



6-1-1951

Labor Law -- Unemployment Compensation -- Geographical Scope of Labor Dispute Disqualification

Paul K. Plunkett

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Paul K. Plunkett, *Labor Law -- Unemployment Compensation -- Geographical Scope of Labor Dispute Disqualification*, 29 N.C. L. REV. 472 (1951).

Available at: <http://scholarship.law.unc.edu/nclr/vol29/iss4/11>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

What will be the scope of judicial review of labor arbitration awards under the new North Carolina statute? It contemplates two grounds:⁸⁰ arbitrability and the arbitrator's authority. The *Thomasville Chair* case,⁸¹ which preceded the statute, involved only the latter. The Uniform Act codifies the usual common law grounds:⁸² charges of bias, corruption, denial of due process and lack of authority, but, it is not directly applicable to labor arbitration. Perhaps the grounds mentioned would be available as at common law, as they are not excluded by the new act. Traditionally, however, the North Carolina Supreme Court has been liberal in sustaining arbitration awards and hearing procedures.⁸³

M. H. Ross.

Labor Law—Unemployment Compensation—Geographical Scope of Labor Dispute Disqualification

Due to a shortage of parts, which was caused by a strike of the United Auto Workers—C.I.O. local in Dearborn, Michigan, the Ford Motor Company closed its assembly plants throughout the country. These assembly plant employees, members of the U.A.W.-C.I.O., but of different locals, filed claims for unemployment compensation in at least four states.¹ From commission decisions allowing the claims,

⁸⁰ §95-36.9(c) of c. 1103, 1951 N. C. Sess. Laws.

⁸¹ *Thomasville Chair Co. v. United Furniture Workers of America*, 233 N. C. 46, 62 S. E. 2d 535 (1950). In reviewing the scope of the arbitrator's authority, the narrow common law attitude toward the role of compromise, as expressed in *Cutler v. Cutler*, 169 N. C. 482, 86 S. E. 301 (1915), would hardly apply to labor disputes. This may be expressly set out in the contract. The arbitrator "is not bound to render a 'Yes' or 'No' decision." AGREEMENT, HILLCREST HOSIERY MILLS AND AMERICAN FEDERATION OF HOSIERY WORKERS (Durham, N. C., Mar. 12, 1949) §3 (b), p. 7.

⁸² N. C. GEN. STAT. §1-559 (1943). See UPDEGRAFF AND MCCOY, *ARBITRATION OF LABOR DISPUTES* 126-28 (1946).

⁸³ *Bryson v. Higdon*, 222 N. C. 17, 21 S. E. 2d 836 (1942). "Anciently, the construction of awards often turned on nice and subtle distinctions, and much refinement . . . but a more liberal and sensible method has been introduced, and the judges have invariably laid it down that the courts will intend everything to support the awards. . . ." *Clark Millinery Co. v. National Union Fire Insurance Co.*, 160 N. C. 130, 139, 75 S. E. 944, 948 (1912). "There is no right of appeal, and this court has no power to revise the decision of judges who are of the parties' own choosing. An award is intended to settle the matter in controversy and thus save the expense of litigation. If a mistake be a sufficient ground for setting aside an award it opens the door for coming into court in almost every case . . . and arbitration instead of ending would tend to increase and encourage litigation." *Eaton v. Eaton*, 43 N. C. 102, 105 (1851).

¹ Georgia, Minnesota, New Jersey, and Virginia.

For discussion of disqualification due to a labor dispute in general see, 17 U. OF CHICAGO L. REV. 294 (1950); 49 COL. L. REV. 550 (1949); 33 MINN. L. REV. 758 (1949); 49 YALE L. J. 461 (1940); 55 YALE L. J. 167 (1945). See also, 49 MICH. L. REV. 886 (1951) for discussion of the "Effect of the Merits of A Labor Dispute on the Right to Benefits."

the Ford Motor Company appealed² on the theory that the Ford plant in Michigan and the assembly plants in other states are so closely integrated as to constitute one establishment within the meaning of the disqualification sections of the Unemployment Compensation Acts.³

These statutes generally provide that a claimant shall be disqualified if the work stoppage is due to a labor dispute at the "establishment"⁴ or at the "factory, establishment, or other premises"⁵ at which he is or was last employed.⁶ Construing a statute of the latter type, the Virginia Court,⁷ following the decision in New Jersey,⁸ held that

² Ford Motor Co. v. Abecrombie, 62 S. E. 2d 209 (Ga. 1950); Nording v. Ford Motor Co., 42 N. W. 2d 576 (Minn. 1950); Ford Motor Co. v. N. J. Dep't of Labor and Industry, 5 N. J. L. 494, 76 A. 2d 256 (Sup. Ct. 1950); Ford Motor Co. v. Unemployment Compensation Comm'n, 63 S. E. 2d 28 (Va. 1951).

