

1959

International Brotherhood of Teamsters, Chauffeurs and Helpers of America, Local Unions No. 222 and No 976 v. Industrial Commission of the State of Utah et al : Brief of Petitioner

Utah Supreme Court

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IN THE SUPREME COURT

of the

STATE OF UTAH

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Clerk, Supreme Court, Utah

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS and
HELPERS OF AMERICA, LOCAL
UNIONS NO. 222 AND NO 976, for and
on behalf of their membership,

Petitioners,

—vs.—

THE INDUSTRIAL COMMISSION OF
THE STATE OF UTAH, ITS BOARD
OF REVIEW, AND THE APPEALS
REFEREE AND CLAIMS SUPERVIS-
OR OF THE STATE DEPARTMENT OF
EMPLOYMENT SECURITY,

Respondents

Case No.

9063

BRIEF OF PETITIONER

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STATEMENT OF CASE

On August 11, 1958, Teamsters Joint Council 38, covering the locals in the Sacramento Valley of California, went on strike against the employers of the Cali-

ifornia Trucking Association (C.T.A.). The strike was limited to certain "terminal" employees in that council, specifically excluding its line driver and clerical employees. The terminal employees' grievance was that their wage rates were less than was being paid their neighbor locals in the Oakland area, which fact had long been a source of irritation to the terminal employee members of the locals of Joint Council 38. The wage differential between the two areas was considerable and the C.T.A. firmly resisted doing anything about the wage discrimination.

Prior to the strike, Joint Council 38 had been warned by the employers of C.T.A., who also belonged to the Western Empire Operators Association covering the 11 western states, that if the Council refused to accept a proposal substantially the same as one which had been submitted to them on May 27, and went on strike, the Western Empire Operators Association would retaliate by shutting down operations over the entire 11 western states area. So when Joint Council 38 struck, the threatened lockout immediately ensued, thus leaving unemployed the Utah applicants for unemployment compensation.

The negotiations in Joint Council 38 for terminal employees were entirely separate and apart and independent of the negotiations for terminal employees in all the other respective joint councils in the 11 western states, including Utah.

Each joint council was an autonomous, independent negotiating unit by itself with sole and complete authority and power to pursue its own respective negotiating objectives, free of any interference from any other joint council, association, or organization whatsoever. Thus, when Joint Council 38 struck, Joint Council 67 for Utah and Idaho was helpless to do anything about it, as was every other joint council, association, or organization.

Each bargaining unit had to bargain for its own master agreement and also for its own wage and hour agreements, the former having to do with certain working conditions and grievance procedures, and the latter having to do with wages, hours, and matters related thereto.

The record, although lengthy, and not uncomplicated, makes clear the autonomous nature of negotiations in Joint Council 38, as distinguished from the separate negotiations in Joint Council 67, and as further distinguished from the separate negotiations by the line drivers committee for line drivers only, thus emphasizing the controlling fact in the case that the strike in Joint Council 38 in no way involved the applicants who are here asking compensation for unemployment resulting from the 11 western states lockout, and therefore said applicants do not come within the ineligibility provisions of 34-4-5 (d) U.C.A., 1953. A statement of facts from the record follows. All italics signify our emphasis.

STATEMENT OF FACTS

Applicants are members of Locals 222 or 976 of the International Brotherhood of Teamsters. Some applicants are line drivers between cities and states and include "short and long line" drivers who operate as either single man drivers or sleeper cab drivers. These applicants are sometimes referred to as over-the-road, or line drivers. The applicants who are not line drivers are "terminal" employees who include local pick-up and delivery drivers, helpers, dockmen, warehousemen, checkers, power lift operators, hostlers, automotive maintenance and service employees (including lubricating operators, gas pump operators, washers, shop and yard clean-up men, stock parts room employees, tire service employees, tire rebuilders), office workers and such other employees not included in the line, or over-the-road, driver category. All of the employees in the latter grouping are sometimes referred to in the evidence as local pick-up and delivery employees, and sometimes as "terminal" employees, distinguishing this entire grouping from the line drivers. All of the line driver applicants are members of Local 222.

Line Driver Negotiations

Prior to 1955 the collective bargaining contracts for the line driver applicants had been negotiated by the officers of Joint Council 67 which represent the Teamster Locals in Utah and Idaho. Joint Council 67 had received specific authorization to so negotiate from the respective locals, since the locals are, as provided by the

(Constitution of their International, the designated agency for bargaining for their respective members. (R. 0234-7) The employers negotiating unit for the same area was the Intermountain Operator's League. The origin of this bargaining unit reaches back to the 1930's. (R. 0045, 0109, 0115)

Then in 1955 the Western Conference of Teamsters appointed a committee to explore the possibility of negotiating a line drivers contract over an 11 western states area. The Western Conference is not qualified under Federal law to bargain or negotiate for anyone. (R. 0236) Neither does it have any authority to represent a local union in any capacity except as the local specifically authorizes it. (R. 0234-6) However, the said committee appointed by the Conference was encouraged to seek authority direct from the various locals throughout the 11 western states to negotiate for the line drivers in that area. At that time the Committee failed to acquire any authority to negotiate or execute an agreement for the locals. (R. 0212-13) This power was retained by the locals, so that any product of the negotiations by the unofficial committee was sent back to the locals and there acted upon individually by the locals or by those joint councils to whom the locals may have delegated such authority. (R. 0212-13)

Then in 1957 a similar committee again sought from the locals an authority which would permit a unified negotiating of a new 1958 contract for line drivers in the

11 western states. This was an 18 man committee including nine alternates, whose chairman was Homer Woxberg and sometimes hereinafter referred to as the Woxberg Committee. This Committee succeeded for the first time in getting from the locals authority to negotiate for every local in the 11 western states. (R. 0213) *The committee, however, was not authorized to conclude any contract or bind the locals.* (R. 0230, 0270) The result of any negotiations of the Committee had to be submitted to the vote of the line drivers, and all would be bound by the vote of the majority. (R. 0271) Whereas, in 1955 each local still had the right to refuse to be bound by any agreement regardless of how many other locals accepted it, in 1958 a majority vote of all the line drivers in the 11 western states area would bind everyone including even those locals wherein a majority had voted against a negotiated agreement.

In February, 1958, there began a series of meetings between the Woxberg, or Line Drivers Committee (and also known as the 1958 Over-the-Road Negotiating Committee) and the employers committee of the Western Empire Operators Association. This Committee consisted of 23 members including three alternates. The 1955 contract was to expire May 1, 1958, but it had been mutually agreed by all concerned to temporarily extend it pending the outcome of the current negotiations. By May 15 or 18 they had concluded a Master Agreement which was ready for submission to the line driver members. (R. 0223) The Master Agreement dealt with cer-

tain general conditions of employment other than wages and matters closely associated with wages.

