IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

DENNIS L AMDAHL
ET AL
Claimants

CARGILL INCORPORATED
NUTRENA FEEDS
Employer

APPEAL NO. 07A-UI-10954-L

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/30/07 R: 03
Claimant: Respondent (2-R)

Iowa Code § 96.5(4) – Labor Disputes
871 IAC 24.33 – Labor Disputes
871 IAC 24.34 – Labor Dispute - Policy

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 2, 2007, reference 01, decision that allowed benefits on the consolidated claim after finding "a labor dispute occurred at the premises of Cargill Incorporated on 10/01/07. There was no concurrent stoppage of work. On 10/01/07 you were unemployed because the collective bargaining agreement had expired. There was no substantial stoppage of work due to a labor dispute. On 10/12/07 the labor dispute was resolved." After due notice was issued, a hearing was held in Cedar Rapids, Iowa, on January 15, 2008. Claimants' designated representatives, Gary Dunham, secretary-treasurer; Eric Fisher, union steward; and Craig Thorn, union member, participated. Employer participated through Michael Rizor, facility manager; and Melissa Schaapveld, human resources coordinator; and was represented by Theresa Davis, Attorney at Law. Mark Zeiger, Attorney at Law, also observed.

ISSUE:

The issue is whether the evidence in the record establishes that claimants were unemployed for the two-week period ending October 13, 2007 as the result of a stoppage of work that existed because of a labor dispute.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimants are workers affiliated with Teamsters' Local 238 in Cedar Rapids, Iowa, and are employed in production or maintenance at Cargill (hereinafter referred to as "employer"). In anticipation of the labor agreement expiration, employer offered a committee of union representatives (hereinafter referred to as "union"), as agent for the union membership, continuation of work pending contract negotiations under the terms of the labor agreement set to expire at midnight on October 1, 2007. The union caucused and declined to extend the contract because in its opinion there were not enough negotiation meetings or days set at that point to reasonably

complete negotiation by October 1 or shortly thereafter. The union and management also tentatively agreed to contract terms, but the union membership rejected ratification due to an impasse over changes in maintenance staffing. A few other concessions were made and a second tentative agreement was voted down by the membership on September 30, 2007. The union then established a picket line at 12:01 a.m. on October 1, 2007, with 100 percent of production and maintenance workers. Striking employees' access cards were deactivated as a security measure, but employer would have reactivated them for those who opted to return to work.

The plant continued to operate without union workers by utilizing engineering staff and supervisors from this plant and eight other facilities in six states. Employer's assertion it had not hired replacement workers is disputed by the union, which believes there are 4 lab and 20 or more maintenance replacement workers who remain working but no striking workers were displaced upon their return to work effective October 13, 2007. The production level was not affected, as employer estimates it remained at 99.9 percent capacity of normal but it did incur unspecified costs to transport staff from other plants and to pay them hourly compensation for overtime work. The union was hesitant to agree that production capacity was that close to normal operations and disputed the likely quality of the work instead. The use of professional and supervisory staff resulted in disruptions to schedules, and various projects were put on hold to continue production and maintenance work. Employer did not contact any individual employees about returning to work under the expired contract during the strike because facility manager Rizor believed he could not communicate directly with striking workers and must communicate only with union representatives, but nor was there an offer made to those representatives to return to work during the strike period. Likewise, the union did not offer to return to work until October 12, 2007, when a new contract was ratified and striking workers returned to work on October 13, 2007.

REASONING AND CONCLUSIONS OF LAW:

Certain issues and findings from the claims level decision are not relevant or are not disputed and can be disposed of summarily. The reference to 871 IAC 24.26(1) in the claims level decision relates to a voluntary leaving of employment due to a change in the contract of hire and is not relevant to the labor dispute issue, since 871 IAC 24.33(2)l requires those claims be processed as if no separation had occurred and additional claims must be taken after the termination of the labor dispute if the individual continues the claim; and 871 IAC 24.34(3) reinforces the policy that the employment relationship continues during a labor dispute unless specifically severed by either party. The parties agree factually with the claims level determination that "[a] labor dispute occurred at the premises of Cargill Incorporated on 10/01/07" and "[o]n 10/12/07 the labor dispute was resolved."

The three remaining points are at least partially disputed:

1. "There was no concurrent stoppage of work."
2. "On 10/01/07 you were unemployed because the collective bargaining agreement had expired."
3. "There was no substantial stoppage of work due to a labor dispute."

Iowa Code § 96.5(4)a provides:

> An individual shall be disqualified for benefits:
>
> (4) Labor disputes.
>
> a. For any week with respect to which the department finds that the individual's 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 the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:
>
> (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and
>
> (2) The individual 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.

