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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 Respondent

Utah Supreme Court

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Walter L. Budge; Fred F. Dremann; Attorneys for Respondents;

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

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

Petitioners and Appellants,

vs.

BOARD OF REVIEW OF THE IN-
DUSTRIAL COMMISSION OF THE
STATE OF UTAH, DEPARTMENT
OF EMPLOYMENT SECURITY, et al

Respondents.

Case No.
9063

RESPONDENT'S BRIEF

WALTER L. BUDGE
Attorney General

FRED F. DREMAN
Special Assistant Attorney General
Attorneys for Respondents

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RESPONDENT'S BRIEF

STATEMENT OF THE CASE

On August 25, 1958, Mr. Fullmer H. Latter as the authorized representative of Teamsters Local Unions No. 222 of Salt Lake City and No. 976 of Ogden, Utah, filed a written

appeal on behalf of all claimants represented by the union for collective bargaining purposes who came within the purview of a decision of a representative of the Utah Department of Employment Security denying unemployment benefits to those claimants effective August 10, 1958, 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 in the establishment where they were last employed. These included long-line and terminal workers.

The matter was duly heard by the Appeals Referee who on the 8th day of October, 1958, affirmed the decision of the Department representative. The parties were notified of the Appeals Referee's decision and on the 15th day of October, 1958, counsel for the claimants filed an application for leave to appeal to the Board of Review of the Industrial Commission of Utah. On the 20th day of October, 1958, an amendment to the application for leave to appeal was filed with the Board of Review.

On the 5th day of February, 1959, the Board of Review issued an order permitting the taking of additional testimony. On the 3rd day of April, 1959, the Board of Review affirmed the decision of the Department representative and the Appeals Referee. On the 10th day of April, 1959, the counsel for the claimants filed a petition for reconsideration of the Board's decision and on the 22nd day of April, 1959, the Board denied the claimant's petition for reconsideration. The matter is now before this Court on a petition for review of the decision.

STATEMENT OF FACTS

For a number of years truck companies operating in Utah and Idaho, including Interstate Motor Lines; Utah-Arizona Freight Lines; Garrett Freight Lines, Inc.; Gallagher Freight Lines, Inc.; Consolidated Freight Lines, Inc.; Ringsby; Pacific Intermountain Express; Inland Freight Lines; et al, have been organized into the Intermountain Operator's League and as such have bargained for the individual employers in labor negotiations with the local unions of the Local Brotherhood of Teamsters, Chauffeurs and Helpers of America (in Utah and Idaho). The Utah and Idaho local unions, each comprised of both long-line and terminal workers, were organized into Joint Council No. 67, the Intermountain Operators League bargaining as a unit for the employers and the teamsters bargaining as a unit for the respective local members. As a result of such bargaining, four agreements were reached covering the period from 1955-1958. Such bargaining resulted in (a) the 1955-1958 Master Labor Agreement covering all workers with reference among other things to union recognition, union security, hiring procedure, discharge and suspension, uniforms, mileage, safety, seniority in lay-offs and rehiring, transfer of employees, check-off and union dues, health and welfare, pension fund, grievance procedure and arbitration; (b) 1955-1958 Long-Line Sleeper Cab Supplement, dealing with minimum rates of pay, hours of service, and working conditions for long-line drivers; (c) 1955-1958 Line Wage Agreement Supplement dealing with minimum rates of pay, hours of service and working conditions of employees; and (d) 1955-1958 Local Wage Agreement Supplement dealing with minimum rates of pay,

hours of service and working conditions of employees for local cartage or pick-up and delivery workers, et al.

In 1955 the parties to the long-line contract had signed or had negotiated contracts on an Eleven Western States basis (R. 0130).

On February 3, 1958, (R. 0035) the Intermountain Operators League in a letter signed by M. L. Woxberg, Chairman, Negotiations Committee, was informed that the Line Wage Agreement expires May 1, 1958, and that for the purpose of concluding a new agreement in advance of May 1, the General Haul Division of Western Conference of Teamsters had established a nine-member negotiating committee. The committee was to be known as the Over-the-Road Negotiating Committee for the Eleven Western States. The letter informed the Intermountain Operators League that the committee held signed powers of attorney from practically all local unions in the Eleven Western States who have line drivers within their membership. The letter extended an invitation to the League to send a committee to a meeting to be held at the Sir Francis Drake Hotel at 1:30 p.m., February 17-18 in San Francisco. The letter stated that the purpose of the meeting was to acquaint the League with the authority and plans of the committee representing the unions and to discuss a procedure to follow in negotiations and to answer any questions pertaining to the negotiations.

On Monday, February 17, 1958, employer organizations in the Eleven Western States met with the Over-the-Road Negotiations Committee for the Eleven Western States at San

Francisco (Exhibit 6). At that meeting the union committee explained to the employers that the General Haul Division of the Western Conference of Teamsters adopted a resolution in 1957 which established an Over-the-Road Negotiations Committee for the Eleven Western States and that the committee consisted of a representative from each Joint Council in the Eleven Western States and that the committee was duly established under the bylaws and the operating procedure of the Union's Western Conference and that the committee would constitute the official negotiating committee for the Over-the-Road Drivers in the Eleven Western States for the For-Hire Trucking Industry. The chairman of the union committee pointed out that the power of attorney gives the authority to the committee to negotiate and negotiate only, and upon arriving at a meeting of minds on a contract, the contract would be submitted back to the local unions and the members for acceptance or rejection. He pointed out that the power of attorney did not give authority to the Over-the-Road Negotiations Committee to conclude a contract. At that meeting the union chairman advised the employer representatives that the procedure followed in the past of not having the international union sign the contract would be changed and that the international would be a party to it after it was approved by the international. The chairman further informed the employer representatives that it was the intent of the negotiating committee to negotiate a uniform contract and that the union recognized that when it came to short lines it recognized that uniformity might be impossible in some areas and that in cases of necessity the definition of a short line which would apply to a particular state or area would be classified

in a supplement covering that state. The union chairman advised the employers that the negotiating committee proposed to present and distribute to the employers a complete master contract in complete language which would be used for the basis of negotiations. It was further pointed out by the union that it was the union intent that the pick-up and delivery agreement follow the master contract and that any referring to costs would be deleted from the master and would be contained in supplements. A master would then cover known distinct cost items such as security, union shops, hot-cargo, picket lines, short haul, grievance procedure, expiration dates and a formula on least equipment.