Having reached an understanding only as to the subjects included in the Master Agreement, the line driver committees, respectively, for the employers and employees proceeded to the consideration of the various line driver "supplemental agreements" which covered such subjects as wage rates, minimum day, starting time, assignment of runs, layover pay, road expense, etc. for a variety of different industries who use the services of the short and long line transport industry; *but the negotiations as to such completely broke down about May 25 or 26.* (R. 0223)

In an attempt to overcome the serious consequences of a protracted stalemate in the negotiations, a meeting of a small group of employer and employee committee members was held at San Francisco in the Sir Francis Drake Hotel on May 27. These committee members met secretly to explore a possible solution which they hoped they could sell to their respective committees. (R. 0224, 0228) The result of this meeting was the wage settlement proposal of May 27. (R. 0050a)

The extent of the authority of the line drivers committee was to act for the "over-the-road drivers" only. Furthermore, it was not authorized to conclude a contract without first getting an affirmative vote from the line drivers. (R. 0270, 0229-30) Despite their limited authority, the line driver committee decided to submit the May

27 proposal not only to the line drivers for an 11 western states vote, but also to try to get the various bargaining units who represented the terminal employees to accept that part of the proposal which applied to such employees. The part of the proposal applicable to terminal employees only, was suggestive and not tied in or a part of the line driver proposal which was submitted to the line drivers for their approval or rejection. (R. 0117) In effect, the employer line committee was saying: "This is our proposal for the line drivers. Since we have agreed to this you should do what you can to persuade the terminal employees within their various bargaining units to accept our proposals to them."

There was this difference in the authority of the committees: Whereas the Woxberg committee had been negotiating for the line drivers only, the employer committee now appears to have had, or at least it acquired by 8:00 p.m. on May 27, the authority to make an offer for all the terminal employees in the several negotiating units in the 11 western states. (R. 0224) While this may have been the actual authority of the employer line committee, *it was not within the authority of the employee line committee either to negotiate or accept any proposal for the terminal employees. The line driver committee had no more authority than it was originally given and the only power it had relative to the terminal employees was the power of persuasion which in this case proved quite inadequate.*

The May 27 proposal was submitted to the line drivers who voted to accept it. The voting returns from the many locals in the 11 western states came in during the month of June. The line drivers in those locals which registered a minority acceptance were, under the 1958 authorization which they had given the committee, obligated to accede to the majority vote. Such was the case with the sleeper cab applicants in Local 222 where the vote was to accept 60, to reject 87. (R. 0067)

On July 14, 1958, after the vote tabulation was completed, Mr. Woxberg notified Mr. Robert Cutler, Chairman of the Employers Over-the-Road Negotiating Committee, that the line drivers had accepted the May 27 proposal and to proceed to abide by the terms thereof. (R. 0069)

Mr. Cutler, on July 18, replied (R. 0070-2) expressing appreciation for Woxberg's notification of acceptance, but then listed 11 points upon which he desired clarification "before advising all employer negotiating groups."

Then Woxberg in his letter of July 22 (R. 0073-4) emphasizes that there now existed an agreement with the line drivers only, *and that terminal employees were not included in the settlement.*

Terminal Employee Negotiations in Joint Council 67

We shall now state the facts relating to contract negotiation efforts in behalf of the terminal employee applicants covering the same period of time.

From the 1930's negotiations of contracts for applicant terminal employees and their predecessors had been handled independently of the line driver contracts by officials of the respective local unions in Utah and Idaho who negotiated with the employer association known as Intermountain Operator's League. This bargaining unit is at least 20 years old, and in 1955 when a change was attempted as to the line driver negotiating unit, no such change was attempted as to the terminal employee negotiating unit.

But in 1958, an effort was made by a committee appointed by the General Hauling Division of the Western Conference of Teamsters to unify all contract negotiating for terminal employees in the 11 western states within said committee. This committee was chairmaned by John W. Filipoff, who first had to get the various negotiating units to permit the Filipoff Committee to negotiate for them. Having succeeded only partially in this effort (R. 0257)) Filipoff, nevertheless, beginning in February, 1958, tried to get the employers to negotiate with his Committee for all terminal employees in the 11 western states, obviously hoping that if he could get the employers to cooperate, he would be able to persuade all of the locals to cooperate. But the employers refused to abandon their traditional bargaining units as to terminal employees, *and especially adamant was the Intermountain Operators League.*

Exhibit 7 (R. 0039-41) is a letter from Mr. Filipoff to all employer units as shown in schedule A of the

exhibit requesting that the employers negotiate an 11 western states contract for the terminal employees. Exhibit 8 (R. 0042) is Mr. Callister's refusal wherein he says, "The operators whom I represent, commonly known as Local Drayage, desire to continue their negotiations as they have done in the past; that is, on a state level."

Having failed to get an affirmative response, the Filipoff Committee then tried to negotiate for the terminal employees in their traditional units one by one, and did in fact do some preliminary negotiating in the respective local negotiating units at Los Angeles, Portland, Arizona, and Seattle where these units had temporarily authorized that Committee to represent them. (R. 0259)

This effort was foreshadowed by Filipoff's letter of March 17. (R. 0043) On March 20, 1958, Mr. Callister reiterated his position of not abandoning the long established unit in Utah and Idaho and added: "*This has been the method of operation for the past twenty years and we can see no reason at this time for a change.*" (R. 0045)

Mr. Filipoff made further attempts to have his committee recognized which provoked another letter from Mr. Callister to Mr. Filipoff written April 15, 1958, wherein he says (referring, of course, to terminal employee negotiations only):

"I think I have advised you before that it is the desire and intent of the *Intermountain Operators League operating in Utah and Idaho* to

continue their bargaining unit as they have in the past and they do not desire to join with the Eleven Western States in a uniform Master Agreement." (R. 0049)

So, having made the foregoing efforts, and others not here mentioned, without success, the Filipoff Committee decided to abandon its efforts. It therefore, three or four days prior to May 27, formally relinquished back to the locals the authority which it had received, and all of the old negotiating units were thus left intact. (R. 0262-3)

Actually, the terminal applicants in locals 222 and 976 had never given the Filipoff Committee any authority to negotiate for them, and that committee never did negotiate for them. (R. 0181, 0259-60, 0262-3)

The May 27 proposal was never submitted to the terminal applicants. Their representatives had not participated in the negotiation of that proposal, and it did not deal with the major grievance which these applicants wanted to negotiate, which was a plan for the reduction of hours worked per week. (R. 0182)

On June 6, 1958 the negotiators for the established unit of the Utah terminal applicants met in Mr. Callister's office. (R. 0051, 0117-8) The employers submitted their proposed contract as to conditions of work, but without any wage proposals, spaces therefor being left blank. (R. 0052-63, 0118) Further negotiations between these parties took place on June 12. (R. 0064-5, 0118) Then

the next day, June 13, Mr. Callister, of the Intermountain Operators League, sent Mr. Latter, of Joint Council 67, a letter and a proposal as to wages. (R. 0075-S, 0120) This June 13 wage proposal showed increases of 8c, 9c and 10c per hour, respectively, for the various terminal employees listed, whereas, Exhibit 13 "Wage Settlement—May 27, 1958" (R. 0050a) shows a blanket raise of 10c per hour for all such employees. Mr. Callister's June 13 proposal shows a raise for clericals in Utah of 10c, March 1, 1959, whereas the May 27 Wage Settlement shows a similar raise for clericals as early as May 1, 1958.

