UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF COMMISSIONER

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Decision No.: 158-C

Date: October 18, 1945

LABOR DISPUTE - 220.15
Grade or class of worker - Membership or nonmembership in union

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Between August 17, 1945, and September 11, 1945, approximately 1350 claims for unemployment compensation benefits were filed at the Lynchburg office by individuals who became unemployed at three shoe factories, owned and operated by Craddock-Terry Shoe Company at Lynchburg, Virginia. The deputy who took the claims was of the opinion that the provisions of Section 5 (d) of the Act applied and referred the claims to the Commissioner for initial determination. Upon the facts certified by the deputy the Commissioner denied all of the claims by orders entered on August 23, 1945, and September 11, 1945. All of the claimants filed timely appeals. The Commissioner, by order entered on September 11, 1945, removed all of said appeals from the appeal tribunal to himself, and fixed Thursday, October 4th, at 10 o'clock, A. M., at the courtroom of the Municipal Court of Lynchburg, as the time and place for hearing said appeals.

FINDINGS OF FACT

On August 14, 1944, Craddock-Terry Shoe Company entered into a contract with United Shoe Workers of America, CIO, Local No. 90, in which the CIO was recognized as the exclusive bargaining agent for all the production employees of said company. Section XI of this contract provided that said contract should remain in full force and effect for one year, and would be automatically extended from year to year unless one of the parties thereto should, by notice in writing given at least thirty days before any annual termination date, terminate the contract at the end of any contract year. Pursuant to this clause in the contract, Craddock-Terry Shoe Company gave such a notice on July 13, 1945, thus terminating the contract on August 14, 1945.

As a result of the termination of the contract, a committee of the CIO Local met with officials of the Company and commenced negotiations in an effort to obtain an extension of the contract until a new contract could be negotiated but no agreement with respect to an extension could be reached. From August 6th to August 14th seven or eight such conferences were held.

On August 14th, the Local held a membership meeting and voted unanimously not to report for work on August 15th because there would be no contract then in effect between the Local and the Company. Around six hundred members of the CIO participated in the meeting. From August 14th to October 2nd, the Local, at various times, held conferences with a conciliator, War Labor Board and other government agencies looking toward a solution of its problem and on October 2nd, the Company and the Local signed a stipulation, under the terms of which the members of the Local returned to work immediately with the understanding that a new contract would be agreed upon not later than October 15th to run to August 14, 1946. Pursuant to this interim agreement the members of the CIO did return to

work on October 3rd. Between August 14th and October 3rd, the Local maintained pickets at each plant of the Company. The majority of the workers who filed claims for benefits are members of the CIO, Local No. 90. A small number of the claimants are members of the A. F. of L. Union, Local No. 441. All the other claimants are not members of any union. According to the testimony of Mr. John A. Wilmer, President of the CIO Local, his union had members working in every department of the three plants at the time the contract expired. All of the claimants are employed in the production departments of the three plants; none of the workers in the other departments became unemployed.

The statement made by Mr. Wilmer that members of the CIO were employed in each department is verified by lists filed by Mr. R. H. Cox, a witness for the Company, such lists showing how the workers are distributed among the various production departments.

According to the testimony of Mr. Cox, supported by an exhibit filed by him, the decrease in production at the three plants during the period of unemployment was an average of 85.1%. The plants show a decrease of 84.7%, 84.8% and 86.2%, respectively.

OPINION

The applicable provision of the Act is Section 5 (d), which reads as follows:

"An individual shall be disqualified for benefits:

"(d) 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 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."

There can be no doubt that there was a stoppage of work at each of the plants during the period beginning August 15th and ending October 2nd. A stoppage of work is an appreciable interruption of production. An interruption of 85.1% comes within this definition. (Underscoring supplied)

The stoppage of work, if the disqualification is to be applied, must "exist because of a labor dispute at the factory, establishment, or other premises" at which the claimants were last employed. That there was a strike by the CIO cannot be disputed. The record shows that around six hundred members of the CIO met on the night of August 14th and voted not to return to work on the 15th of August. None of the members of the CIO worked for the Company between August 14th and October 3rd. A strike is a by-product - a direct result of - a labor dispute. A labor dispute is any disagreement between the employer and the workers involving the terms and conditions of employment. The dispute in this case commenced on August 6th when the Company and the Local found themselves in disagreement over the extension of the expiring contract and the terms and conditions of a new contract. Although the members of the Local returned to work on October 3rd under an interim agreement, the dispute was not settled on the date of this hearing. The disagreement over terms and conditions of employment was still pending. There is no escape, therefore, from the conclusion that the stoppage of work was caused by a labor dispute existing at each of the Company's plants. For this reason all the claimants who are members of the CIO must be disqualified from receiving benefits. (Underscoring supplied)

With respect to the claimants who belong to the A. F. of L. and those who are not members of any union, they, too, must be disqualified. It is not necessary here to determine whether or not these two latter groups of claimants come within the terms of the exception set forth in subsection (1) of Section 5 (d), because it is clear that they have failed to show that they come within the terms of subsection (2) of Section 5 (d). This subsection places the burden upon the claimants to show to the satisfaction of the Commission that they do 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 the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute." (Underscoring supplied)

The record establishes conclusively that members of the CIO Local were working in each department of the Company's plants. Without going into a discussion of the meaning of grade or class, as may be necessary in some cases, it is obvious that in every department where the A. F. of L. members and the non-union workers were employed there were also employed members of the CIO. In each department the workers, CIO, A. F. of L., and non-union, performed the same general type of service, which places them in the same grade or class. Those workers who do not belong to the CIO Local undoubtedly lost their employment during the duration of the stoppage through no fault of their own. The statute, however, is clear and unambiguous. Unless a claimant

can show that he comes within the exceptions of Section 5 (d), he is disqualified. None of the claimants has shown that he comes within such exceptions.

DECISION

For the reasons stated in the foregoing opinion, it is ordered that the claims of all individuals involved in this hearing be, and the same are hereby denied for unemployment occuring from August 14, 1945, through October 2, 1945.