Labor Dispute Disqualification Under the Ohio Unemployment Compensation Act

Soon after the enactment of the Federal Social Security Act in 1935,[1] all the states[2] and the three territories enacted legislation which provided for the payment of benefits to the unemployed worker. Into each plan was written a provision excepting those workers unemployed due to a labor dispute. Since the enactment of the Ohio Unemployment Compensation Law in 1936,[3] relatively little litigation has involved the labor dispute disqualification. Although the cases that have come before the courts and the administrative bodies have been few, the total number of claimants affected has nevertheless been relatively high.[4] Claims involving

[1] Chapter 9 sub-chapter C of Internal Revenue Code as amended, formerly 49 Stat. 626, C. 531, Title III (1935)

[2] ALA. CODE ANN. tit. 26, § 214, subd. A (1940), ALASKA COMP. LAWS ANN. §51–5–4(d) (1949), ARIZ. CODE ANN. §56–1005d (Cum. Supp. 1947), ARK. DIG. STAT. 1089 (Cum. Supp. 1944), CAL. GEN. LAWS act 8780(d), §56a (1944); COLO. STAT. ANN. c. 167A §5(d) (Cum. Supp. 1947); CONN. GEN. STAT. §7508(3) (1949); Del.: 2 C.C.H. UNEMPLOYMENT SERV., §4027, D.C. CODE §460310(f) (Cum. Supp. 1948); FLA. STAT. §443.06(4) (1943), GA. CODE ANN. §54–610(d) (Cum. Supp. 1947), HAWAII REV. LAWS §4231(d) (1945), 1947 IDAHO LAWS, c. 269, §66(j), ILL. ANN. STAT. c. 45.134(d) (Cum. Supp. 1947), IND. ANN. STAT. §52–1539c (Burns Cum. Supp. 1947); IOWA CODE §96.5(4) (1946); KAN. GEN. STAT. ANN. §44–706(d) (Cum. Supp. 1947); KY. REV. STAT. ANN. §341.360(1) (1948); LA. GEN. STAT. ANN. §4434.4(d) (Cum. Supp. 1947); ME. REV. STAT. c. 24, §5(d) (1944); MD. ANN. CODE GEN. LAWS art. 95A, §5(d) (1939), MASS. ANN. LAWS c. 151A, §25b (1942); 1943 Mich. Laws, c. 246, §29(c), MINN. STAT. ANN. §268.09, subd. 1(6) (West 1945), MISS. CODE ANN. §7379(d) (1943); MO. REV. STAT. ANN. §9431/II(a) (1939), MONT. REV. CODES ANN. §3033.8(d) (Supp. 1939), as amended, Laws 1941, c. 164, §3; NEB. REV. STAT. §480628(d) (1943); NEV. COMP. LAWS ANN., §2825.05(d) (Supp. 1945), N.H. REV. LAWS, c. 218, §4D (1942); N.J. STAT. ANN. §43, 21–5(d) (Cum. Supp. 1948; N.M. STAT. ANN., §57–805(d) (1941); N.Y. LABOR LAW §592(1); N.C. GEN. STAT. ANN., §96–14d (1943); N.D. REV. CODE §52–0602(4) (1943); OHIO GEN. CODE ANN., §1345–6d (1948); OKLA. STAT. tit. 40, §215(d) (1941), ORE. COMP. LAWS ANN., §126–705(d) (Supp. 1947); PA. STAT. ANN. tit. 43, §802(d) (Cum. Supp. 1948), R.I. GEN. LAWS c. 284, §7(4) (1938), S.C. CODE ANN. §7035–85(d) (1942); S.D. CODE §17.0830(4) (1939), TENN. CODE ANN., §6901.29E (Williams Cum. Supp. 1948), TEX. REV. CIV. STAT. ANN., art. 5221b–3(d) (1947); UTAH CODE ANN., §42–2a–5(d) (1943); VT. REV. STAT., §5379 IV (1947); VA. CODE ANN., §1887(97)(d) (1942), WASH. REV. STAT. ANN., §9998–215 (Supp. 1945); W VA. CODE ANN., §2366(78) (1943); WIS. STAT., §108.04(10) (1947); WYO. COMP. STAT. ANN., §54–105B II (1945).

