

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



LABOR DISPUTE - 130
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DECISION OF COMMISSION

In the Matter of

Charles L. Wornom, Claimant
[REDACTED]

Newport News Shipbuilding
& Dry Dock Company
Newport News, Virginia

Employer

Date of Appeal
To Commission: June 23, 1977

Date of Hearing: December 1, 1977

Decision No.: 9939-C

Date of Decision: December 12, 1977

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Tribunal (No. UI-77-3422-F), dated June 7, 1977.

ISSUE

Was the claimant unemployed due to a labor dispute in active progress and did he come within the exceptions as set forth in Subsections (1) and (2) of Section 60.1-52(b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The claimant appealed from a decision of the Appeals Tribunal which held that he was ineligible for benefits from April 3, 1977, through May 28, 1977. Newport News Shipbuilding & Dry Dock Company was the claimant's last employer prior to filing his claim, where he had worked as a senior designer through March 31, 1977.

Based on an election by union members, the National Labor Relations Board had designated Union Local No. 8417, United Steelworkers of America, as the bargaining agent with the employer for all employees employed in the design department as senior designers, designers, junior designers, technical aides, senior design aides, design aides, and apprentices, regardless of whether or not they were members of the union local. Members of the union local called a strike against the employer and set up pickets at the entrance to the employer's plant on April 1, 1977. The labor dispute between the union and the employer has not been settled and picketing of the employer's plant continues.

The claimant is not now and never has been a member of the union. When he went to the employer's plant on April 1, 1977, he did not cross the picket line to report for work because of fear for his own safety. The claimant also did not attempt to report to work on the next three workdays, but on April 7, 1977, did go into the employer's plant through a back entrance where there were no pickets and advised the supervisor that he wanted to work. He was told that an official of the company had instructed that no union-eligible personnel would be allowed to work, and that since the claimant, due to his work classification, was eligible to be a member of the union local whose members were on strike, he could not work. The employer later agreed that the claimant could return to work on June 13, 1977, and he did so.

The claimant, through his attorney, argues that he should not be held ineligible for benefits by including him in the same class or grade of workers as those on strike. He suggests that a fair designation of the classes of workers would be union designers versus nonunion designers. The claimant further argues that he should be eligible for benefits during the period he was unemployed because the Virginia Right to Work Law was violated when the employer would not allow him to work, because that law declares it to be public policy that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union.

Section 60.1-52 of the Code of Virginia provides in part that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that:

"(b) His total or partial unemployment is not due to a labor dispute in active progress or to shutdown or start-up operations caused by such dispute which exists (1) at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (2) at a factory, establishment or other premises (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; and
- (2) He does not belong to a grade or

class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute."

There is no question that this claimant's unemployment resulted from a labor dispute in active progress at the establishment where he was last employed. The question is whether or not he comes within both of the exceptions cited above so as to make him eligible for unemployment compensation during the period of his temporary unemployment. It has been repeatedly held in the past that a worker is "directly interested" in a dispute where his wages, hours of work, or conditions of work will be affected, favorably or unfavorably, by the outcome of a labor dispute. It is of no consequence that the individual is not a member of the union conducting the strike or that he is not in sympathy with its purpose. Regardless of the fact that the claimant is not a union member and not on strike against his employer, he will be affected by the negotiations as relate to the conditions of his employment because he is a member of the grade or class of workers for which the National Labor Relations Board has certified the union local is the bargaining agent with his employer. The contention by the claimant's attorney that the term "grade or class" of workers should be interpreted to mean nonunion workers versus union workers appears to be a specious argument which does violence to the clear wording of the statute. The term "grade or class" means not merely an organized group or cohesive unit acting in concert in its own behalf, but a group of individuals who, because of the like nature of their duties in a particular circumstance, are readily identifiable and segregatable from others employed at the factory, establishment, or other premises.

The contention that the claimant should be eligible for benefits because Virginia's Right to Work Law conflicts with the Unemployment Compensation Law also is a specious argument which cannot be accepted. If it were truly believed that the claimant's rights under the Virginia Right to Work Law were violated by the employer, the remedy is not to pay him unemployment compensation, but to seek redress under Section 40.1-63 of the Code. It is concluded that the exceptions provided in Subsections (1) and (2) of Section 60.1-52(b) of the Code did not apply to the claimant in this case, and he therefore did not meet the eligibility requirements of the Act.

DECISION

The decision of the Appeals Examiner is hereby affirmed.

It is held that the claimant did not meet the eligibility requirements of the Act from April 3, 1977, through May 28, 1977.



Gene Pitts
Assistant Director of Appeals