On February 26, 1958, John W. Filipoff, Chairman, 1958 Local Drayage Contract Negotiating Committee, informed Fullmer H. Latter of Local Union 222 as follows:

"The so-called 'for-hire local drayage carriers' represented by you and/or your organization have recently been, or soon will be, served with notice of termination of all existing labor contracts running between these carriers and various Teamsters Locals representing their employees engaged in local drayage operations.

"Most of these Teamster Locals have designated the 1958 Local Drayage Contract Negotiating Committee of the Over-the-Road-General Hauling Division, Western Conference of Teamsters (hereinafter called the Negotiating Committee) to initiate and conduct negotiations calculated to develop labor contracts to replace those recently terminated.

"This negotiating committee is composed of one member and one alternate of each Teamsters Joint Council in the Western Conference, plus the writer, who functions as Committee Chairman.

"In order that mutually desirable plans may be proposed, considered and made for the conduct of 1958 local drayage contract negotiations in the respective jurisdictions of Teamsters Joint Councils 28, 37, 38, 42, 54, 67, and 71, we suggest that the 'for-hire local drayage carriers' you represent select an individual or committee to meet for half a day with our Negotiating Committee at 9:00 a.m. in the Empire Room at the Sir Francis Drake Hotel, San Francisco, California, on Thursday, March 13, 1958" (R. 0028).

On February 28, 1958, Fullmer H. Latter, for Local Union No. 222, directed a letter to the Intermountain Operators League informing the League that it was the intention of the Teamsters Local Union No. 222, to terminate the 1955-1958 Master Labor Agreement, the 1955-1958 Long Line Sleeper Car Supplement, the 1955-1958 Line Wage Supplement, and the 1955-1958 Local Wage Agreement Supplement at the time and in the manner provided in those agreements. He informed the Operators League that the local union officers were ready, willing and able and available to confer with the employers for the purpose of negotiating a new contract (R. 0032).

Although the above communications referred to a Notice of Intention to Terminate, actually no communication was ever served upon the employers to terminate the contract (R. 0010).

Prior to the Notice of Intention to Terminate, Utah Locals 222 and 976 in concert with other local unions in the Eleven Western States, met at San Francisco and formulated two separate bargaining committees. One committee was made up of teamster personnel representing the respective bargaining units throughout the Eleven Western States for the purpose of negotiating with the employer for the Over-the-Road Line Drivers, both single man position and sleeper on an Eleven Western States basis. At the same time a separate group known as the 1958 Local Drayage Contract Negotiators Committee was formulated, made up of different personnel with John W. Filipoff as Chairman, for the purpose of attempting to establish a new bargaining unit covering terminal employees throughout the Eleven Western States.

Throughout the record a part of these so-called terminal employees are referred to as pick-up and delivery workers or local cartage workers (R. 0010).

On February 26, 1958, John W. Filipoff, Chairman of the 1958 Local Drayage Committee, notified the Intermountain Operators League that the union was requesting a meeting in San Francisco on March 13, 1958, for the purpose of negotiating local drayage issues (R. 0039).

On March 5, 1958, Louis H. Callister, Secretary of the Intermountain Operators League wrote John W. Filipoff informing him that the members of the Intermountain Operators League desired to continue their negotiations on a state level as they had done in the past (R. 0042).

On March 17, 1958, John W. Filipoff directed a letter to the Intermountain Operators League informing the League that although the local unions in the Eleven Western States had respectively given power of attorney to the 1958 Local Drayage Contract Negotiating Committee of the Over-the-Road—General Haul Division, Western Conference of Teamsters, the Intermountain Operators League and all other employer groups for reasons best known to them, did not see fit to attend the March 13 meeting in San Francisco. The letter informed the League that the Local Drayage Negotiating Committee would proceed to conduct necessary 1958 local drayage contract negotiations for the local unions with the League at such time and place as might be mutually agreed upon (R. 0043).

On March 20, 1958, the Intermountain League, through its Secretary, informed John W. Filipoff that the League again reiterated its position that questions regarding local drayage and pick-up and delivery belonged to the local level (R. 0045).

On March 25, 1958, John W. Filipoff informed the Intermountain Operators League that the Contract Negotiations Committee would be in touch with the League for the purpose of setting a date for negotiations in Salt Lake City in the near future (R. 0046).

On March 26, 1958, John W. Filipoff directed a letter to Fullmer H. Latter of Local Union No. 222, informing him that the 1958 Local Drayage Contract Negotiating Committee of Over-the-Road—General Hauling Division, Western Conference of Teamsters would in the very near future be in touch with the local union for the purpose of fixing a date to com-

mence 1958 local pick-up and delivery drayage negotiations, to be held in Salt Lake City (R. 0047).

With that letter were enclosed two copies of a so-called "Master Contract Proposal" *together with a statement that the committee proposed that all basic 1958 contract provisions, i.e. scope, coverage, working conditions, fringe benefits, be standardized and made uniform within the Eleven Western States area.* (Italics ours).

On April 15, 1958, Mr. Callister, for the Intermountain Operators League, wrote Mr. Filipoff thanking him for his letter of April 11 which enclosed twelve copies of the proposed Western States Area Local Pick-Up and Delivery Drayage Agreement. Mr. Callister again pointed out that the Intermountain Operators League wished to continue their bargaining unit as they had in the past and that it did not desire to join with the Eleven Western States in a Uniform Labor Agreement for Local Pick-Up and Delivery Drayage Workers (R. 0049).

In the meantime Long Line Negotiations had continued between the employer organizations and the Over-the-Road Negotiating Committee for the Eleven Western States. On March 25, 1958, Homer L. Woxberg, chairman of that committee, submitted a written report to Fullmer H. Latter, Secretary of Local 222 (R. 0037). In his report, Woxberg pointed out that negotiations were opened in San Francisco on March 11, 1958, and continued through March 16 with all of the negotiating committees present. He stated that prior to the opening of negotiations a proposed Master Agreement had

been presented to all associations. The report informed Local 222 as follows:

"You will be contacted soon by your Joint Council Committeeman or alternate, who has been instructed by the Negotiating Committee, to immediately prepare the necessary information required by the International Union when giving strike sanction to our local unions. Your Negotiating Committee will advise you when to call special meetings of your membership for the purpose of taking a strike vote if it becomes necessary and negotiations break down. The Line Negotiations Committee is working closely with the Local Cartage Committee on this procedure." (Italics ours.)

During the meetings in San Francisco and prior to May 27, 1958, meetings were held by Fullmer H. Latter and several of the employer representatives speaking for the Intermountain Operators League. At those meetings the terms of the proposed contract as they pertain to terminal employees, local drayage employees, and local office workers were discussed (R. 00120).

