STATE OF MARYLAND
HARRY HUGHES
Governor
KALMAN R. HETTLEMAN
Secretary

DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
383-5032

– DECISION –

DECISION NO.: 264-BH-82

DATE: March 9, 1982

CLAIMANT: Harold Adams, et al

APPEAL NO.: Ben. Det. #358

S.S.NO.:

EMPLOYER: Cambridge Wire Cloth Company

L. O. NO.: 10

APPELLANT: CLAIMANTS

ISSUE: Whether the Claimants' unemployment is due to a stoppage of work, other than a lockout, which exists because of a labor dispute within the meaning of Section 6(e) of the Law; whether the Claimants were able to work, available for work and actively seeking work within the meaning of Section 4(c) of the Law; whether the Claimants failed, without good cause, to accept suitable work when offered within the meaning of Section 6(d) of the Law; whether the Claimants were partially unemployed within the meaning of Section 3(b)(3) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT April 8, 1982

– APPEARANCES –

FOR THE CLAIMANT:

Harold Adams - Claimant
Tom Bradley - AFL-CIO President, Union Representative
Peter Callegary - Attorney
Duane Willey - Claimant
Ray Johnson - Claimant

FOR THE EMPLOYER:

Warren Davison - Attorney
Edward N. Evans II- President

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the testimony at the hearing, as well as the legal arguments presented to the Special Examiner and to the Board.

Much of the testimony presented to the Special Examiner was irrelevant to the issues in this case. Evidence of who was morally at fault for the labor dispute, who has delayed other legal proceedings and who has committed and who has alleged unfair labor practices within the meaning of federal labor law is totally irrelevant to the issues in this case, which concerns only the relatively simple provisions of the Maryland Unemployment Insurance Law.

The Board has considered the testimony of the Employer's witness, who testified that the Employer was ready, willing and able to take back to work immediately any and all of the Claimants. In considering the testimony, however, the Board has also taken into account the Employer's position at legal argument, which was that this testimony was true for the purposes of this hearing only and that the Employer may actually refuse reinstatement to as many as six of the Claimants. The Board of Appeals, which is bound by the law to make findings of fact based on what it believes to be the truth, cannot accept completely at face value testimony which is proffered as true only for the purposes of the hearing.

Although the Claimants contended that the Employer's actions towards certain of them was so harsh and unfair as to result in a virtual refusal of work to the Claimants, the evidence supporting this contention is so scant that the Board cannot find that such a de facto lockout existed.

FINDINGS OF FACT

The Claimants, members of local 8678 of the United Steelworkers of America, are employees of the Cambridge Wire Cloth Company in Cambridge, Maryland. The names of these Claimants are on list A, attached to this decision.

A dispute over recognition of the union had been simmering for at least five years. On August 1, 1981, the union voted to strike the premises in order to attain recognition as the bargaining agent for the employees of Cambridge Wire Cloth. On August 4, 1981, the strike began. Approximately 2/3 of the production workers participated in the strike initially, although some of the strikers did later return to work. The strikers picketed one day a week for ten hours a day. They received $40.00 for picket duty from the international union, from a fund to which neither the local union nor the strikers had contributed.

The Employer hired 55 replacements for the strikers and continued production. During the first week of the strike, shipments were down to about half of pre-strike levels. By the second week, however, shipments were up to about 79.8% of pre-strike levels, and by the fourth week, shipments were up to 99.8% of pre-strike levels. Customer orders remained at pre-strike levels from the early stages of the strike, and by the sixth week of the strike both shipments and orders were at 102% of expected levels.

The Employer is ready, willing and able to accept back the great majority of the strikers on short notice. There remains, however, a small group of unidentified strikers about whom the Employer is undecided about offering their jobs back.

CONCLUSIONS OF LAW

The Board will attempt to rule on all the issues raised in its Pre-Hearing Order. In addition, the Board will consider the issue raised by the strikers' receipt of $40.00 per week for picket duty. This receipt raises the issue of whether this amount of money should be deducted from any benefits received. The Board will consider this issue without further notice because the facts, which were supplied entirely by the Claimants, are undisputed.

