15.00

LABOR DISPUTES

Section 29(8)

Section 29(8)

LABOR DISPUTE, Burden of proof, Controversy, Disguised layoff, Expiration of contract, Lockout, Peaceful negotiations, Substantial contributing cause

CITE AS: Smith v ESC, 410 Mich 231 (1981); Doerr v ESC, 410 Mich 231 (1981).

Appeal pending: No

Claimant: Gary Smith, et al
Employer: Imerman Screw Products Co., et al
Docket No: B76 699 51312 et al

SUPREME COURT HOLDING: "[A] lockout may be a manifestation of a 'labor dispute in active progress' as that term is utilized in the ESA."

FACTS: "In both of these cases, the employer locked out its employees upon the expiration of their collective bargaining agreement after negotiations to arrive at a new agreement had been unsuccessful."

DECISION: (1) The claimants in Smith are disqualified under Section 29(8) of the Act. (2) Doerr is remanded to the Board of Review.

RATIONALE: "The definition of the term 'labor dispute' as set forth in Part 3A requires that there be a controversy."

"An employer may not use the failure to reach an agreement as a pretext for charging a labor dispute when it would otherwise have curtailed operations because of economic conditions."

"In conclusion, we hold that a lockout may be a manifestation of a 'labor dispute' in active progress' as that term is utilized in the ESA. If a claimant cannot work because of a lockout, 'in the establishment in which he is or was last employed', and if the substantial contributing cause of the lockout is a labor dispute, then the claimant falls within the purview of the disqualification of [S.] 29(8)."

Section 29(8)

LABOR DISPUTE, Same establishment, Single facility, Truck drivers

CITE AS: Noblit v The Marmon Group, 386 Mich 652 (1972).

Appeal pending: No

Claimant: Walter G. Noblit, et al
Employer: The Marmon Group
Docket No: B66 3622 RM 35552

SUPREME COURT HOLDING: Where an employer has only one facility, truck drivers who deliver the finished product are employed at the same establishment as inside workers.

FACTS: The employer had only one location, a foundry from which the firm shipped finished products on trucks operated by company employees. The claimants were truck drivers who became unemployed because of a strike by the foundry workers. The drivers belonged to a different union, and did not honor the picket lines of the foundry workers.

DECISION: The claimants are disqualified from receiving benefits.

RATIONALE: "There is only one establishment in this case. All of the defendant's employees are employed at that one establishment. Were we to engage in fancy linguistic footwork to conclude otherwise, we would be defeating, not advancing, the declared legislative policy."

"That policy is not only to relieve from involuntary unemployment, but to do so in a manner calculated to avoid any encouragement of work stoppages arising out of labor disputes. This, the legislature has chosen to do in part by declaring a conclusive presumption that there is such a community of interest between the employees of a single establishment that it is impractical to attempt to distinguish between those employees whose unemployment is due to the vicissitudes of the market place, and those whose unemployment is due to the breakdown of internal labor management relations."

Section 29(8)

LABOR DISPUTE, Direct interest, Financing, Participation

CITE AS: Burrell v Ford Motor Co., 386 Mich 486 (1971).

Appeal pending: No

Claimant: Bartholomew Burrell, et al
Employer: Ford Motor Company
Docket No: B65 3701 34711

SUPREME COURT HOLDING: Where contract issues have been resolved by a claimant's local and by the national union, but new contracts have not been executed, and the claimant's unemployment is caused by strikes at integrated facilities, the strike fund portion of the claimant's regular union dues is not regarded as financing the labor dispute, but the claimant is deemed to have a direct interest in the labor dispute.

FACTS: Following the reopening of contract negotiations, the claimants were laid off from their jobs at nine Ford plants in Michigan because of strikes at other integrated facilities in six states. All relevant issues had been resolved at the national level and at each of the claimants' locals. New contracts were not signed until the labor disputes ended at the other plants. The regular union dues included an amount allocated by the union to its strike fund.

DECISION: The claimants are disqualified from receiving benefits.

RATIONALE: "As to plaintiffs, all issues, local or national, had been agreed to. Any local demands won at the struck plants would not be implemented at the claimants' plants. We find no basis for disqualification on the ground of participation."

As to financing, the Court adopted the finding of the Appeal Board: "The facts in the instant matter clearly show that the Union did not increase the amount of its dues nor re-designate any portion thereof after the inception of the labor dispute on June 1, 1964."

"The Collective Bargaining Agreements, both national and local, pertaining to claimants had 'expired', they had been 'opened by mutual consent', and their terms could have been 'modified, supplemented or replaced' (even though they were not) until such time as the newly negotiated agreements became fully effective by formal execution."

Section 29(8)

LABOR DISPUTE, Burden of proof, Eligibility, Lockout, Slowdown

CITE AS: Michigan Tool Co v ESC, 346 Mich 673 (1956).

Appeal pending: No

Claimant: Joseph Chile, et al
Employer: Michigan Tool Co.
Docket No: B53 2302 15424

SUPREME COURT HOLDING: As a general rule, a claimant has the burden of establishing eligibility; one exception is that an employer has the burden of proving that unemployment is caused by a labor dispute.

FACTS: The 129 claimants were locked out for approximately two weeks. The employer had accused them of organizing a slowdown and thus causing a sharp decline in production. The employer contended that the closing of the plant was forced by the drop in the workers' output.

DECISION: The claimants are entitled to receive benefits because the stoppage of work did not result from a labor dispute.

RATIONALE: "Under the proofs which were submitted to it, the appeal board properly found that employer had failed to establish a slowdown, and we cannot say that this finding was contrary to the great weight of the evidence. Employer's notice to its employees that its plant was being closed gave as the only reason for this action, with the resulting stoppage of work, that plant production was not maintained at its proper level and that claimants had failed to give a fair day's work."

"Employer asserts that the burden of establishing eligibility for benefits under the act is upon claimants. This broad principle is a correct general statement of the law. Cassar v Employer Security Commission, 343 Mich 380. It is, however, subject to certain exceptions. The facts which would prove a slowdown were peculiarly within the knowledge and control of employer, and under such circumstances the burden was upon it to produce competent and convincing evidence that there had in fact been a slowdown."

15.05

Section 29(8)

LABOR DISPUTE, Shutdown-start up operations, Lay off, Labor dispute in active progress

CITE AS: Scott v Budd Co, 380 Mich 29 (1978).

Appeal pending: No

Claimant: Clarence Scott, et al
Employer: The Budd Company
Docket No: B64 1637(1) 32860

SUPREME COURT HOLDING: ..."[I]ndividuals who become unemployed because of shutdown or start-up operations caused by a labor dispute in the establishment in which they are employed" are disqualified for unemployment benefits.

