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Labor Law - Right to Unemployment Compensation as Affected by Union-Management Retirement Agreement

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COMMENTS

LABOR LAW — RIGHT TO UNEMPLOYMENT COMPENSATION AS AFFECTED BY UNION-MANAGEMENT RETIREMENT AGREEMENTS— Under what circumstances has an employee "voluntarily" left work so as to disqualify him from receiving benefits under an unemployment

compensation act?[1] This general question has troubled the courts for a considerable time and has presented itself in a variety of fact situations, e.g., leaving work because of labor disputes[2] and for personal reasons.[3] The courts' interpretation of the meaning of "voluntarily" has generally been influenced by numerous considerations such as the policy behind unemployment compensation, the specific terminology of the statute involved, and the procedure for financing the plans. The specific problem with which this comment deals is summarized in the following question: when an employee leaves his employment by reason of a union contract calling for his retirement by the employer at a given age plus receipt of a pension, is such employee barred from benefits under an unemployment compensation act because his leaving is "voluntary"? The decisions of the administrative and judicial bodies that have dealt with this issue[4] have been far from unanimous. Since a basic knowledge of the typical unemployment compensation act is necessary for an understanding of the problem, an attempt will be made to summarize those statutory provisions which are pertinent. An examination will then be made of the reasoning by which the courts, tribunals and writers reach one or the other result. Finally, there will be singled out for particular attention some of the analytical fallacies and pitfalls which tend to obscure the real issues and complicate the process by which decisions in this area are reached.

I. *Statutory Background*

Pertinent Provisions of Unemployment Insurance Acts. Unemployment compensation acts exist in all 48 states, Alaska, Hawaii, and the District of Columbia.[5] The typical act contains, among other matters, a declaration of policy, an eligibility provision and a disqualification clause. One of the disqualification sections relates to the nature

[1] An example of the typical wording of such acts is found in the New Jersey statute: ". . . an individual shall be disqualified for benefits: (a) For the week in which he has left work voluntarily without good cause. . . ." N.J. Stat. Ann. (1950) tit. 43, §21-5(a).

[2] See 25 WASH. L. REV. 50, 99 (1950); 36 ILL. B.J. 364 (1948).

[3] See Peterson, "Unemployment Insurance in Colorado—Eligibility and Disqualification," 25 ROCKY MT. L. REV. 180 at 191 (1953).

[4] Under the unemployment compensation statutes of the states, the great majority of appeals from unemployment benefit determinations are settled by administrative tribunals.

[5] For a list of the citations of the unemployment compensation acts of all the states as of 1948, see 10 OHIO ST. L.J. 238, n. 2 (1949). In some quarters it is believed that unemployment compensation should be placed on a federal level. Haber and Joseph, "Appraising the Social Security Program-Unemployment Compensation," 202 ANNALS 22 at 31 (1939); FEDERAL SECURITY AGENCY, ANNUAL REPORTS 43 (1949). Cf. 30 AM. LAB. LEG. REV. 151 (1940).

of the employee's termination of his employment. During the early development of these statutes many of them did not disqualify a claimant who voluntarily left his job, but since the early 1940's, such provisions have become increasingly prevalent. Today they exist in every state.[6] According to one writer,[7] this helps carry out the policy behind unemployment compensation by aiding those workers whose unemployment is caused by lack of work but not those who are unemployed through their own fault. However, in only one state does a voluntary discontinuance of work cause automatic disqualification.[8] In all other states, a claimant is not disqualified unless he voluntarily quit work "without good cause" or "without good cause attributable to the employer."[9]

Policy Behind Unemployment Compensation Acts. The basic purpose of these acts is to provide the diligent worker with partial insurance against the hazards of economic insecurity by providing him with benefit payments on the occasion of involuntary unemployment.[10] Today, almost every unemployment compensation act declares this to be the public policy.[11] A secondary aim of these acts is to serve the general public interest by stabilizing employment, maintaining consumer purchasing power, preserving labor standards and increasing labor mobility.[12] The system of unemployment compensation is designed to insure the risk of short-term unemployment.

Experience Rating. The funds from which benefits are paid are generally obtained from payroll taxes levied on employers. In the overwhelming majority of the states the rates are varied in some degree with

[6] For the early development of disqualification provisions, see generally Malisoff, "The Emergence of Unemployment Compensation," 54 POL. SCI. Q. 237 (1939); Witte, "Development of Unemployment Compensation," 55 YALE L.J. 21 at 41 (1945). For the British construction of the phrase "voluntarily leaves his employment" see BRITISH UMPIRE DECISIONS, UNEMPLOYMENT COMPENSATION INTERPRETATION SERVICE, p. 101 (1938).