None of the claimants fall under the characterizations of subsections (1) or (2). As to the first disputed point, the separate questions of causation posed under Iowa Code § 96.5(4), linking the unemployed status to the work stoppage and then the stoppage of work to the labor dispute were analyzed by the Iowa Supreme Court, which found "the stoppage of work and the labor dispute, are independent conditions." *Crescent Chevrolet v. IDJS*, 429 N.W.2d 148, 152 (Iowa 1988), citing *Alexander v. EAB*, 420 N.W.2d 812, 814 (Iowa 1988). Thus, it is possible for a labor dispute to exist prior to a stoppage of work (such as during negotiations prior to the contract expiration), afterwards (for the time it takes to resume normal operations after a new contract becomes effective), or without a work stoppage (when replacement workers are hired to retain normal operations). See also, Annot. 61 A.L.R.3d 693, 698 (1975). Ultimately, the Court held that for disqualification, a labor dispute and work stoppage must occur in the same week and a work stoppage "ceases when employer's operations are returned to a substantially normal basis." *Crescent* at 153. Therefore, assuming there was a work stoppage in the case at bar, it would fall within the two-week strike period when the claims for unemployment insurance compensation were made. However, the very existence of a stoppage of work remains even after the concurrency is resolved and is addressed in conjunction with the third area of dispute.

871 IAC 24.33(1) provides:

> (1) Definition.
>
> As used in sections 96.5(3)"b"(1) and 96.5(4), the term labor dispute shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual shall be disqualified for benefits if unemployment is due to a labor dispute.

The second dispute centers on the expiration of the labor agreement as a causal link to the unemployment. As the *Crescent* court determined, the unemployment may be caused by the stoppage of work and the stoppage of work may be caused by the labor dispute. However, in

this fact situation, the unemployment was not caused by the mere existence of a labor dispute, since the negotiations on points of disagreement for a new contract began prior to the expiration of the contract. Nor did the unemployment occur because the contract was set to expire, since employer offered to continue the terms of the contract during negotiations beyond October 1, 2007. The unemployment resulted only after the union declined employer's offer to extend the contract, after the membership twice voted down the union's tentative agreement with employer on new contract terms, and voted to strike effective 12:01 a.m. October 1, 2007.

This then leaves the final question of whether there was a substantial stoppage of work due to a labor dispute.

871 IAC 24.34(8) provides:

> A lockout is not a labor dispute if the claimant is willing to continue working under the preexisting terms and conditions of the expired collective bargaining agreement for a reasonable period of time while a new collective bargaining agreement is negotiated. A lockout is a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get more desirable terms for the employer.
>
> a. The test for determining whether a stoppage of work is a lockout or labor dispute is to determine the final cause and the party ultimately responsible for the work stoppage. If the employees have offered to continue working for a reasonable period of time under the preexisting terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations and the employer refuses to maintain the status quo by extending the expired contract, the resulting work stoppage constitutes a lockout and the claimants shall not be disqualified because of a labor dispute.
>
> b. A cessation of employment by the employer is not a lockout if:
>
> (1) The stoppage of work is in the same facility or another facility of the employer and the claimant is directly involved in the labor dispute and the collective bargaining negotiations will directly affect the claimant's condition of employment, or
>
> (2) The claimant or the recognized collective bargaining agent declines an offer from the employer to extend the expired collective bargaining agreement while negotiations continue for a reasonable period of time taking into consideration the nature of the employer's business, or
>
> (3) The employer can demonstrate that its refusal to allow employees to continue working under the terms and conditions of the expired collective bargaining agreement is due to a compelling reason of such degree that the extension of the contract would be unreasonable under the circumstances.

871 IAC 24.34(9) provides:

> To constitute a labor dispute there must be a stoppage of work at the plant or establishment. If there is no stoppage of work, the individual who leaves employment shall be deemed to have voluntarily quit.

Crescent involved a similar fact scenario when after the contract had expired and negotiations reached an impasse, union members went on strike from multiple employers and were replaced by supervisory personnel and non-union workers, allowing the business operations to continue. The Court addressed the question of whether "any discontinuance of work by striking employees constitutes a disqualifying stoppage of work without consideration of the strike's effect on the employer." *Crescent* at 150. It adopted the widely accepted "American Rule" labeled by the United States Supreme Court (citation omitted), which focuses on the level of employer's operations rather than an employee's non-working status during the strike period and found it consistent with the agency rule (formerly 345 IAC) 871 IAC 24.34(9). *Crescent* at 151.

