UNEMPLOYMENT INSURANCE AND LABOR DISPUTES AT THE "FACTORY, ESTABLISHMENT, OR OTHER PREMISES"

Few deny the desirability of insurance against the economic hardships which flow from unemployment. This has been indicated by the passage of unemployment compensation acts by every state[1] during the last two decades. However, no such unanimity exists concerning the question of applicability of these statutes to those unemployed as a result of a labor dispute. Blanket labor dispute disqualification would prevent labor unions from utilizing benefit payments as a weapon in collective bargaining; however, such disqualification would also penalize those unemployed and result in economic hardship to the idle workers, their families, and their communities.

The acts, which are largely modeled after the Social Security Board's draft bill,[2] have permitted a compromise by establishing limitations short of blanket labor dispute ineligibility. Typically, it is provided that an applicant may be disqualified from receiving benefits if his unemployment is due to a stoppage of work arising out of a labor dispute at the "factory, establishment, or other premises"[3] at which he was last employed, except where neither he nor any member of his "grade or class of workers" is participating in, financing, or directly interested in the labor dispute.[4] Thus, an employee who is

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1. See Note, 49 COL. L. REV. 550 n.1 (1940) for a collection of these statutes.

2. SOCIAL SECURITY BOARD, DRAFT BILLS FOR STATE UNEMPLOYMENT COMPENSATION OF POOLED FUND AND EMPLOYER RESERVE ACCOUNT TYPES (1936). Wisconsin, however, had passed such an act in 1932. Wis. Spec. Sess. Laws 1931-32, c. 20.

One reason for the states adhering to the draft bill is that the Social Security Board must approve a state's unemployment compensation law as being in accordance with the Federal Unemployment Tax Act, see note 7 *infra*, before the state may receive federal grants-in-aid in administering its compensation system. 49 STAT. 626 (1935), as amended, 53 STAT. 1378 (1939), 42 U.S.C. § 503 (1940).

3. The statutes of Ala., Cal., D.C., Ky., Mich., Minn., N.Y., R.I., and Wis. use only the words "in the establishment": ALA. CODE ANN. tit. 26, § 214 subd. A (1940); CAL. GEN. LAWS act 8780(d), § 56a (1944); D.C. CODE § 46-310(f) (Cum. Supp. 1948); KY. REV. STAT. ANN. § 341.360(1) (1948); MICH. COMP. LAWS § 421.29(1)(b) (1948); MINN. STAT. § 268.09, subd. 1(6) (1945); N.Y. LABOR LAW § 592(1); R.I. GEN. LAWS c. 284, § 7(4) (1938); WIS. STAT. § 108.04(10) (1947). The Utah statute specifies a "factory or establishment": UTAH CODE ANN. § 42-2a-5(d) (1943). Idaho has no comparable provision: Idaho Laws 1947, c. 269, § 66(j). The laws of the remaining majority of the states speak of "factory, establishment, or other premises."

4. See note 1 *supra*. An illustrative statute provides that a claimant shall be disqualified for benefits: "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 because of a labor dispute at the factory, establishment, or other 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 at which stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

directly engaged in a strike, or who is a member of a grade or class of workers who are striking at the same plant, is ineligible for benefits; but employees who are idle because of a strike in another independent company may obtain benefits. A closer question arises when geographically separated plants of the same company are shut down by a strike in one of the units. The determination as to eligibility of the non-striking workers, who are of the same grade or class as the strikers, generally turns upon the interpretation of the word "establishment," as used in the labor dispute disqualification clauses.[5] This question was involved in several recent cases[6] growing out of the Ford strike of 1949.

Twenty-five thousand Ford Motor Company employees in assembly plants located throughout the United States were "laid off," due to a lack of parts, soon after Ford's parts-producing workers at Dearborn, Michigan, went on a sympathy strike in aid of striking Dearborn assembly-line employees. Both groups were members of the same local union. Under the company-wide collective bargaining agreement between Ford and the UAW-CIO, arbitration of the dispute of the Dearborn assembly workers would affect uniformly all Ford assembly-line employees, wherever located. The officers of the International UAW-CIO refused Ford's request that they order the Dearborn parts-producing employees back to work. Subsequently, Ford assembly-line workers throughout the country applied for unemployment compensation. Since these benefits are financed by a payroll tax on employers,[7] Ford, as an

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"Provided, that if 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." VA. CODE ANN. § 1887(97)(d) (1942).

But in nine states blanket labor dispute disqualification exists. See Note, 33 MINN. L. REV. 758, 763 n.38 (1949). However, even these states require that the labor dispute be at the "establishment" where the claimant was last employed, before he will be declared ineligible.

