


LEGAL DIVISION
MULTI-CLAIMANT DECISION MEMORANDUM

Date: May 6, 2019

To: Adjudications Hubs and Programs and Services Coordinators

From: Anne FF Rugens  Principal Attorney

Susan H Crabb  Programs & Services Coordinator

Subject: **LABOR DISPUTE**

**United Food and Commercial Workers International Union
Locals 919 & Local 371** v. **The Stop & Shop Supermarket
Company, LLC
ER# 95-070-46**

Claimants: Abby Jo Rivera (919)

Background

Approximately 11,000 retail grocery workers in Connecticut and Rhode Island are involved in a labor dispute with The Stop & Shop Supermarket Company LLC. The workers are members of United Food and Commercial Workers International Union (UFCW). The Connecticut employees are members of Locals 919 and 371. A predetermination hearing in the above matter was conducted in writing on May 1, 2019. Hearing notices and questionnaires were sent to the named claimants, The Stop & Shop Supermarket Company, LLC (hereinafter "the Employer") and UFCW Locals 919 and 371 (hereinafter "the Unions"). Both claimants provided a written statement. J. William Gagne, Jr., Attorney on behalf of the Local 919 claimant and that particular local of the Union, participated in writing. Mark Espinosa, President of Local 919 provided a written Affidavit. Corporate Cost Control, agent for the employer, also provided a written statement. UFCW Local 371 provided a statement. The responses by the Unions are similar in content. To date, 3824 workers in Connecticut have filed for benefits.

Findings

The most recent collective bargaining agreements between members of the Unions and the employer expired on February 23, 2019 at midnight. Negotiations for a new contract started on January 14, 2019. The members of the Unions continued working under the terms and conditions of the expired contracts until 12:45 p.m. on April 11, 2019, at which time the Unions elected to withhold the services of its members and a labor dispute commenced. There were picket lines set up at the various store locations in Connecticut. Managers, workers who

crossed the picket lines, and temporary workers performed the duties normally performed by members of the Unions. There were no reports of threats or violence on the picket lines and work was available to the employees if they had chosen to cross the picket lines. The parties reached a full agreement on April 21, 2019 and the striking workers returned to work on April 22, 2019.

The record reveals that the claimants last worked on April 11, 2019. They became unemployed due to the labor dispute and both claimants filed a claim for unemployment benefits effective April 7, 2019.

The record establishes that both claimants reported for duty the day the strike commenced but left part way into their shift because they were participating in the strike.

Decision

Conn. Agencies Regs. §31-235-1(f) defines "labor dispute" as "any controversy concerning terms or conditions of employment, or concerning association or representation of person in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations or any other controversy arising out of respective interests of employer and employee."

Conn. Gen. Stat. Section §31-236(a)(3), provides in pertinent part that an individual shall be ineligible for benefits:

during any week in which it is found by the Administrator that his total or partial unemployment is due to the existence of a labor dispute other than a lockout at the factory, establishment or other premises at which he is or has been employed, provided the provision of this subsection shall not apply if it is shown to the satisfaction of the Administrator that (A) he is not participating in or financing or directly interested in the labor dispute which caused the unemployment, and (B) he does not belong to a trade, class or organization or workers, members of which, immediately before the commencement of the labor dispute, were employed at the premises at which the labor dispute occurred, and are participating in or financing or directly interested in the dispute; or (C) his unemployment is due to the existence of a lockout. A lockout exists whether or not such action is to obtain for the employer more advantageous terms when (i) an employer fails to provide employment to his employees with whom he is engaged in a labor dispute, either by physically closing his plant or informing his employees that there will be no work until the labor dispute has terminated, or (ii) an employer makes an announcement that the work will be available after the expiration of the existing contract only under terms and conditions which are less favorable to the employees than those current immediately prior to such announcement; provided in either event the recognized or certified bargaining agent shall have advised the employer that the

employees with whom he is engaged in the labor dispute are ready, able and willing to continue working pending the negotiation of a new contract under the terms and conditions current immediately prior to such announcement.

The statutory definition of "lockout" is two-pronged and requires findings that (1) an employer made an announcement that work will be available after the expiration of the existing contract only under terms and conditions which are less favorable to the employees than those current immediately prior to such announcement and (2) provided, the union must have given notice to the employer that the employees participating in the labor dispute were ready, able and willing to continue working pending the negotiation of a new contract under the terms and conditions current immediately prior to such announcement.