FACTS "On Wednesday, October 30, 1963, a number of employees in the foundry section of the brake drum manufacturing operation of the Budd Company ... walked off the job in protest of disciplinary action taken by management against two employees. As a result, production of castings was substantially curtailed. Through negotiations to settle the matter, start-up operations began in the foundry section on ... November 1, 1963. ... Because castings for some lines were not available from the foundry or from the bank, the company began laying off employees on those lines. Around 64 employees were laid off on November 4 and an additional 21 on November 5. The majority were recalled on November 11 and 12 and all were back at work by the 18th."

DECISION: The claimants are disqualified because of the labor dispute.

RATIONALE: Under Section 29(8) there are "three time intervals" relative to a disqualification: "(1) the time while a labor dispute is in active progress, (2) the time during which shutdown operations take place, and (3) the time during which start-up operations occur. These time periods may overlap in a given situation or each might be a separate segment of time. Each is a ground for disqualification if the requisite causal connection is established with a claimant's unemployment.

"[T]o adopt the construction ... that the shutdown and start-up clauses are operative only while the labor dispute is in active progress, would be to render those provisions without meaning in the statute because employees whose unemployment is due to a labor dispute then in active progress are disqualified by virtue of that fact. The court does not impart a nugatory meaning to words in a statute if the words are susceptible to being made effective."

11/90
NA

Section 29(8)

LABOR DISPUTE, Building trades, Contractor association, Contractor/employer, Separate establishment.

CITE AS: Peterson v Bechtel Corporation, No. 70457 (Mich App December 19, 1984).

Appeal pending: No

Claimant: Reuben Peterson, et al
Employer: Bechtel Corporation
Docket No: B78 62256 72839

COURT OF APPEALS HOLDING: "Bechtel was the 'establishment' in which plaintiffs were employed and in which the labor dispute occurred, plaintiffs are involved by definition 'directly involved' under Section 29(8)(a)(10)."

FACTS: Bechtel contracted with Cleveland Cliffs to engineer and construct an iron ore facility. As contractor/employer, Bechtel hired from various building trades and was a member of the Michigan Chapter of Associated General Contractors,(MAGC). A majority of craft union contracts expired with MAGC. Negotiations reached an impasse and picketing began by the carpenter union. Claimants honored the pickets, though not members of the carpenter union. Bechtel, deferred to by Cleveland Cliffs, closed the facility. Claimants argue that Bechtel was not the establishment in which claimants were employed, but either MAGC or Cleveland Cliffs.

DECISION: Claimants are disqualified under the labor dispute provisions of the Act.

RATIONALE: Bechtel, an active member of MAGC, was the employer/ establishment against which the strike activity was directed. Bechtel, not Cleveland Cliffs, made decision to close the facility and thereby continue the effects of the strike.

Section 29(8)

LABOR DISPUTE, Adjacent plants, Refusal to cross picket line, Threats, Voluntary leaving

CITE AS: Kalamazoo Tank & Silo Company v UCC, 324 Mich 101 (1949).

Appeal pending: No

Claimant: Eli W. Adams, et al
Employer: Kalamazoo Tank & Silo Company
Docket No: B6 794 3360

SUPREME COURT HOLDING: ... [C]laimants were entitled to benefits since the situation confronting claimants was the creation of and attributable to employer and claimants were unemployed through no fault of their own.

FACTS: A picket line was established by a union, to which claimants did not belong, around both the plant where the picketers worked as well as around the adjacent plant at which claimants worked. While some employees of employer crossed the picket line, others did not do so because personal safety was threatened.

DECISION: Claimants are not disqualified for benefits due to voluntary leaving.

RATIONALE: Claimants were denied safe access to the plant. They had nothing to do with or say about the location of the two plants of the common parking space and entrance or the joint use of the property by the employees of the two plants. At no time did employer offer claimants the free and safe access to the plant to which they are entitled.

Section 29(8)

LABOR DISPUTE, Refusal to cross picket line, Picket line violence

CITE AS: Dynamic Manufacturers, Inc. v UCC, 369 Mich 556 (1963).

Appeal pending: No

Claimant: Vernon Mason
Employer: Dynamic Manufacturers, Inc.
Docket No: B60 2976 25478

SUPREME COURT HOLDING: Whether the refusal of claimants to cross the picket line disqualified them (for benefits) was a question for administrative, rather than judicial, determination.

FACTS: A labor dispute arose at employer's work place with immediate work stoppage and picketing. Claimants who were laid-off employees were recalled to work. Claimants reported to the work site but each was deterred from crossing the picket line by threats of violence and fear of personal harm.

DECISION: Claimants are not disqualified for benefits either for failure to accept suitable work or because of the existence of a labor dispute.

RATIONALE: Justice Souris - Concurring:

> "The Referee and appeal board found as a fact that claimants refused to cross the picket line because of violence. That factual finding is not against the great weight of the evidence. Having so found, the Referee and appeal board correctly concluded that neither asserted disqualifying provisions of the Act was legally applicable."

Section 29(8)

LABOR DISPUTE, Interim employment

CITE AS: Great Lakes Steel Corp v Employment Security Commission, 381 Mich 249 (1968).

Appeal pending: No

Claimant: Thomas Moceri, et al
Employer: Great Lakes Steel Corporation
Docket No: B60 1064 24588

SUPREME COURT HOLDING: " ... claimants are eligible for benefits because of layoffs by their interim employers."

FACTS: Claimants were employed by Great Lakes Steel. Claimants, among others, went on strike because of a labor dispute at Great Lakes Steel. Subsequent to the commencement of the strike, claimants obtained interim employment. From this employment, claimants were laid off before the strike at Great Lakes Steel had ended. Claimants seek benefits for the period of unemployment between the time they were laid off by the interim employers and the time they returned to work at Great Lakes Steel.

DECISION: Claimants are not disqualified for benefits due to a labor dispute in the establishment in which they were last employed.

RATIONALE: The Court adopted the reasoning used by the Court of Appeals, Great Lakes Steel Corporation v Employment Security Commission 6 Mich App 656 (1967):

> "We have previously held that although an employer - employee relationship did so exist between Great Lakes and the claimants for certain purposes, the interim employer became the 'establishment in which he is or was last employed,' when employment with such employer had been obtained. In our view, the interim employer then also became the 'employing unit' within the meaning of section 48."

Editor's Note: Section 29(8)(b) of the MES Act was amended after Great Lakes Steel. See Empire Iron Mining Partnership at Digest 15.35.

Section 29(8)

LABOR DISPUTE, Misconduct, Collective bargaining agreement, Commission neutrality

CITE AS: Lillard v Employment Security Commission, 364 Mich 401 (1961).

Appeal pending: No

Claimant: Freddie Lillard
Employer: Chrysler Corporation
Docket No: B58 817 20795

SUPREME COURT HOLDING: " ... [I]t is not the role of the Michigan Employment Security Commission or the Courts to judge the merits of a labor dispute."

FACTS: Claimant was discharged for an unauthorized walkout. The walkout contravened provisions of the contract in force between employer and claimant's union. The claimant was a member of a department where, as a result of newly automated process, jobs were being eliminated. Claimant's walkout was in protest of job elimination by employer without consultation with the union.