[3] 116 Ohio Laws Pt. II 286 (1936)

[4] Records indicate in 1948 that 6,957 claims were disallowed because claimant was found "not capable or available" and 1,039 claims disallowed due to labor dispute. In 1947, claims disallowed because "not capable or available" amounted to 8,297 and 2,002 due to labor dispute. In 1946, claims disallowed because "not capable or available" numbered 8,514 and 29,506 due to labor dispute. In 1945, claims disallowed because "not capable or available" num-

the labor dispute disqualification have had such significance that the Ohio Bureau of Unemployment Compensation has adopted a special procedure for processing such claims.[5]

Many factors have contributed to reduce the amount of litigation in this area. Possibly the most significant has been the prosperity which has seadily increased since 1939 and particularly through the war production period. Significant also were the "no strike—no lockout" pledges adopted by labor and management on December 23, 1941, upon the suggestion of President Roosevelt. Regardless of what the future may hold, an analysis of the labor dispute disqualification is pertinent today because such disqualification has an undeniable dynamic effect on our economy.

The origin of the labor dispute disqualification is found in the British National Insurance Act of 1911.[6] There it was stipulated that any insured worker who lost employment as the result of a stoppage of work which was due to a trade dispute was disqualified for benefits during the period of such stoppage. Persons finding themselves in such a position were thus left to finance themselves and to maintain their position in the dispute on their own financial resources.

Curiously, the basic requirements established in the Federal Social Security Act,[7] to which state conformity was required, did not contain a labor dispute disqualification clause. However, in various draft bills prepared by the Social Security Administration for the guidance of the states, there did appear such a provision. Many explanations have been proffered for the inclusion of this disqualification. The more important of these have been[8] (1) Un-

bered 14,386 and 16,086 due to labor dispute. *See*, Chart of New Claims allowed or disallowed at initial determination by office, under the Ohio Unemployment Compensation Law for years 1948, 1947, 1946, 1945, published by Division of Research and Statistics, Ohio Bureau of Unemployment Compensation, Columbus, Ohio.

[5] When a claim for benefits is filed, there is indicated on the face of the application whether or not a labor dispute is in progress at the employer's premises. If, however, such fact is not indicated, there is a double check in that the employer, following Regulation 411.2 of Bureau of Unemployment Compensation, must file within 24 hours after cessation of work due to an alleged labor dispute a notice setting forth date when cessation of work began. Upon the Bureau's request, an employer must furnish the names and Social Security account number of all workers ordinarily attached to the establishment.

As the Initial Determination Section receives the applications for benefits, all claims marked labor dispute are separated and collected. The facts of the alleged dispute are submitted to a legal advisor for opinion. Based upon such legal opinion, the claim is either allowed or denied.

[6] Unemployment Insurance Act of 1911, 1 and 2 GEO. V, c. 55.

[7] See *supra* note 1.

[8] Fierst and Spector, *Unemployment Compensation in Labor Disputes*, 49 YALE L.J. 461 (1940), Note, 49 COLO. L. REV. 550 (1949).

employment insurance is designed to insure against those risks which are economic in nature and non-voluntary; (2) If benefits were payable to employees involved in labor disputes, such conflicts would be prolonged with resulting loss to our economy; (3) The added problems of rate making and calculation of the risk and the resulting costs would cause a collapse of the entire scheme of social legislation; (4) The State should maintain a neutral position and not aid in financing one of the parties to the dispute.

Ohio General Code Section 1345-6-d(1) provides ". . . no individual may serve a waiting period or be paid benefits for the duration of any period of unemployment with respect to which the Administrator finds that such individual:

> (1) *lost* his employment or has *left* his employment by reason of a *labor dispute* (other than a lockout) at the factory, establishment, or other premises at which he was employed, as long as such labor dispute continues; . ." (emphasis supplied).

Except for the amendment of October 1, 1941,[9] when the phrase "labor dispute" was inserted in place of the word "strike" there has been no change in this provision since the adoption of the Unemployment Compensation Act in 1936. As will be subsequently indicated, the substitution seems to have broadened the area of disqualification.

WHAT CONSTITUTES A LABOR DISPUTE?

Following the practice of the majority of states,[10] the Ohio Legislature has not defined the term, labor dispute, nor is the legislative intent in any way indicated.

Unfortunately, the issue of what constitutes a labor dispute under the Ohio Act has never been squarely presented to the courts. The Supreme Court of Ohio has implied, however, in *Baker v. Powhatan Mining Company*,[11] that the definition of a labor dispute as contained in the National Labor Relations Act[12] should be followed in determining whether such a dispute exists under our act.[13]

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[9] 119 Ohio Laws 821, 837 (1941).