5. One state provides by statute that all plants operated by the same employer, which are located in the state, are to be considered as one establishment in determining eligibility under the labor dispute disqualification clause. CONN. LAWS c. 374, § 7508(3) (Supp. 1949). The Ford strike illustrates the inadequacy of such a provision.

6. Ford Motor Co. v. Abercrombie, 207 Ga. 464, 62 S.E.2d 209 (1950); Ford Motor Co. v. Div. of Empl. Sec., 96 N.E.2d 859 (Mass. 1951); Nordling v. Ford Motor Co., 231 Minn. 68, 42 N.W.2d 576 (1950); Ford Motor Co. v. Board of Review, 5 N.J. 494, 76 A.2d 256 (1950); Ford Motor Co. v. U.C.C., 191 Va. 812, 63 S.E.2d 28 (1951).

7. 49 STAT. 639 (1935), as amended, 53 STAT. 1396 (1939), 26 U.S.C. §§ 1600-1611 (1948) (Federal Unemployment Tax Act). Also, see SOCIAL SECURITY ADMINISTRATION, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS AS OF OCTOBER 1948, 12 (1948).

The payment of benefits in a given state would adversely affect Ford's payroll tax rate for the subsequent year. See, *e.g.*, N.J. STAT. ANN. § 43:21-7(c)(4) (Cum. Supp. 1941). But, it has been suggested that different considerations may apply in states where the compensation fund is a general pooling, rather than a reserve account or guaranteed employment account. See Note, 19 N.Y.U.L.Q. REV. 294, 302 (1942). In two states employees are required to contribute. ALA. CODE ANN. tit. 26, § 202 (1940); N.J. STAT. ANN. § 43:21-7(d) (Cum. Supp. 1941).

interested party, appealed the granting of compensation to the workers in several jurisdictions.[8]

Several tests have been applied in the construction of the term "establishment" as used in the labor dispute disqualification. Under the British act,[9] which has served as a prototype for the American laws, an employee is disqualified if he is unemployed "by reason of a stoppage of work . . . due to a trade dispute at the factory, *workshop* or other premises at which he was employed. . . ."[10] The umpire, who is the highest authority under the British act,[11] has consistently ruled that "workshop," like "factory," refers to a single geographical unit.[12] The "geographical proximity" test is also frequently applied in this country,[13] and in those Ford cases where benefits were allowed, it was primarily upon the ground that the geographically separated plants were not one "establishment."[14] An inherent difficulty of the geographic test is determining the required degree of proximity before separate plants will be considered one "establishment." More important are the illogical and often unfortunate results of basing eligibility upon geography, rather than upon participation, interest in the strike, or need.[15] However, this test provides the most logical definition of "establishment," and restricts labor dispute disqualifications to those unemployed at the area of the dispute.

Ford contended that its country-wide system constituted one establishment because of the "functional integration" of its plants,[16]—an argument successfully used in some earlier cases. In *Spielman v. Industrial Commission*,[17] it was held that two plants forty miles apart were one establishment

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8. See note 6 *supra*. First appeals are to an arbitrator or referee. *E.g.*, 3 C.C.H. UNEMPL. INS. REP. 20, 555 (Ky. Referee 1949).

9. National Insurance Act, 1911, 1 & 2 GEO. 5, c. 55, as amended, 10 & 11 GEO. 5, c. 30 (1920), 14 & 15 GEO. 5, c. 30 (1924), 25 GEO. 5, c. 8 (1935); 9 & 10 GEO. 6, c. 67 (1946). The Social Security Board's model bill was patterned after this act.

10. The only substantial difference between most American labor dispute disqualification provisions and that of the British act is the substitution of the word "establishment" in the former for "workshop" in the latter. See note 4 *supra*.

11. 25 GEO. 5, c. 8, part III, § 44(6) (1935).

12. See Nordling v. Ford Motor Co., 231 Minn. 68, 89, 42 N.W.2d 576, 588 (1950).

13. *E.g.*, Walgreen Co. v. Murphy, 386 Ill. 32, 53 N.E.2d 390 (1944).

14. See cases cited in note 6 *supra*. In Ford Motor Co. v. Div. of Empl. Sec., 96 N.E.2d 859, 862 (Mass. 1951), the court remarked that: "The statute . . . impresses us as laying stress upon geographical location. . . ."

It is probably true, as several courts have suggested, that the word "establishment," as used in the labor dispute disqualification clauses of the unemployment compensation acts, was originally intended only to extend the application of the acts to places not properly described as factories. See, *e.g.*, General Motors Corp. v. Mulquin, 134 Conn. 118, 126, 55 A.2d 732, 736 (1947).