DECISION: The labor dispute section of the statute applies and it is in error in applying the misconduct provision.

RATIONALE: " ... This appeal represents still another attempt to make use of a public act, the Michigan employment security act, as a disciplinary measure to enforce a private collective bargaining agreement. ... The full measure or discipline provided by the collective bargaining agreement has been applied to this claimant. As far as the private collective bargaining agreement is concerned, claimant has lost his job and his case."

"Nothing appears more certain than that this was a labor dispute. This was a disagreement between some employees of the Chrysler Corporation and their employer over job elimination and work standards. Lack of union sanction for the stoppage does not change the nature of the difficulty. The labor disputes disqualification should have been applied."

Section 29(8)

LABOR DISPUTE, Financing, Special strike fund dues, Meaningful connection, Significant amounts, Proximate relation, Foreseeability of unemployment

CITE AS: Baker v General Motors Corp, 420 Mich 563 (1984); Aff'd 478 US 621 (1986).

Appeal pending: No

Claimant: A. G. Baker, et al
Employer: General Motor Corporation
Docket No: B69 3117 40569

SUPREME COURT HOLDING: A meaningful connection between financing a labor dispute and unemployment exists where the worker engages in financing in significant amounts and at times proximately related to the dispute which caused the worker's unemployment.

FACTS: The relevant national and local agreements expired in September, 1967. The claimants paid special increased strike fund dues in the following two months. Workers at several functionally integrated plants struck the employer in January, 1968 and drew strike pay. The claimants became unemployed when the strikers caused a shut down of operations at their locations.

DECISION: Plaintiffs are disqualified because they financed a labor dispute meaningfully connected with their unemployment.

RATIONALE: Plaintiffs paid emergency dues "for the purpose of supporting labor disputes. It was foreseeable that the dues would be used to support local strikes. Because the operation of General Motors is comprised of a series of interrelated production units ... it was foreseeable that a strike against one plant would result in layoffs at plants not involved in the dispute ... The amount of emergency dues when considered in the aggregate, in terms of the plaintiffs contributions and in terms of the effect on the strikers, was significant and demonstrates a meaningful connection with the dispute that caused the unemployment." Payment of the emergency dues immediately preceded the dispute that caused the unemployment, the time lag being minimal when considered in the light of the method employed.

After remand, the decision of the Board is affirmed by an equally divided court.

NOTE: The U.S. Supreme Court held the "financing" disqualification in the Michigan statute as construed by the state Supreme Court is not preempted by federal law. While federal law protects the employees' right to authorize a strike, it does not prohibit a state from deciding whether or not to compensate employees who thereby cause their own unemployment.

Section 29(8)

LABOR DISPUTE, Misconduct discharge, Contract penalty, Statutory construction

CITE AS: Linski v ESC, 358 Mich 239 (1959).

Appeal pending: No

Claimant: William Linski
Employer: Wood Fabricating Co.
Docket No: B57 1602 19509

SUPREME COURT HOLDING: Where there is in the same statute a specific provision, and also a general one which would include matters embraced in the former, the rule of statutory construction requires application of the specific section, as opposed to the general section.

FACTS: Appellant was the union steward. He was discharged after calling a strike which was unauthorized by the union, and in violation of the contract.

DECISION: The claimant is disqualified under the labor dispute section of the Act.

RATIONALE: "The statute provides 2 alternative disqualification provisions possibly applicable to the present situation. The labor dispute disqualification is specific. The misconduct disqualification is more general ... The most ordinary rule of statutory construction demands application of the specific section, as opposed to the general section.

"On the surface of this matter, the episode we deal with has all of the appearances of a labor dispute ... We do not hold that a finding that a labor dispute exists necessarily excludes application of the misconduct penalty. What would be misconduct is not cured by the fact that it occurred in the course of a labor dispute. What we deal with here, however, is peaceful cessation of work. Claimant's action is termed wrong because it was not in accordance with the terms of the contract concerned. The record discloses this to be true. And the record also shows that the contract penalty of discharge has been applied. We can find no warrant for adding to the contract penalty for breach still another penalty not squarely spelled out in the statute. See T. R. Miller Mill Co., Inc., v Johns, 261 Ala 615."

15.13

Section 29(8)

LABOR DISPUTE, Permanent replacements, Termination of labor dispute disqualification

CITE AS: Plymouth Stamping, Div of Eltec Corp. v Lipshu, 436 Mich 1 (1990).

Appeal pending: No

Claimant: Mike Lipshu, et al
Employer: Plymouth Stamping Div of Eltec Corp.
Docket No: B81 84901 84830 et al

SUPREME COURT HOLDING: "[A]ny striker who is permanently replaced is entitled to benefits from that time forward unless and until some succeeding event again renders the labor dispute a substantial contributing cause of the unemployment."

FACTS: Claimants began striking after the labor contract expired. The employer began hiring replacement workers and notified the union that the strikers had been permanently replaced. Later, it notified the union that there were seven positions that the sixteen strikers could immediately fill if the union accepted the employer's last contract offer. The union advised that the strikers would return only as a group and only after the employer fired or laid off all replacement workers.

DECISION: The labor dispute disqualifications terminated when the employer notified the strikers that they had been permanently replaced.

RATIONALE: When the employer notified the claimants that they had been permanently replaced, the labor dispute ceased to be a substantial contributing cause of their unemployment. Baker v General Motors Corp, 409 Mich 369 (1980). However, the claimant's refusal of a subsequent offer of employment could again cause the labor dispute to become a substantial contributing cause of their unemployment. The matter was remanded to the Commission for further factual development regarding the availability of specific positions after the replacement workers became permanent employees, the claimant's eligibility to fill any such positions, and what notification, if any, was given to the union, and to consider any other bases on which the claimants may or may not be eligible for benefits.

Section 29(8)

LABOR DISPUTE, Flight personnel, Ground personnel, Same establishment

CITE AS: McAnallen v ESC, 26 Mich App 621 (1970).

Appeal pending: No

Claimant: Carole J. McAnallen, et al
Employer: United Air Lines
Docket No: B67 309 35243

COURT OF APPEALS HOLDING: Flight personnel who work in an airplane, are not employed in the same establishment as the ground personnel of an airline.

FACTS: The claimants worked as cabin attendants and pilots. "They were laid off for a month in July-August, 1966, because of a nationwide strike of the ground personnel of the airline."

DECISION: The claimants are not disqualified for benefits because of a labor dispute.

RATIONALE: "In Northwest Airlines, Inc. v Employment Security Commission (1966), 378 Mich 199, the claimants were Michigan-based ground service employees of Northwest Airlines who were laid off from work as a result of a strike by flight engineers who were domiciled in Minneapolis and Seattle but who were attached to aircraft which flew from place to place throughout the airline system, including Michigan. The issue there, as here, was whether the claimants' unemployment was the result of a strike 'in the establishment' where they were employed. It was held that the non-striking ground personnel were not employed in the establishment of the striking personnel."

