BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

LOGAN T PURCELL	:	
	:	**HEARING NUMBER:** 19BUI-04633
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
FRANK MILLARD & CO INC	:	
	:	
Employer	:	

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3,96.19-38A&B

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The Board finds the analysis of the Administrative Law Judge to be correct. *See generally Training and Employment Guidance Letter 12-09*. We would add that a term of employment negotiated through a Union, and which is part of the contract of hire (CBA), is an agreed-to term. This is so even if the worker subjectively disagrees with any or all of the CBA. The Iowa Supreme Court held in an unemployment case that a worker who disagreed with a Union-negotiated wage could not quit and claim a change in the contract of hire was imposed by the employer. This was because "the majority of the employees in an appropriate collective bargaining unit by selecting a union to represent them, make that union the exclusive bargaining agent for all of the employees in the union ... the rights of the individual worker to deal with his employer is surrendered to the bargaining agent." *Efkamp v. IDJS*, 383 N.W.2d 566, 569-70 (Iowa 1986). Hence even if a leave of absence were a mandatory condition of employment imposed by a CBA the CBA is itself assented to by the Union, and thus it is an agreed to leave of absence within the meaning of the regulation.

As for partial unemployment the agency database confirms that the Claimant reported no wages during any week he claimed for benefits. His brief reference to partial unemployment seems to be an argument that total unemployment is a special case of partial unemployment where the amount of wages earned is zero. We find this is not so.

It is inconceivable to us that total unemployment can be viewed as a species of partial unemployment where the wage equals zero. If this were the case then all layoffs would fall under the definition of partial unemployment. Under the Code when an "individual's employment although temporarily suspended, has not been terminated" and the period of suspension is for enumerated reasons, and also for no more than four weeks then the worker need not be available for, or seeking work. See 871 IAC 21.1(113)(a)("A layoff is a suspension from pay status initiated by the employer…"). If we viewed all such suspensions of paid status to be partial unemployment then a worker would never have to be available for work, or seeking work, while on layoff no matter for how long. A twelve week seasonal layoff would be compensable even if the laid off worker was not looking for work while waiting for recall. This is inconsistent with the regulations of the Department. 871 IAC 24.23(20) (A claimant is not available for work "Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer…") The concepts of temporary and partial unemployment are different and one is not a subcategory of the other. This being the case, we cannot rely on partial unemployment to excuse the Claimant from complying with the able, available, and actively seeking work requirements.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv