is called. Locals not having members at the "struck" plant would not be in a position to join in the strike. However, the strike would, nonetheless, have as its purpose the enforcement of the joint negotiation demands and would, if successful, directly benefit all of the members represented by the entire bargaining group.

As previously pointed out, Section (d) (1) *supra*, makes it clear that a group will be bound by the action of any of its members who strike or act to foment a strike. If this were not true, then in every case the member locals of a joint negotiating group could choose one of the member locals to effectuate a strike and thus accomplish the desired result without any risk of disqualification for unemployment compensation benefits.

When several locals join together to act as a single joint negotiating body to bring about the accomplishment of a desired end, i.e., a wage increase, all of those locals become involved, for the purposes of unemployment compensation, by the actions of the individual members or locals, which actions are taken to bring about the desired end.

CONCLUSION

We respectfully submit that the representative, the Referee, and the Board of Review correctly found that the claimants in this matter were involved by reason of the specific provisions of Section 35-4-5(d), Utah Code Annotated 1953, and that

they were, therefore, ineligible to receive unemployment compensation during the period of the work stoppage.

The decision of the Board of Review of the Industrial Commission of Utah should therefore be affirmed.

Respectfully submitted,

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