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 Amicus Curiae

Utah Supreme Court

Huggins & Huggins; Attorneys for Northern Utah Central Labor Council;

Case No. 9063

IN THE SUPREME COURT of the STATE OF UTAH

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

Petitioners and Appellants,

vs.

BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION OF THE STATE OF UTAH, DEPARTMENT OF EMPLOYMENT SECURITY et al

Respondents.

Northern Utah Central Labor Council,
Amicus Curiae.

Brief of Amicus Curiae

HUGGINS & HUGGINS,
Attorneys for Northern Utah Central Labor Council

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PRELIMINARY STATEMENT

Northern Utah Central Labor Council is not a party to the above proceedings but its members are vitally concerned with the decision heretofore made by the Appeals Referee and the Board of Review in the above entitled cause, and have therefore sought and obtained leave to appear in this case and to file a brief in support of the petitioners and appellants for the reason that such decision, if permitted to stand or affirmed by this court, might or could adversely affect all said

members and the members of all other unions in future cases.

This court's attention is respectfully directed to the weight of the evidence in the record upon which the Appeals Referee and the Board of Review made findings and the seriousness of making such findings and its conclusion and order against the apparent weight of the evidence. We feel that the essential facts, as shown by the record, are accurately set forth and argued in the brief of petitioner and appellant and its reply brief on file herein which statement we hereby adopt; any further statement of the facts in this brief would serve no purpose save to usurp the time of this court in reading them. We further feel that if the findings, conclusions and decisions of the Appeals Referee and the Board of Review are affirmed and permitted to stand that great hardship will result to the members of all organized labor and could conceivably result in hardships to the operators as well, and we think would tend to cause difficulty in labor management negotiations, and additional litigation as well.

STATEMENT OF POINTS

POINT 1

THE FACTS FOUND BY THE APPEALS REFEREE AND AS FOUND INDEPENDENTLY BY THE BOARD OF REVIEW DO NOT REFLECT THE FACTS SHOWN IN THE RECORD AND DO NOT ACCURATELY REFLECT THE EVIDENCE AND ARE NOT SUPPORTED BY THE EVIDENCE IN THE RECORD.

POINT 1 (A)

THERE IS NO SUBSTANTIAL COMPETENT EVIDENCE IN THE RECORD OF MULTI-UNIT EMPLOYER OR MULTI-UNIT EMPLOYEE BARGAINING.

POINT 2

THE APPEALS REFEREE AND BOARD OF REVIEW ERRED IN HOLDING THAT THE APPLICANTS WERE INELIGIBLE FOR UNEMPLOYMENT BENEFITS.

POINT 3

THE WORK STOPPAGE INVOLVED IN THIS CASE WAS AN ECONOMIC WEAPON USED BY THE EMPLOYER TO COMPEL APPLICANTS TO ACCEPT A MULTI-EMPLOYER-EMPLOYEE BARGAINING UNIT TO WHICH THEY WERE NOT PARTIES OR HAD AUTHORIZED REPRESENTATION.

POINT 4

A RULE SHOULD BE LAID DOWN THAT MULTI-UNIT BARGAINING SHOULD BE ESTABLISHED ONLY THROUGH ACTIVE BILATERAL PARTICIPATION BY ALL PARTIES CLAIMING ITS BENEFITS OR TO BE CHARGED WITH THE RESPONSIBILITIES THEREOF AND NOT BY UNILATERAL RETROACTIVE ACCEPTANCE OF ITS FRUITS.

ARGUMENT

The writer is under obligation to file this brief on or before the date set for argument of the cause in the Supreme Court. Having come into the case cold and without any previous knowledge of the facts in the case and because of the time required in the reading and examination of the record and the many problems set forth therein, and points No. 1, 1(a) and 2 are so interrelated that they will be argued together.

This court has construed the provisions of Section 35-4-5 (d) UCA 1953, in at least three cases commencing with the case of Olaf Nelson Construction Company et al vs Industrial Commission et al, 243 Pac. 2d 951, 121 Utah 525. Whether the writer agrees with the conclusion reached in the case is immaterial. Until reversed, that decision and subsequent ones following it have become the law in this state with respect to the fact situation existing in that case. In the opinion of the writer, the decision of the Board of Review and the Appeals Referee can and should be reversed on the fact situation in this case without disturbing the law laid down in the Nelson case where six craft unions to which claimants for unemployment compensation benefits belong, had admittedly collectively bargained through their duly authorized representatives as one bargaining unit with the Associated General Contractors of America, Intermountain Branch, consisting of approximately 75 general contractors as one bargaining unit in that case. The differences in that case and subsequent cases decided by this court and the instant case is that the unions, Local 483, Idaho, and Locals

222 and 976, Utah, having offered to negotiate collectively with the other unions in the 11 western states as a unit were repulsed by the Intermountain Operators League consisting of the truck operators in Utah and Idaho, by letter dated March 5, 1958, from the operators' representative, Louis Callister, in answer to an invitation from the chairman of the union negotiating committee Mr. Filipoff.