[10] Only Alabama defines labor dispute in its Unemployment Compensation Law. 26 ALA. CODE, sec. 214A incorporates the Norris-LaGuardia Act definition of the term.

[11] 146 Ohio St. 600, 67 N.E. 2d 714 (1946)

[12] 49 STAT. 449; 29 U.S.C. §§151-166 (1935) Many state courts have adopted the definition of labor dispute contained in the National Labor Relations Act. *See* e.g., Miners in General Group v. Hix, 123 W. Va. 637, 17 S.E. 2d 810 (1941), Sandoval v. Industrial Commission, 110 Colo. 108, 130 P. 2d 930 (1942), Dallas Fuel Co. v. Horne, 230 Iowa 1148, 300 N.W 303 (1941); Barnes v. Hall, 285 Ky. 160, 146 S.W 2d 929 (1940); Huerta v. E. Ragensburg & Sons, C.C.H., U.I. Serv., Fla., par. 8079 (1944).

[13] In the *Baker* case at page 610, the court said, "The mere statement of the facts clearly shows that the situation presented in the instant case was not

Although the *Baker* case arose in 1941 before the amendment and therefore involved the *strike* disqualification, the court—probably aware of the 1941 amendment[14]—accepted the broad definition of a labor dispute. In subsequent decisions, both the Board of Review and the Administrator have yielded to the precedent established in the *Baker* case.[15]

Some basis can be found for the contention that the definition of a labor dispute in the National Labor Relations Act was intended to be adopted and applied in the Social Security Act. Chapter 9, sub-chapter C, section 1603(5) (A) of the Internal Revenue Code as amended (formerly Title IX of the Social Security Act) deals with the so-called "refusal of work section." This requires:

> Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout or other dispute . . .

Since Congress did not define the term "labor dispute" in this refusal of work section, it is quite possible that it may have intended the term, when used in this latter act, to have the same meaning which it had already explicitly placed upon it in the Norris-LaGuardia[16] and the National Labor Relations Acts.[17] From this it would follow that when the Ohio Legislature adopted this required clause in Ohio General Code Section 1345–6–3(2) the term "labor dispute" was intended to carry the same meaning adopted by Congress. Otherwise, Ohio would not be complying with the Social Security Act. Since the State Legislature would not have intended conflicting meanings to be attached to the term "labor dispute" in different parts of the act, it would follow that the broad meaning of the term was adopted in the labor dispute disqualification provision as well as in the refusal of work provision.

It is significant that in a dictum the Ohio Supreme Court appears to have adopted the definition contained in the National Labor Relations Act even though thirteen years earlier it had developed a different definition of this same term in a labor injunction case.[18] In the *La France*[19] case, which is still followed in Ohio,[20] a labor

only a 'labor dispute' . . " The court's quotation of labor dispute refers to the previously cited National Labor Relations Act definition of the term.

[14] See *supra* note 9.

[15] *See*, e.g., Abbott v. Globe Wernicke Co., Board of Review Appeals Docket No. 59035 (1948); Dicken v. East Shore Machine Products Co., B'd of Rev. Appeals Docket No. 67357 (1948); Douglas v. Cleveland Co-operative Stove Co., Board of Review Apeals Docket No. 85207 (1948).

[16] 49 STAT. 640 (1935), 26 U.S.C. §1603 (1946).

[17] See *supra*, note 12.

[18] La France Electrical Construction and Supply Co. v. Int'l Brotherhood of Electrical Workers, 108 Ohio St. 61, 140 N.E. 897 (1923)

[19] See *supra*, note 18.

dispute exists only when the parties involved in a controversy are in an employer-employee relationship. The term as used in the National Labor Relations Act[21] is not restricted to a controversy between an employer and his employees. Under either definition of the term there must exist a controversy arising out of an insistence by one party for acceptance or abrogation of some condition of employment and a resistance by the other party to these demands. This insistence and resistance by the parties generally results in a withholding of work. However, the presence of a work stoppage does not necessarily indicate a labor dispute.

Often it would seem that neither the Board of Review nor the Administrator recognizes the prerequisite finding of a controversy but looks only to the presence of a stoppage of work in determining whether or not a labor dispute exists.