Under the provisions of the International Constitution, it was necessary that any proposed contract be submitted to the union membership and to the International Union for approval before it could be submitted to the employers. The instructions given by the Joint Negotiating Committee to the local unions was a precautionary measure because at that stage in March the negotiations had just commenced and there was no way of knowing whether or not they would be successful (R. 0217).

In April the negotiations were moved to Phoenix, Arizona, because of a lack of adequate accommodations in San Francisco. At the Phoenix meetings the matter of the extension of the line and pick-up and delivery agreements were discussed. It was agreed that the employer groups should be given an opportunity to consult with their employers on the issuing of such extensions with the new agreements to be retroactive to May 1, 1958. On or about May 6, the Union Negotiating Committees were informed that the employer associations in all areas had approved the extension of agreements (R. 0219).

During May, the Line Negotiating Committee concluded in principle a Master Agreement between the employers and the union covering line drivers with the result that the committee contacted all of the unions from all over the Eleven Western States and submitted the master to them for ratification. The master was ratified on or about May 15 or 18 and the parties proceeded to start negotiations on the many supplemental agreements, there being approximately 35 supplemental line agreements in the Eleven Western States (R. 1020).

The negotiation of the Master Agreement and the negotiation of the Supplemental Agreements followed the agreed pattern of procedure as pointed out by the Chairman of the Line Negotiating Committee: "... when we have an industry such as the freight industry with many segments of it involved and many different types of contracts that you are not solving the problem but just solving one of them—they all have to be solved so consequently our agreement right in the begin-

ning of the negotiation was that nothing would be actually agreed and signed until we concluded all. That is a normal proceeding in negotiating where you have multiple problems and multiple contracts" (R. 0247-R. 0248).

In the multiple negotiations it was the routine procedure to go through the process of negotiating the master and supplements and sending the proposed agreements back to the local unions and then having the local unions vote and based upon the voting pull the contracts back together in the joint negotiating groups and taking a "look-see" as to whether or not the parties can get together (R. 0248).

The negotiations for the supplemental agreements for the line drivers broke down about May 25 or 26 (R. 0223). At that point the chairman of the Line Negotiating Committee and one or more representatives of that committee, met with a few of the key employer representatives at a secret meeting at the Sir Francis Drake Hotel for the purpose of exploring the possibility of arriving at some understanding that would alleviate the pressure. Out of that meeting came what was generally known as the May 27 Memorandum (Exhibit 13-A) (R. 0224).

This unofficial committee presented the May 27 Memorandum to all of the employers who were in San Francisco at that time and the employers approved it (R. 0224-R. 0225). Most of items 2 to 13 in that May 27 Memorandum referred to pick-up and delivery workers and in many cases to line drivers as well, for example, with reference to paid holidays and pensions. Items 4 and 5 pertained to both pick up and

delivery and line employees. Item 7 pertained to line workers. Item 9 pertained to both pick-up and delivery and line workers. Item 10 pertained to both pick-up and delivery and line workers (R. 0225-R. 0226).

The May 27 proposal was forwarded to 103 local unions with the instruction to submit it to their membership for ratification and with the further instruction that the line drivers would vote as a unit, Eleven Western States wide, but would break the vote down between line single men and sleeper cab so that actually there would be conducted two votes in the line vote; one for the approval for the sleeper cab division and one for the approval of the line single men (R. 0229).

Under the agreement and pursuant to the power of attorney given to the Line Negotiating Committee, the majority vote of the line workers and not the vote of the majority of the local unions prevailed and even though in Utah, within Joint Council 67, the vote of the members rejected the sleeper cab provisions, the over-all vote of the Eleven Western States nullified that rejection (R. 0230). The line committee requested the employers to put this proposal into effect for the line employees (R. 0232). This the employers refused to do (R. 0223).

At the time the May 27 Memorandum was agreed to in San Francisco by the employer and union representatives, it was agreed that if the memorandum was approved by the membership and the unions, there would be a meeting in Seattle at the time of the Western Conference of Teamsters to conclude the agreements (R. 0238).

The May 27 Memorandum was also submitted to some of the locals for the vote of the pick-up and delivery workers and was approved by some and rejected by others. Utah's pick-up and delivery workers did not vote on it. There was no agreement that the vote of the majority of the workers would over-ride the vote of the local unions (R. 0229).

On June 6, 1958, the negotiators for the Utah terminal applicants met in Mr. Callister's office (R. 0051, R. 0117-8). The employers submitted their proposed conditions of work but made no wage proposals (R. 0052-63, R. 0118). Further negotiations between these parties took place on June 12 (R. 0064-5, R. 0118). The following 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. 0075-8, R. 0120). This proposal showed wage amounts of eight cents, nine cents and ten cents per hour, respectively, for the various terminal employees listed, whereas Exhibit 13, "Wage Settlement—May 27, 1958" (R. 0050A) contained a blanket raise of ten cents per hour for all such employees.

The June 13 proposal listed a raise for clericals in Utah of ten cents, effective March 1, 1959, whereas the May 27 Wage Settlement shows a similar raise for clericals as early as May 1, 1958. Mr. Callister's June 13 proposal was voted on by the terminal employees in Joint Council 67 on June 17 and 18. The employees voted to accept the employer's plan for reducing the weekly hours. Mr. Callister was advised that there should be an increase in hourly wage rates over those submitted in the June 13 proposal (R. 0182).

On or about June 25, 1958, the Employers' Negotiating Committee and the union representatives met in Seattle. The Seattle discussions were based primarily on the pick-up and delivery and local cartage issues since some local unions had rejected the memorandum and some had turned it down and others had not reported a vote (R. 0238). At this time the Employers' Negotiating Committee took the position that they were negotiating the pick-up and delivery issues on an Eleven Western States basis (R. 0239) and most of the discussion was on this point (R. 0240). There was no agreement between the parties because the union took the position that they were not vested with the authority to lump the votes of the bargaining units as they pertained to the pick-up and delivery issues. The union's position was based upon the fact that even though the Filipoff Committee had power of attorney from some 65 per cent of the local unions including the Boise local which was a member of Joint Council 67 to negotiate on local pick-up and delivery cartage issues, the committee had never fully functioned because of employer resistance to negotiating those issues on an Eleven Western States basis (R. 0240). No final agreement was reached at the Seattle meeting on either the long-line or pick-up and delivery (R. 0244). At the Seattle meeting the Line Committee informed the employers that if the provisions of the May 27 Memorandum which had been accepted by the line, were sweetened for the pick-up and delivery workers, the line expected to receive that sweetening (R. 0243). At the Seattle meeting the unions and what is generally referred to as a "Hoffa Proposal" requested the employers to sweeten up the May 27 Memo-

randum, particularly with reference to the cost of living and other items.