[7] Kempfer, "Disqualifications for Voluntary Leaving and Misconduct," 55 YALE L.J. 147 at 149 (1945).

[8] In Montana a claimant is disqualified by any voluntary quitting whether there be just cause or not.

[9] Ohio limits disqualification to "just cause." In nine states and Hawaii, good cause is restricted to good cause connected with the work, attributable to the employment or the employer. In the other 29 states, Alaska and the District of Columbia, the general good cause provision includes good personal cause. U.S. BUREAU OF EMPLOYMENT SECURITY, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS (as of Aug. 1954) p. 82.

[10] The original reason for using the phrase "involuntary unemployment" was to provide support against constitutional attacks. Harrison, "Statutory Purpose and 'Involuntary Unemployment,'" 55 YALE L.J. 117 at 118 (1945).

[11] For example, N.J. Stat. Ann. (1950) tit. 43, §21-2; Pa. Stat. Ann. (Purdon, 1952) tit. 43, §752; 30 N.Y. Consol. Laws (McKinney, 1950) Labor Law, §501.

[12] See ALTMAN, AVAILABILITY FOR WORK 17 (1950).

the past employment experience of each employer. This variation in the employer's tax rate is known as experience rating. Almost all states provide for such a plan, the purpose of which is to serve as an inducement for employers to stabilize employment in their businesses, i.e., the smaller the depletion in the employer's fund, the lower will be his future compensation tax.[13] In analyzing the voluntary character of a claimant's departure from work, the procedure for financing the plans must be considered since the courts generally refer to the adverse effect on the employer's tax rates if benefits were allowed to those who are not strictly "involuntarily unemployed." Where an employer has provided for pension benefits he may be required to bear the double burden of contributing to both pension plans and the unemployment compensation fund. However, he could probably shed a part of this double burden by providing that pension payments are to be reduced by the amount of any unemployment compensation recovered by the employee.[14]

II. *Retirement Is "Voluntary"*

If an employee is retired by his employer at a given age (there being no provision to that effect in his individual employment contract), it seems clear that he would be considered "involuntarily unemployed."[15] Should the result be different when a labor union's representation is added? Does the collective bargaining agreement render the termination "voluntary?"[16] It has been argued that the answer should be in the affirmative since the collective bargaining agreement becomes, in effect, part of the employee's contract of employment.[17]

[13] For the theories and methods of experience rating systems, see Arnold, "Experience Rating," 55 YALE L.J. 218 (1945). Cf. Rainwater, "The Fallacy of Experience Rating," 2 LAB. L.J. 95 (1951).

[14] BOYCE, HOW TO PLAN PENSIONS 31 (1950).

[15] On the other hand, when an employee subscribes to a pension plan under which he voluntarily agrees to retire at a given age, he cannot claim unemployment benefits upon a theory that he has been discharged. Madison Gas and Elec. Co. v. Gardner and Industrial Commission of Wisconsin, (Wis. Cir. Ct. 1951) CCH, EMPL. INS. REP., p. 52535, ¶8602 (just prior to retirement, claimant signed a statement, "I accept retirement"). Hall v. Board of Review, 160 Pa. Super. 65, 49 A. (2d) 872 (1946).

[16] A related problem is found where there is a general shutdown so that all eligible employees may take their vacations simultaneously in accordance with a collective bargaining agreement between union and employer. Under these circumstances, are employees who are not eligible for vacation pay, entitled to unemployment compensation for the period covered by the shutdown? This problem is treated in detail in 30 A.L.R. (2d) 366 (1953). Some courts have held that such unpaid employees are voluntarily unemployed on a theory that the union is the employee's agent and that its action constituted an agreement on the part of the employees to take an unpaid vacation. Most courts take the view that such employees are out of work through no fault of their own and therefore are entitled to benefits.

[17] Jackson v. Minneapolis-Honeywell Regulator Co., 234 Minn. 52, 47 N.W. (2d) 449 (1951); Barclay White Co. v. Board of Review, 356 Pa. 43, 50 A. (2d) 336, cert.