Thus in the *Globe-Wernicke* case,[22] an employer unilaterally changed a bonus plan.[23] This action resulted in decreased earnings of the employees. After approximately three months operation under the changed bonus plan, production began to decrease in key departments with the consequent interruption in the flow of materials and resultant shortages in some departments and bottlenecks in others. Soon disruption of production progressed to the stage where the company felt it necessary to lay off several hundred of its employees. Both the employees and their union denied taking any concerted action to effect such a decline in production and there was no evidence that a formal strike was voted at any of the numerous union meetings. There had been some preliminary negotiations between the union and the employer concerning the bonus plan.

In concluding that a labor dispute existed, the Board of Review stated, "Conceivably a labor dispute may exist without a strike; but when a labor dispute progresses to a point where the employees by concerted action bring about a cessation of work or a situation where they fail to work at their customary rate of speed, in the effort to enforce their demands, then all the requisite elements of a strike are present. Such strike falls within the inclusive term, labor dispute." Although the Board casually refers to the existence of a labor dispute, the facts leave grave doubt as to whether there was a controversy at all. The pitfall of looking only to the presence of a stoppage of work without a finding of a pre-existing

[20] Crosby v. Rath, 136 Ohio St. 352, 25 N.E. 2d 934 (1940), *cert. denied*, 312 U.S. 690 (1941).

[21] See *supra*, note 12.

[22] See *supra*, note 15.

[23] "In November, 1946, the National Wage Stabilization Board held that by substituting the Divisional Incentive Plan for the Incentive Bonus Plan the company had violated the National Wage Stabilization Act."

controversy seems apparent in this decision.

Where employee unions were involved in a jurisdictional dispute and the negotiations culminated in a work stoppage, the Board of Review, finding that a strike existed, disqualified the claimants.[24] The case arose in 1941 before the amendment which substituted *labor dispute* for *strike*. Although the Board may have been in error in classifying a jurisdictional dispute as a strike, it is clear that such a controversy is a *labor dispute* under the National Labor Relations Act.[25]

Any doubt concerning the determination of the period of ineligibility has been expressly met by the Legislature. The act specifically states that this disqualification endures "as long as such labor dispute continues." Therefore, it follows that upon the termination of the labor dispute, the claimants are no longer disqualified under this provision. Many times employment is not resumed immediately and there is a delay in employment subsequent to the termination of the labor dispute. It might be contended that so long as the continued unemployment is proximately related to the labor dispute, the claimant remains unemployed due to a labor dispute. However, such a view would seem to be inconsistent with the express terms of the statute.

The sale of the plant, factory, or establishment has been held to terminate the disqualification.[26] However, this would seem to be true only where the employment relationship or labor dispute is terminated simultaneously with the sale. If the employee effectively removes himself from employee status while the labor dispute is in progress and accepts other permanent employment, the labor dispute so far as it affects his disqualification is now terminated.[27] This is in accordance with the language of the statute which contains the phrase, ". . . at which he was employed . . ."[28]

It is expressly provided in the act that benefits will not be denied where the termination of employment is due to a lockout.[29] The statute does not define a lockout. As a matter of fact, such excep-

[24] Hand v. Newark Stove Co., B'd. of Rev. Appeals Docket No. 14140 (1942); C.C.H., U.I. Serv., Ohio, par. 1980.07.

[25] In U.S. v. Hutcheson, 312 U.S. 219 (1941), a jurisdictional strike was held to be a labor dispute under the Norris-LaGuardia Act; *a fortiori*, a labor dispute under National Labor Relations Act which incorporates the same definition of the term.

[26] Dicken v. East Shore Machine Products Co., *supra*, note 15; *but see*, Williams v. T.W.A., Board of Review Appeals Docket No. 65676 (1948)

[27] Glaser v. Superior Pattern Co., Board of Review Appeals Docket No. 49469; Ben. Ser. Vol. 11, No. 10 (Ohio-R-1948).

[28] OHIO GEN. CODE, §1345-6-d(1).

[29] Seven states specifically exclude lockout from the disqualifying effect of a labor dispute in the Unemployment Compensation Insurance Act. These states are Arkansas, Connecticut, Kentucky, Minnesota, Mississippi, Oklahoma, and West Virginia.

tion has rarely been found by the Board of Review.[30] This does not mean, however, that the issue is not often raised by a union. Recently in the *Globe-Wernicke* case, *supra*, such a position was taken by the claimants. During the lay-off period, the employer repeatedly published notices that work would be available if the union would notify the management that it did not approve of a work slow-down. In answering the claimants' contention that the employer had *locked out* the employees, the Board said, "The company's closing of its plant, once the work stoppage by the employees had begun, was not a lockout but, to the contrary, was a protective measure only."