"The flight personnel, who work in the airplane as it flies from one place to another, constitute a work force separate and apart, physically and functionally from the ground personnel at the airport. Focusing on the character of the 'worker's employment and the character of the place in which it was performed,' viewing the matter 'from the standpoint of the worker's employment' (Northwest, p 133), we conclude that the plaintiffs, who perform their services in an airplane, were not employed in the airport or the establishment where the striking ground personnel were employed."

Section 29(8)

LABOR DISPUTE, Controversy, Lockout, Termination of contract

CITE AS: Salenius v Jim Cullen, Inc., 33 Mich App 228 (1971).

Appeal pending: No

Claimant: Robert A. Salenius, et al
Employer: Jim Cullen, Inc.
Docket No: B68 3343 36845

COURT OF APPEALS HOLDING: Where union members terminate their contract upon its expiration but continue to work, and the employer agrees to adopt whatever contract terms result from negotiations between the union and other employers, a subsequent lockout is not a labor dispute.

FACTS: The employer was a Wisconsin-based construction firm which had one Michigan work site but no ties to the Michigan Chapter of the Associated General Contractors, whose member companies had been struck by the General Laborers' Union. The Union's contract with the employer had been terminated, but its members stayed on the job. The employer agreed to accept the terms of the contract being negotiated with the M.A.G.C. After three weeks without a contact the employer locked out its workers.

DECISION: The lockout was not due to a labor dispute.

RATIONALE: "Clearly there was the requisite controversy between MAGC and the Laborers' Union. However, since Cullen was in no way affiliated with the MAGC and did not participate in any capacity in the negotiations between the Union and MAGC, the latters' dispute cannot be transposed to Cullen and those of its employees who were members of the Laborers' Union."

"Competent, material and substantial evidence must establish that the employer and at least one group of his employees expressed, prior to or during the lockout, differing view on wages, and the like. After Cullen informed the Union that it would accept the terms of a contract negotiated by MAGC, there were no negotiations between Cullen and its employees."

"The termination by the Laborers' Union of its contract with Cullen did not constitute a labor dispute."

Section 29(8)

LABOR DISPUTE, Actual violence, Refusal to cross picket line, Picket line violence

CITE AS: Holdridge v Tecumseh Products Co, 80 Mich App 310 (1977).

Appeal pending: No

Claimant: Arthur L. Holdridge, et al
Employer: Tecumseh Products Co.
Docket No: B75 4555 49678

COURT OF APPEALS HOLDING: "[E]mployees who decline to cross a picket line and attend work during a strike because of reasonable fear of violence are nonetheless entitled to unemployment compensation benefits."

FACTS: The claimants were employed as supervisors. Workers at their plant went on strike and began picketing. The employer told the claimants to report for work.

"The foremen testified before the hearing Referee that they were subjected to threats of violence. One of the foremen testified that when he attempted to drive across the picket line, his vehicle was forced to a stop by one of the strikers who 'crawled out of his truck, ripped his coat off and jerked me out of the car.' The foremen decided to not cross the picket line for fear of physical harm."

DECISION: The claimants are not disqualified under Section 29(8) of the Act.

RATIONALE: "The lower court and administrative bodies rule that since plaintiffs were employed in the 'same establishment,' and could have gone to work, 'but for' the labor dispute, plaintiffs were ineligible for benefits. While we acknowledge the rule that a peaceful strike at a single place of employment bars even non-striking employees from unemployment compensation benefits, Noblit v The Marmon Group, 386 Mich 652; 194 NW2d 324 (1972), we hold it inapplicable to these facts calling for application of the ' Actual violence' exception to the general rule that workers involved in a labor dispute are not entitled to unemployment compensation benefits."

"For claimant to be entitled to unemployment benefits during a strike, the claimant must show the following: '(1) That he was willing to cross a peaceful picket line, (2) that he made a reasonable attempt to cross the picket line in question, or (3) that his sole reason for failing to cross the picket line was a well-founded and reasonable apprehension of violence to his person.'"

11/90
NA

Section 29(8)

LABOR DISPUTE, Lockout, Notice requirement, Fair Employment Practices Act

CITE AS: Metropolitan Detroit Plumbing & Mechanical Contractors Association v ESC, 425 Mich 407 (1986).

Appeal pending: No

Claimant: Paul G. Beauvais, et al
Employer: Glanz & Killian, Inc.
Docket No: B75 7176 61578

SUPREME COURT HOLDING: The notice provision of the Michigan Labor Mediation Act is preempted by the National Labor Relations Act, and thus may not be construed to permit payment of unemployment compensation in this case.

FACTS: On May 31, 1974, the contract between the Union and the Association expired. The parties agreed to continue work on a day-to-day basis. During July, two Association members alleged that they were the "objects of selective strike action." On July 29, 1974, a lockout by members of the Association went into effect. Individual employees were notified of the lockout upon reporting to work on July 31, 1974. They were not given the ten day notice required by the Michigan Labor Mediation Act.

DECISION: The claimants are disqualified because of the labor dispute.

RATIONALE: In a unanimous opinion, the Supreme Court held: "The notice provision of the Michigan Labor Mediation Act is preempted by the National Labor Relations Act, and thus may not be construed to permit payment of unemployment compensation in this case. A lockout is one form of labor dispute which will disqualify a worker from receiving unemployment benefits where, as in this case, the unemployment was due to a labor dispute in which the worker was directly involved. The association was not required to give a ten-day notice before instituting the lockout, and the employees are not entitled to unemployment compensation." But cf. Baker v General Motors Corp, 420 Mich 563 (1984); Aff'd, 54 LW 5037 (1986).

Section 29(8)

LABOR DISPUTE, Termination of labor dispute disqualification, Permanent replacements

CITE AS: Wohlert Special Products v MESC, 202 Mich App 419 (1993)

Appeal pending: No

Claimant: Bruce Behnke, et al
Employer: Wohlert Special Products, Inc.
Docket No. B89-52300-117085 et al

COURT OF APPEALS HOLDING: In a labor dispute situation where the strikers' positions were never filled by permanent replacement workers and the strikers could have returned to work at any time, the labor dispute did not cease to be a contributing cause of their unemployment.

FACTS: On January 30, 1989, union employees went on strike after one and a half years of contract negotiations. The employer did not implement a lockout and offered employees the opportunity to continue working. The employer hired some temporary replacements and continued to operate. On May 28, 1989 the employer announced the hiring of permanent replacement workers. Nonetheless, the employer never managed to replace all the strikers and always had numerous unfilled positions. Some workers who applied for benefits after May 25 were granted benefits on the basis that the labor dispute disqualification ended when the employer began hiring permanent replacements.

DECISION: The claimants are disqualified under Section 29(8).