Thus, employer affirmance is given to Mr. Latter's testimony (R. 0117) that the May 27 proposal "was not intended to be presented to employees employed as terminal employees." At least it was not intended to be presented to the Utah terminal employee applicants, and it "was not presented in this instance to those employees." (R. 0117) We observe that the employers who were responsible for the Wage Proposal of May 27 were more liberal in their offers than the Intermountain Operators League were, which may explain the League's refusal to abandon its traditional bargaining unit for terminal employees.

The June 13 proposal of Mr. Callister's was voted on by the terminal employees in Joint Council 67 on June 17 and 18. They voted to accept the employers' plan for reducing the weekly hours, which was the point in chief contention, but the employees advised the union officers that there should be some increase in hourly wage rates

over those submitted in the June 13 proposal, all of which was immediately conveyed to Mr. Callister. (R. 0182) The League made no further offer till September 5 when an offer of 2c per hour over the June 13 proposal was made. *This was submitted to the terminal applicants on September 14 and they accepted. A contract based thereon was signed October 24, 1958.* (R. 0182)

Although the May 27 proposal for Terminal employees was not submitted to the Utah applicants, it was submitted to some of the other units. The terminal employees in Southern California, within Joint Council 42, voted overwhelming to accept the May 27 proposal. Other units had voted acceptance, but some had rejected it. Because of the relatively large number of terminal employees in Joint Council 42 in the Los Angeles area, and because they "overwhelmingly" voted to accept the May 27 proposal, it became apparent to the employers during the Seattle meeting about June 25 that if the terminal employees had negotiated and voted as an 11 western states unit, as the Filipoff Committee had urged the employers to do, under which arrangement there would have been a "lumping" of all the votes together, there would have been a total and complete acceptance of the May 27 proposal by the terminal employees in the entire 11 western states. (R. 0238-40)

But, at that time it was too late, the votes were already cast and counted, the Filipoff Committee, frustrated from the start, was dead, and "nobody was vested

with the authority in our unions to lump the votes of these bargaining units." (R. 0240) So nothing was accomplished at the Seattle meeting.

Although the line drivers, and those terminal employee negotiating units that had voted to accept the May 27 proposal, tried, following the Seattle meeting, and long before the Sacramento Valley Strike of August 11, to get the employers to sign a contract and thereby formally finalize the offer and acceptance of the May 27 Proposal, the particular employer negotiating units involved refused to do so.

Terminal Employee Negotiations in Joint Council 38

Since the strike occurred in Joint Council 38, we ought to study what happened there and why. There is a considerable stipulated record on the matter. Exhibits 27, 28 and 29 (R. 0273-0291) give a detailed history of the events leading up to the strike by the terminal employees in Joint Council 38. In summation these facts, in part, are:

1. That the appointed officers of Joint Council 38, chairmaned by Wendell J. Kiser, negotiated for a contract for their terminal employees with the California Trucking Association (C.T.A.).

2. That, like Joint Council 67 and the Intermountain Operators League, they had a bargaining history of at least 20 years.

3. That in 1958 they negotiated on the premise of changing the pre-existing contract between them, which this negotiating unit had executed in 1955.

4. That all such negotiations were independent of their line driver negotiations.

5. That their main grievance was that their wage scales were considerably less than those enjoyed by teamster terminal employees in the Oakland or Bay area.

6. That they did not authorize any other person, group or committee to negotiate for them, and, in fact, no one else did negotiate for them.

7. That on June 12 a carefully prepared and State supervised election was had by the terminal employees on two questions: (1) whether to accept the May 27 proposals plus a pension provision and the balance of their former collective bargaining contract as to terminal employees, and (2) whether they wanted to strike if they did not get parity with the Bay area. The result of the vote on the first question was in the negative except for the clerical workers who voted to accept. As to the second question, all of the terminal employees, except the clerical workers, voted to strike.

8. The California Trucking Association refused to negotiate with Joint Council 38 on any basis other than the union's acceptance of the May 27 proposal plus a pension provision.

9. Because the C.T.A. refused to negotiate something better for Joint Council 38 than the May 27 proposal plus a pension provision, and because the negotiators of Joint Council 38 were bound by a strike vote of the members, Joint Council 38 went on strike August 11, 1958, specifically not including in the strike its line driver members and its clerical members. In this decision to strike, Joint Council 38 proceeded entirely on its own and against the appeals and efforts of the Western Conference President and others to dissuade it from striking.

10. *The various employers in every other negotiating unit in the 11 western states, including those in the Inter-mountain Operators League, immediately locked out every employee including the Utah applicants.*

11. That at no time did any locals outside Joint Council 38 authorize that council to represent them, nor did they participate in the above negotiations, or the attempt to negotiate for those who struck; nor did Joint Council 38 participate in, or in any way negotiate with, any other group or organizations of unions.

12. That the dispute which gave rise to the strike in Joint Council 38 arose several years ago, was limited strictly to the locals in Joint Council 38, and the dispute, specifically, was their desire to have wage parity with terminal employees in their neighbor locals in the Bay area.

13. That the C.T.A. in its attempt to force Joint Council 38 into an agreement based on the May 27 proposal, obviously with the backing of all other western states trucking employers, had, for a considerable time prior to the strike, threatened Joint Council 38 with an 11 western state lockout if Joint Council 38 went on strike.

14. That the line drivers in Joint Council 38 were represented in their 1958 negotiations not by Joint Council 38, but by the Woxberg Committee to whom the Joint Council 38 locals had granted the authority therefor.