Subsequent to the Seattle meeting, Local 70 in Oakland, California, went on strike and gained a substantial wage scale over and above the provisions of the May 27 Memorandum (R. 0242). After the successful Oakland strike, Joint Council 38 in California gave notice to the employers in that area that they wanted equality with Oakland (R. 0242-R. 0243), and demanded what they referred to as "Oakland Parity." Joint Council 38 notified the employers they were going to strike the local pick-up delivery and dock hands (R. 0245).

By telegram, on August 4, 1958, Mr. E. A. Gritch, Vice Chairman of the Western States Employers Negotiating Committee, notified Mr. Fullmer H. Latter, representative of Joint Council No. 67 and a member of the Teamsters Joint Negotiations Committee, that with reference to the strike threat made by the local union members of Joint Council No. 38 in California, the employer groups would consider that, "*A strike against one would be a strike against all*" employers in such groups in the Eleven Western States (R. 0130). (Italics ours.)

After the Gritch telegram, but prior to August 11, 1958, the date on which the strike of members of Joint Council No. 38 took place, a meeting was held in San Francisco between the Over-the-Road or Line Drivers Negotiating Committee and the Employers Negotiating Committee. The teamsters committee requested that the employers committee permit the line drivers affiliated with Joint Council No. 38 unions to continue

to work and pull line load rigs into and out of any local union affiliated with Joint Council No. 38. A representative of Joint Council No. 38 was present at that meeting. The employers committee took the matter under advisement and on or about August 9, advised the teamsters committee that their request was unacceptable and that the employers did not choose to operate in that fashion (R. 0237 and R. 0130).

On August 11, 1958, Joint Council No. 38 called a strike against the employers within its jurisdiction. Whereupon the employers generally in the Eleven Western States began curtailing operations (R. 0237). By August 15, 1958, the stoppage of work at the premises of the employers of the appellants herein was substantially complete.

The further negotiations which took place subsequent to August 11, the date of the strike, are probably best summarized by the testimony of Woxberg, Chairman of the Long Line Negotiating Committee: "During the strike, which lasted thirty-seven days, the exact date I couldn't tell you, but someone proposed a meeting in Washington, D. C., *of all interested parties*, with the result that a committee of the union representatives, unofficial, committee of employers, went to Washington. I refused to attend that meeting. I did not go, and so advised those people who went to Washington, both employers and union representatives as well, that we had concluded a line agreement with our employers. There was no need for me to go to Washington. Any problems that we had governing line drivers in the West can be settled in the West, with the results that the meeting in Washington was confined to working

out pick-up and delivery and local solutions to the problems.

"For example, much time was spent on the particular pick-up and delivery problems of Denver. A formula was worked out for the Denver group; much time was spent for the problems in Utah; a formula was worked out which was different than the Denver one; much time was spent on the Valley settlement, which was a formula that exceeded any other formula that was granted to any other area. In other words, they came out with a large slice of the pie. *They concluded all those local pick-up and delivery problems, and established a formula.* That meeting adjourned in Washington after many people had applied their names to the bottom of these understandings, and was reconvened here in San Francisco. (Italics ours.)

"Reconvening in San Francisco we then proceeded to iron out what was left of the problems covering the line . . . The employers granted to the line unions the cost of living" (R. 0245-R. 0246).

As a result of the tentative agreement having been reached in Washington, D. C., with reference to pick-up and delivery problems and the final agreement having been reached with reference to line problems, the work stoppage in the Eleven Western States ended and operations were resumed on September 17 and 18, 1958.

STATEMENT OF POINTS

POINT ONE

THE FINDINGS, CONCLUSIONS AND DECISION OF THE COMMISSION, THE APPEALS REFEREE AND THE BOARD OF REVIEW ARE SUPPORTED BY THE EVIDENCE.

POINT TWO

THE UNEMPLOYMENT OF THE CLAIMANTS HEREIN 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 ONE

THE FINDINGS, CONCLUSIONS AND DECISION OF THE COMMISSION, THE APPEALS REFEREE AND THE BOARD OF REVIEW ARE SUPPORTED BY THE EVIDENCE.

In our statement of facts we have set forth the events as they occurred, showing those which may be construed as mitigating against the decision appealed from as well as those supporting that decision.

The continued objections of the Intermountain Operators League to the negotiation of new contracts for terminal employees on an Eleven Western States basis are clearly outlined as is the fact that the Utah locals in Joint Council 67 did not give formal power of attorney to the Eleven Western States Local Drayage Contract Committee to negotiate terminal issues for those Utah locals.

If this case is to be decided on the issue of the granting of express powers of attorney to negotiate and the unwillingness of the Intermountain Operators League to negotiate terminal issues on an Eleven Western States basis, the decision appealed from must be reversed and benefits paid to the claimants. Such a position must necessarily disregard the preponderance of evidence which establishes an Eleven Western States bargaining pattern for both the long-line and the terminal workers, the effect of which was to make any possible final agreement in any one area dependent upon agreement in all areas in the Eleven Western States. With few exceptions each of the locals in the Eleven Western States included in its membership both long-line and terminal workers. In some cases the same local bargained for clerical and other employees. The services of all employees were essentially integrated in the operations of the employer. A strike by the terminal employees would have a pronounced effect on the performance of the long-line workers and vice versa. In a large measure each was dependent upon the other.

At the time negotiations started and at the time of the strike of Joint Council 38 the long-line workers were operating

under agreements which were applicable to all long-line workers in the Eleven Western States, and the terminal workers were covered by separate agreements which were applicable to the locals in their respective joint councils (R. 0130). The 1955-1958 terminal worker agreements were negotiated separately by each joint council. With few exceptions the agreements covering terminal workers were effective to April 30, 1958, in case either party gave 60 days notice of its intent of terminating or modifying; otherwise, the agreements continued on a year-to-year basis (R. 0107). The Utah agreements, carried this April 30, 1958, date.

Now we come to the events which took place between February and September of 1958. The Commission representative, the Appeals Referee and the Board of Review properly concluded that those events inextricably involved the parties in a bargaining situation wherein the final settlement of each problem for each segment of workers was more or less dependent upon a general Eleven Western States industry-wide agreement of issues. Not until such general agreement was reached was the work stoppage ended. We do not contend that all of the solutions to local problems resulted in a single uniform settlement. That, of course, was not true. The bulk of the provisions of the Master Agreements, of course, did apply to the Eleven Western States.