RATIONALE: This case is factually distinguishable from Plymouth Stamping, Division of Eltec Corp v Lipshu, 436 Mich 1; 461 NW2d 859 (1990). In that case, strikers were held eligible for benefits when their positions were permanently replaced, because at that point, the labor dispute was no longer a substantial, contributing cause of their unemployment. They could reapply as new employees after the strike was settled and were subject to rehire as positions became available. In the case at bar, the strikers always had the option of accepting reinstatement to their former positions. Their refusal to return to work precludes them from receiving benefits.

7/99
14, 12, d3:

Section 29(8)

LABOR DISPUTE, Employed, Hearsay rule exception, Sympathy strike

CITE AS: Vickers v ESC, 30 Mich App 530 (1971).

Appeal pending: No

Claimant: Victor L. Vickers, et al
Employer: Asplundh Tree Expert Company
Docket No: B66 3457 35162

COURT OF APPEALS HOLDING: " ... Unemployment is the indispensable, essential element or ingredient which brings into being and sets into motion all of the other provisions of the Act."

FACTS: Claimants were employees of a power line clearance company which had a contract with Detroit Edison. Claimant's union struck the Edison Company. However, only Edison employees were on strike. Claimant's contract was not at issue in the strike. Work was available for each of the claimants during the period of the strike; they knew the work was available, but did not report for work; the union did not want them to work.

DECISION: Claimants are not unemployed as defined by Section 48 of the MES Act.

RATIONALE: The fact that Edison and Asplundh each hold union contracts with the same union is coincidental; but that does not create a unity of entity of the two employing units. The union removed claimants from their jobs in sympathy with the strikers. Claimants lost the benefit of employment in available work and earnings during the period of the Edison strike for reasons other than the employer's failure to furnish full-time regular work.

Section 29(8)

LABOR DISPUTE, Direct involvement, Non-union member, Unemployment notice

CITE AS: Totman v School District of Royal Oak, No. 83-259-023 AE, Oakland Circuit Court (December 21, 1984).

Appeal pending: No

Claimant: Frederick H. Totman
Employer: School District of Royal Oak
Docket No: B82 60001 88326W

CIRCUIT COURT HOLDING: Claimant was unemployed in an establishment where he last worked as a result of a labor dispute.

FACTS: Claimant, a non-union teacher, received an unemployment notice from the employer with no explanation detailed thereon. A strike had been called against the district. Claimant argues that he should not be disqualified, since he was not involved or interested in the labor dispute.

DECISION: Claimant is disqualified under the labor dispute provision of the Act.

RATIONALE: Section 29(8) provides four bases for determining direct involvement in a labor dispute. To establish disqualification, the unemployment [must] be due to a labor dispute in the establishment at which claimant is employed and claimant's unemployment is caused by the dispute. There is no requirement that claimant be directly notified that his unemployment is caused by a strike.

Section 29(8)

LABOR DISPUTE, Bakery workers, Driver salesperson, Lockout, Regional warehouse, Same establishment, Separate union contract

CITE AS: Kovalcik (Grocers Baking Co.), 1980 BR 61434 (B77 16121).

Appeal pending: No

Claimant: Joseph J. Kovalcik
Employer: Grocers Baking Co.
Docket No: B77 16121 61434

BOARD OF REVIEW HOLDING: A wholesale driver salesperson, operating from a regional baked goods warehouse and working under a separate union contract, is not employed in the same establishment as inside workers at the central bakery.

FACTS: A wholesale driver salesperson for a baking company, working from a regional warehouse, was laid off after the employer locked out a group of workers at its central bakery. The labor dispute did not involve the claimant, whose union contract was separate.

DECISION: The claimant is not disqualified for benefits because of a labor dispute.

RATIONALE: "In the case of Graham v Fred Sanders Company, 11 Mich App 361 (1968), the Court of Appeals found that all of the employees in the retail outlets maintained by Sanders were not employed in the same establishment even though there was functional integrality and overall executive supervision; the court held that there was no relationship between the striking bakery employees and the nonstriking employees. One of the factors which the Court looked at in making its decision that the retail employees were not employed in the same establishment was the difference in job skills and working conditions. In the case at hand, the board finds the factual situation to be very similar to Graham v Sanders, supra. This claimant was employed as a wholesale driver salesman who operated out of the regional warehouse which was controlled by the regional manager. The terms and conditions of this claimant's employment were different than those of the bakers who were involved in negotiations which resulted in a lockout. This claimant's employment relationship with the employer was governed by a completely different contract."

Section 29(8)

LABOR DISPUTE, Hourly employees, Production workers, Same establishment, Separate union contracts, Single facility, Skilled trades, Salaried technicians

CITE AS: Dixon (Kelvinator, Inc), 1980 BR 68643 (B79 08055).

Appeal pending: No

Claimant: Roger Dixon
Employer: Kelvinator, Inc.
Docket No: B79 08055 68643

BOARD OF REVIEW HOLDING: Where an employer has only one facility, and a strike by skilled trades and production workers results in the unemployment of salaried technicians covered by a separate union contract, the technicians are employed at the same establishment as the strikers.

FACTS: The Referee stated: "The facts show that the employer has one establishment in Michigan. The claimants in this case are technical salaried people and worked at the same place where the labor dispute occurred. Their unemployment in this case is clearly and concededly due to the strike by skilled trades and industrial workers who were employed at the one and only plant of this employer. The claimants were not involved in this strike, did not refuse to cross picket lines and there is no question that their unemployment was involuntary."

DECISION: The claimants are disqualified because of a labor dispute.

RATIONALE: The Board adopted the decision of the Referee, who held; "[T]here is no question that the involuntary unemployment of the claimants was a category of involuntary unemployment which the legislature has specifically excluded from eligibility for unemployment compensation benefits. There was only one establishment in this case. All of the claimants-employees are employed at that establishment. Were we to engage in fancy linguistic footwork to conclude otherwise, we would be defeating, not advancing, the declared legislative policy. That policy is not only to relieve from involuntary unemployment, but to do so in a manner calculated to avoid any encouragement of work stoppages arising out of labor disputes."

Section 29(8)

LABOR DISPUTE, Disguised lay off, Impasse, Lockout, Strategy, Substantial contributing cause

CITE AS: Alti v Whirlpool Corporation, No. 83-2598 AE-Z, Berrien Circuit Court (May 20, 1985); lv den Mich App March 6, 1986; lv den 425 Mich 881 (1986).

Appeal pending: No

Claimant: Toni Alti, et al
Employer: Whirlpool Corporation
Docket No: B77 1217(1) 62081, et al

CIRCUIT COURT HOLDING: "The lockout by Appellee was not a 'disguised layoff' and the labor dispute was a substantial, contributing cause of appellant's unemployment, (even though it may not have been the only cause)." Claimants disqualified.

FACTS: The collective bargaining agreement expired and subsequent negotiation reached an impasse. The employer locked out the employees. All assembly was transferred to another plant where a third shift was added, plus overtime. Prior to lockout, 10,200 units were produced. After the lockout, 8,600 units were produced.

DECISION: The reduced production during the lockout could have been the result of the conditions from the lockout as well as changing market conditions. To speculate on what effect market conditions had would be just speculation in light of the testimony presented.