A lockout was defined as a "cessation of furnishing of work to employees in an effort to get for the employer more desirable terms."[31] One member of the Board dissented on the ground that a lockout existed since the employer's action was arbitrary and was not a "protective measure." The dissent also indicated that in applying the disqualification, the merits of the dispute are not to be considered and that logically when determining whether a lockout exists, the merits of the lockout should not be in issue either.

It would seem that the Ohio Legislature and the Board of Review, in treating a lockout as parallel with a labor dispute, have overlooked a fundamental difference between the terms. A labor dispute, even though broadly construed, may or may not exist prior to a lockout or a strike. Both of these latter terms, strike and lockout, merely describe the manner in which an interruption of work is effected. There need be no looking to the "merits" of the labor dispute when determining whether a strike or lockout exists; there need be only a review of the sequence of events preceding the work stoppage to determine which party's action is the proximate cause of the work stoppage which has in turn resulted in unemployment.

What Comprises a Factory, Establishment, or Other Premises?

As specified in the act, in order to constitute a disqualification a labor dispute must be at the *factory*,[32] *establishment*,[33] or *other*

[30] Dissenting opinion Abbott v. Globe Wernicke, *supra*, note 15, Board Member Roberts states, "In applying the disqualification, the Board has never, to the writer's recollection, recognized any condition which caused workers to leave work in concerted action when it found a labor dispute existed and workers were unemployed by reason of a labor dispute (other than a lockout). In other words, regardless of the ruthlessness of the employer in imposing conditions upon the workers, if the workers left their employment as a means of preventing such impositions, the disqualification was applied."

[31] This definition is taken from Iron Molder's Union No. 125 v. Allis Chalmers Co., 166 Fed. 45, 52 (1909)

[32] Webster's New International Dictionary (1948) defines factory as, "A building, or collection of buildings, usually with its equipment or plant, appropriated to the manufacture of goods."

premises at which the claimant was employed. No Ohio cases have been found which involve the construction of the first and third terms. Only the second term, *establishment*, has been construed in Ohio. Generally, the issue has arisen when a labor dispute has developed in one business unit resulting in unemployment in another unit owned and operated by the same employer.

An examination of decisions here and elsewhere reveals that two factors have played a determining role in resolving this issue. They are (1) common employer status among the two or more business units concerned; and (2) interdependence or functional integrality between the units.

The question of common employer status has not been squarely faced in Ohio. However, in *Agee v. Republic Steel Corporation*,[34] a strike in the captive coal mines of the corporation resulted in unemployment in the Youngstown Steel Mills owned and operated by Republic Steel. The Referee held the unemployment was due to "lack of work," in that the labor dispute admittedly was not within the steel industry but in the coal industry. Apparently, the facts that an adequate supply of coal was on hand at all times and that the employer anticipated a coal shortage were controlling. Although this decision fails to indicate clearly whether a holding company and its subsidiaries are to be treated as one establishment, it is significant that emphasis was placed on the finding that the labor dispute was in the coal industry rather than in the steel industry. Absent the necessity of finding a common employer status, it would seem that if there exists functional integrality between the business units a finding of a labor dispute in the same industry is unnecessary.

Nevertheless, in an earlier case, *Denger v. U. S. Steel Corporation*,[35] the Board of Review declared that a holding company and its various subsidiaries will not be considered as an establishment. There a brakeman employed by the Lake Terminal Railroad Company lost his employment by reason of a general strike in the steel industry which caused a work stoppage at National Tube Steel Company. The Lake Terminal Railroad's sole function consisted of servicing the National Tube Steel Company; both corporations were subsidiaries of the U. S. Steel Corporation. Recgnizing such facts, the Board found the claimant eligible for benefits, asserting that, "While both companies are subsidiaries of the same parent company, they are separate establishments. In view of the fact

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[33] Webster, *ibid.*, defines establishment as, "A permanent place of residence or business; hence, such a place with its grounds, furnishings, staff of employees, etc."

[34] Board of Review Appeals Docket No. 49847, 903 Ref. 48 (1948)

[35] Board of Review Appeals Docket No. 38317 (1947).

that claimant was employed by an employer other than one involved in the labor dispute . . ."