Completing the Contracts

By May 27, 1958, the Master Agreement for line drivers had been substantially agreed upon. This was the product of several months rather steady negotiations, and in the opinion of the parties thereto was a model agreement that could well be adopted by other bargaining units and unions other than Teamsters. (R. 0250) So it was that the various terminal negotiating units used it as such with appropriate adaptations. (R. 0249-50)

From the time of the final tabulation of the line driver voting, the Woxberg Committee insisted that it had a contract. The contract as finally drawn "was settled on the May 27th wage formula of 10, 10 & 10 ***." (R. 0246)

As early as June 18, 1958, two months before the strike, the terminal applicants accepted the Intermountain Operators League's June 13th proposal as to their chief point of difference: the reduction of weekly hours, and requested an increase over the hourly wage rates proposed. No specific amount was requested. There is nothing in the record to explain the failure of the League to make a counter offer or even a refusal to offer, between June 18 and September 5. Finally, at this late date of September 5, a 2c per hour increase was offered and forthwith accepted by said applicants. The applicants thus accepted the first and only counter offer made by the League. A wage increase was not a point of grievance with the Utah terminal applicants. When, by June 18, they had settled on the problem of hour reduction they no longer had a grievance and were satisfied; and they had no plan, or desire or inclination whatsoever but to work.

There is, furthermore, nothing in the record, nor in the Board's findings of fact, which shows in any degree that the terminal applicants received anything which can be attributed to the strike in Joint Council 38.

STATEMENT OF POINTS RELIED UPON

The points upon which petitioners rely for the reversal of the Board's Decision are as follows:

POINT I

THE FACTS FOUND BY THE APPEALS REFEREE
AND THE FACTS FOUND INDEPENDENTLY BY THE

BOARD OF REVIEW ARE FRAGMENTARY AND MIS-LEADING AND DO NOT ADEQUATELY REFLECT AND REPRESENT THE ENTIRE RECORD AND EVIDENCE, OR ARE NOT SUPPORTED BY ANY EVIDENCE.

POINT II

THE APPEALS REFEREE AND THE BOARD OF REVIEW ERRED IN HOLDING THAT THE APPLICANTS ARE INELIGIBLE FOR UNEMPLOYMENT BENEFITS UNDER 34-4-5(d), UCA, 1953.

- (A) NONE OF THE APPLICANTS WERE MEMBERS OF ANY GRADE, CLASS OR GROUP OF WORKERS WHO ENGAGED IN A STRIKE.
- (B) NONE OF THE APPLICANTS WERE WORKERS OF THE ESTABLISHMENT WHERE A STRIKE OCCURRED.

POINT III

THE WORK STOPPAGE INVOLVED IN THIS CASE WAS AN ECONOMIC WEAPON WHICH THE EMPLOYER CREATED AND IMPOSED UPON THE APPLICANTS TO COMPEL THEM TO RECOGNIZE AND ACCEPT A MULTI-EMPLOYER BARGAINING UNIT.

ARGUMENT

POINT I

THE FACTS FOUND BY THE APPEALS REFEREE AND THE FACTS FOUND INDEPENDENTLY BY THE BOARD OF REVIEW ARE FRAGMENTARY AND MIS-LEADING AND DO NOT ADEQUATELY REFLECT AND REPRESENT THE ENTIRE RECORD AND EVIDENCE, OR ARE NOT SUPPORTED BY ANY EVIDENCE.

In the foregoing Statement of Facts petitioners have tried to state the material facts in this case. Because there are two groups of employee applicants whose contracts were negotiated by different bargaining units the Statement is not as free from complexity and length as one would like. If the court believes we have made an accurate statement of the facts as they appear, uncontradicted, in the record, it must be keenly aware of the inadequate and quite misleading nature of the Findings of Fact made by the Appeals Referee, and of the statements of fact in the Board's Decision. Without restating our exceptions and comments as expressed to the Board of Review on the Findings made by the Appeals Referee, we respectfully urge the Court to consider those comments if they are considered pertinent. (R. 0158-0170)

It would appear, however, that the Board of Review did not adopt the Referee's Findings. Subsequent to the Referee's Findings there was considerable evidence taken and stipulated by the parties which only the Board considered. We conclude, therefore, that the findings of fact which governed the Board's decision are strictly the Board's own findings which are found in, and must be lifted from, the statements made in the Board's Decision entered April 3, 1959. Since we assert that the Board has made some serious and basic errors in its findings of fact, we now proceed to an analysis of those findings.

1. The third paragraph of the Decision (R. 0185) reads:

“Memorandums of proposed master agreements submitted to the several employer associations in the 11 western states by union 11 western states bargaining committees formed the basis for the bulk of negotiations for both the pickup and delivery and the long line workers.”

This paragraph indicates the failure of the Board to grasp the fact, which is plain in the record, that the Master Agreement which was negotiated by the line driver committee for the line drivers only, was used only as a form or model by all the terminal negotiating units, and in each case had to be separately agreed upon and adapted to the particular problems in the several, separate, terminal employee negotiating units. In the words of the witness upon whom the Board relies, when speaking of the master agreement which the line driver committee negotiated: “This is a guide for many, many, unions; it is going to make it harmonious. Many hours and brains were used in putting that document together from the employers’ and union side both. It’s a fine agreement, and it can be used as a pattern not only for pickup and delivery drivers, it could be used by many unions other than teamsters as a pattern to harmonious and labor relations.” (R. 0250) This evidence is uncontroverted. We are puzzled as to how the Board can determine from the Record that the master agreements necessarily “formed the basis for the bulk of negotiations.” Be that as it may, the record is clear that the master agreements in no way were a matter of controversy, dispute, or grievance after the middle of May, 1958. And it was not until after May 27 that the real

trouble developed; and that trouble had nothing to do with any provision in any master agreement. *The real trouble was as to wage rates, and the only real trouble as to wages was restricted to the grievance in Joint Council 38.*

2. The fourth paragraph of the Decision (R. 0185) reads:

“As stated in effect by a union representative in his testimony — when negotiations in an industry such as the freight industry are conducted and many segments of it are involved and many different types of contracts, they all have to be solved. So consequently the agreement right in the beginning of the negotiations was that nothing would be actually concluded and signed until we concluded them all. That is the normal procedure in negotiations where you have multiple problems and multiple contracts. The board can find no substantial deviation from this procedure.”

This paragraph refers to an agreement that no contract would be concluded and signed until all were concluded. Such was the understanding of the line committee at the beginning of negotiations. (R. 0247-8) But the Board fails to find that “in fact, it never works out that way.” (R. 0252) Concerning the results, Mr. Woxberg, whom the Board quotes, says: “Well, the results of today, as of this very moment, the line master is not signed. The line supplements are in the process of getting signed. Areas have signed and completed their local pick-up and

delivery agreements and signed local master agreements ***." (R. 0251-2)

The "agreement" not to sign one until all were ready was nothing more than an expression by the line drivers negotiating committee that they were, at the beginning of the negotiations, agreeable and hopeful that such would be the case. It was not a binding agreement between the line committees, nor was it, nor could it be, binding upon any of the terminal employee negotiating units, because the various units wherein lay the authority to so agree did not make such an agreement.