The theories on which the courts enforce such agreements are diverse,[18] but regardless of the theory used and the difficulty in fitting this situation into conventional contract concepts, such collective agreements are valid and enforceable.[19] Since the contract made by the union becomes the contract of the employees and calls for their retirement by the company at a given age, the employees have made the matter compulsory to the employer and have fixed the status of their retirement as voluntary. The claimant may not take a position calling for compulsory retirement in his employment contract and then repudiate it in order to claim involuntary unemployment for the purpose of unemployment compensation benefits.[20] By the collective agreement the union spoke for the employees to the same extent as they could as individuals. Furthermore, it seems inconsistent with the purpose of the unemployment compensation acts to permit employees to dictate through a strong union the circumstances under which they will be eligible for unemployment compensation.[21]

III. *Retirement Is "Involuntary"*

Equally persuasive arguments are presented to uphold the proposition that worker does not voluntarily leave work when he is "retired" under a collective bargaining contract made for him by the union.

Since an individual employee might be in the minority as to specific terms of a collective contract and yet be bound by its requirements,[22] the conclusion that he individually consented to the terms of the agreement is pure fiction. Even though an employee is legally bound by the

den. 332 U.S. 761, 68 S.Ct. 63 (1947); In re Emp. Buffelen Lumber & Mfg. Co., 32 Wash. (2d) 205, 201 P. (2d) 194 (1948).

[18] The three main theories used by the courts are (1) usage and custom theory (collective bargaining agreements establish usages which, unless expressly rejected by the employee, are binding terms of the individual's employment); (2) third party beneficiary theory (such agreements are in the nature of a third party beneficiary contract); (3) agency theory (the union is an agent for the employee). The first of these theories has definitely lost favor with the courts in recent years. The third theory is defective in that it would be of no help to a non-union member, nor to one who joins a union subsequent to the making of a contract, unless he later ratified it. For a discussion of these various theories, see Rice, "Collective Labor Agreements in American Law," 44 HARV. L. REV. 572 (1931); TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING §163 (1940).

[19] TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING §163 (1940). The union even has power to enter into collective agreements adversely affecting the interests of some of its members. O'Keefe v. Local 463, 277 N.Y. 300, 14 N.E. (2d) 77 (1938).

[20] Campbell Soup Co. v. Board of Review, 24 N.J. Super. 311, 94 A. (2d) 514 (1953); Dept. of Industrial Relations v. Pesnell, 29 Ala. App. 528, 199 S. 720 (1940).

[21] See Barclay White Co. v. Board of Review, 356 Pa. 43 at 52, 50 A. (2d) 336, cert. den. 332 U.S. 761, 68 S.Ct. 63 (1947).

[22] Hartley v. Brotherhood, 283 Mich. 201, 277 N.W. 885 (1938). It is also possible that the worker was forced against his will to join the union if there was a closed or union shop contract.

union contract, this should not preclude him from unemployment compensation when he is retired against his will by reason of the agreement.[23] The union-employer contract is a mutual agreement in which each side has a voice. Thus there is merely a concurrent determination of the terms of employment. When an employee reaches the specified age, the terms of employment expire; there is neither discharge nor withdrawal. Applicants for jobs frequently must accept work even though they are informed that it will last only for a stated period of time. When the employee accepts a job which he knows in advance to be temporary, his leaving at the specified time is not voluntary within the meaning of the unemployment compensation acts. Although the term of employment is longer, the retirement situation is not essentially different.[24]

It is argued that the legislatures intended to limit disqualification to those separations resulting from a decision on the part of the worker himself. In the "retirement" situation the employee does not exercise his own volition in leaving his job. He has no alternative other than to submit to the employer's retirement policy, no matter how that policy was originated. Since one purpose of unemployment compensation is to improve the position of the unemployed worker, the courts should keep in mind this broad social aspect of the acts to permit a complete realization of the legislatures' intent.[25] Thus, many courts have said that the acts must be liberally construed to further their remedial purpose and all doubts should be resolved in favor of those to be benefited.[26]

IV. *Confusion Within the Courts*

Many of the direct and collateral matters discussed by the courts as bearing upon the problem of "involuntarily" leaving work must be carefully examined before their true relevancy can be determined.

The first of these matters relates to the receipt of "retirement" pensions. Should the receipt of such pensions be determinative of an employee's statutory right to unemployment benefits? Two separate and

[23] Where an employee has the option of retiring or continuing to work beyond the retirement age (if the union and company agree to it), leaving work at the retirement age disqualifies him from benefits. Krauss v. A. & M. Karagheusian, Inc., 13 N.J. 447, 100 A. (2d) 277 (1953).

[24] Campbell Soup Co. v. Board of Review, 13 N.J. 431, 100 A. (2d) 287 (1953).

[25] Empire Star Mines Co. v. California Employment Comn., (Cal. App. 1945) 158 P. (2d) 606.