While the *Crescent* court did not have to look beyond the percentage of reduction in repair orders during the strike period to find a substantial work stoppage, since this employer (Cargill) admitted maintaining capacity of 99.9 percent during the two week strike period, other factors mentioned must be examined to determine if this work stoppage existed, and if so, whether it was substantial.

Citing the supreme court of Pennsylvania, the Iowa Supreme Court found that a lockout by employer is not disqualifying and agreed that:

> "In the very delicate and sensitive negotiations which are involved in the development of a new collective bargaining agreement to replace one that is nearing its expiration, all parties must be sincere in their desire to maintain the continued operation of the employer's enterprise. The law contemplates that collective bargaining will be conducted in good faith, with a sincere purpose to find a basis for agreement. Neither an adamant attitude of "no contract, no work" on the part of the employees, nor an ultimatum laid down by the employer that work will be available only on his (employer's) terms, are serious manifestations of a desire to continue the operation of the enterprise. While either or both of these positions may legitimately be taken by the parties during the bargaining negotiations prior to the expiration of the existing contract, when the contract has in fact expired and a new agreement has not yet been negotiated, *the sole test under [the statute] of whether the work stoppage is the responsibility of the employer or the employees is reduced to the following: Have the employees offered to continue working for a reasonable time under the pre-existing terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations; and has the employer agreed to permit work to continue for a reasonable time under the pre-existing terms and conditions of employment pending further negotiations?* If the employer refuses to so extend the expiring contract and maintain the status quo, then the resulting work stoppage constitutes a "lockout" and the disqualification for unemployment compensation benefits in the case of a "stoppage of work because of a labor dispute" does not apply.

Alexander v. EAB, 420 N.W.2d 812, 815 (Iowa 1988) (emphasis supplied, citation omitted).

Left undecided in that case, but inferred by the passage, is that a work stoppage is caused by the union where it opts not to extend the contract by a reasonable amount of time and strikes immediately upon the contract expiration, as occurred here when the union disrupted the status quo by its rejection of employer's overtures to keep the membership working and continue the operation of the enterprise. The union's excuse for not extending the contract was rather circular, since it argued there were not enough negotiation periods set before the contract would expire, but then presented two tentative agreements to the union membership within a day and would not agree to extend the contract for even a limited number of days in order to reasonably

complete negotiations. Thus, the employer did not lockout the employees and the union brought about the stoppage of work.

The second part of the final question then becomes whether or not the stoppage of work was substantial. Claimants may be disqualified if a labor dispute causes a substantial, though not total, stoppage of employer's work. *Meyer v. IDJS*, 385 N.W.2d 524, 526 (Iowa 1986). There is no specific legislative or judicial guidance on the issue of reconciling the union's unwillingness to continue working under the expired contract terms during a reasonable period of extended negotiations with the employer's ability to operate at essentially full capacity during the work stoppage, but the court in *Crescent* touched on factors of "substantial curtailment including decreased production, business revenues, service, number of employees, payroll or man hours" and found support for a work stoppage based upon repair order reduction of about 30 percent. *Crescent* at 151 and 152. It then rejected the union's suggestion that no work stoppage exists if the business operation continues by "cannibalizing" workers from another department but called for examination of the issue in the context of the entire business operation. *Crescent* at 152.

Iowa Code § 96.5(4)b provides:

> An individual shall be disqualified for benefits:
>
> (4) Labor disputes.
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> b. 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.

The negative impact to employer's business operations outside of Iowa is not relevant to the statutory question and is not addressed here. However, there were multiple and substantial areas of impact to the employer's local business operations, such as disruption of schedules, ongoing projects unrelated to production left idle, and the costs of travel and overtime pay because of the additional effort to bring in a sufficient number of salaried employees from eight other plants outside of Iowa to perform the duties of 102 striking workers for two weeks. Thus, even if local production capacity was 99.9 percent of normal, aside from the union's admission that the quality was suspect, employer went to great lengths and considerable additional expense to continue the operation of the enterprise with no effort whatsoever by the union to preserve the production status quo.

Accordingly, the administrative law judge concludes the claimants were unemployed for the two week period ending October 13, 2007 due to a substantial work stoppage that existed because of a labor dispute.

DECISION:

The November 2, 2007, reference 01, decision is reversed. The claimants are not entitled to benefits for the two-week period ending October 13, 2007.

REMAND:

The issue of whether claimants are individually overpaid benefits as a result of this decision is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis
Administrative Law Judge

_____
Decision Dated and Mailed

dml/kjw