The statutory definition of "lockout" cannot be met unless both prongs of the definition have been satisfied. Under Section 31-236(a)(3) of the Connecticut General Statutes, each week of unemployment is to be treated as a severable unit. *Conte v. Egan*, 135 Conn. 367, 373 (1949). The Administrator may find that an individual's unemployment is due to the existence of a labor dispute other than a lockout in one week, yet determine that his unemployment was for a different non-disqualifying reason in the following week. A strike may be converted into a lockout, for purposes of unemployment compensation eligibility by the occurrence of those conditions described in the statutory definition. *Sturtevant v. Tectonic Industries, Inc.*, Board Case No. 1860-BR-83, *Simons v. Colt Industries*, Board Case No. 1335-BR-87 (4/29/88).

A review of the record reveals that there is no dispute that the employer did not announce that there would be no work while the labor dispute was ongoing or make any effort to physically prevent employees from entering the work site.

Additionally, the parties concur that the employer did not make an announcement that work would be available after the expiration of the existing contract only under terms and conditions which are less favorable to the employees than those current immediately prior to such announcement. To determine what conditions existed "immediately prior to the announcement," it is helpful to look to Board of Review precedent and recent Supreme and Superior Court decisions. The phrase "current immediately prior to" the announcement has consistently been construed to mean the last mutually agreed upon terms between the union and the employer. See *Sturtevant v. Tectonic Industries*, Board Case No. 1860-83-BR (10/6/83); *Simons v. Colt Industries, Inc.*, Board Case No. 1335-87-BR (4/29/88). See also *Church Homes, Inc. v. Administrator, Unemployment Compensation Act, et. al*, 250 Conn. 297 (8/24/99), citing to *Simons v. Colt Industries, supra* ("Any mutually agreed upon past practice or term or condition to which both parties stipulate will be a term and condition current immediately prior to 'such announcement.' The record establishes that workers were permitted to work under the terms and conditions of the expired contracts during the negotiation of the new contracts. Management employees were reassigned to cover the most essential bargaining unit work and the Employer has also hired temporary workers. After three months of negotiations failed to produce a new agreement, the Unions went on strike on April 11, 2019. Although one party

asserted that the employer engaged in a constructive lockout, this premise is not recognized in Connecticut law.

Accordingly, the record illustrates that the first prong of the two-pronged definition of a lockout has not been satisfied.

Finally, there is no dispute in the record that the Unions did not advise the Employer that their members were ready, able and willing to continue working pending the negotiation of a new contract. The statute requires that the employees advise the employer that they are ready, able and willing to continue working (1) "pending the negotiation of a new contract" and (2) "under the terms and conditions current immediately prior to such announcement." The record is devoid of evidence to support a finding that the Unions provided a statement to meet the language of the statute. Thus, the record establishes that the Unions failed to satisfy the second prong of the two-pronged definition of a lockout.

Accordingly, absent evidence establishing the narrow statutory provisions of the lockout definition set forth in Conn. Gen Stat. §31-236(a)(3), it must be determined that the claimants' unemployment was due to the existence of a labor dispute other than a lockout. As such, benefits are denied.¹

This decision may be used as guidance for any similarly situated claimants. Any questions regarding application of this decision may be directed to this office. In addition, any cases involving different or unusual circumstances may be forwarded to this office. The Master claimant's fact-finding report should contain an "M" in the multi-claimant indicator field. All other claims adjudicated based on this memorandum should contain a "Y" in the multi-claimant indicator field.

Primary Contact: Susan Crabb

Labor Dispute: Benefits denied effective April 7, 2019 using the following variables.

15-205 Labor Dispute – Definite Period

EMP-RESP "Y" MOH "K" ISS-TYP "A"

V-1 95-070-46

V-2 4/7/19

V-3 4/27/19

V-5 4/11/19

V-6 4/21/19

Multi Claimant Field "Y"

¹ As an aside, the record reveals that certain union members received strike benefits in the amount of \$100. It is noted that section 31-236-50 of the Regulations of Connecticut State Agencies provides that payments rendered by a union to an individual involved in a labor dispute shall have no effect on the individual's benefit entitlement. As such, if claimants had been found eligible, the strike benefits would not be allocable.

Labor Dispute
The Stop & Shop Supermarket Company LLC
UFCW Local 919 & 371

Consolidation of Appeals

In order to consolidate individual appeals of this decision, any claimant appeal taken or received should not be data entered using the AU51 function. Instead, please complete the appeal form UC352, and notify Susan Crabb. She will coordinate the consolidation with the Appeals Division. Regarding confidentiality, and without the informed consent of the individual master claimants, the names of the master claimants and any information provided may only be provided to the specific Union of which the specific master claimant is a party.