3. The fifth paragraph of the Decision (R. 0185-6) reads:

"The long line master agreement was negotiated primarily by an 11 western states employer committee and a single 11 western states union bargaining committee. The results of these negotiations were submitted to the respective locals for a vote of the membership, and a vote of the majority was to accept the negotiated terms. These were later changed in minor detail after an agreement had been reached with reference to pickup and delivery workers."

This paragraph substantially conforms to the record, except that there is nothing in the record to warrant the statement that the Master Agreement was "later changed in minor detail." This statement appears to refer to Woxberg's testimony (R. 0249) that there was an improvement in "cost of living" for line drivers. This provision was not a part of the line Master Agreement, but

was part of one of the supplemental agreements and arrived at several months after agreement had been reached as to the line Master Agreement. See Exhibit 13 (R. 0050) for the subject matter of the line Master Agreement. It contains nothing as to wages and similar matters such as the "cost of living" provision.

Furthermore, the fifth paragraph of the Decision fails to find facts which complete the picture, such as, that the line committee made many serious and good faith efforts to conclude the contract before the strike in Joint Council 38 on the basis of the May 27 proposal; that any change in the supplemental line contract after the strike was of a minor nature, which fact the Board does concede (R. 0186), but fails to add that it came as a gratuity without demand or negotiation (R. 0247); that some terminal negotiating units also tried to conclude a contract on the basis of the May 27 proposal before the strike in Joint Council 38 (R. 0252-3); and that at least 7 weeks before the strike, the Utah terminal applicants also formally voted an acceptance of the June 13 proposal of the League except for a relatively minor element upon which the union invited a further proposal from the League. And, it should be added, that the Intermountain Operators League failed to make such further proposal for more than 11 weeks thereafter, and, incidentally, when made, was immediately accepted.

4. The sixth paragraph of the Decision (R. 0186) reads:

“The pickup and delivery master agreement was in effect put together by a union group working with an employer group at various times and places, and then submitted to the several locals for further negotiations and for approval or rejection. We recognize that there were some negotiations at the joint council levels primarily dealing with hours and wages, but we consider this a part of the total negotiations. After all of the local negotiations had been concluded, all of the material and proposals were pulled together at a central point and then submitted to the local memberships for their approval or rejection. A hold out on the part of one or more locals on the unsettled issues on pickup and delivery matters would and did delay the adoption of the master agreements for pickup and delivery workers.”

This paragraph shows how completely successful the Department's attorney was in influencing the Board to the Department's viewpoint. Parenthetically, it should be observed that because of the complicated nature of the facts in this case, counsel for petitioners at every stage of this case before the Board, requested an oral hearing before the Board, but every such request was ignored or rejected. The meeting of the Board which produced the Decision herein was attended by counsel for the Department but not by counsel for petitioners, because they were neither notified of the meeting nor invited to attend the same. Likewise, when the Board met to consider applicants' Petition for Reconsideration, counsel for applicants were not permitted to attend and be heard, but counsel for the Department was present at the meeting and presumably heard. We do not presume to say that the Board was

originally biased in this matter, but we do say that if it were, or if counsel for the Department unilaterally influenced the Board during its deliberations in behalf of the Department's ruling, consciously or unconsciously, such bias or such influence could be no better evidenced than by paragraph 6 of the Decision.

We object to paragraph 6 for these reasons:

(a) One cannot be sure whether the Board is speaking of negotiations in Joint Council 67 or of negotiations covering the 11 western states. If it means the latter, we object to it because there was no single "pickup and delivery master agreement," and there is absolutely nothing in the record to suggest it. Everyone of the approximately 10 negotiating units in the 11 western states for pickup and delivery employees had its own master agreement which was completely negotiated within its own unit and any intelligent reference to master agreements covering the western states for "pickup and delivery" employees must, of necessity, be in the plural. If, however, the Board in referring to a single "pickup and delivery" master agreement, was indeed speaking only of the master agreement negotiations in Joint Council 67 covering all the locals in Utah and Idaho, it destroys one of its main premises for its final decision.

(b) As further evidence of the Board's confusion of the facts, it speaks of negotiations "dealing with hours and wages" in connection only with the master agreement. The record is clear and uncontroverted that hours

and wages are subjects which are not a part of any master agreement in any negotiating unit. More will be said about the Board's confusion about master agreements when we discuss Paragraph 7 of the Board's Decision.

(c) The Board also quotes from testimony of Woxberg in support of pickup and delivery negotiations, when, in fact, he was testifying only as to line negotiations. We here refer to the last two sentences of paragraph 6 of the Decision.

If one will carefully read from the bottom of R. 0246 to and including the 8th line of R. 0249, it must be obvious, in view of all the other testimony in the record, as well as the facts expressed and general tenor of what Woxberg says in said pages, that the Board took no little pain to take some phrasing entirely out of context to make a finding of fact that simply is not supported to any extent in the record.

Toward the bottom of Page 46 Woxberg, who was strictly a line negotiator only, explains that the line agreement was settled on the May 27 wage formula. Then Department counsel asks: "Q: Well, now, who pulled these terms on local pick-up and delivery together and submitted them back to the locals; how is that done? A: That was done by those people that have their names on the bottom of that agreement. I had nothing to do with it." (R. 0246-7)

Then Woxberg testified that any benefit the employers were willing to give the line drivers over the May 27 proposal was entirely voluntary and that "I knew and they knew it was not compulsory." He then testified that because of the nature of the freight business, its need for integration with other segments thereof, you really don't solve your problems by just solving one of them and that it was "standard" procedure to agree "right in the beginning of the negotiations" to conclude all contracts before concluding any contract. Then Department counsel asks: "Q. So you always went through this process of sending the proposed terms back to the local unions, having the local unions vote, and then pulling it all back together and taking a looksee to see if you can get together. A. Yes, it's routine."

This is the basis of the Board's statement in Paragraph 6 of its Decision as above quoted, and before quoting the rest of Woxberg's answer, we wish to comment on the above.