The Claimants clearly engaged in a strike on August 4, 1981. There is no substantial evidence of a lockout. As the Court of Appeals has made clear in Browning-Ferris Inc. v. Employment Security Administration, ____ Md. ____, 438 A.2nd 1356 (1982) a strike, in order to bring about the disqualification intended by Section 6(e) of the Maryland Unemployment Insurance Law, must bring about a substantial stoppage of work. The word "stoppage" refers to a stoppage of the Employer's operation, not a stoppage of the Claimants' services. See also, Saunders v. Maryland Unemployment Compensation Board, 188 Md. 677 (1947).

In this case, the Board concludes that there was a substantial stoppage of work during only the first week of the strike, during which shipments were down to about half of pre-strike levels . After that week, shipments were near or above the 80% mark in each succeeding week (reaching 99% in the fourth week, 102% in the sixth week), orders were coming in at pre-strike levels, and these orders were being filled. These levels of orders and levels of production, when taken together, clearly indicate that there was no substantial stoppage of work. See, Browning-Ferris Inc. v. Employment Security Administration, supra, footnote 3. Since there was no substantial stoppage of the Employer's work after the first week of the strike, no disqualification of the Claimants from unemployment insurance benefits can be made under Section 6(e) of the Law after the first week of the strike.

A more difficult question is whether or not, when a strike is in progress but where there is no substantial stoppage of work at the Employer's premises, a mass disqualification of all the strikers under Section 4(c) of the Law is appropriate. The Special Examiner in this case disqualified all of the Claimants under this section of the law on the theory that, since they are actively engaged in the strike, they are necessarily not available for work and actively seeking work within the meaning of Section 4(c) of the Law.

The fact that one is engaged in a strike with one employer does not necessarily mean that he or she is not available for or seeking other work. Indeed, it is common knowledge that strikers often seek and accept other employment during the duration of a strike. Although it could be argued that a person who refuses to work at one place of potential employment (in this case, at the struck employer) is not able, available and actively seeking work because of that fact alone, Section 4(c) of the Law has never been used by the Agency to disqualify people who refuse one particular job. This useage is well supported by the statute, which has a distinct and separate section of the law, Section 6(d), specifically set out for dealing with the case of a person who refuses one particular job. The refusal of one particular job, if it does not meet the requirements of Section 6(d) for job refusal penalties, will not, in and of itself, disqualify a person under Section 4(c).

The question that then arises is whether there are any characteristics of this particular strike which justify the imposition of a mass disqualification under Section 4(c). The Board concludes that there are no such characteristics in this case. The Claimants all perform picket duty one day a week. The spending of one day per week in activities other than job searching has never been held to prove conclusively that a Claimant is not available for and actively seeking work. Of course, an inflexible commitment to spend one normal work day per week in activities not related to work would so interfere with the availability requirements of Section 4(c) so as to disqualify a Claimant in that position, see, Robinson v. Md. Employment Security Board, 202 Md. 515 (1953), but no such commitment has been proven in this case.

Although the Board is ruling that an automatic mass disqualification under Section 4(c) of the Law was not appropriate in this case, it is important to note that both of the factors involved, i.e., the refusal to work at one place and the setting aside of one day per week for activities not related to work search are relevant to a determination under Section 4(c) of the Law; and, in any individual case, these factors may tip the scales in favor of a finding that a Claimant is not truly

available for and actively seeking work (along with the other factors of the individual case). The Board is ruling simply that these two factors do not, as a matter of law, prove in and of themselves that a Claimant is not meeting the eligibility requirements of Section 4(c). Therefore, a mass disqualification under this section of the law cannot be imposed based solely on these facts.

The Claimants' receipt of $40.00 per week in return for one day's picketing is a receipt of wages for services performed within the meaning of Section 20(n) and 20(1) of the Law. Since the Claimants must perform picketing services in order to receive this amount, and since the Claimants had not previously contributed to the fund from which the $40.00 was paid, and since the Claimant's local union had not contributed to this fund, the payment for these services should be considered as wages.