In February of 1958, in preparation for an Eleven Western States notice of intent to terminate the 1955-1958 agreement, Locals 222 and 976 (Utah) met in San Francisco with local unions of the Eleven Western States and formulated two Eleven Western States bargaining committees. These meetings were

held as a result of communications sent out by the General Hauling Division, Over-the-Road Division of the Western Conference of Teamsters. These two committees were the 1958 Local Drayage Contract Committee for the Eleven Western States and the Over-the-Road Negotiations Committee for the Eleven Western States (R. 0110). F. T. Baldwin, Local 483, Boise, and Fullmer Latter, Local 222, were appointed member and alternate on the local drayage committee.

The first information which the employers and their organizations had of the formulation of these committees apparently came from letters sent by the Chairman of the two committees on the respective dates of February 3 and February 26, 1958, in which the employers were informed in essence that they would shortly receive notices of intent to terminate the 1955-1958 agreements in the Eleven Western States which had an ending date of April 30. It must be noted that the first information on the intent to bargain for new agreements came not from the locals but from these Eleven Western States committees.

It is obvious from the record that the employers agreed after the long-line committee and employer meeting in San Francisco on February 17-18 that bargaining would be conducted for the line workers on an Eleven Western States basis. There was, however, continued opposition particularly from the Intermountain Operators League to such joint negotiations for pick-up and delivery or terminal workers. This opposition was voiced from time to time in writing by the League. These letters from the League, however, were not acknowledged and

the Eleven Western States Local Drayage Committee Chairman continued to correspond with the Intermountain Operators League just as if no objections had been voiced. One of these letters from the Chairman of the Local Drayage Committee (R. 0043) invited the Intermountain Operators League and other employer groups to attend a meeting in San Francisco on March 13. The employers in the Eleven Western States failed to attend that meeting of the Local Drayage Committee, and subsequent thereto the Local Drayage Committee Chairman notified the employers that if it would proceed to conduct contract negotiations for local unions with the League at such time and place as might be mutually agreed upon (R. 0043). There is no record of such meetings taking place.

The situation was different with the long-line negotiations, and the employers met with that committee starting March 11. Attention is called to the fact that prior to any meeting dealing with direct negotiations of Master Agreements a Master Agreement for the long-line and the Master Agreement for the local pick-up and delivery workers complete in every detail was submitted to the employers with the announcement that those Master Agreements would form the basis for negotiations.

On or about March 25, 1958, the Chairman of the long-line negotiating committee submitted a report of progress to the various local unions, and among other things at that time informed them that the local's particular joint council committeeman or alternate had been instructed by the negotiating committee to immediately prepare the necessary information required by the International Union when giving strike sanction to our local unions (R. 0037).

The long-line negotiating committee in a meeting at Phoenix with the employer representatives in April raised a question on the extension of the line and pick-up and delivery agreements beyond April 30, 1958, and asked the employers to consult and let the unions know their conclusion on the proposed extension of the 1955-1958 agreements during negotiations. This same employer group acting for all the workers, long-line and terminal, on or about May 6 informed the union committee that the 1955-1958 agreements would be extended retroactive to May 1, 1958. Here then we have the first concrete situation in which the employer group (representing all segments of the industries with reference to all types of workers) negotiated on an Eleven Western States basis for both the long-line and the local drayage workers (R. 0219).

During the following month of May the long-line negotiating committee working with the employer committee concluded in principle a Master Agreement. Pursuant to the required procedure that the Master must first be approved for the unions before negotiations of the supplemental agreements were carried out, the Master was submitted to the unions and ratified (R. 1020). At this time there is still no evidence of any negotiations on the Master Agreement with reference to the local pick-up and delivery on terminal workers. Subsequent to the general agreement on the line Master the negotiation on the approximately 35 supplemental line agreements broke down.

At this point in negotiations we have a complete departure from committee negotiations. On May 27 at a secret meeting in San Francisco a Chairman of the line negotiations committee

and one or more representatives of the unions met with a few employer representatives for the purpose of exploring the possibility of arriving at some understanding that would alleviate the stalemate. Out of this meeting came what was generally to be known as the May 27, 1958, Wage Settlement (Exhibit 13a and R. 0224). This May 27 Wage Settlement contained provisions dealing with *both* the *long-line* and *local drayage* workers. Here then was the second concrete example of Eleven Western States bargaining on both the long-line and local drayage workers by a group now which had no legal power of attorney to negotiate for either the long-line or the local drayage workers. This May 27 Wage Settlement was on the following day submitted to some 40 or more employer representatives and the representatives of the local unions and it was approved by these two groups for submittal to the locals in the Eleven Western States for their approval or disapproval.

The agreement was sent to the locals and the long-line workers by a majority vote of the total line membership voted to accept the provisions which applied to the long-line workers. A number of the local unions voted to accept the provisions which applied to pick-up and delivery workers. A number of the locals voted to reject the pick-up and delivery provisions. In Utah the records show that the pick-up and delivery issues were not submitted to the local pick-up and delivery employees for their vote.

The appellants make a particular point of the fact that no power of attorney had been given by the Utah locals for joint negotiations with reference to pick-up and delivery

workers. By now, however, the pattern of joint negotiations for the Eleven Western States on all issues, line and pick-up and delivery, was becoming clear. At the time of the acceptance on May 28 by the employer representatives and the union representatives of the May 27 Wage Settlement, it was agreed that the employer representatives would appear at the Western Conference of Teamsters meeting (June 25, 1958) in Seattle for the purpose of seeing whether or not a final agreement for the Eleven Western States could be arrived at.

In the meantime there were two or three meetings between the Utah locals and the Intermountain Operators League. These took place June 6 to 8. Out of these meetings came a proposal addressed by L. H. Callister for the Intermountain Operators League to Fullmer H. Latter as Secretary of Joint Council No. 67 (R. 0075). In his letter Mr. Callister stated that he was submitting therewith "*a proposal which is in accordance with the recent understanding arrived at between your representatives and the representatives of the employers at San Francisco, California,*" meaning of course, the May 27 Wage Settlement Agreement. (Italics ours). His letter stated specifically, "We refer to such matter No. 6 which is contained in said Agreement and which provides as follows: Utah-Idaho pick-up and delivery to convert to 40 hour week equitably (39 cents)." Here again Mr. Callister is referring specifically to Item No. 6 of the Wage Settlement—May 27, 1958. He continued, "We also refer you to such matter No. 2 which is as follows: 'In all agreements the rates shall be increased by ten cents per hour on May 1, 1958, May 1, 1959 and May 1, 1960.'" Here again Mr. Callister is referring to the Wage Settlement—May 27, 1958 (R. 0075).

