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Unemployment Compensation - Labor Dispute Disqualification - Public Policy and the "Establishment"

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UNEMPLOYMENT COMPENSATION — LABOR DISPUTE DISQUALIFICATION — PUBLIC POLICY AND THE "ESTABLISHMENT"—Claimants brought suit for unemployment compensation allegedly due them for a period of temporary unemployment. Their employer manufactured spark plugs which were assembled at its Ohio plant using component parts made at its Michigan plant some 50 or 60 miles distant. The parts were transported daily by truck to the Ohio plant, and the Michigan plant was under the direct supervision of the Ohio plant. When a labor dispute occurred at the Michigan plant, lack of parts forced the lay-off of claimants at the Ohio plant. Upon termination of the labor dispute and a resumption of production the claimants resumed their employment. Claims for unemployment benefits under the Ohio statute,[1] which denies benefits when the unemployment is due to a labor dispute at the "establishment," were denied by the Administrator and Board of Review of Unemployment Compensation. The Court of Common Pleas affirmed and on appeal to the Court of Appeals of Ohio, *held,* affirmed, one judge dissenting.[2] The Michigan and Ohio plants constitute one "establishment" within the meaning of the Ohio act. The two plants are functionally integrated, physically proximate, and there is general unity in their operation. *Adamski v. State of Ohio, Bureau of Unemployment Compensation,* (Ohio App. 1959) 161 N.E. (2d) 907.

The social policy and purpose[3] of unemployment compensation legislation is to compensate involuntary unemployment, which can probably be best characterized as unemployment forced upon the employee through no fault of his own, and to encourage employers to stabilize employment. This social policy of compensating only involuntary unemployment underlies the labor dispute disqualification provision found in all the state statutes. The provision in general denies relief where the unemployment is due to a "labor dispute" at the "establishment" in which the claimant was employed. Applying the involuntary unemployment concept to the principal case, it would appear that the Ohio claimants have been forced out of work through no fault of their own, i.e., the cause of their unemployment cannot be attributed to them, and compensation should be awarded. But there is an obvious danger in adopting this view. The employer's

[1] Ohio Rev. Code (Page, 1953) §4141.29 (C) (2) provides that no benefits shall be paid to any individual who has "lost his employment or left his employment by reason of a labor dispute other than a lockout at the factory, establishment, or other premises at which he was employed, as long as such labor dispute continues. . . ." The various state statutes are compiled in 10 OHIO ST. L.J. 238 (1949). See, generally, Haggart, "Unemployment Compensation during Labor Disputes," 37 NEB. L. REV. 668 (1958); Lesser, "Labor Disputes and Unemployment Compensation," 55 YALE L.J. 167 (1945).

[2] The dissenting judge felt that the Ohio and Michigan employees worked for different "employers" within the meaning of the statute.

[3] Statements to the effect that the public policy of the act is to provide "benefits to persons who are unemployed through no fault of their own, and to reduce involuntary unemployment and suffering caused thereby to a minimum" are found in most of the state acts.

entire labor force, wanting to exert economic coercion against him by closing down his entire operations, may do so by striking at only the key plants. In such a case the only members of the labor force who lose unemployment benefits would be workers at the struck plants, while the employees at those plants which are closed as a result of the strike would collect compensation even though they are not adverse to their unemployment and may be said to have sanctioned or approved it.[4]

Whether conscious of it or not, a majority of our courts, including the Ohio court in the principal case, have disposed of the problem of key plant strikes by their construction of "establishment."[5] Various tests have been employed to determine what constitutes an "establishment," such as the comprehensive test[6] of functional integration,[7] physical proximity,[8] and general unity used in the principal case. Other courts have construed "establishment" from a "stand point of employment."[9] By making the granting or withholding of benefits turn on "nice distinctions in the definition of the word establishment," these tests fail to reflect properly the social policy of compensating involuntary unemployment.[10] Recognizing this, the California court has refused to place such dubious weight on the definition of "establishment" and employed a test of volition which makes a subjective inquiry into the substantial elements causing unemployment to determine if it is really involuntary and innocent.[11] Where

4 Some evidence of this was found in Park v. Appeal Bd. of Michigan Employment Security Commission, 355 Mich. 103, 94 N.W. (2d) 407 (1959). The lower court found that the claimants, laid off because of a strike at a Ford plant in Ohio, were directly interested in the labor dispute.