15. While the unemployment compensation statutes have not specified "need" as a criterion of eligibility, observe, for example, the language of the policy section of the Georgia Unemployment Compensation Law quoted in note 38 *infra*.

16. See Ford Motor Co. v. Div. of Empl. Sec., 96 N.E.2d 859, 861 (Mass. 1951); Ford Motor Co. v. Board of Review, 5 N.J. 494, 501, 76 A.2d 256, 260 (1950); Ford Motor Co. v. U.C.C., 191 Va. 812, 821, 63 S.E.2d 28, 32 (1951).

17. 236 Wis. 240, 295 N.W. 1 (1940).

even though their owners were not identical, but only affiliated, and although each plant had its separate wage and labor contract, its own seniority and service record, and its own labor union. In *Chrysler Corp. v. Smith*,[18] nine plants within eleven miles of the main plant were held to be a single establishment. Thus, the court in *Ford Motor Co. v. Abercrombie*,[19] said:

> It cannot be held on any basis of reason and logic that mere separate locations, regardless of the distance, of these indispensable functions do and could change them into two separate factories, establishments, or other premises.[20]

Actually, the "functional integration" test is worthless. If a labor dispute at one plant causes a work stoppage in another, it is evident that the plants are "functionally integrated."[21] Consequently, a logical application of this definition would inevitably preclude recovery of benefits in all such cases.

It was also advocated that the various Ford plants constituted one establishment from the standpoint of union organization. The Supreme Court of Georgia[22] disallowed the payment of benefits to Ford's Georgia employees on the ground that the refusal of the international union's officers to disapprove of the Michigan strike, which they had authority to do under the union constitution, was imputable to the claimants in Georgia. The international officers were said to be agents for the members since under the union constitution they were agents of the members in bargaining for an employment contract. It was immaterial that the Georgia claimants desired to work.

Aside from attempting to show merely that the Georgia plant and the Michigan plant were a single establishment from the standpoint of employment, because of the union arrangement, the Georgia court seemed to assume that the claimants *participated* via their agents. But participation in a stoppage is not synonymous with participation in the dispute which causes that stoppage,[23] and the initiative had been taken by Ford in laying off its Georgia employees.[24]

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18. 297 Mich. 438, 298 N.W. 87 (1941).

19. 207 Ga. 464, 470, 62 S.E.2d 209, 214 (1950).

20. *But cf.* Tucker v. American Smelting and Refining Co., 189 Md. 250, 55 A.2d 692 (1947).

21. See Shadur, *Unemployment Benefits and the "Labor Dispute" Disqualification*, 17 U. OF CHI. L. REV. 294, 322 (1950); Note, 49 COL. L. REV. 550, 558 (1949); Note, 36 ILL. L. REV. 581, 585 (1942).

22. Ford Motor Co. v. Abercrombie, 207 Ga. 464, 62 S.E.2d 209 (1950).

23. Nor should "stoppage of work which exists because of a labor dispute" be confused with "unemployment due to a stoppage of work." The former refers to the plant, the latter to the worker. Lawrence Baking Co. v. U.C.C., 308 Mich. 198, 13 N.W.2d 260 (1944); Magner v. Kinney, 141 Neb. 122, 2 N.W.2d 689 (1942); *In re* Steelman, 219 N.C. 306, 13 S.E.2d 544 (1941). *Contra*: Board of Review v. Mid-Continent Petroleum Corp., 193 Okla. 36, 141 P.2d 69 (1943).

24. Abercrombie v. Ford Motor Co., 81 Ga.App. 690, 692, 59 S.E.2d 664, 666, *rev'd on other grounds*, 207 Ga. 464, 62 S.E.2d 209 (1950).

The agency theory used by the Georgia court to deny benefits is not a novel one. In *Copen v. Hix*,[25] membership in an international union which supported a local strike was held a ground for disqualification, even though the strikers were foremen and claimants were miners, and members of a different local. Although the decision in that case purported to turn upon the claimants being of the same "grade or class" as the strikers, the court said, ". . . the members . . . cannot divorce themselves from direct involvement without showing a contemporaneous disapproval of the organization's activities."[26] But how and why should a claimant have to show disapproval of the international's activities? Such a theory of agency could make mere membership in an international union a bar to recovery of unemployment compensation.