The enclosed proposal (R. 0076, Item No. 1) stated that "The new Master Agreement shall cover or supplement all local agreements and in any conflict between the new Master and supplemental agreements (and Masters which apply thereto) the provisions of the new Master shall govern." We find no evidence that there were negotiations at the local level dealing with the Master Agreement for pick-up and delivery workers. Mr. Callister's proposal on behalf of the Intermountain Operators League was accepted in part in that the workers voted to accept the employers' plan for reducing the weekly hours (Item No. 6, Wage Settlement—May 27, 1958). The members, however, advised their representatives that there should be an increase in the hourly rates over those submitted in the proposal (R. 0182). Here then we have the local unions and the Intermountain Operators League, in spite of the absence of any power of attorney with reference to the pick-up and delivery workers, accepting the Eleven Western States Wage Settlement—May 27, 1958, as the basis for further negotiations at the local level. This apparent acceptance of the result of an Eleven Western States proposal, that is the May 27 Wage Settlement and the negotiation at the local level of the strictly local problem, outlines the picture of what apparently was generally happening in the negotiations. These local negotiations had the effect of implementing what had been done on the Eleven Western States basis and did not detract from the general picture of Eleven Western States negotiations.

On June 25, 1958 (after the votes of the locals on the long-line and local drayage issues were tabulated) the employer representatives for the Eleven Western States (it must be

remembered that these representatives appeared for the employers on both the long-line and pick-up and delivery issues) met with the union representatives at the Seattle meeting of the Western Conference of Teamsters. At that meeting they were informed by Mr. Hoffa that some of the terms for pick-up and delivery workers were not satisfactory. In spite of the fact that the majority of the vote of the membership in the locals in the Eleven Western States had approved the long-line proposals of the May 27 Wage Settlement, there appears to have been no attempt at the Seattle meeting to reach a final agreement on the long-line contracts. Instead, the record shows (R. 0243) that most of the meeting time was concerned with the discussion of the problems of the local pick-up and delivery agreements. The employers were apparently arguing that they had been negotiating on pick-up and delivery issues on an Eleven Western States basis and that, therefore, the vote of the local unions on the pick-up and delivery issues which were submitted in the May 27 Wage Settlement should be tabulated on the basis of the vote of the total local pick-up and delivery membership rather than on the basis of the acceptance or refusal by the individual locals. The unions took the position that there had been no agreement at the beginning of negotiations that the local pick-up and delivery votes would be so tabulated and that the Eleven Western States negotiating committees did not on June 25, 1958, have the authorization to so tabulate the votes.

It was apparent to the employers that at least some of the locals would ask for better terms than were contained in the May 27 Wage Settlement. There was no meeting of minds at Seattle.

After the Seattle meeting it was obvious to the employers that they were going to be subjected to pressures by the different locals which would change the pattern of the May 27 Wage Settlement proposal. At the time of the Seattle meeting it was also apparent that there could be no final agreement on the long-line Master and supplements which were negotiated on an Eleven Western States basis until such time as the local pick-up and delivery issues were settled. In fact, at Seattle the employers were advised that if the Wage Settlement provisions of the May 27 proposal were "sweetened" with reference to pick-up and delivery workers then the long-line workers expected to receive that "sweetening."

The unions in their testimony, of course, point out that they were bound by the vote on the long-line agreements and could not enforce such "sweetening." As we will see later, however, when an agreement on the issue of pick-up and delivery workers was affected the long-line agreement was "sweetened." The employers in refusing to formally accept the long-line Master and supplements until the pick-up and delivery issues were settled apparently recognized that there would be an attempt on the part of the unions to obtain better terms either on a local or joint council or Eleven Western States basis. That was made clear to them at Seattle.

Subsequent to the Seattle meeting Local 70 in Oakland, California, went on strike and gained a substantial wage increase over and above the provisions of the May 27 Memorandum (R. 0242). After the successful Oakland strike, Joint Council 38 in California gave notice to the employers in that area that they wanted equality with Oakland (R. 0242-

R. 0243) and demanded what they referred to as "Oakland Parity." Joint Council 38 notified the employers in their area that they were going to strike local pick-up and delivery workers and dock hands (R. 0245). The employers shortly thereafter on August 4, 1958, through Mr. E. A. Gritch, Vice Chairman of the Western States Employers' Negotiating Committee, notified Joint Council 67 and other joint councils in the Eleven Western States that with reference to the strike threat by the local unions of Joint Council 38 in California the employer groups in the Eleven Western States would consider that a "strike against one would be a strike against all" (R. 0130).

After the Gritch telegram and prior to August 11, 1958, the date of the strike of Joint Council 38, the Western States Employers' Negotiating Committee met with the committee of the Over-the-Road or Line Drivers' Negotiating Committee in San Francisco. The union committee requested that the employers permit the line drivers affiliated with Joint Council 38 unions to continue to work and to pull loads into and out of any local union affiliated with Joint Council 38. This the employers refused to do; and reiterated their position that a strike against one was a strike against all.

On August 11, 1958, Joint Council 38 called a strike, and the employers in all of the Eleven Western States generally began a curtailment of operations (R. 0237). Subsequent to the strike and during the stalemate someone proposed a meeting in Washington, D. C., of all interested parties with the result that a committee of union representatives which was apparently unofficial and did not follow the membership of the

Eleven Western States joint committees went to Washington, D.C., with a committee of employer representatives. Woxberg, the Chairman of the Long-Line Committee, did not go because he argued that the long-line issues are generally settled and that any further negotiations on those issues should be held in the West.

The meetings in Washington, D. C., were, therefore, primarily confined to negotiations on the various pick-up and delivery problems, and the committee succeeded in working out a solution and a formula for each area with the result that all of the local pick-up and delivery problems were concluded. The union representatives and employer representatives initialed or signed the memorandum of the understandings, and the meeting was adjourned and was reconvened in San Francisco.

At the meeting in San Francisco the "sweetening" which was arrived at in Washington with reference to the cost of living formula for the pick-up and delivery workers was granted to the line workers (R. 0245-R. 0246). With the final agreement which was reached by the joint negotiations in Washington and San Francisco, the work stoppage in the Eleven Western States ended, and operations were resumed on September 17 and 18, 1958.