³ The disqualification sections of the various statutes are as follows: ALA. CODE ANN. tit. 26, §214 A (Supp. 1946); ALASKA COMP. LAWS §51-5-4 (d) (1949); ARIZ. CODE ANN. §56-1004 (d) (Supp. 1946); ARK. DIS. STAT. §81-1106 (d) (Supp. 1946); CAL. GEN. LAWS act 8480d, §56 (a) (1944); COLO. STAT. ANN. c. 167 A, §5 (c) (Supp. 1949); CONN. GEN. STAT. §7508 (3) (1949); DEL. REV. CODE c. 207, No. 6 (1943); D. C. CODE tit. 46, §310 (f) (Supp. 1948); FLA. STAT. ANN. §443.06 (4) (Supp. 1948); GA. CODE ANN. §54-610 (d) (Supp. 1947); HAWAII REV. LAWS §4231 (d) (1945); IDAHO CODE §72-1366 (j) (1949); ILL. REV. STAT. c. 48, §223 (d) (1949); IND. STAT. ANN. §52-1539 c. (Burns 1947); IOWA CODE ANN. §96.54 (1949); KAN. GEN. STAT. §44-706 (d) (Corrick 1947); KY. REV. STAT. ANN. §341.360 (1) (Baldwin 1948); LA. GEN. STAT. ANN. §4434.4 (d) (Dart 1947); ME. L. c. 430, No. 15-IV (1949); MD. ANN. CODE art. 95 A, §5 (e) (Flack 1947); MASS. ANN. LAWS c. 151 A, §25 (b) (1942); MICH. STAT. ANN. §17-531 (b) (Reis 1947); MINN. STAT. ANN. §268.09 Subd. 1(6) (West 1945); MISS. CODE ANN. §7379 (e) (Supp. 1948); MO. REV. STAT. ANN. §9431 II (a) (Cum. Supp. 1948); MONT. REV. CODES §3033.8 (d) (Supp. 1939); NEB. REV. STAT. §48-628 (d) (1943); NEV. COMP. LAWS ANN. §2825.05 (d) (Supp. 1945); N. H. REV. LAWS c. 218, §4D (1942), as amended N. H. L. c. 185 (1949); N. J. STAT. ANN. §43:21-5 (d) (Supp. 1948); N. M. STAT. ANN. §57-805 (d) (Supp. 1947); N. Y. LAB. LAW §592.1 (McKinney 1948); N. C. GEN. STAT. §96-14 (d) (1950); N. D. REV. CODE §52-0602.4 (1943); OHIO CODE ANN. §1345-6d (1) (Throckmorton 1948); OKLA. STAT. ANN. tit. 40, §215 (d) (Supp. 1948); ORE. COMP. LAWS ANN. §126-705 (d) (Supp. 1947); PA. STAT. ANN. tit. 43, §402 (d) (Purdon 1948), as amended, PA. L. ACT 530 (1949); R. I. GEN. LAWS c. 284, §7(4) (1938); S. C. CODE ANN. §7035-82 (d) (1942); S. D. CODE §17.0830 (4) (1939); TENN. CODE ANN. §6901.29E (Michie Supp. 1948); TEX. STAT. REV. CIV. art. 5221B-3 (d) (Vernon 1947); UTAH CODE ANN. §42-2a-5 (d) (1943); VT. L. H. 212, §5379V (1949); VA. CODE ANN. §1887 (97) (d) (1942); WASH. REV. STAT. ANN. §9998-105 (f) (Supp. 1943); W. VA. CODE ANN. §2366 (78) (4) (1943); WIS. STAT. No. 108.04 (10) (Brossard 1947); Wyo. COMP. STAT. ANN. §54-105B II (1945).

⁴ Alabama, California, District of Columbia, Kentucky, Michigan, Minnesota, New York, Rhode Island, and Wisconsin have this type statute.

⁵ This is the most common type statute. With the exception of Idaho, which has no comparable provision, Texas, which adds the word "vessel" to the usual trio, and Utah, which speaks of "factory or establishment," all jurisdictions not listed in footnote four have this phraseology.

⁶ Regardless of which phraseology is used the problem of determining the geographical scope of the labor dispute disqualification is substantially the same. Ford Motor Co. v. Unemployment Compensation Comm'n, 63 S. E. 2d 26 (Va. 1951).