The purpose of the collective bargaining agreement was to treat the various Ford plants as one unit for bargaining, not to determine unemployment insurance eligibility. It was not contended that the claimants would not have worked throughout the strike at Dearborn, had the assembly plants had sufficient parts on hand. Even though the Michigan strike was sanctioned by union officers who acted with full knowledge that the short supply of parts at the various assembly plants would halt production of vehicles, it seems unjust to penalize the non-striking workers in other states. The union constitution expressly provided that any strike vote by a local required ratification by the officials of the international, and could be overridden by their order that the strikers return to work.[27] The claimants could not control the acts of the union officials, nor would their refusal to ratify the officers' acts have any effect. So, while the international officers were claimants' agents for the purpose of making the collective bargaining agreement, they were more like principals in controlling strikes.

In addition to the contention that its entire system constituted one establishment, Ford strongly pressed the argument that the claims should be rejected since the claimants were "directly interested"[28] in the Dearborn strike. Any improved working conditions secured by the Dearborn assembly workers

25. 130 W.Va. 343, 43 S.E.2d 382 (1947).

26. *Id.* at 351, 43 S.E.2d at 386. More convincing is the statement, ". . . participation by the international union in a labor dispute on behalf of a local union is not participation of every local represented by the international in such a local dispute. This would be an unwarranted extension of the principles of agency." Chrysler Corp. v. Smith, 297 Mich. 438, 474, 298 N.W. 87, 100 (1941) (dissenting opinion).

27. See Ford Motor Co. v. Abercrombie, 207 Ga. 464, 465-66, 62 S.E.2d 209, 212 (1950); Ford Motor Co. v. U.C.C., 191 Va. 812, 819, 63 S.E.2d 28, 31 (1951).

28. The weight of authority holds that a labor dispute that affects wages, hours of work, and general conditions of employment causes all employees concerned to be directly interested. Chrysler Corp. v. Smith, 297 Mich. 438, 451-52, 458 n., 298 N.W. 87, 92, 94 n. (1941); *accord,* Auker v. Review Board, 117 Ind. App. 486, 71 N.E.2d 629 (1947); Huiet v. Boyd, 64 Ga. App. 564, 13 S.E.2d 863 (1941). *Cf.* Local No. 658 v. Brown Shoe Co., 403 Ill. 484, 491, 87 N.E.2d 625, 630 (1949). *Contra*: Kieckhefer Container Co. v. U.C.C., 125 N.J.L. 52, 13 A.2d 646 (1940).

would inure to the benefit of all the assemblers, wherever located, under the union agreement.[29] Most of the cases rejected this position because the existence of a "direct interest" is a disqualification only when the labor dispute occurs at the "factory, establishment, or other premises" in which the claimant was last employed.[30]

It might be urged, however, that "establishment" should be broadly construed so as to include all those directly interested in the labor dispute. Just as all directly interested employees are denied unemployment compensation when there is a company-wide strike, so should they all be disqualified when a strike at one component part causes the entire company to shut down. This would not impair a legitimate use of the strike weapon by a local union,[31] yet, would prevent circumvention of the labor dispute disqualification provisions at the expense of the employer whose premium payments are based upon the employment record of his company.[32]

The mere fact that the claimant's wages or working conditions may be affected by the dispute should not conclusively bar him from obtaining compensation.[33] It is doubtful that the payment of compensation to non-striking employees would materially increase the willingness or ability of the union to strike. The statutory benefits are a grossly inadequate substitute for the wage loss,[34] and the ratio of compensation to regular wages is further reduced by the mandatory waiting period.[35] Those directly engaged in the strike would remain ineligible, and it is unrealistic to believe that the claimants would forward a portion of their meager compensation awards to the strikers.

Similarly, there is little basis to the claim that the employer would be compelled to finance a strike against himself. There is evidence that the

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It is immaterial to a finding of direct interest whether the union did or did not actually succeed in its demands. Nobes v. U.C.C., 313 Mich. 472, 480, 21 N.W.2d 820, 823 (1946).

29. See Abercrombie v. Ford Motor Co., 81 Ga.App. 690, 692-93, 59 S.E.2d 664, 666 (1950).

30. See cases cited in note 6 *supra*.

31. A strike by the Dearborn assembly workers alone would not have forced the shutdown of the other assembly plants. It was the sympathy strike of the production employees that forced a halt to all production. If the production workers had struck because of a grievance of their own, then the assembly workers would not be disqualified as they would have had no direct interest in the strike, and were not of the same "grade or class" as the production workers.

32. See note 7 *supra*.

33. Since the union may not succeed in its demands, the claimant may gain nothing from the settlement of the dispute. Furthermore, a construction of "establishment" broad enough to include all those "directly interested" would also disqualify a worker at a distant plant whose only connection with the strike is that he is a member of a "grade or class" of workers who are directly interested, even though the claimant would be unaffected by the strike's settlement.