RATIONALE: In Smith v MESC, 410 Mich 231 (1981) the Supreme Court held that a lockout was one form of a "labor dispute." The lockout was a strategy to win concessions in the labor dispute.

Section 29(8), 48

LABOR DISPUTE, Lost remuneration, Safety during labor dispute

CITE AS: Roesner (Limbach Company), 1977 BR 52993 (B76 6467).

Appeal pending: No

Claimant: Gregory S. Roesner
Employer: Limbach Company
Docket No: B76 6467 52993

APPEAL BOARD HOLDING: Where there is no violence or threat of violence, an employee who honors the picket line of a union to which he does not belong suffers a loss of remuneration.

FACTS: The claimant was a plumber and a pipe fitter for a subcontractor on a construction project. Union carpenters set up a picket line as part of a strike against the general contractor. Neither the claimant nor his union were involved. The claimant refused to cross the picket line, and so did not work during the strike. Work was available for him, and some plumbers did work while the strike was in effect. The claimant declined to use an alternate entrance designated by his employer.

DECISION: The claimant lost remuneration, under Section 48 of the Act, by his refusal to cross the picket line.

RATIONALE: "The Referee considered this matter under the 'lost remuneration' provisions of Section 48 of the Act. He concluded, on the basis of Michigan Supreme Court decisions Kalamazoo Tank and Silo Co. v Unemployment Compensation Commission, 324 Mich 101 and Dynamic Manufacturers, Inc., v Employment Security Commission, 369 Mich 556, that the employer had failed to provide the claimant an assurance of safety in crossing the picket line and, therefore, that work was not genuinely available for the claimant so as to justify the application of the 'lost remuneration' concept within the meaning of Section 48 of the Act."

"The Appeal Board does not agree with the Referee's finding that the claimant should not be required to cross the picket line in this matter. It is noted that the Michigan Supreme Court decisions on which the Referee relies in reaching his conclusion in this regard, are cases where it was found that the refusal was based on 'violence or the threat of violence.' These cases are distinguished from the present case because there is no showing on the record in this matter that any violence or concrete threat of violence was associated with the carpenter's picket line."

11/90
NA

Section 29(8)

LABOR DISPUTE, Strike, Substantial contributing cause, Partial shutdown

CITE AS: Ide v Four Star Corporation, No. 82-4981 AE, Wexford Circuit Court (March 22, 1984).

Appeal pending: No

Claimant: Lynn Ide, et al
Employer: Four Star Corporation
Docket No: B80 68001 74062

CIRCUIT COURT HOLDING: A partial shutdown by the employer does not terminate a labor dispute.

FACTS: "[A]n existing labor contract ended on September 15, 1979 and a strike followed, terminating after the negotiation of a new contract on February 15, 1980 ... On or about November 9, 1979, after the employer had made its final offer to the union, the employer moved a substantial portion of its machinery, equipment and operation from the Cadillac plant to the Mesick plant some 20 miles away. Most of the management personnel who had been located at Cadillac also moved to Mesick, but some activity remained at the Cadillac plant". In mid November, the company erected a For Sale Sign outside the Cadillac plant. Claimants contend that their unemployment after November 9, 1979, was not due to a labor dispute, but due to a lack of work since the plant was effectively closed and there existed no employment opportunity for them.

DECISION: The claimants are disqualified because of a labor dispute.

RATIONALE: "The claimants were unemployed due to a labor dispute. The claimants were not terminated or discharged by the employer, not locked out by the employer, and the Cadillac plant was not closed ... in November or anytime thereafter."

"The labor dispute ... is a substantial contributing cause of the unemployment" Smith v Employment Security Commission, 410 Mich 231 (1981).

Section 29(8)

LABOR DISPUTE, Direct interest, Non-teaching employees, Same establishment, School district, Teachers

CITE AS: Chadwell v School District of the City of Flint, No. 426 Genesee Circuit Court (April 1, 1981).

Appeal pending: No

Claimant: Anna M. Chadwell, et al
Employer: School District of the City of Flint
Docket No: B78 02421 62957

CIRCUIT COURT HOLDING: Where a teachers' strike causes the unemployment of school secretaries, clerks and food service workers, who can reasonably expect to benefit from the strike, these non-teaching employees have a direct interest in the labor dispute.

FACTS: "The question presented in this case is whether these secretaries, clerks and food service workers are entitled to unemployment benefits to be paid by the Board for the two weeks, approximately, that their 1977 summer vacation was extended by the teachers' strike."

DECISION: The claimants are disqualified because of a labor dispute.

RATIONALE: "Dann v Employment Security Commission, 38 Mich App 608, 196 NW2d 785 (1972) was relied upon by the Board of Review. That case, which never made much sense and which should never have been applied to a school strike, has been discredited by Baker v Gen Motors Corp, 409 Mich 639 (1980)."

"Although the majority of the Board of Review did not consider these issues, I am satisfied that the secretaries and clerks were directly involved as employees in the same establishment as the striking teachers and that all of the claimants reasonably expected to benefit eventually, in direct proportion to the improvement achieved by the teachers' strike and negotiations and that, therefore, they were directly interested and so directly involved."

Section 29(8)

LABOR DISPUTE, Controversy, Employer association, Expiration of contract, Functionally integrated establishments, Lockout, Selective strike

CITE AS: Bedger v Brooks Lumber Co, No. 80-006100 AE, Wayne Circuit Court (April 8, 1981).

Appeal pending: No

Claimant: Norman A. Bedger
Employer: Brooks Lumber Co.
Docket No: B76 18613 56233

CIRCUIT COURT HOLDING: Employees who are locked out are disqualified where " ... the lockout was in direct response to the union's attempt to impact contract negotiations through the use of a selective-strike strategy."

FACTS: The employer belonged to an employer association. "The parties entered into labor contract negotiations which resulted in an impasse. At this time the union chose to strike only one of the association members, Erb Lumber. The association, pursuant to its by-laws, deemed the union action as a strike against all its members and therefore proceeded to lock-out all local 458 employees".

DECISION: The claimant is disqualified under Section 29(8) of the Act.

RATIONALE: "This issue was directly addressed by the Michigan Supreme Court in its reversal of the Court of Appeals decision in Smith decided February 3, 1981 S Ct DKT #62991."

"The Supreme Court said, (at p 6 of slip opinion):

> We hold that a lockout is one form of a 'labor dispute' as that term is used in (S) 29(8). Furthermore, we find that (S) 29(8) exempts lockouts from the labor dispute disqualification only when the labor dispute occurs in functionally integrated establishments operated by the same employing unit.

Clearly these separately owned and operated businesses are not 'functionally integrated' establishments."

11/90
7, 14, d3:NA

Section 29(8)

LABOR DISPUTE, Direct involvement, Non-union member, Unemployment notice

CITE AS: Totman v School District of Royal Oak, No. 83-259-023 AE, Oakland Circuit Court (December 21, 1984).