In refusing to negotiate with the operators and unions of the 11 western states as one unit, Mr. Callister, after acknowledging receipt of the invitation to so negotiate declined in the following words:

> "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.*" (Emphasis Ours).

App. Ex. 8 (R0042).

He subsequently on March 20th, App. Ex. 10 (R0045), and April 15, 1958, App. Ex. 12 (R0049), refused to negotiate as a unit. In its finding, paragraph 4 of the decision of the Appeals Referee, page 2, nothing is said concerning the letters of refusal of the Intermountain Operators League, dated March 5th and 20th, to submit to multi-unit negotiations, but finds "But there is no evidence of any reply in acceptance of that by the Union". This gives rise to an anomalous situation comparable to the young swain who proposed marriage to the sweet young object of his affections and is promptly repulsed by her refusal to enter into the bonds of matrimony with him. He in turn does noting affirmativly about her refusal, does not accept it—just does

nothing. He subsequently dies leaving a substantial estate whereupon the object of his affections seeing her loss, promptly lays claim to a widow's share of his estate claiming that since he did not accept her refusal to marry him that she is entitled to participate in the distribution of his estate.

The facts in this case are that after Mr. Callister refused to bargain with the 11 western states as a unit he failed to show up at the bargaining table, App. Ex. No. 9, (R0043), and the union bargaining unit, under Mr. Filipoff, to all intents and purposes dissolved and relinquished its authority back to the locals. Locals 222 and 976 had never given this Filipoff committee authority to act for them. It was not, if I read the record correctly, until after a contract had been negotiated by those who did accept the invitation to bargain as a unit, had been submitted to at least some of the local unions for their ratification or rejection and the vote of the union members resulting in a majority favoring it that the Intermountain Operators' League claimed the right to act in concert with those who had bargained separately, by declaring a strike against one would be considered a strike against all. What the league would have done had [redacted] one or more operators of the 11 western states initiated a lockout, and the unions claimed a lockout at one plant constitued a lockout at all plants can only be surmised. The records reveal that the members of Joint Council 67 voted against ratification of the proposed contract. The members of Joint Council 38 in California, a separate bargaining unit for Sacramento and San Joaquin areas, (R0122-3), later on the 11th day of August, 1958, struck

whereupon it appears from the record in the sequence of events which followed, the operators throughout the entire 11 western states conceived it to serve their purposes best to declare that a strike against one of the operators was a strike against all including the members of the Intermountain Operators League, notwithstanding their refusal to bargain collectively with the others as a unit, so that after having refused to bargain - but to lend assistance to the operators in the area served by Local Council 38 in California, all of the operators adopted the plan to use the strike by a local and the lockout by all the operators in the area as an economic weapon to force or compel all of the unions in the 11 western states to bring pressure to bear upon Local Council 38 to end their strike.

It seems to the writer that no conclusion can be reached other than that the general lockout became and was therefore the primary cause of the unemployment of the members of Locals 222 and 976.

The decision of this court in the Nelson and subsequent cases amounts to the imposition of a penalty against non-striking unions for the acts of striking unions with which they have previously negotiated based upon the volitional test. This then, we think, becomes the crux of this case whether the requirements of the volitional test are met. The ingredients of that test here are:

(1) Did the unions constituting local councils 222 and 976 bargain collectively with the operators of the 11 western states, including the Intermountain Operators League?

(2) If the court finds that the record discloses, by substantial competent evidence, that they did so bargain, then was the result of the joint bargaining accepted by a majority voted under the formula laid down for its adoption?

(3) Were all of the unions and all of the operators within the 11 western states bound by the bargaining results at the time joint Council 38 struck?

It seems to the writer that unless all three ingredients of the volitional test are clearly in evidence at the time of the strike, unless the strike is called simply to avoid the coming into existence of the several ingredients, that it is unthinkable for an operator or a union, either, to come in and adopt retro-actively for their own purposes that which they have refused to join in the creation. It is a well known and universally recognized principal that courts are loathe to impose penalties, and only impose penalties in cases where the evidence is clear and convincing that the penalty should be imposed, there should be no assuming or presuming any facts. They should clearly be in evidence, otherwise, and particularly in a case involving the participants in this proceeding, all unions affiliated with other unions, in any bargaining process, whether intended to effect them or not, must be compelled for their own protection to intercede in negotiations which may seem entirely foreign to them and make a positive record in advance that they are not to be considered to be parties to or be bound by the outcome of such negotiations. Then too the same duty may devolve upon the operators who could conceivably find themselves

in the same position that the members of the union find themselves in here, for their protection in any bargaining negotiations, may find it necessary to interpose their appearance where their interests may not of their own volition be affected and make their record in advance positively that they are not parties to and will not be bound by the results of the bargaining process. This could lead to an intolerable situation where no union and no operator would feel safe to remain aloof from proceedings which might conceivably, through the assumption of certain facts not clearly in evidence, vitally affect their rights.

