

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No: S-16299-16308

LABOR DISPUTE: 125.1

Date: November 19, 1964

Determination of Existence -
Closing of Plant or lock-out

POINTS AT ISSUE

- (1) Have the claimants been available for work during the week or weeks for which they claim benefits?
- (2) Was the claimants' unemployment due to a stoppage of work caused by a labor dispute?

FINDINGS OF FACT

Claimants appealed from determinations in which it was held their unemployment was due to a stoppage of work caused by a labor dispute. The claimants after being given credit for their waiting period weeks were disqualified effective April 27, 1964, under Section 60-47(d) of the Code of Virginia.

The Great Atlantic & Pacific Tea Company, Inc. (A & P Tea Company) was the claimants' last employer and were employed at the company's store in Exmore, Virginia. The A & P Tea Company along with six other companies; Giant Food, Inc.; Food Fair Stores, Inc.; Pen Fruit Company, Inc.; Grand Union Supermarkets; Safeway, Inc.; Acme Markets, Inc.; form an association know as the Baltimore Food Employers Labor Relation Association (FELRA).

The employees of the aforesaid companies are represented by two unions. Local No. 117, Amalgamated Meat Cutters and Butcher Workers of North America are not involved in this appeal and decision. The other union, Local No. 692, AFL-CIO, Retail Store Employees Union, represents the grocery clerks, produce clerks and cashiers. These unions have agreements with the employers covering the employees in the Greater Baltimore, Maryland area and extends to Exmore on the Eastern Shore of Virginia.

It is indicated that although separate contracts are negotiated with the seven employers, they bargain collectively with each union exclusively for health, welfare and pension provisions. There are other provisions in the contract with each company that are similar and are negotiated collectively. Some differences in the contracts involve jurisdiction, recognition and job classifications which are negotiated on an individual basis. Policing and enforcing of the contracts is done on an individual basis.

The contracts with all the employers and Local 692 expired January 25, 1964. No new contracts had been concluded with any of the member companies; however, negotiations continued until it was felt by the union negotiating committee an impasse had been reached with Acme Markets, Inc. The members

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of Local 692 had voted to give their negotiating committee authority to do whatever it thought best to effect a settlement of the issues. Under the aforesaid authority it was decided to call a strike on April 17, 1964, by Local 692 against Acme Markets, Inc.

It was necessary for Acme to close its stores as the employees represented by Local 692 were out on strike. Shortly thereafter on the same day all the other companies who were members of FELRA closed their doors. The A & P Tea Company at Exmore was closed at noon on April 17, 1964. Although the employer put a sign on its door, the claimants' testimony vary as to its exact wording, but it appears that the notice was to the effect the store was closed because of a labor dispute.

The companies who had closed their doors reopened for business on June 24, 1964, and the claimants returned to work shortly thereafter. The strike by the union continued against Acme Markets, Inc., and they did not reopen their stores until July 20, 1964, after the strike was settled on July 17, 1964. New agreements were then concluded by member companies of FELRA and Local 692.

If the A & P Tea Company had not closed their doors the claimants would have continued working. All claimants, during the period that they were claiming unemployment compensation, sought employment each week; were able and available for work; and, as a result several claimants secured part-time or temporary employment. None of the claimants participated in the labor dispute by picketing.

OPINION

Section 60-46(c) of the Virginia Unemployment Compensation Act provides in part that, in order to be eligible for benefits, a claimant must be available for work. Generally, to be considered available for work, among other things, a claimant must show that he is actively and earnestly looking for work, is ready and willing to accept all offers of suitable work, and does not place undue restrictions upon his employability.

Inasmuch as these claimants have demonstrated an active and diligent search for employment during the period they were claiming unemployment compensation, they have made a showing they have met the aforementioned requirements of the Code.

Since all claimants have proved their availability for work, the primary issue to be determined is whether or not the claimants were unemployed due to a stoppage of work caused by a labor dispute, and if they come within all the exceptions set forth in the statute.

Section 60-47(d) of the Code of Virginia provides, "An individual shall be disqualified for benefits, but only after having served a waiting period as provided in §60-46: For any week with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists (1) because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (2) because of a labor dispute at a factory, establishment or other premises

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(including a vessel) either within or without this State, which (a) is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed and (b) supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

- (1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and
- (2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises (including a vessel) at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

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 such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises. Provided further, that mere membership in a union, or the payment of regular dues to a bona fide labor organization, shall not alone constitute financing a labor dispute."

It is to be noted that the members of the union voted to give authority to its negotiating committee to strike against any or all of the companies. It would seem if an impasse had been reached with Acme Markets, Inc., the union members would only have voted to give the negotiating committee power to strike against Acme Markets, Inc. It is evident there must have been sufficient reasons for the union members to give authority to its committee to call a strike against any or all of the companies as no new contracts had been completed with any company.

It is apparent the employers comprising the (FELRA) considered the strike against Acme Markets, Inc. as a strike against the entire group, even though the union contends the strike against Acme was due to a provision in the contract not involved with the other companies. The other companies in making their new contracts with the union may have gained a concession if the strike had not been successful against Acme.

The Chief Appeals Examiner, therefore, finds that there was a common interest of the employers sufficiently to show that a strike against one was a strike against all the companies.

It is apparent the employers of the association stand together as a group and that the action taken by the union was aimed at all of them collectively and individually.

Under the Virginia Law there is no distinction between a strike or lockout:

"In the absence of a statute providing otherwise, a lockout by an employer is a labor or trade dispute, although it is not essential thereto." 81 Corpus Juris Secundum 264.

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In this case there was a lockout or a suspension of operations by the employer resulting from a labor dispute.

"A Labor dispute is any disagreement between the employer and the workers involving the terms and conditions of employment." Decision of the Commission No. 158-C.

Unions may call a strike to enforce their demands for contract changes and by the same token the employer may utilize the device of a lockout in resisting such demands. The contracts Local 692 had with the seven employers expired on January 25, 1964, and thereafter until the new contracts were signed there was no question a labor dispute existed between the union and the member companies. The labor dispute resulted in a stoppage of work because the employers locked their doors in the effort to utilize the device of a lockout in resisting the union's demands.

In view of the foregoing, it must be concluded these claimants were unemployed due to a stoppage of work caused by a labor dispute.

The remaining question to be decided is whether or not the claimants come within the exceptions as shown in Section 60-47(d) of the Code.

"The burden rests on all the claimants to show they come within the exceptions." Decision of the Commission No. 407-C.

Although the claimants were not actively participating in the dispute they were directly interested in the labor dispute which caused the stoppage of work. The lockout was the result of the strike by the employees who are members of the same union against Acme Markets, Inc. Any benefits gained by the union in the strike against Acme would inure to the benefit of all the other employees as they would be in a position to enforce their demands against the other companies. The claimants were directly interested in the outcome of the dispute.

In view of the foregoing, it must be concluded the claimants were unemployed due to a stoppage of work caused by a labor dispute and they have not proved they come within the exceptions as provided in the aforementioned section of the Code of Virginia.

DECISION

The determinations of the Deputy, disqualifying the claimants effective April 27, 1964, because their unemployment was due to a stoppage of work caused by a labor dispute, are hereby affirmed and remain in effect for any week benefits are claimed until they have performed services for an employing unit during thirty days, whether or not such days are consecutive.