If any of the above factors were lacking, the Board may well have considered the payments as donations or welfare payments, not deductible from any unemployment benefits received under Section 3(b) (3) of the Law. The Board concludes that, under the present set of facts, such payments are deductible. In reaching this conclusion, the Board need not consider whether such wages are in covered employment, since wages are reportable, and deductible, whether they are received in covered employment or not. See, the Board decision in the Vincent case, Board decision No. 1072-BH-81.

The next question is whether the strike, and the resulting refusal to perform one's own job at the struck company, may bring into play an automatic mass disqualification under Section 6(d) of the Law for refusing suitable work.

Section 6(d) of the Law states that a job cannot be considered "suitable" if it is vacant due to a labor dispute, but this statement is limited to "new work". The clear "implication of this phrase is that old work (i.e., one's own old job) is suitable work even if it is vacant due to a labor dispute. The Board concludes, therefore, that a striking employee may be disqualified under Section 6(d) of the Law for refusing to return to his previous employment (provided, of course, that the work is otherwise suitable).

The Board can see no reason why a mass disqualification for refusing suitable work could not be imposed on striking employees in an appropriate case. The appropriate case would-be a case in which there was a blanket, unconditional offer to all employees to return immediately to work (and all of the work was otherwise suitable). In this case, however, the Employer did not really make this unconditional offer. Rather, the Employer made this offer in a general way, reserving the right to accept back those employees it desires and to reject others.

This general offer of reinstatement is insufficient to cause the Employment Security Administration to invoke an automatic disqualification on all Claimants in this case under Section 6(d) of the Law. The whole raison d'etre of group hearings, appeals and decisions is simply convenience. When the facts of each individual's case are the same, and no one is prejudiced by a group decision, the law provides in Section 7(g) for these group hearings. In this case, a mass decision concerning Section 6(d) would clearly be prejudicial to those employees who are not called back to work at all by their employer. No more prejudicial set of facts can be imagined than to be disqualified for refusing a job offer, without a chance for a hearing, when no such job offer was made. Since there is the possibility of prejudice inherent in allowing a group decision in this case, the convenience of issuing a mass, comprehensive decision simply must be dispensed with.

Section 6(d) of the Law includes two disqualifications relevant to this case: a disqualification for refusing to apply for suitable work, and a disqualification for refusing suitable work when offered. Of these two possible disqualifications, one can be activated only by the Executive Director. The plain words of the statute indicate that the Executive Director must initiate any disqualification for failing to apply for suitable work. The other disqualification, the refusal to accept suitable work when offered, can be activated by a private employer. This disqualification is triggered only by an offer of suitable work. Since, in this case, there was no unequivocal offer of work made to all of the employees, there can be no mass disqualification under Section 6(d).

For every case in which the Employer can show that a genuine offer to return to work was made to a particular employee, however, the Agency may impose a disqualification under Section 6(d) of the Law, provided all of the elements of this disqualification are met. In evaluating the other elements of Section 6(d) of the Law, the Board concludes that it is appropriate in this case to place the burden on a Claimant (once he has been shown to have been offered his old job back) to show that it is unsuitable work (if he so alleges). In evaluating whether or not the work is suitable, the Agency should refer to those factors specifically mentioned in Section 6(d) and should avoid adjudicating, or allowing litigation or evidence concerning, the whole general merits and history of this labor dispute. The administrators and adjudicators of the unemployment insurance law should strenuously avoid involvement in the merits of the labor dispute. Browning-Ferris, supra at 432 A.2d 1362.