34. *E.g.*, IND. ANN. STAT. § 52-1536a(a) (Burns Repl. 1951) (twenty dollars per week maximum).

35. *E.g.*, IND. ANN. STAT. § 52-1538c (Burns Repl. 1951) (one week).

payroll tax for the support of the compensation system is passed on to the consumer, or even that, in many cases, its incidence is borne by the employees.[36]

Furthermore, the claimants in the Ford cases left their jobs involuntarily due to a lack of work to perform for which they were not responsible. They did not participate in the strike vote, nor did they have any voice in the settlement of the dispute. A distant labor dispute should not be permitted to cause economic dislocation in a community and unnecessary hardships upon the families of those unemployed through no fault of their own. This would be in derogation of the very objectives of unemployment compensation.[37]

Basically, the courts in the Ford cases were required to decide whether the union or the employer should occupy an enhanced bargaining position, in the light of the purposes of the compensation acts. Complete neutrality is impossible. Accordingly, if the existing labor dispute disqualification provisions are to be retained, and the criterion of "establishment" continues to determine the eligibility of unemployed workers for benefits where the shut-down of one plant causes the closing of a multi-unit system, then a literal application of the "geographical proximity" test most nearly obtains the desired result. Despite the difficulty in determining what constitutes sufficient separation to avoid disqualification, in most instances recovery may be had where the plants are in different states or are several miles apart. On this basis most of the Ford cases were correctly decided.

Nevertheless, it is apparent from the above discussion that the existing labor dispute disqualification clauses frequently will not permit an adequate adjustment of the interests of labor, management, and the public in this area. It has been suggested that a better solution would be to repeal the labor dispute clauses altogether, as this "would relieve unemployment without being either an incentive or deterrent to customary forms of labor activity."[38] But while it is true that benefit payments do not stimulate strikes, it would be contrary to the policy of compensating only those involuntarily unemployed[39] to allow payments to persons directly engaged in a strike.

Conversely, it seems arbitrarily unjust to disqualify anyone who is unemployed because of a strike in which he is not directly participating, even

36. See Schindler, *Collective Bargaining and Unemployment Insurance Legislation,* 38 COL. L. REV. 858 n.1 (1938).

37. Compare the policy stand taken by the Georgia court in the *Abercrombie* case with the policy section of the Georgia Unemployment Compensation Law which states that: "Involuntary unemployment is . . . a subject . . . which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker or his family. The achievement of social security requires protection against this greatest hazard of our economic life." Ga. Laws 1937, No. 335, § 2.

38. Fierst and Spector, *Unemployment Compensation in Labor Disputes,* 49 YALE L.J. 461, 491 (1940).

39. See Harrison, *Forenote: Statutory Purpose and "Involuntary Unemployment,"* 55 YALE L.J. 117 (1945).

when he is employed at the plant where the strike occurs. Under the present acts, a non-participating employee is ineligible if any member of his "grade or class" of workers at the establishment where he was employed is participating in, financing, or directly interested in the dispute or if he has a direct interest in the outcome.[40] Such non-participants have not voluntarily left their jobs, and they are available for work at all times. Therefore, it is desirable that the labor dispute disqualification clauses be amended so as to make only actual participation in the dispute a ground for ineligibility.[41]

The objectives of unemployment compensation should be[42] to reduce the hazards of involuntary unemployment by providing some security for the families of the unemployed; to maintain purchasing power in the community; to increase the stability of employment by inducing employers to maintain steady employment policies; and to help eliminate the necessity for public appropriations to support the needy. Although the test of direct participation as the sole criterion of labor dispute disqualification is not without difficulty,[43] it is believed that it would substantially achieve these ends without placing either labor or management in an unreasonably advantageous bargaining position.

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40. See note 4 *supra*. The "grade or class" provision has been rationalized upon the grounds of administrative expediency, deterrence of strikes, and discouragement of defections from the union. Queener v. Magnet Mills, Inc., 179 Tenn. 416, 424-25, 167 S.W.2d 1, 4 (1942). But see Note, 49 COL. L. REV. 550, 565 (1949).

As previously shown, mere direct interest of the claimant should not disqualify him for benefits.

41. While perhaps such unemployment can be voluntary even in the absence of labor dispute participation, only participation should be taken as evidence of that volition.

42. "There never has been agreement as to the purpose of unemployment compensation or its basic principles." Witte, *Development of Unemployment Compensation*, 55 YALE L.J. 21 (1945).

43. The courts would still be left with the question of what constitutes involuntary unemployment or participation.