⁷ Ford Motor Co. v. Unemployment Compensation Comm'n, 63 S. E. 2d 28 (Va. 1951).

⁸ Ford Motor Co. v. N. J. Dep't of Labor and Industry, 5 N. J. 494, 76 A. 2d 256 (1950).

the claimants were entitled to compensation. These courts based their decision upon the theory that the legislative intent⁹ in using the word "establishment" was an indication that the beneficence of the act embraced businesses other than factories, such as banks, hotels, and theaters, but not ". . . to widen and extend the area or territorial scope [of the disqualification section] beyond that encompassed by the companion words 'factory' and 'other premises'"¹⁰

The Supreme Court of Georgia,¹¹ supported by earlier decisions,¹² reached a contrary result on the theory that the Michigan plant and the assembly plants are so closely integrated as to constitute one establishment within the meaning of the Unemployment Compensation Act. This court, interpreting a statute¹³ identical with the Virginia statute,¹⁴ held that the words "factory" and "other premises" did not restrict the meaning of the word "establishment" but that the general words "other premises" were restricted by the preceding words "factory" and "establishment."¹⁵

While the legislatures could have defined the meaning of the word "establishment," they left the meaning to be determined by judicial interpretation. Consequently, the courts' decisions must rest largely on the purpose of the acts and of the disqualification sections. As the Virginia Court points out, "The Unemployment Act . . . was intended to provide temporary financial assistance to workmen who became unemployed without fault on their part."¹⁶ With this statement all

⁹ The British act, predecessor of the American statutes, used the phrase "factory, workshop or other premises," clearly indicating a test of geographic proximity. Was this test changed by substituting "establishment" for workshop? See, 17 U. OF CHICAGO L. REV. 294, 321 (1950) (where the question is answered in the negative).

¹⁰ Ford Motor Co. v. Unemployment Compensation Comm'n, 63 S. E. 2d 28, 33 (Va. 1951).

¹¹ Ford Motor Co. v. Abecrombie, 62 S. E. 2d 209 (Ga. 1950). This decision reversed the Court of Appeals of Georgia which had followed the same reasoning as the Virginia and New Jersey courts. The Court of Appeals said, ". . . at the factory, establishment, or other premises . . . relates to the place where the employee is thus engaged, that is, the geographical location of the factory, establishment, or other premises." Abecrombie v. Ford Motor Co., 81 Ga. App. 690, 59 S. E. 2d 664, 668 (1950).

¹² Chrysler Corp. v. Smith, 297 Mich. 438, 298 N. W. 87 (1941); Spielman v. Industrial Comm'n, 236 Wis. 240, 295 N. W. 1 (1940) (both statutes used only the word "establishment").

¹³ GA. CODE ANN. §54-610 (d) (Supp. 1947).

¹⁴ VA. CODE ANN. §60-47 (1942).

¹⁵ The Minnesota court construing its statute, which omits the words "factory" and "or other premises," held that the claimants were entitled to compensation. The court said, ". . . the solution of the problem lies in determining from all the facts available whether the unit under consideration is a separate establishment from the standpoint of employment and not whether it is a single enterprise from the standpoint of management or for the more efficient production of goods." Nordling v. Ford Motor Co., 42 N. W. 2d 576, 588 (1950).

¹⁶ Ford Motor Co. v. Unemployment Compensation Comm'n, 63 S. E. 2d 28, 33 (Va. 1951).

courts agree; however, they disagree as to whether or not the employees are at fault in a situation similar to the one under consideration.

A minority of the courts¹⁷ have held that the employees are at fault in such situations. These cases hold that the union is the agent¹⁸ of the individual members; therefore, members of the union are responsible for the action of the union. Technically this view is sound;¹⁹ however, these courts overlook the practical aspects of union membership.²⁰

The majority²¹ view recognizing the remedial nature of the statutes construe the disqualification section strictly so as to effectuate the general purpose of the statute. But since the legislatures have clearly shown an intent to disqualify those who participate in a labor dispute, the courts are bound to give effect to this intent. The problem is how best to do this without discriminating between workers and between employers; and without "taking sides" in disputes between labor and management. To date no complete solution has appeared.

There are two valid objections to allowing compensation to those involuntarily unemployed due to a labor dispute existing in a geographical location other than that of the place of employment. One is that a union might order a strike of only key employees knowing that such a course would as effectively induce a complete work stoppage as would a strike of all member employees, and that benefit payments to all non-striking members would appreciably lessen the drain upon the union treasury.