The Board takes administrative notice that some Claimants were individually disqualified under Section 6(d) of the Law. In Appeals No. 25514 and 25618 they protested these disqualifications to an Appeals Referee. At the hearing before Appeals Referee Hennegan, these two Claimants dismissed their appeals, relying on an understanding that the Board of Appeals would consolidate their cases with the instant case. Under all of the circumstances , the Board concludes that these appeals should be reinstated and set up for an additional Referee's hearing in Cambridge. The Appeals Referee should apply the unemployment insurance law, as interpreted in this decision, to these appeals. This appeal may be treated as consolidated appeal if, in the opinion of the Appeals Referee, after consideration of this opinion of the Board, no individual's case will be unfairly prejudiced, or if all parties agree to this procedure.

In two other appeals, Appeals No. 25395 and 25227, the Appeals Referee proceeded to a decision. The decisions in these two cases are final unless they have been individually appealed to the Board.

DECISION

The unemployment of the Claimants was due to a stoppage of work, other than a lockout, at the Employer's premises. They are disqualified for the week ending August 8, 1981. The decision of the Special Examiner with regard to this week is affirmed.

Those Claimants who recieve pay for picket duty are partially disqualified, under Section 20(1) and 3(b)(3) of the Law, from any benefits they might otherwise receive.

There is insufficient evidence that the Claimants as a group were not able, available and actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law, based on the fact of the labor dispute itself. The decision of the Special Examiner in regard to Section 4(c) of the Law is reversed.

Those individual disqualifications issued under Section 6(d) of the Law and appealed in Appeal No. 25514 and 25618 are not consolidated with this case. Those appeals are reopened and are to proceed as separate cases to be decided under the guidelines set out in this opinion.

Thomas W. Keech
Chairman

Maurice E. Dill
Associate Member

K:D
kmb
DATE OF HEARING: January 21, 1982

COPIES MAILED TO:

CLAIMANTS (See lists attached)

EMPLOYER

Ed Lamon, Union Rep.

Tom Bradley, AFL-CIO

Peter M. Callegary

Warren M. Davison, Esquire

UNEMPLOYMENT INSURANCE - CAMBRIDGE

LABOR DISPUTE

DATE: NOV. 18, 1981

IN THE MATTER OF:
Cambridge Wire Cloth Company

BENEFIT DETERMINATION NO. 358

APPEAL RIGHTS
CLAIMANT OR EMPLOYER:

Any interested party to this decision may request an appeal and such Petition for Appeal may be filed in any Employment Security Office or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, Maryland 21201, either in person or by mail. If the Claimant appeals this determination and remains unemployed, he/she MUST CONTINUE TO FILE CLAIMS EACH WEEK. NO BACK-DATED CLAIMS WILL BE ACCEPTED.

The period for filing a Petition for Appeal expires on December 3, 1981.

BENEFIT DETERMINATION NO: 358

IN THE MATTER OF:
Harold Adams

S.S.

vs.

Cambridge Mire Cloth Company
Goodwell Ave.
Cambridge, Md. 21613

ISSUE: Whether the Claimant's unemployment was due to a stoppage of work, other than a lockout, which exists because of a labor dispute within the meaning of Section 6(e) of the Law.

APPEARANCES

FOR THE CLAIMANTS:

Tom Bradley - AFL-CIO President
Ray Johnson - Staff of AFL-CIO
Ed Lamon - Maryland State & DC AFL-CIO
Harold Adams - President of Local 8678 United Steel Workers of America
Bill Robinson - Claimant
Donald O Lyons - Claimant
Jerome Jackson - Claimant
Jesse Eskridge - Claimant
Bobby Fitzgerald - Claimant
Richard Banks - Claimant
James Stanley - Claimant
Jerome Tilghman - Claimant
Ben Elbourn - Claimant
Lawrence Pinder - Claimant
James Lee - Claimant
Arthur Smith - Claimant
Robert Hubbard - Claimant
Chas Whaples - Claimant
Edward Bradford - Claimant
Robert Bradshaw - Claimant
George Bradnock - Claimant
Mark Hurley - Claimant
Rickey Mooney - Claimant
David Warfield - Claimant
Paul-Newcomb - Claimant
Donna Hessler - Claimant
Michael Fitzhugh - Claimant
Timothy Stultz - Claimant
Mark Tyler - Claimant
Wallace Willey - Claimant
Edwin Lloyd - Claimant
Wilbur Willey - Claimant
King Gullette - Claimant
Ray King - Claimant
Susan Lane - Claimant
Herbert Ball - Claimant