The last question of the Department's Counsel above is not clear in meaning and therefore the categorical "yes" is not clear and therefore must be reconciled, if possible, with the other evidence. Who is "you" in the phrase "so you always"? Can it possibly be any other than the line committee concerning whose activities Woxberg is testifying? We know from the evidence in the case that it would not be anyone or any group who has authority to act or in any way negotiate for all the employees in the 11 western states because no one group was

given this authority. Another thing we know from the evidence is that in the 1958 efforts to compose the differences in the respective bargaining units, the president of the Western Conference acting in the role of a conciliator made every effort to get the various parties together. Even the president of the International Union made an effort to conciliate the parties in the different units both in Seattle and in Washington, D.C. And the fact is firmly established and uncontradicted in the record that when the various and separate units did get together it was by virtue of decisions made by the duly authorized negotiating officials in the respective units and then ratified only by the vote of the membership in the different units, voting separately in their own units.

So what does Woxberg's answer mean? It is suggested that it can only mean that he had in mind his own experience in the line driver committee in 1958 because the leading question to which he was responding was a general statement which somewhat approximated this experience, and which was the only experience he could testify about for he had no experience negotiating for any terminal employee group.

But as further evidence that Woxberg was not saying what the Board says in Paragraph 6 is what he adds in this answer, when in speaking of the May 27 memorandum, he says.

"I understand that there is people testifying that at that meeting we agreed to submit pick-up and delivery portions of that unofficial proposal on eleven western states basis and count the votes

on eleven western states basis. That was never discussed; that was never entered into the discussion that at those meetings about how the vote would be conducted.

Q. There is nothing to that effect in this record.

A. Oh, isn't there?

Q. As far as I know. The final settlement, or final agreement which was entered into on or about September 18th did contain some increases over and above the May 27th memorandum?

A. Yes; cost of living. In line it included the cost of living. We did not improve the wage structure.

Q. Pensions remained the same?

A. Pensions remained the same.

Q. Holidays?

A. The health and the holiday remained the same for line. *I am only testifying as to line.*"
(R. 0249)

(d) The final sentence in Paragraph 6 of the Decision reads:

"A holdout on the part of one or more locals on the unsettled issues on pickup and delivery matters would and did delay the adoption of the master agreements for pickup and delivery workers."

The treachery of this statement is that it fails to add something vital which the record makes very clear: that after approximately June 25 (more than six weeks before the strike in Joint Council 38) it was the *employers* from every negotiating unit in the 11 western states, acting in concert, who refused to settle anywhere unless they could get a settlement everywhere on the May 27th Proposal terms. This, in spite of the special problem which had arisen in Joint Council 38 concerning "Oakland parity," and in spite of the fact that the applicants, every other bargaining unit in the 11 western states, the Western Conference of Teamsters' president, and the International president had no power or authority to prevent the strike but did everything they could by persuasion of the Joint Council 38 officers to avoid it. Even the union negotiating committee in Joint Council 38 could not prevent it because the terminal employee members in that negotiating unit had overwhelmingly voted to strike if they did not get parity with the Bay Area. So, inexplicably, the Board, in effect, blames the Utah applicants and the other lockout victims outside Joint Council 38, for a delay in arriving at the various contract settlements, which delay the record attributes solely to the employers for a period which began as early as six weeks *before* the strike!

Leaving the last sentence of Paragraph 6 to stand alone without the above additional facts to place it in its proper place and setting is, if deliberate, quite unconscionable.

5. Paragraph 7 of the Decision (R. 0186) is likewise burdened with a gross inaccuracy. It reads:

“We conclude that the integrated process of arriving at master agreements for all of the locals in the 11 western states involved all of the membership of all the locals in any strike by one or more of the locals in the 11 western states when one of the effects of the strike was to prevent or delay the adoption of the master agreement or to increase the benefits to the workers over and above those proposed in the agreement.”

This statement is another error of the Board, and the reading of it in light of the record strongly suggests that the Board started out with this statement as a premise and picked and carefully chose only those isolated “facts” which might tend to suggest the “factual” conclusion in his paragraph. We object to it specifically because:

(a) There is nothing in the record which even suggests that the various *master* agreements were arrived at by an “integrated” process. What the record does show clearly is that the line committee—employer and union—after many months, and well prior to May 27, agreed on a master agreement for line drivers which was readily used by the various terminal negotiating units as a model or form which, where necessary, was changed and adapted to their local situations, and, whether changed or not, had to be accepted and adopted by the negotiating parties and their union members in the respective units in order to bind the parties thereto.

(b) That “any strike by one or more of the locals” did ~~not~~—~~could~~ not—involve any problem as to the master agreement because in no segment of the 11 Western states was there any problem concerning the line master agreement nor concerning the master agreements as to any of the terminal units. Nowhere was there any effort by either side in any negotiating unit to “prevent or delay the adoption of the master agreement,” *and in no unit was there any change in a master agreement* because of the strike in Joint Council 38 or the general lockout in the 11 western states.

(c) The Board shows its failure to read or comprehend the record when it says: “When one of the effects of the strike was to prevent or delay the adoption of the master agreement or to increase the benefits to the workers over and above those proposed in the agreement.”

After May 27, 1958, the only dispute in any negotiating unit was as to wages, and problems akin thereto—*subjects which the master agreements in any unit did not deal with.*

Furthermore, the delay in signing any contract was caused by the refusal of the *employers* to sign a contract and by their refusal to negotiate. The line drivers were trying to get them to sign a contract on the May 27 wage proposal terms several weeks before the localized strike in Joint Council 38. And the Intermountain Operators League stopped negotiating with Joint Council 67 as to

terminal employees long before that strike. It took the League from June 18 to September 5 to make a new offer on the wage rates, and during this period of delay there was not any communication that they wouldn't make a better offer.

6. That part of Paragraph 8 of the Decision (R. .0186) which makes findings of facts contradicts much of the Board's previous findings. It reads in part:

*"The strike of the locals in Joint Council 38 to obtain the 'Oakland Parity' and the subsequent shutdown of Operations by employers in Utah and the other 11 western states involved the appellant claimants ***."*

Now, when the Board admits that the *purpose* of the Joint Council 38 strike *was to get wage parity with Oakland* it at once denies and contradicts every finding to the effect that its purpose was a scheme or plan which involved every other employee in the 11 western states including the applicants. If the Board can say from the record, as it does say, that Joint Council 38 was acting by itself to overcome a wage differential between it and an adjoining bargaining unit, then it frees the applicants from every involvement therewith which some of the other "findings" unjustly and inaccurately accuse them of.

And when the Board further finds that "the subsequent shutdown of operations by employers in Utah *** involved the appellant claimants" it fails to add the fact

as to how and by whom they were involved. The record is plain, and the statement in this paragraph bears it out, that they were involved as innocent lockout victims without the slightest power, individually or collectively, to do anything about either the *local strike* or the *general lock-out*. They became unemployed involuntarily, by actions of third parties entirely beyond their power to influence or control; and there is no finding of the Board that disputes this fact.