From the above, it would seem that the Board of Review requires a common employer-employee status as a prerequisite before the units will be considered as one establishment. Other jurisdictions indicate the necessity of showing common employer-employee status.[36]

The introduction of functional integrality as a factor when determining what constitutes an establishment has brought forth divergent views among the courts. If two or more business units are held to constitute an establishment because interdependence or functional integrality exists between them, disallowance of many otherwise eligible claimants whose unemployment is involuntary is readily facilitated. The concept of functional integrality is not unique in unemployment compensation insurance since it has been accepted by both administrative tribunals and courts when determining employer-employee relationships under other types of socio-economic legislation.[37] There seems to be a tendency toward viewing all the various installations of a business enterprise as one economic unit rather than categorizing the many parts independently

A more restrictive view refuses to accept functional integrality between the business units as a factor in determining an establishment.[38] The proponents of this view contend that Congress and the state legislatures intended a liberal construction to be applied when interpreting the terms of this legislation. The adherence to a liberal construction permits the participation of a greater number of unemployed in benefits. A liberal construction *a fortiori* necessitates a narrow interpretation of the term, establishment. It is also pointed out that terms used in a statute are intended to carry their ordinary meaning. Since the ordinary meaning of an establishment is a place of business other than those indicated by the word *fac-*

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[36] Ben. Ser. Vol. 11, No. 8 (Cal.-R-1947), Ben. Cer. Vol. 11, No. 9 (La.-A.-1947), Ben. Ser. Vol. 2, No. 2 (Mass.-A.-1940); Ben. Ser. Vol. 2, No. 7 (N.Y.-A.-1939), Ben. Ser. Vol. 4, No. 6 (Ore.-A.-1941).

[37] Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947); N.L.R.B. v. Hearst Publications, Inc., 322 U.S. 111 (1940)

[38] *See* Roberts dissenting in Diesel Wemmer case *infra* note 42, "The purpose of the legislation is to pay unemployment compensation benefits and to ameliorate the consequences of widespread unemployment. Such compensation is payable to unemployed workers with certain exceptions. To bring claimants within such exceptions, it is necessary to strain at the meaning of the language of the statute and to read into the act exceptions with regard to 'integrated industry,' which are not mentioned anywhere in the legislation. To say the least, this would result in a narrow rather than a liberal construction of the meaning of the statute." *Cf.* Roberts in majority opinion, Adams v. North Electric Manufacturing Co. *infra* note 45.

tory,[39] "the courts would not be justified in construing establishment as meaning functional integrality and general unity of the business of a large corporation with its many and varying units of industry."[40]

As to the intent of the Ohio Legislature, it is somewhat doubtful if a liberal construction is any longer contemplated. Section 1345–33 of Ohio General Code, which provided for a liberal construction when applying the act, has been repealed.[41] However, at the time the Board of Review first accepted the more comprehensive functional integrality concept, this section was still in effect.

Whatever may have been the legislative intent, the Board of Review in *Bradford v. Deisel-Wemmer Gilbert Corporation*[42] followed the decisions of Wisconsin[43] and Michigan[44] which, respectively, espoused functional integrality or synchronized coordination among business units as the dominant factor in determining an establishment. In a subsequent decision,[45] the Board reaffirmed this position by finding that a Mt. Gilead plant was solely dependent upon a Galion plant for its supply of basic materials and therefore the Mt. Gilead plant was part of the same establishment when a labor dispute at Galion caused the unemployment at Mt. Gilead.

The Board also stated that this functional integrality or interdependence could be removed during the progress of the labor dispute at such time as the Mt. Gilead plant should be able to secure an adequate supply of materials from outside sources, enabling it to recall its workers. But, the Board went on to say that this integrality or interdependence, once removed, could not be replaced subsequently should the outside source of materials prove inadequate and unemployment result. Such unemployment, said the Board, would then be "by reason of lack of work due to a shortage of materials and not because of the labor dispute." It would seem that contra to the Board's position, functional integrality could be resumed once the economic interdependence has been established.

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[39] General Motors Corp. v. Mulquin, 55 A. 2d 732 (1947); C.C.H., U.I. Serv., Conn., par. 8173.

[40] Tennessee Coal, Iron & R.R. Co. v. Martin (1948), C.C.H., U.I. Serv., Ala., par. 8148.