Roger Hubbard - Claimant
Edward Brittingham - Claimant
Ray Bradshaw - Claimant
Ernest Thompson - Claimant
William Elzey - Claimant
Harold Jackson - Claimant
James Hubbard - Claimant
William Hubbard - Claimant
Robet Camper - Claimant
Robert Snelling - Claimant
James Elzey - Claimant
David Willey - Claimant
Alfred Foster - Claimant
Ottie Mills - Claimant
William Davis - Claimant
Billy Farley - Claimant
Frederick Hughes - Claimant
Benjamin Bradshaw - Claimant
Keith Turner - Claimant
Gary Dibble - Claimant
Richard Willey - Claimant
Glenn Brannock - Claimant
Jack James - Claimant
Ronnie McCollister - Claimant
William Abbott - Claimant
Kehoe Lewis - Claimant
Roy Harney - Claimant
Roland Bradley - Claimant
Ricky Cannon - Claimant
Fred Short - Claimant
Kevin Johnson - Claimant
David Fitzhugh - Claimant
Edward Brambe - Claimant
Wade Callison - Claimant
Duane Rilley - Claimant
Doug Willey - Claimant
Jimmy Gambrill - Claimant
Kevin Mills - Claimant
Edward Lowe - Claimant
Grady Wilson - Claimant

FOR THE EMPLOYER:

Warren Davison - Attorney
Everett P. Creighton - Vice-President
Thomas Jacobs - Personnel Director

FINDINGS OF FACT

The Claimants on List A, attached hereto and made part hereof, are members of Local 8678 of the United Steel Workers of America. They were employed by the Cambridge Wire Cloth Company at all times pertinent to this determination.

In September of 1977, Local 8678 was selected by the production employees of Cambridge Wire Cloth Company as bargaining agent in an election supervised by the National Labor Relations Board. The Employer challenged the election administratively and in the courts. The Fourth Circuit Court of Appeals, remanded the case to National Labor Relations Board which issued a revised decision. This revised decision was again appealed to the Fourth Circuit Court of Appeals by the Employer and is now pending.

In July of 1981 after the issuance of the revised National Labor Relations Board order, the Employer and union met to discuss the future. The union insisted that the Employer bargain. The Employer refused prefering to pursue its legal remedies attacking the validity of the election which selected the union as a bargaining agent.

The union memberhip on August 1, 1981, at a meeting, voted to strike the company beginning August 1, 1981, in an attempt to obtain bargaining and a collective bargaining agreement from the Employer.

Picket lines were established on the first day of the strike and continue to the present. The Claimants performed picket duty one day per week, ten hours per day. Union members who performed picket duty qualify for strike benefit pay from the international of the United Steel Workers of America. The payments are $40.00 per week. The Claimants have paid no dues to the International of the United Steel Workers of America directly or indirectly through the local union. They, therefore, have not contributed to the funds from which the strike benefits are paid.

Throughout the strike the Employer sustained operations at near normal levels except for the first week of the strike.

During the first week of the strike, the Employer shipped forty-nine per cent of its quota and was operating at less than seventy per cent production. Thereafter, however, shipments rose steadily until in the forth week of the strike the Employer was shipping 99.8% of its quota's and was operating at eighty per cent production as compared to prestrike level. The Employer had continued since the forth week of the strike to maintain production levels at 80 per cent of the strike levels. The Employer was able to continue its operations at near normal levels by using supervisory personnel to perform tasks formally performed by the Claimants, by hiring additional workers and by using some production workers who did not go on strike.

Although the Employer has hired additional workers, it stands ready to accept back at work all of the Claimants is this case.

During the previous strike involving this union and Employer concerning the same matters, when the union made an offer to return to work, the Employer accepted it promptly and did, in fact, take back just about every striking employee at that time.