Considering all of the events as they actually happened, we have the picture of the long-line negotiating as a committee with full power of attorney to so negotiate up until the time when the long-line Master Agreement was arrived at. Thereafter the proposed settlements were reached not by the official

long-line committee but by an unofficial committee of employers and employees. We also have the picture of the local drayage committee for the Eleven Western States having power of attorney from some 65 or 70 per cent of the locals to negotiate for those locals on pick-up and delivery workers, and in spite of those powers of attorney the employers refused to negotiate with that committee. What did happen, of course, was that the aforementioned unofficial committee actually worked out the May 27 Wage Settlement proposal, the terms of which applied to both the long-line workers and the pick-up and delivery workers.

The further negotiations which took place both in Utah and in other jurisdictions used the proposed Wage Settlement of May 27 as the basis for further negotiations. The issue of continuance of operations after the April 30 date was carried out as a result of joint negotiations and not as a result of any local negotiating.

What was earlier apparent to the employers became especially obvious when they were informed at the meeting of the Western Conference of Teamsters in Seattle that some of the proposals of the May 27 Wage Settlement were not acceptable. The whole picture of the negotiations was that contract settlements were contingent upon the settlement of all issues in all joint councils in the Eleven Western States. It became obvious to the employers that the unions apparently intended to strike joint council by joint council if that was necessary to obtain better terms than were offered in the May 27 Wage Settlement proposal. The employers retaliated by closing down their operations in the Eleven Western States.

The evidence in the record would have supported no decision other than that which disqualified the claimants from receiving unemployment compensation benefits.

Only after all basic issues, Line and Local Drayage, were worked out was there any evidence of final agreement between the parties which could be construed as binding. A conclusion that the strike of Joint Council 38 was independent of and could not directly affect negotiations in the Eleven Western States would be founded on only part of the facts.

The facts found by the Appeals Referee as supported by the findings of the Board of Review reflect the record and the evidence.

POINT TWO

THE UNEMPLOYMENT OF THE CLAIMANTS HEREIN 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 issue involved is whether the claimants should be disqualified from receiving unemployment compensation benefits under the provisions of Section 35-4-5(d), Utah Code Annotated, 1953. This statute provides:

"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 of such plan, or agreement to foment a strike, shall be eligible for benefits"

The appellants contend that none of the applicants were members of any grade, class or group of workers who engaged in a strike and that none of the applicants were workers of the establishment where a strike occurred. They also contend that the work stoppage involved resulted from an economic weapon which the employer created and imposed upon the applicants.

Essentially this is a question of whether or not the facts in this case bring it within the purview of earlier decisions of this Court in the cases of Olof Nelson Construction Company, et al, vs. Industrial Commission, 243 P 2d 951, 121 Utah 525, and Teamsters, Chauffeurs & Helpers of America, et al, vs. Orange Transportation Company, et al, 296 P 2d 291, 5 Utah 2d 45. In those cases the Court laid down the principle that where workers are arrayed on one side against management on the other side in multiple bargaining organizations, the Court will look to see whose conduct is really responsible for the work stoppage.

In the case of Olof Nelson Construction Company vs. Industrial Commission *supra*, the Court stated:

"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 . . . "

Referring to the California cases of McKinley vs. California Stabilization Commission, 34 Cal. 2d 238, 209 P 2d 602, and Bunny's Waffle Shop vs. California Employment Commission, 24 Cal. 2d 735, 151 P 2d 224, this Court said:

"Consideration of these two California cases emphasizes the fact that where a multi-unit employer group is bound together to bargain collectively with labor unions if a work stoppage is brought about by action of the employers in putting economic pressure on the employees, the latter are eligible for unemployment compensation benefits; if a work stoppage occurs as a result of a strike by any of the employees for the benefit of all, aimed at all of the employers, then all of the employees are ineligible."

Justice Crockett stated:

"I think that principle is sound and should be squarely approved by us so that both labor and management will know that he who first resorts to the use of work stoppage as a means of putting on economic pressure to settle a dispute will be chargeable with the responsibility of having done so.

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

Justice Crockett continued:

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

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

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

In the Olof Nelson Construction Company case *supra*, the Court said, speaking of the matter of the statutory language dealing with place of employment:

"But the Legislative intent to determine the eligibility of claimants for unemployment compensation does not seem to limit the disqualification provision to cases where strikes exist at the particular factories or establishment where claimant was employed."

The Court then concluded that the place of employment of all claimants involved in multiple bargaining would, in the event a strike was called at the premises of one or more employers be included in the overall term, "place of employment."

For purposes of clarity and in order that we might better compare the facts in the Olof Nelson Construction Company case *supra* with the facts in the instant case to determine whether or not the rule of Olof Nelson case should apply, we herewith set out a comparison of those facts.

In the Olof Nelson case the Associated General Contractors had historically and in the case at hand bargained

as a unit with the Building Trades Council as a unit which represented the Six Basic Crafts of the building trades workers. The Secretary of the Building Trades Council representing the Six Basic Crafts advised the Association by letter of the union's desire to open the wage provision of the "49-51 contract." The Six Basic Crafts bargained collectively for what appeared to be at least six different wage structures.

In arriving at the 1955-1958 contract, the Intermountain Operators League bargained for the Utah employers who were engaged in the trucking industry with Joint Council 67 in organization of teamster locals in Utah and Idaho. The record shows, however, that uniform agreements for the line workers in the 1955-1958 contracts were arrived at on an Eleven Western States basis after the agreements for the local drayage workers had been arrived at on a Joint Council basis.

In the instant case the unions banded together with the announced intent of bargaining through two joint Eleven Western States negotiating committees—one for the long-line workers and the other for the local drayage workers. These two Eleven Western States union committees proceeded to inform all of the employers in the Eleven Western States that they would soon receive notice of intent to terminate the 1955-1958 agreements for all teamster employees in the Eleven Western States. Subsequent thereto the representatives of the joint councils gave formal notice to the employers in writing of their intent to terminate the agreements. The facts are clear that the Eleven Western States employers formed a com-

mittee representing the employers in that area for the purpose of bargaining with the long-line committee on an Eleven Western States basis. Although a majority of the local unions gave power of attorney to the Eleven Western States union committee to bargain for them, the employers would not in their separate leagues or as an Eleven Western States organization agree in the beginning of the negotiations to work as a unit with reference to local drayage issues.

At the commencement of the negotiations, then, we had a change in the long-line worker area to clear-cut, Eleven Western States multi-unit bargaining. This was not immediately true with reference to the local drayage negotiations which did not at any time chrystalize into specific, formal legally authorized multi-unit bargaining. The events show, however, that commencing on or about May 27 the primary negotiations (except for a few league and joint council meetings at State levels on wage issues) on both the long-line issues and the drayage issues were conducted on an Eleven Western States basis by unofficial committees of employers and unions.