[26] Illustrative are Henry A. Dreer, Inc. v. Board of Review, 127 N.J.L. 149 at 152, 21 A. (2d) 690 (1941); Calif. Employment Comn. v. Black-Foxe Military Inst., 43 Cal. App. (2d) 868 at 872, 110 P. (2d) 729 (1941); Bergen Point Iron Works v. Board of Review, 137 N.J.L. 685 at 686, 61 A. (2d) 267 (1948).

distinct problems are raised here. (1) Has the worker left his job "without good cause?" Although the answer is not clear cut, it appears that he would be disqualified from compensation. Absent contrary evidence, the inducement for leaving work would be deemed to be the pension benefits, the receipt of which hardly constitutes "good cause."[27] Some courts have confused this question with the related one of whether the claimant's leaving was "involuntary." (2) Does the receipt of this income have any effect upon an unemployed worker's position by reason of express statutory limitation? In only sixteen states[28] have the acts expressly eliminated or reduced the amount of benefits for any week in which the claimant receives a pension from his employer. In no state does receipt of income from sources not connected with his job disqualify a claimant, since an employee need not be indigent to secure the benefits provided by law. The statutory scheme makes no provision for inquiring into an individual's financial needs.[29]

The second pitfall is found in the failure of some courts to limit their analyses to the question of whether the claimant has "left work voluntarily" within the meaning of the statute of the particular state. Since all present unemployment compensation acts disqualify only employees whose voluntary quitting lacks "good cause," it is possible for a court to find that a worker who leaves "voluntarily" (in the volitional sense) with good cause is "involuntarily unemployed" and still eligible for compensation.[30] But when an employee is automatically "retired" at an age specified in a collective bargaining agreement, the issue is solely whether the retirement is "voluntary." Only if a determination is made against the claimant (that he left of his own volition) does the existence or non-existence of "good cause" enter the analysis.

[27] U.S. BUREAU OF EMPLOYMENT SECURITY, UNEMPLOYMENT COMPENSATION INTERPRETATION SERVICE-BENEFIT SERIES, vol. 5, no. 9, p. 242 (a 78-year-old coal miner who was retired at his own request in order to be eligible to receive old-age pension held to have left work voluntarily without good cause); Id., vol. 8, no. 6, p. 131 (a 65-year-old blacksmith left his job after he became entitled to retire on a pension held to have left work voluntarily without good cause when the policy of the employer was to permit employees to work after reaching retirement age); Krauss v. A. & M. Karagheusian, Inc., 13 N.J. 447, 100 A. (2d) 277 (1953).

[28] U.S. BUREAU OF EMPLOYMENT SECURITY, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS (as of Aug. 1954) p. 103. Cf. 35 MINN. L. REV. 610 (1950).

[29] 99 UNIV. PA. L. REV. 711 at 712 (1951); Friel v. Board of Review, 167 Pa. Super. 362, 75 A. (2d) 7 (1950).

[30] Compare Dept. of Labor v. Unemployment Compensation Board, 133 Pa. Super. 518 at 520, 3 A. (2d) 211 (1938) with Teicher v. Board of Review, 154 Pa. Super. 250, 35 A. (2d) 739 (1944), and Bliley Elec. Co. v. Board of Review, 158 Pa. Super. 548, 45 A. (2d) 898 (1946).

Yet some courts discuss these issues interchangeably—as if they were one and the same. A reference to one instance of this muddled thinking is made in the above discussion of pensions. If the issue is whether the worker quit "involuntarily," the receipt of the pension should be irrelevant. Not only may "good cause" be confused with the involuntary nature of the termination of employment, but once it is decided that the leaving is voluntary the court may overlook the unlimited "good cause" provision of its own statute and apply the more restrictive statute of another jurisdiction.[31] The use of alleged "precedents" is confusing and dangerous when based upon a statute that is worded differently.

Thirdly, the courts have also merged at times the similar but separate considerations governing a worker's disqualification and eligibility, and have produced a confusing definition of "involuntary unemployment" by relating these problems to the availability-for-work issue.[32] A voluntary leaving of work may be evidence of an intent not to work. Such an intent may, in turn, prove that the claimant is not available for employment and is therefore ineligible for benefits.[33] The ground of ineligibility, however, is the intent not to work, not the voluntary character of the leaving.