5 A few states have attempted to define "establishment." See, e.g., Ill. Rev. Stat. (1959) c. 48, §434. ". . . Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each department shall, for the purpose of this Section be deemed to be a separate factory, establishment or other premises."

6 See Nordling v. Ford Motor Co., 231 Minn. 68, 42 N.W. (2d) 576 (1950); Snook v. International Harvester Co., (Ky. 1955) 276 S.W. (2d) 658; Mountain States Tel. and Tel. Co. v. Sakrison, 71 Ariz. 219, 225 P. (2d) 707 (1950). See 28 A.L.R. (2d) 291 (1953).

7 See Chrysler Corp. v. Smith, 297 Mich. 438, 298 N.W. 87 (1941), modified if not overruled in Park v. Appeal Bd. of Michigan Employment Security Commission, note 4 supra.

8 See Spielmann v. Industrial Commission, 236 Wis. 240, 295 N.W. 1 (1940); Snook v. International Harvester Co., note 6 supra; General Motors Corp. v. Mulquin, 134 Conn. 118, 55 A. (2d) 732 (1947).

9 Machienski v. Ford Motor Co., 277 App. Div. 634, 102 N.Y.S. (2d) 208 (1951); Snook v. International Harvester Co., note 6 supra.

10 See Matson Terminals, Inc. v. California Employment Commission, 24 Cal. (2d) 695 at 707, 151 P. (2d) 202 (1944), where the court observed "that the legislature did not intend that the payment or withholding of benefits should turn on nice distinctions in the definition of words like . . . establishment is evident from" the policy declaration of the statute.

11 McKinley v. California Employment Stabilization Commission, 34 Cal. (2d) 239, 209 P. (2d) 602 (1949). The case involved a wage contract negotiation between a union representing the employees of several employers and the employers association. When the union called a strike against some of the employers, the employers not struck locked-out their employees. *Held*, three judges dissenting, the locked out employees were not entitled to benefits because they were involved in the trade dispute. See also DePaoli v.

an employee is laid off because of a strike at another plant of the employer, and the employee is in sympathy with and directly interested in the strike, standing to participate in any economic benefits gained thereby, he should be disqualified from receiving unemployment compensation. But if the layoff occurs because of a strike at another plant in which the employee laid off is not directly interested his unemployment is truly involuntary and compensation should follow. The Ohio statute involved in the principal case[12] is not incapable of such a construction. If the collective bargaining agent is attempting to obtain economic benefits on behalf of the laid-off employee as well as the striking employees, the laid-off employees are in fact involved in a labor dispute at the place (or "establishment") at which they are employed. A similiar construction can be given to the labor dispute disqualification provision found in the statutes of a majority of the states,[13] which prohibits the payment of benefits when there is a "stoppage of work which exists because of a labor dispute" at the "establishment." This could be construed to mean a "stoppage of work" at the "establishment" which exists because of any labor dispute in which the employee is directly interested.[14] This construction of the statute directs attention to the proper facts in each case, and the social policy of compensating involuntary unemployment would be more nearly accomplished.

William G. Thursby

Ernst, (Nev. 1957) 309 P. (2d) 363; Olof Nelson Constr. Co. v. Industrial Commission, 121 Utah 517, 243 P. (2d) 951 (1952); Bodinson Mfg. Co. v. California Employment Commission, 17 Cal. (2d) 321, 109 P. (2d) 935 (1941).

[12] Note 1 supra.

[13] The statutes of about three-fourths of the states have provisions substantially similar to the Michigan Act, Mich. Stat. Ann. (1950) §17.531, which provides that the individual shall be disqualified for benefits ". . . (b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: *Provided, however,* that no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section no individual shall be deemed to be directly involved in a labor dispute unless it is established. . . . (2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work. . . ."

[14] See subsection (2) of the Michigan statute, note 13 supra.