As Justice Crockett stated in the Nelson case:

> "The public policy underlying the employment security act as declared by the legislature is * economic insecurity due to unemployment, is a serious menace to the health, morals and welfare of the people * and that it is a situation * which requires appropriate action * to prevent its spread and to lighten its burden".
>
> "The immediate purpose is to assist the worker and his family in times of unemployment. The secondary and larger purpose is to provide stability for the general economy by assuring consistency of purchasing power. The economic and social welfare of the parties immediately concerned and all society in general are best served by the continuance of employment and the possible adjustment of differences in order to keep the wheels of industry moving and to maintain the integrity of unemployment compensation system".

In this case the members of Local 222 were unemployed

not by reason of a strike fomented by them and not by or through a strike under a contract in which they had participated in negotiating. They were unemployed because of the general lockout, which became general, at least in part by the attempted retroactive adoption of or adherence to a contract resulting from bargaining in which the members of the Intermountain Operators League, parties to the lockout, refused to participate. Under the fact situation here it does not seem that petitioners are attempting to obtain benefits where there was work available which they declined to accept, even under the volitional theory adopted in the Nelson case.

If the real cause of their unemployment was a lockout, they, petitioners, are entitled to compensation. Doubt was expressed by Robert H. Cutler, chairman of the Negotiating Committee for the Operators who did negotiate that the proposed agreement reached in San Francisco on May 27 covered or included any agreement covering pick up and delivery employees in the following language *"inasmuch as several of the provisions of the settlement made in San Francisco on May 27, 1958, include items pertaining to pick up and delivery employees, it is not clear to employer negotiating group whether or not these items are included in the overall settlement or are these to be negotiated separatly." App. Ex. #20 (0072). That exhibit was a letter addressed to Mr. H. L. Woxberg, Chairman over the route negotiating committee, general hauling division of the Western Conference of Teamsters under date of July 18, 1958. Chairman Woxberg's answer to the inquiry apparently disclaimed any authority to speak

for the pick up and delivery groups. App. Ex. #21 (R0074). The May 27th proposal was never submitted to the terminal petitioners.

POINT 3

THE WORK STOPPAGE INVOLVED IN THIS CASE WAS AN ECONOMIC WEAPON USED BY THE EMPLOYER TO COMPEL APPLICANTS TO ACCEPT A MULTI - EMPLOYER - EMPLOYEE BARGAINING UNIT TO WHICH THEY WERE NOT PARTIES OR HAD AUTHORIZED REPRESENTATION.

On June 13, 1958, Mr. Louis H. Callister, representing the Intermountain Operators League, submitted an entirely separate proposal to Joint Council #67 proposing smaller pay raises than the May 27th proposal, indicating an intention not be be bound by the joint negotiations between the League and the terminal employees, it was not until October 24, 1958, that they signed an agreement (RO182), indicating an intention not to be bound by the joint negotiations. App. Ex. #22 (R0075). While subdivision 1 of Section 35-4-5 (d) provides:

> "If the commission, upon investigation, shall find that a strike has been fomented by a worker of any employer, none of the workers of the grade, class or group of workers of the individual who is found to be a party to such plan or agreement to foment a strike shall be eligible for benefits".

It is nevertheless axiomatic that such finding by the commission should be affirmately supported by the evidence and not by supposition, assumption or any lack

of evidence. This court said in the case of Iron Workers Union vs. Ind. Com. 139 P. 2d 208 — "Substantial competent evidence." "The Group" was determined in the Nelson case at page 956 to be the bargaining unit and it appears in this case the bargaining unit at the request of the Intermountain Operators League was Local Council 67 and not the Filipoff Committee with which the League refused to negotiate. The purpose of the strike in the Nelson case, as found by the court, was to apply economic pressure to assist the bargaining representatives of the six basic crafts in obtaining an INDUSTRY WIDE (Emphasis ours) wage raise, Joint Local 38 (California group) had no such intent. Its only purpose apparently was to give its members parity with the "Oakland group".