Finally, and of most importance, needless confusion has arisen by "judicial excursions into the metaphysics of freedom of the will and microscopic inspection of the volitional processes constituting the act by which the claimant has become unemployed."[34] In deciding that a quitting was involuntary, some courts emphasize that the employee's claim to benefits is determined by his motives at the time of the termination. Such an analysis is not entirely realistic, however, when a union, as the worker's agent, has negotiated the retirement contract. On the other hand, a conclusion that the employee left voluntarily because the union acted in his stead at the bargaining table indicates that any termination of employment is voluntary if consensual. But this assumption is not always true. Such an approach would meet with difficult factual determinations, e.g., did the company or the union have the upper hand during the bargaining. The volitional test postulates

[31] See note 9 supra for the various types of statutes. Campbell Soup Co. v. Board of Review, 24 N.J. Super. 311, 94 A. (2d) 514 (1953), followed this tendency by stressing the fact that retirement was compulsory to the employer, notwithstanding the fact that this was of no special importance under a New Jersey type statute. For a view that an "employer's fault" concept has no place in the unemployment compensation program, see Simrell, "Employer Fault vs. General Welfare as the Basis of Unemployment Compensation," 55 YALE L.J. 181 (1945); 17 GEO. WASH. L. REV. 447 (1949).

[32] Valenti v. Board of Review, 4 N.J. 287, 72 A. (2d) 516 (1950).

[33] Bliley Elec. Co. v. Board of Review, 158 Pa. Super. 549, 45 A. (2d) 898 (1946).

[34] 28 N.Y. UNIV. L. REV. 1332 at 1334 (1953).

an inquiry into the dynamics of the circumstances which created the unemployment, but such inquiry does not adequately explain the results. The above factors indicate that any analysis which relies mainly upon consensual relations is inaccurate. The situation contemplated by the unemployment compensation acts involved a unilateral decision on the part of the worker or the employer, not one in which a union has previously negotiated a specific date for retirement. It has been urged that in view of the general purpose of the unemployment compensation laws, the test as to whether unemployment is voluntary should be determined by the employee's willingness to be in the labor market (assuming that his prior leaving of work was for "good cause") and not by the relationship existing between employee and employer.[35]

V. *Conclusion*

The age composition of the United States' population is undergoing a substantial shift upwards.[36] With this advancing age, the number of workers who are retired or are facing retirement will be growing every year. Scientific advances have prolonged the life expectancy of the average employee, but social and economic development have placed age limitations upon his employment activity. In view of the obstacles confronting an older person in obtaining new employment, a decision that he left "voluntarily" and is therefore not entitled to benefits might serve to reverse to some extent the social and legislative trend toward providing honorable alternatives to "poor relief."[37] If it is determined that unemployment compensation is recoverable in the "retirement" cases, an employer may use this fact in his negotiations with the union for retirement and pension plans. A decision that a worker did not quit "voluntarily" will also protect employees who are retired in accordance with a collective bargaining agreement but are unable to qualify for pension benefits. Thus, the amount received from unemployment benefits could act as a floor which all workers would receive as a consequence of these retirement plans.[38] A further basis for holding such a leaving "involuntary" might be found in statutory provisions which prohibit an individual from waiving or releasing his

[35] Harrison, "Statutory Purpose and 'Involuntary Unemployment,'" 55 YALE L.J. 117 (1945).

[36] In the 1950 census, 8% (or 12 million) of the total population were 65 years and over, and 3 million of them were in the labor force. Bancroft, "Older Persons in the Labor Force," 279 ANNALS 52 at 53 (1952).

[37] W. T. Grant Co. v. Board of Review, 129 N.J.L. 402 at 405, 29 A. (2d) 858 (1943).

[38] ALTMAN, AVAILABILITY FOR WORK 18 (1950).

rights to unemployment benefits.[39] Since, absent agreement, forced retirement would constitute "involuntary" unemployment, if the bargaining agreement renders the retirement "voluntary" the claimant is waiving his right to unemployment compensation by entering into the retirement contract.[40]

These policy arguments indicate that those courts and administrative tribunals which have decided that the worker's leaving is "involuntary" have reached a desirable result. As discussed earlier, however, the analyses used in arriving at that result have not always been as satisfactory. A close inspection of the interrelation between the employer, the employee and his union bargaining agent raises collateral issues which border on being superfluous. Considerations of public and legislative policy, as discussed above, furnish all the foundation necessary to arrive at a sound decision.

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[39] Wash. Laws (Rem. Supp. 1945) §9998-321; Pa. Stat. Ann. (Purdon 1952) tit. 43, §861; 43 N.J. Stat. Ann. (1950) tit. 43, §21-15(a).

[40] Glover v. Simmons Co., 31 N.J. Super. 308, 106 A. (2d) 318 (1954).