CONCLUSIONS OF LAW

Section 6(e) of the Maryland Unemployment Insurance Law disqualifies Claimants from receipt of benefits if their unemployment is due to a work stoppage, other than a lock out, which exists because of a labor dispute at the premises at which they were last employed.

The term "labor dispute" includes any controversy concerning terms or conditions of employment or rising out of the respective interest of the Employer and employee and includes lock outs and strikes. See Article 100, Section 74(c) Annotated Code of Maryland and Baltimore Typographical Union v. Hearst 246 Md. 308 (1967).

The Claimants through their union and the Employer have engaged in controversy over representation and bargaining rights since 1977. They are clearly involved in a classic "labor dispute".

The term "work stoppage" as used in Sections 6(e) of Article 95A was the subject of a thorough exposition in Saunders v. Maryland Unemployment Compensation Board 188 Md. 677 (1947). There in the Court of Appeals concluded that a "stoppage of work" is a fact to be proven and phrase is not synonymous with the word "strike". The court further notes as persuasive the decision of the English Umpires who had held that stoppage of work refers to a stoppage of work carried on at the Employer's premises. Finally the court held that a work stoppage ends when there is a "substantial resumption of operations". A fortiorari if there is not a substantial cessation operations there is no work stoppage.

In the instance case there was a substantial work stoppage during the first week of the strike only. Thereafter, there was substantial resumption of operations so that the Employer had sufficient capacity to handle its customers requirements, fill orders at a ninety per cent of pre-strike quotas and produce goods at eighty per cent pre-strike levels. It also must be noted that part of the reason for its failure to operate at one hundred per cent of pre-strike levels was described by its communications committee as orders being slack because of the cost of borrowing money.

From the foregoing it is concluded that the Claimants in this case were disqualified under Section 6(e) from receiving unemployment insurance benefits only during the first week of the strike. However, they are not entitled to unemployment insurance benefits during the remainder of the strike to the present time because they are disqualified from receiving those benefits under Section 4(c) of the Maryland Unemployment Insurance Law. Under that Section, a Claimant must be available for work and actively seeking work in order to qualify for benefits.

The Claimants in this case are not available for work and not actively seeking work. They are all engaged in the labor dispute and all of them are doing picket duty one day a week for ten hours. The Claimant are receiving $40.00 per week strike benefits from a fund operated by the International of the United Steel Workers of America. They have not contributed to this fund and in order to qualify for receipt of money from this fund they must put in their ten hours of picket duty. They are not reporting to work at the Employer's premises where work is, available for them.

Additionally, there has been no demonstration that the Claimants have divorced themselves from the strike and are now seeking work at other premises. If and when they establish that they are no longer involved in the strike and are, in fact, seeking work and are available for work without restriction then they will qualify for unemployment insurance benefits.

DECISION

The unemployment of the Claimants for the week beginning August 2, 1981 and ending August 8, 1981 was due to a work stoppage, other than a lock out, resulting from a labor dispute within the

meaning of Section 6(e) of the Maryland Unemployment Insurance Law. They are disqualified from receiving unemployment insurance benefits for the week beginning August 2, 1981 and ending August 8, 1981.

The Claimants are not available for work and actively seeking work without restriction within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. They are disqualified from receiving unemployment insurance benefits for the week beginning August 2, 1981 and until all of the requirements of the Law are met.

MARTIN A. FERRIS
Special Examiner

MAF:raf
DATE OF HEARING: November 4, 1981

COPIES MAILED TO:

CLAIMANTS (SEE LIST A ATTACHED HERETO AND MADE PART HEREOF)

EMPLOYER

Ed. Lamon, Union Rep.

Tom Bradley, AFL-CIO

UNEMPLOYMENT INSURANCE - CAMBRIDGE

Mr. Frank O. Heintz - Executive Director

Maurice Ashley - U. I. Director

John Zell - Legal Counsel

Severn Lanier - Appeals Counsel

Gary Smith - Chief Appeals Referee