Then, because of the inability, or the outright refusal, of the Board to grasp the import of the record it adds, "and consequently their unemployment was due to the strike." Whatever the causal relationship was between the strike in California and the unemployment in Utah, we can be sure it was not the kind of causation that the legislature had in mind when it enacted 34-4-5 U.C.A., 1953, as we shall more fully discuss. We reiterate: *applicants' unemployment was brought about by forces entirely beyond their own power to alter in the slightest degree, and there is no finding of fact by the Board to the contrary!*

POINT II

THE APPEALS REFEREE AND THE BOARD OF REVIEW ERRED IN HOLDING THAT THE APPLICANTS ARE INELIGIBLE FOR UNEMPLOYMENT BENEFITS UNDER 34-4-5 (d), U.C.A., 1953.

The statute which this court is now asked to apply to the facts herein reads:

“An individual shall be ineligible for benefits
* * *:

“(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.”

Thus, where a strike situation is applied to defeat the claims of unemployment compensation applicants, who, themselves, did not participate in a strike, two factors or conditions must be present:

1. The non-striker must be a member of a “grade, class, or group where there is a “stoppage of work,” and

2. The term “group” applies only to, and should not, we believe, be interpreted to extend beyond, one or more classes of workers who are on strike at a specific “factory or establishment.”

There appears to be little question that the legislators intended a very limited area of ineligibility, thinking only, as expressed in the singular, of a strike at a “factory or establishment.” But for the purpose of discussing the meaning of the statute as applied to this case, we accede to this court’s former interpretation of 34-4-5(d), U.C.A., 1953, as stated in the case of *Olof Nelson Construction Company et al. v. Ind. Comm. et al.*, 243 P2d 951, 121 Utah 525.

A. None of the Applicants were members of any grade, class or group of workers who engaged in a strike.

In the Olof Nelson case, this Court, in considering the meaning of the phrase "any grade, class, or group," concludes: "In the present case the Six Basic Craft Unions bargained together as one group with the Labor Committee of the A.G.C. In view of the history of the negotiations between these two groups, the bargaining units is the 'group involved' in this case."

In the Nelson case the bargaining unit comprised six different craft unions within the State of Utah which had combined into one negotiating unit to bargain with the A.G.C., and this unit had existed as such for two or three years. Thus, when the six unions, acting in concert, struck two jobs, but did not strike the other jobs within the area of the bargaining unit, all the contractor members of the A.G.C. shut down their operations in the entire bargaining unit. Those employees who did not strike, but who were "locked out" were ineligible for unemployment benefits for the reason, said the court, that they were within the bargaining unit where the strike occurred and therefore belonged to the "group" involved. In support of its opinion this court lays important stress on the following facts in that case: "There is no dispute that the strike was directed against the entire employer association," that the strike came through claimants' "duly authorized union representatives," and the claimants were "parties to the scheme or plan to foment" the strike.

Where a strike occurs within a given bargaining unit where centralized, negotiating authority has been given by all employees within that unit, as was the undisputed situation in the Nelson case, we have facts quite different from the facts in the case at bar, and the differences are substantial and crucial.

The essential fact differences are these:

1. Applicants were in no way connected with or involved in the strike of Joint Council 38; the Joint Council 38 strike was directed only against the employers within their own bargaining unit, the California Trucking Association; and the strike was for the sole purpose of getting the same wages as was being paid their neighbor employees in Oakland. This fact the Board concedes in paragraph 8 of its decision. The California Trucking Association was the employer bargaining side of a negotiating unit that had existed as a unit for at least 20 years without change or interruption. The bargaining in that unit in 1958 proceeded from and upon their own past relationships and contracts, completely without concern for the problems of any other negotiating unit. The Joint Council 38 terminal employees had only one objective: to get for themselves wage parity with Oakland. This they were determined to get even if it meant a general lockout over the entire 11 western states as the employers had threatened, and which the other union negotiating units were trying to avoid by asking Joint Council 38 not to strike. Joint Council 38 was not striking anyone but C.T.A., *nor was it trying to help any employees in other*

units. What they did under the circumstances showed a complete lack of concern for their brother unionists in the other bargaining units. So, unlike the Nelson case, the strike here was not directed against the freight industry in the larger area beyond Joint Council 38, which fact the Board, in effect, admits.

2. The strike of Joint Council 38 did not come through claimants' "*duly authorized union representatives.*" All the evidence is to the contrary. The union officers who negotiated for Joint Council 38 specifically state that they had no authority to represent anyone outside of Joint Council 38, nor did they make any attempt to do so. (R. 0288-9) And their authority within Joint Council 38 was limited to negotiating for their terminal employees only. *Applicant terminal employees gave their negotiating authority to the officers in Joint Council 67 only, as had been the case for 20 years.* And applicant line driver employees gave their negotiating authority to the Woxberg Committee, with the specific limitations heretofore discussed. These are facts upon which there is no dispute in the record and there are no specific findings to the contrary by the Board.

3. Claimants in this case were not parties to a scheme or plan to foment the strike.

There is no finding of fact by the Board to the contrary.

We can understand the Court's position in the Nelson case in its interpretation of the word "group." It recognizes the problems of employers within a given bargaining unit when a strike occurs against any given segment of that bargaining unit at contract negotiating time. Any scheme by all employees within a negotiating unit to place all the employers in that unit in a position where they were subject to localized strike pressures at isolated places within the unit that would affect the negotiations therein should defeat unemployment benefits of all who participated in the scheme, if the scheme backfired and left them victims of a lockout as applied by the employers to non-strikers within the unit. Desiring to avoid such benefits for such schemers this Court adopted what may be considered as a very liberal view of the term "group" when it applies the term to all parties in a bargaining unit regardless of how large or extensive such unit is.

But the Board now wants to extend this Court's interpretation of "group" to include innocent victims of an employer's lockout which extends far beyond the boundaries of the bargaining unit where the strike occurs and to include Utah applicant members of bargaining units that were entirely separated from Joint Council 38 in California, and had nothing to do with the strike. Their unemployment was entirely involuntary, caused by forces completely beyond their control. Surely this Court will not permit such injustice, and defeat of legislative intent.