Appeal pending: No

Claimant: Frederick H. Totman
Employer: School District of Royal Oak
Docket No: B82 60001 88326W

CIRCUIT COURT HOLDING: Claimant was unemployed in an establishment where he last worked as a result of a labor dispute.

FACTS: Claimant, a non-union teacher, received an unemployment notice from the employer with no explanation detailed thereon. A strike had been called against the district. Claimant argues that he should not be disqualified, since he was not involved or interested in the labor dispute.

DECISION: Claimant is disqualified under the labor dispute provision of the Act.

RATIONALE: Section 29(8) provides four bases for determining direct involvement in a labor dispute. To establish disqualification, the unemployment [must] be due to a labor dispute in the establishment at which claimant is employed and claimant's unemployment is caused by the dispute. There is no requirement that claimant be directly notified that his unemployment is caused by a strike.

Section 29(8)

LABOR DISPUTE, Termination of labor dispute, Discharge

CITE AS: Knight-Morley Corp v ESC, 352 Mich 331 (1958).

Appeal pending: No

Claimant: Carlton D. Semos
Employer: Knight-Morley Corp
Docket No: B54 2412 16805

SUPREME COURT HOLDING: Striking workers are not subject to disqualification under Section 29(8) if they are discharged.

FACTS: Claimants went on strike September 30, 1953. As they left they were told that if they struck they were fired and replacements would be hired. They were sent a letter that if they did not report to work by October 5 they would be considered to have quit. Beginning October 5 the employer permanently replaced the striking workers, removed their time cards, cancelled group insurance coverage, and published a notice in a newspaper that the claimants were "no longer employees of this company."

DECISION: Claimants are not disqualified under Section 29(8).

RATIONALE: "It would be difficult to conceive of language and accompanying course of action by an employer more expressive of a present intent to discharge employees or more effective to accomplish that end."

Claimants were still employees while on strike until discharged by the employer. The labor dispute disqualification terminates when the employee is discharged, even though on strike at the time.

Section 29(8)

LABOR DISPUTE, Same establishment

CITE AS: Park v ESC, 355 Mich 103 (1959).

Appeal pending: No

Claimant: Alexander Park, et al
Employer: Ford Motor Co
Docket No: B53 2548 (1) 16396

SUPREME COURT HOLDING: Functional integration, general unity and physical proximity of an employer's plants do not, standing alone, make them a single "establishment" within the meaning of Section 29(8) of the MES Act.

FACTS: Claimants were employed at three Ford plants in the Detroit area. A strike at Ford's Canton, Ohio forge plant resulted in a shortage of necessary parts, and, as a consequence, claimants were laid off. There was no strike vote, walkout or picketing at the three affected plants, and other employees, not affected by the shortage of parts, continued to work.

DECISION: Claimants are not disqualified under Section 29(8).

RATIONALE: At the time, Section 29(8) provided for disqualification if a labor dispute was in "the establishment" where claimants worked. The court concluded the terms "employing unit" and "establishment", are not synonymous, with "employing unit" being the broader, more inclusive term. The court reviewed decisions from other states and quoted the following with approval:

> "... the test of functional integrality, general unity, and physical proximity should not be adopted as an absolute test in all cases of this type. No doubt, these factors are elements that should be taken into consideration in determining the ultimate question of whether a factory, plant, or unit of a larger industry is a separate establishment within the meaning of our employment and security law. However, there are other factors which must also be taken into consideration." Nordling v Ford Motor Co., 231 Minn 68 (1950).

(Note: Section 29(8) was amended in 1963. The amendment did not change the definition of "establishment", but did provide for disqualification in cases of a labor dispute in any other establishment within the United States functionally integrated with the subject establishment and operated by the same employing unit.)

Section 29(8)

LABOR DISPUTE, Same establishment, Direct interest, Bakery workers, Retail workers

CITE AS: Graham v Fred Sanders Co, 11 Mich App 361 (1968).

Appeal pending: No

Claimant: Margaret Graham, et al
Employer: Fred Sanders Company
Docket No: B65 278 33786

COURT OF APPEALS HOLDING: Claimants, non-striking retail employees who worked at diverse locations, were not employed in the "same establishment" as striking bakery production workers.

FACTS: Claimants were employed as retail salespeople at bakery concessions operated by the employer at more than 50 grocery stores throughout the Detroit area. A strike by bakery production workers at the employer's main plant resulted in the layoff of claimants. The two groups of employees belonged to different unions and operated under separate collective bargaining agreements. The employer had a central administrative office adjacent to its manufacturing plant and all personnel and industrial relations decisions were made there. The functions of the bakery workers and retail employees were integrated to the extent neither group could operate without the other.

DECISION: Claimants are not subject to disqualification under Section 29(8).

RATIONALE: "The act contemplates that one employing unit may operate more than one establishment, and that nonstriking employees employed in other establishments will not necessarily be disqualified for benefits. Unity of management, overall executive supervision and functional integrality cannot be determinative because if they are then there would be few, if any, separate establishments.... The bakery employees, who worked in the factory, constituted a work force separate and apart, physically and functionally, from plaintiffs who worked in supermarkets scattered throughout the metropolitan Detroit area.... The relationship of the plaintiffs and of the bakery employees to their units of employment is entirely different. One work force was engaged in production, another in sales. Perhaps most importantly, the aptitudes, skills and labor required of, and working conditions affecting, one work force are entirely different from those in respect to the other."

15.32

Section 29(8), 32(d)

LABOR DISPUTE, Termination of disqualification, Statutory construction, Retroactivity of amendment

CITE AS: Dow Chemical Co. v Curtis, 431 Mich 471 (1988).

Appeal pending: No

Claimant: Irvin Curtis, et al
Employer: Dow Chemical Co.
Docket No: B74 5287 63858

SUPREME COURT HOLDING: An amendment to Section 29(8) of the MES Act is not effective retroactively. The amended eligibility requirements do apply to benefit weeks after the effective date of the amendment.

FACTS: From March 18 - September 9, 1974, the 486 claimants involved in this matter engaged in a strike against the employer. The involved claimants were held disqualified for benefits by the MESC under the labor dispute provision of the MES Act. In accordance with Section 29(8) as then worded, and as construed in Great Lakes Steel Corp v ESC, 381 Mich 249 (1968), claimants "requalified" by securing short term interim employment with other employers. This interim employment lasted less than two days, and each claimant's earnings were nominal. While the strike was in progress the legislative enacted an amendment to Section 29(8), effective June 9, 1974. The amendment provided that in order to terminate disqualification under Section 29(8) a claimant had to perform services with an employer in at least two consecutive weeks and earn wages in each of those weeks in an amount at least equal to his weekly benefit rate.

DECISION: The MESC properly charged employer's account for benefit weeks prior to the effective date of amendment. Employer's account is not to be charged for subsequent weeks. Claimants are not required to make restitution because of a three year statutory bar.