The May 27 Wage Settlement proposal was arrived at on an Eleven Western States basis and was submitted to all locals for their vote. The employer representatives met with the unions at the Western Conference of Teamsters in Seattle and discussed primarily the unsettled issues of the local drayage workers on an Eleven Western States basis. The employers were informed at that time by the unions that certain terms of the proposed wage settlement were unsatisfactory on an Eleven Western States basis.

In the Olof Nelson case the unions were asking for the revising of the wage scales upward for the different crafts.

In the instant case the two Eleven Western States joint union committees for the long-line and local drayage workers notified the employers that they were asking for an Eleven Western States Master Agreement covering all line workers and an Eleven Western States Master Agreement covering local drayage workers and for wage increases. Many of the recommended provisions apply to both line workers and local drayage workers.

In the Olof Nelson case the formal bargaining unit of the employers continued throughout to negotiate with the formal bargaining unit of the workers.

In the instant case the organized employer committee of the Eleven Western States negotiated with the formally constituted long-line committee but refused in the beginning to negotiate with the formally constituted local drayage committee for the Eleven Western States. Then when negotiations broke down on the long-line supplements an unofficial committee of employers and union representatives proceeded to negotiate a recommended settlement for all of the locals in the Eleven Western States and both their long-line and drayage workers.

In the Olof Nelson case no agreement was reached and the operations of two employers were struck by the unions to gain the wage demands which were made for the Six Basic Crafts.

In the instant case the long-line workers voted to accept the terms of the May 27 Wage Settlement and although some

of the local drayage workers voted to accept those terms, others voted to reject them. Consequently no general agreement was arrived at and the employers were informed that some of the terms were not satisfactory. At this point Joint Council 38 ostensibly acting for itself and the locals comprising its membership announced that it was striking its employers to obtain a wage settlement over and above that of the May 27 Wage Settlement proposal.

In the Olof Nelson case prior to the time of the strike of the two employers the Associated General Contractors informed the Building Trades Council that the employers would consider that a strike against one was a strike against all.

Prior to the strike of Joint Council 38, the employers representing the Eleven Western States informed Joint Council 38 and the other unions in the Eleven Western States that a strike against one would be considered a strike against all. On or about the same time the employers stated that they would shut down all of their operations in the Eleven Western States and that they would not permit the long-line drivers to pull loads in and out of the Joint Council 38 areas.

In the Olof Nelson case, after the strike negotiations were continued between the Associated General Contractors and the Six Basic Crafts and from these negotiations came the settlement which ended the work stoppage.

In the instant case negotiations were continued in Washington, D.C., between an unofficial group representing the Eleven Western States employers and an unofficial group

representing the local drayage workers in the Eleven Western States. Out of these negotiations came the settlement of all the issues affecting all of the local drayage workers in the Eleven Western States. The cost of living gains which were obtained for the local drayage workers were shortly thereafter given to the long-line workers. The local members approved the negotiated terms and the work stoppage ended.

Looking back at the facts, then, we find two areas in which there seems to be a difference between the facts in the Olof Nelson case and the instant case. First of these is that in the Olof Nelson case there was, as we pointed out, a clearcut establishment of bargaining units, while in the instant case the units which did the primary bargaining were unofficially representing the Eleven Western States. We think that the unofficial character of the bargaining committees did not essentially lessen the basic Eleven Western States nature of the bargaining which was conducted. We see no evidence in the record that there was ever any departure from the union intent to obtain Master Agreements covering the long-line and local drayage workers in all of the Eleven Western States. In fact, there is no indication that there was ever any bargaining at the joint council or local levels in connection with the Master Agreements. The only evidence of bargaining at the local levels was with reference to wages, and in the case of Utah the conversion to the 40-hour week which was outlined in the May 27 proposal.

The second point or apparent difference is that in the Olof Nelson case there was an announced intention on the part of the unions to strike in order to gain the requested wage terms

for the entire industry, whereas Joint Council 38 announced its intention of striking in order to gain certain wage advantages for the members of Joint Council 38. In light, however, of the entire negotiating picture the strike of Joint Council 38 must necessarily be construed as an economic pressure move, the ultimate result of which would be a gain for all workers in the Eleven Western States of wage terms more favorable than those set forth in the May 27 wage proposal. In fact, that is exactly what did happen. As we pointed out, joint negotiations took place in Washington, D.C., and a settlement was reached. It is obvious that the employers, being fully aware of the facts of life, recognized that with first the Oakland strike and then the strike of Joint Council 38 the employers were being "single shotted," the ultimate result of which would continue the dispute in the Eleven Western States until substantially the same wage settlements were reached for all workers in the Eleven Western States. In fact, starting with the joint release of the May 27 Wage Settlement proposal and the position of the Western Conference of Teamsters at the Seattle meeting and the refusal of the employers to put the long-line agreements into effect at the time they were informed of the majority vote of the unions there could not be a return to the formal system of joint council negotiations, at least with respect to bargaining on the 1958 contract.

In the Olof Nelson case *supra*, this Court, quoting from the case of McKinley vs. California Stabilization Commission *supra*, with approval stated:

"Other quotations which emphasize the California position are: 'It seems clear that under such industry-

wide single contract negotiation economic action by either side, whether a strike or lockout, would be considered by each of the parties as action against the entire group struck or locked out. . . . The selection of a certain plant or plants for a shutdown by strike at a particular time was a mere matter of strategy and conduct of the trade dispute which equally involved all of the bakeries and their employees. This, in effect, applied the union's economic sanctions against each employer and brought about the unemployment of all of its members. Had the association acted first by closing down one of the members plants and the union followed with a strike against all of the remaining plants, it would be equally clear that the volitional act causing the unemployment was the initial shutdown.' "

It is clear from the facts in the instant case starting with the time of the May 27 proposal and the employers' unwillingness to enter into final agreement in the area of the long-line workers until all of the issues for all of the workers were settled that the volitional case laid down by the Court and the California Court should be followed. The responsibility for the work stoppage should be related to the strike of Joint Council 38 because it was the actual and directly impelling cause of the strike which was extended to Utah workers following shutdown of operations on the part of all of the employers in the Eleven Western States.

CONCLUSION

In conclusion we wish to point out that the instant case arises under substantially similar facts and circumstances as

those of the Olof Nelson case *supra* and that it falls within the volitional rule laid down by this Court in that case.

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

Respectfully submitted,

WALTER L. BUDGE

Attorney General

FRED F. DREMAN

Special Assistant Attorney General

Attorneys for Respondents