This court said in the Nelson case at page 956 "The Bodinson case, 109 Pac. 2d 935, established the fundamental theory that disqualification for benefits depends upon the fact of voluntary action by the claimant". Here there was no voluntary action on claimants' part for three reasons, i.e. (1) They were not a party to the bargaining unit which adopted the contract under which the California Union members were working, because of the refusal of the Intermountain Operators League to bargain with the other operators as a unit; (2) Because claimants played no part in bringing about the strike, and (3) the strike was not brought for their benefit and they could obtain no benefits from it. Not only that but they affirmativly asserted their desire and readiness to work as additional evidence that the strike was not called for the benefit of petitioners Joint Council #38 offered to permit local unions to

continue to work and pull line load rigs into and out of the jurisdiction of any locals affiliated with it, that offer was refused by the operators (RO151), so that as in the Bunny Waffle Shop vs. California Employment Commission case 151 Pac. 2d 224, the economic weapon in this case was created by the Intermountain Opeerators League in joining with the California and other operators and directed against their (Intermountain Operators League) employees to pressure them into using their efforts to induce the members of the Joint Local Council 38 to terminate their strike. Therefore, adopting the theory of volitional cause of the work stoppage, petitioners in no sense (under the facts in this case, as the writer understands them) left their work of their own choice. As a matter of fact they had no choice. It was forced upon them by the lockout, by the Intermountain Operators League seeking to assist the California operators with whom it refused to bargain as a multi-unit to obtain benefits through an arrangement which it, by such refusal, prohibited from coming into being. In the McKinley vs. Cal. Emp. Stab. Com. case, 209. Pac. 2d 602, relied upon by respondents, industry-wide negotiations including the employers struck against had been established to obtain a master contract over a period of ten years. The converse was true in the instant case covering a period of 20 years and the Intermountain Operators League declared its intention to keep it so, having thus refused to join in the multi-unit negotiations can it then be said that the responsibility for the work stoppage in Utah did not relate to the lockout which constituted the actual

and impelling cause of the unemployment of petitioners and appellants.

POINT 4

MULTI-UNIT BARGAINING SHOULD BE ESTABLISHED ONLY THROUGH ACTIVE BILATERAL PARTICIPATION BY ALL PARTIES CLAIMING ITS BENEFITS OR TO BE CHARGED WITH THE RESPONSIBILITIES THEREOF AND NOT BY UNILATERAL RETRO-ACTIVE ACCEPTANCE OF ITS FRUITS.

It is the recognized law in this state that doubts concerning eligibility of applicants for benefits who have "become involuntarily unemployed" "should be resolved in favor of coverage of the employee". Johnson vs. Board of Review, 7 Ut. 2nd 113, 320 P. 2d 315.

In order that applicants for benefits in doubtful situations may receive the benefit of the law announced in the Johnson case Supra, a rule substantially in the form as set out in Point 4, should be adopted, the adoption of such rule would in the future serve as notice to all parties involved on both sides of the question where bargaining or collective bargaining is to be performed that they must, in advance, take a position which will inform the opposite side of their relative position or relation to them throughout the proceedings from beginning to end so that the parties may act in the protection of their own rights and in the fulfillment of their obligations with full knowledge of their relationship to each other. By following such procedure it seems to the writer that conflicts such as the present one could largely be avoided. The chips would be down and each party

would know in advance the consequences of its own action, and confusion in the proceedings and the results thereof could largely be eliminated.

What appears to the writer to have happened in this case with respect to the operators forming the Intermountain Operators League and the jeopardy in which their manner of procedure has placed petitioners could as well happen conversely. In other words, a group of unions or any union, unless ground rules are laid down for their guidance, could in the future withhold its acceptance of suggested procedure until they determine for their own benefit the manner in which they prefer to proceed in the final determination of the results of area negotiations.

CONCLUSION

As amicus curiae, we are not so much concerned with the question of which party prevails in this particular proceeding but we are concerned with the problem of finding the true facts so that the established law may be correctly applied to them. If we have appeared in the foregoing analysis and brief to be partisan that is the result of what appears to us to be the weight of the competent evidence as revealed by a somewhat complicated and confused record, a careful examination of which, including the great volume of exhibits, will reveal a rather unique and difficult procedure in what appears to have been an unsuccessful effort to bring about unified bilateral collective bargaining which, if adhered to in good faith by all of the parties throughout the proceedings, would have resulted in a conclusion less fraught with doubt and resulting in hardship to no

one. The writer is aware that it is not possible to eliminate doubt in transactions between parties but we think it is possible that through the adoption of Rules of procedure and the strict adherence thereto, frankly, by all parties to multiple negotiations that the causes of litigation may be substantially reduced and hardship to innocent victims largely eliminated.

It is respectfully submitted, therefore, that the decision of the Appeals Board of the Industrial Commission should be reversed and that a rule should be laid down by this court to the effect that multi-unit bargaining should be established only through unified bilateral participation by all of the parties claiming its benefits or to be charged with the responsibilities thereof and not by unilateral retroactive acceptance of its fruits.

Respectfully submitted,

HUGGINS & HUGGINS
By IRA A. HUGGINS
Attorney for Northern Utah Central Labor Council