¹⁷ *Ford Motor Co. v. Abecrombie*, 62 S. E. 2d 209 (Ga. 1950); *Chrysler Corp. v. Smith*, 297 Mich. 438, 298 N. W. 87 (1941); *Spielman v. Industrial Comm'n*, 236 Wis. 240, 295 N. W. 1 (1940).

¹⁸ *Chrysler Corp. v. Smith*, 209 Mich. 438 N. W. 87 (1941) (The court at page 92 said, "whether we regard the employees as acting through their agent, or treat them as third party beneficiaries, . . . the practical result is the same."); *Chrysler Corp. v. U. C. C.*, 301 Mich. 351, 3 N. W. 2d 302 (1942); *Ford Motor Co. v. Abecrombie*, 63 S. E. 2d 209 (Ga. 1950).

¹⁹ *Moen v. Director of Employment Security*, 324 Mass. 246, 85 N. E. 2d 779 (1949); *Barclay White Co. v. Unemployment Compensation Board of Review*, 161 Pa. Super. 630, 56 A. 2d 295 (1948).

²⁰ In the normal agency relationship the principal has the power to control the conduct of his agent and if the agent disobeys the principal's orders the relationship can be terminated, usually to the economic disadvantage of the agent. It is absurd to assume that the individual member or minority membership of a union can control the union's activity. Of course, the agency may be terminated but only to the economic disadvantage of the principal.

²¹ *General Motors Corp. v. Mulquin*, 134 Conn. 11, 55 A. 2d 732 (1947) (involved plants in different cities in Connecticut) (The Connecticut statute has since been amended to disqualify a person unemployed due to a labor dispute ". . . at the factory, establishment or other premises at which he is or has been employed, or at a factory, establishment or other premises operated by his employer in the state of Connecticut. . . ." *CONN. GEN. STAT.* §7508 (1949); *Tucker v. American Smelting and Refining Corp.*, 189 Md. 250, 55 A. 2d 692 (1947) (plants several thousand miles apart); *Ford Motor Co. v. N. J. Dep't of Labor and Industry*, 5 N. J. 494, 76 A. 2d 256 (1950); *Nordling v. Ford Motor Co.*, 42 N. W. 2d 576 (Minn. 1950); *Ford Motor Co. v. Unemployment Compensation Comm'n*, 63 S. E. 2d 28 (Va. 1951).

The second objection is that such payments make the statutes discriminatory against the employer who has different stages of production in the plants which are geographically separated. He finds his payments to the unemployment fund increased due to compensation paid his non-striking, but idle workers, whereas the employer with all stages of production under one roof has no increase since his idle workers are disqualified and receive no compensation.²²

With these two objections in mind, it seems that any equitable solution will require some other basis than geographical location. Yet, any other basis seems also to have aspects of unfairness.²³ Faced with such a dilemma perhaps it would be wise for the legislatures to reexamine their reasons for *any* disqualification due to labor disputes.

The remedial aim of the Unemployment Compensation Acts is to protect the health and general welfare of the claimants during a period of temporary unemployment. Consequently, it seems that compensation should be allowed during a period of unemployment due to a labor dispute. However, the compensation should not be large enough to encourage strikes; the funds paid out during these periods should not be charged against the individual employer; and the general fund from which the payments are made should be at least partly financed by contributions from the employees.

PAUL K. PLUNKETT.

²² "All the States finance unemployment benefits mainly by contributions from subject employers on the wages of their covered workers; in addition two States (Alabama and New Jersey) collect employee contributions." COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS 13 (Dep't Labor 1949).

"All States laws have in effect some system of experience rating by which individual employers' contribution rates are varied from the standard rate on the basis of their experience with unemployment risk." COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS 15 (Dep't Labor 1949).

²³ Three states have tried to solve the problem of location of the labor dispute by legislation. Connecticut specifically disqualifies a claimant whose unemployment is due to a labor dispute in any establishment operated by the employer within the state. This does not, however, solve the problem even though the legislative intent is made clear. The same objections can be made to this type of statute as to those which do not make disqualification depend on state lines. The Michigan statute specifically disqualifies workers who stop work voluntarily in sympathy with striking employees in some other establishment or department of the same employer and those who become unemployed indirectly because of a stoppage of work in some other department or unit. This statute serves only to complicate the problem since one of the major difficulties is to determine if the employee's act was voluntary or otherwise. Oregon's statute includes in its disqualification section a dispute at any other premise which the employer operates if the dispute makes it impossible for him to conduct work normally in the establishment in which there is no labor dispute. This is probably the best statute if it is assumed that an employee who is unemployed due to a labor dispute should be disqualified.