B. None of the Applicants were workers of the establishment where a strike occurred.

Under this sub-heading we wish to make an appeal to this Court to interpret the meaning of the phrase "at the factory or establishment" in 34-4-5 (d) U.C.A., 1953. If we read the Nelson case correctly, the Court appears to have ignored the problem which this phrase poses. Mr. Justice Wade recognizes the problem and, based thereon, dissents from the majority opinion. While we believe the Board's Decision in the case at bar is erroneous in the view of the *majority* opinion in the Nelson case, we nevertheless also believe that the above limiting phrase ought to add further support to our view that the Board is in error; and we urge the Court to give this phrase all due consideration in this case, as it appears not to have done in the Nelson case. We urge a review and an acceptance of the dissenting opinion concerning the phrase "at the factory or establishment," for the reasons therein given and for the further reason, as expressed by this Court that, "Doubts should be resolved in favor of coverage of the employee." (Johnson v. Board of Review, 7 Utah 2d 113, 320 P2d 315)

The Board cites as further support of its Decision the case of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Orange Transportation Company and Inland Freight Lines et al (296 P2d 291, 5 Utah 2d 45). This case follows the principle of law established in the Nelson case because the general lockout following the limited strike in the

Orange Transportation Company case did not extend beyond the area of the particular bargaining unit wherein the strike occurred. The bargaining unit was the Inter-mountain Operators League for the employers and Joint Council 67 for the Union—the same historical unit which negotiated for the terminal employees in the case at bar covering the locals in Utah and Idaho only. We reiterate, as far as the instant case is concerned, that we have no quarrel with either decision that the Board cites. On the contrary, we believe they support our view entirely and that the Board has simply failed to recognize it.

POINT III

THE WORK STOPPAGE INVOLVED IN THIS CASE WAS AN ECONOMIC WEAPON WHICH THE EMPLOYERS CREATED AND IMPOSED UPON THE APPLICANTS TO COMPEL THEM TO RECOGNIZE AND ACCEPT A MULTI-EMPLOYER BARGAINING UNIT.

In the Nelson case this Court cites with approval the case of *Bunny's Waffle Shop v. California Employment Commission*, 151 P2d 224,

“in which case * * * an association of restaurant owners sought to compel their employees to recognize the multi-employer unit as the bargaining agency for each individual employer, by reducing wages 25% * * *. The employees left their jobs rather than accept the reduced wage scale. The Court in determining that the employees were not ineligible * * * stated:

‘The economic weapon in the present case was created by the employers and directed

against their employces, and it alone, rather than the trade dispute that occasioned it, was the cause of the leaving of work.' "

Now, any fair appraisal of the undisputed facts in the case at bar must conclusively establish that the applicants were innocent victims of an economic weapon which their employers were using for the purpose of bringing unfair pressure to bear on the employces in Joint Council 38 during their dispute with the California Trucking Association. The record makes it obvious that the employers were so organized that there was ready cooperation and quick maneuverability between all the closely knit employer bargaining units in the trucking industry in the 11 western states whenever it served their purposes to join forces. We have also seen that if, in their view, it served their purposes to not join forces, they didn't.

On the other hand, we have seen in the record that when a crisis arose, the various union bargaining units did not have the same flexibility and power to join their forces that the employers had. Thus, when the Western Conference, having long been aware of the good sense in negotiating terminal contracts on an 11 western state basis, assigned the Filipoff Committee the job of soliciting authority from the Locals to negotiate for them, Filipoff, after many months, was able to obtain authority to negotiate for only 65% of the locals. Joint Council 38 never did cooperate. Then with only 65% of the locals with him he tried to get the various employer bargaining units to negotiate with his committee, but all the employ-

ers completely refused, resulting in the complete demise of that committee, on or about May 24, before it ever functioned. But it took 5 or 6 months of hard work before the committee realized the futility of its efforts.

On the employer side, the committee which negotiated with the union line committee, all at once on the evening of May 27, was able to represent that they were authorized to speak not only for the line employees, but also for the terminal employees in every bargaining unit in the 11 western states. Then, at Seattle on June 25 all of the various terminal employer negotiating units who had refused to bargain on an 11 western states basis with the Filipoff Committee, as soon as they saw the results of the balloting in Joint Council 42 (Los Angeles) insisted on a counting of terminal employee ballots on an 11 western states basis. This power and flexibility of the employers to consolidate when it especially served their purposes to do so, was also powerful enough to prevent or persuade the Intermountain Operators League from any effectual negotiations with Joint Council 67 from June 18 to September 4. And, finally, it was powerful enough to influence the employers of the Intermountain Operators League and the employers of every other negotiating unit in the 11 western states to lock out of their jobs thousands of innocent employees because of a strike which they had nothing to do with.

The teamsters were not organized to compete with this power and flexibility of the employers. They tried. Had the Western Conference officials had their way,

Joint Council 38 would not have gone on strike. But Joint Council 38 couldn't be controlled.

So as in the Bunny's Waffle case, the power which the employers had was used to fashion the lockout weapon, which was applied far beyond Joint Council 38 into the southern part of California and 10 other states, to try to force the terminal employees in Joint Council 38 to accept the May 27 proposal just as the employers in the Waffle case tried, by extending the negotiating area, to impose a reduction in wage rates. In the competitive use of economic power, we are not too surprised to see such conduct as this by the employers. But what we ought not to have to become accustomed to is for the Department of Unemployment Security, and the Board of Review, being constituted as they are, or should be, to look at such actions of the employers, and then, without the benefit of anything in the record or of any findings of fact to support it, to render a decision which necessarily places the blame and the responsibility, not upon the employers where it ought to be placed, but upon the innocent and remotely situated Utah applicant lockout victims.

CONCLUSION

The Board's Decision is in error, should be reversed, and applicants should be granted the unemployment benefits which they seek. The reasons for this error, as partially summarized, are that the Board has failed to understand the difference between fomenters of strikes

and innocent victims thereof; it has failed to recognize a bargaining unit where rests the ultimate negotiating authority, and it has made unwarranted legal conclusions of an effort by several of such units, while still retaining and independently exercising that authority, to cooperate in an attempt to equalize a more powerful oppositional force; and further it has failed to see the difference between a strike in a bargaining unit for the purpose of obtaining wage parity with a neighbor unit and a retaliatory employer lockout *within that unit* as contrasted with an openly brazen employer scheme and device of retaliating with a general 11 western states lock-out for the admitted purpose of trying to force the local striking unit into accepting the local employers' terms.

Finally, we fail to see from the facts of this case why the Board didn't grant the benefits. We see no reason for doubting the validity of applicants' claims. But assuming there was reason for some slight doubt, because of the Board's misunderstanding of the Olof Nelson case, then the Board shows a failure to be sufficiently sensitive to the purposes of the Act and to the principle announced by this Court *that doubts concerning applicants who have "become involuntarily unemployed" "should be resolved in favor of coverage of the employee."* (Johnson v. Board of Review, *supra*)

Respectfully submitted,

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