RATIONALE: "In the absence of any clear indication from the legislature that retrospective operation was intended ... we conclude that the MESC properly charged Dow's rating account ... with respect to benefit weeks prior to the effective date of the amendment." However, as eligibility is determined on a weekly basis and Dow timely protested, "[C]laims made for benefit weeks after June 9, 1974, were controlled by the new criteria set forth in the amendment."

"The MESA is so structured that if the law changes or if facts change, an interested party has the right to demand that eligibility or qualification, or both, be determined anew."

6/91
3, 14:G

Section 29(8)

LABOR DISPUTE, Merits of the labor dispute

CITE AS: Lawrence Baking Co. v Unemployment Compensation Commission, 308 Mich 198 (1944).

Appeal pending: No

Claimant: Voyle English, et al
Employer: Lawrence Baking Company
Docket No: 6820 769 7024

SUPREME COURT HOLDING: "The public purpose of the unemployment compensation law is to alleviate the distress of unemployment, and the payment of benefits is not conditioned upon the merits of the labor dispute causing unemployment."

FACTS: Fifteen minutes after 16 of the employer's 38 employees went on strike and interrupted operations, the employer hired new employees and resumed operations without further interruption. The strikers filed for unemployment benefits for weeks after they had been notified that they had been replaced for their participation in the strike.

DECISION: The claimants are not disqualified from receiving benefits.

RATIONALE: This case was decided prior to the 1963 amendments to the labor dispute disqualification provisions of the Act. Prior to such amendments, disqualification would be imposed if the unemployment was due to a stoppage of work existing because of the labor dispute in the establishment. The claimants were held not disqualified because there was no stoppage of operations in the establishment during the weeks for which they were claiming benefits. This decision is included in the Digest because of the significance of the "HOLDING" above.

Section 29(8)

LABOR DISPUTE, Unsafe work conditions, Grievance procedure

CITE AS: Erickson v Universal Oil Products Corp, 36 Mich App 466 (1971).

Appeal pending: No

Claimant: Harold F. Erickson, et al
Employer: Universal Oil Products Corporation
Docket No: B68 4528 (1-65) 37142 thru 37206

COURT OF APPEALS HOLDING: The Employment Security Appeal Board erred in denying benefits without considering claimants' assertion that the changes in the signalling procedures created such an imminent danger to life or limb as to justify their refusal to work.

FACTS: After the employer unilaterally charged the procedures used in signalling the hoist engineer during the raising and lowering of the mancar used to transport the men into and out of the mine, the miners refused to enter the mine. Subsequently, an arbitrator found that the new signalling method was more hazardous than the old method and was, therefore, unsafe within the meaning of the labor agreement in effect.

DECISION: The Court of Appeals remanded the matter to the Appeal Board which again held the claimants disqualified. On appeal of that decision the circuit court reversed stating that the claimants had good cause for leaving their employment. Erickson, et al v Universal Oil Products, No. 78 3657 A, Houghton County Circuit Court (9-21-78).

RATIONALE: "In the ordinary case where the change in working conditions represents a limited hazard, public policy, as expressed in the legislative enactment favors the use of the grievance procedure thereby avoiding a work stoppage. However, in an extraordinary case where there has been a significant increase in the dangers involved in the employment, the Legislature did not expect the men to continue to work at the serious risk of immediate loss of life or limb."

15.35

Section 29(8)

LABOR DISPUTE, Requalification, Interim employment, Objective requirements, "Make-work"

CITE AS: Empire Iron Mining Partnership v Orhanen, 455 Mich 410 (1997)

Appeal pending: No

Claimant: Peter Orhanen et al; Donald Asmund et al
Employer: Empire Iron Mining Partnership
Docket No. B91-02538-RO1-118700W

SUPREME COURT HOLDING: Workers who obtain short term interim employment during a labor dispute can requalify for benefits if they satisfy the objective requirements of Section 29(8)(b). Work for multiple employers does not bar requalification under Section 29(8)(b). There is no subjective "good faith" requirement imposed on the Section 29(8)(b) criteria.

FACTS: During a strike which lasted from July 31-December 1, 1990, sixteen striking employees obtained interim employment for at least two weeks and earned wages equal to or greater than their benefit rate. Some of the employees got jobs through the union hall and worked for multiple employers. When laid off from these interim jobs these workers applied for unemployment benefits. The questions raised are (1) whether or not employment with multiple employers satisfies the statutory requirement that the individual perform services with "an employer" and (2) whether or not there is an implicit requirement that the interim work be accepted in "good faith" and not solely for the purpose of perfecting an unemployment claim.

DECISION: Claimants met the requalification requirements and are entitled to benefits.

RATIONALE: The Act does not require claimants to work for a single employer in order to requalify via rework under Section 29(8)(b). When read in the context of other sections of the MES Act, it is apparent that "an employer" includes multiple employers. There is no implicit requirement that claimants have to show they accepted interim employment in "good-faith." The requirements for requalification are objective and the Act does not contemplate investigation of a claimant's subjective motivation. "Given the remedial purpose of the MEA and the potential to overload the system if subjective criteria were adopted, we will not tread where the Legislature has refused to go. Inquiry into the subjective elements of an employee's employment is outside the bounds of the act."

7/99
11, 12, d3: H

Section 29(8)

LABOR DISPUTE, Lockout, Disguised layoff, Substantial contributing cause

CITE AS: Alexander v A.P. Parts Manufacturing Co., unpublished per curiam Court of Appeals, February 23, 1996 (No. 168700).

Appeal pending: No

Claimant: David J. Alexander, et al
Employer: A.P. Parts Manufacturing Co.
Docket No. B90-60000-119070 et al

COURT OF APPEALS HOLDING: Where, in the context of contract negotiations, the employer increased production in order to build up inventory, then locked out its union employees while negotiations continued, there was evidence sufficient to support the conclusion that claimants' unemployment was substantially related to a labor dispute.

FACTS: Contract between employer and claimants' union (UAW) was to expire February 8, 1990. Since October 1989, employer had been warehousing parts sufficient to cover 2-3 month period following expiration of contract. Additional employees were hired. On December 8, 1989 employees were notified that layoffs were likely as of February 8, 1990 if a contract was reached, because of the stockpiled inventory. On February 8, 1990, employer's final contract offer was rejected. Employees notified of shutdown on February 9th and February 12th for inventory adjustment. On February 13th the employer locked out its union employees. On March 30th the employer gave notice plant would reopen and lockout cease on April 2, 1990. Tentative contract reached May 5, 1990, ratified May 15, 1990.

DECISION: Claimants were subject to disqualification under Section 29(8).

RATIONALE: "Here the parties do not contest whether a labor dispute existed. Therefore, we need only determine whether substantial evidence exists to connect the labor dispute with the lockout." That evidence was supplied by employer testimony the lockout was designed to improve the employer's bargaining position and to narrow the distance between the parties. Warehousing of inventory gave the employer the option of using a lockout as a tactic if negotiations soured.

7/99
19,20, d12:N/A