[41] 122 Ohio Laws 239, 240 (1947). However, the clause has been re-enacted Am. S.B. 142, effective August 22, 1949.

[42] Board of Rev. Appeals Docket No. 12811 (1942)

[43] Hamkiss v. Industrial Commission and Nash Kelvinator and Spielmann v. Industrial Commission and Nash Kelvinator, 236 Wis. 240, 295 N.W 1 (1940).

[44] Chrysler Corp. v. Smith, 297 Mich. 438, 298 N.W. 87 (1941), 135 A.L.R. 900 (1941)

[45] Adams v. North Electric Manufacturing Co., Board of Review Appeals Docket No. 74836 (1948).

One of the factors often considered when determining the existence of functional integrality has been the physical proximity between the business units. In the *Deisel-Wemmer*,[46] *North Electric Manufacturing Company*,[47] *Chrysler*,[48] and *Nash-Kelvinator*[49] cases, the distances were 30, 14, 11, and 40 miles, respectively. Apparently, the importance of the distance is not controlled by the actual mileage but by the effect that such distance would naturally have on the economic interdependence between the separate business units.[50]

Even though the Board of Review has adopted the functional integrality concept, it has not, however, broadened its meaning to limits followed in other jurisdictions under different legislation. There remains the hurdle of finding a common employer status among the business units. This prerequisite remains an impediment to a finding that a corporate holding company with its various subsidiary operating companies constitutes a single establishment, even where the interdependence between the units is clear.

Nevertheless, without regard to common employer status, the Board of Review, following the strict wording of the provision, has taken a unique position concerning the situs of a dispute. The Board has held that the disqualification is not restricted to those employees who are employed by the employer involved in the dispute but includes all those whose labor is at the factory, establishment, or other premises, regardless of the identity of the employer. A check weighman, an employee of the United Mine Workers of America, performed his duties on the property of a coal company and was thrown out of work when the mine shut down because of a labor dispute between the union and the coal operator. The Board held that the claimant was ineligible for benefits even though he was not involved in the dispute.[51]

CAUSAL RELATIONSHIP NECESSARY BETWEEN THE LABOR DISPUTE AND THE UNEMPLOYMENT

The finding that a labor dispute exists at the factory, establishment, or other premises is not of itself sufficient to disqualify a particular claimant. Under the Ohio Act, as in all states, a causal relationship must be found between the labor dispute and the claimant's unemployment. The Ohio act provides that an employee is disqualified if he has "*lost* his employment or has *left* his employment *by reason* of a labor dispute . . ." (emphasis supplied). The

[46] See *supra*, note 40.
[47] See *supra*, note 45.
[48] See *supra*, note 44.
[49] See *supra*, note 43.
[50] For a contra conclusion, see note, 49 Col. L. Rev. 550 at 558 (1949).
[51] Risk v. United Mine Workers, 1714 Ref. 43 (1943).

Board of Review in determining whether a causal relationship exists appears to have adopted the "proximate cause" test.[52]

Any discussion concerning the application of the disqualification to an employee who has been discharged before the labor dispute occurred would appear superfluous. Nevertheless, the Board of Review has suggested that if a labor dispute arises out of the discharge of an employee, such employee may be disqualified if he participates in the concerted action taken by his fellow employees to challenge the discharge.[53] Although the result reached by the Board may be acceptable, it is submitted that in this situation the claimant could be more appropriately disqualified under the "available for work" provision.[54] When there are no causes other than the labor dispute which might be capable of causing unemployment, the casual relationship between such labor dispute and unemployment is usually obvious from the facts.[55] However, a more challenging problem of causal relationship is presented when other operational facts exist simultaneously with the labor dispute, which facts standing alone could precipitate unemployment. In this latter situation a more careful analysis of the sequence of operational facts must be made in order to determine which has been the proximate cause of the unemployment. Logically if the labor dispute occurs subsequent to the unemployment, it should not be categorized as a proximate cause until such time as employment would be available if it were not for the labor dispute.

This rationale is supported by the Board of Review in *Hoffman v. Vitrified Products Company* case.[56] There a manufacturer of "hot tops," which were used exclusively by the steel industry, in reducing his operations pending settlement of a steel strike laid off the claimant. During the period of limited production a labor dispute resulting in a strike developed between the manufacturer and his employees. The Board of Review declared the claimant eligible for benefits from the date of lay-off until the termination of the steel strike; but disqualified him from the date of cessation of the steel strike until termination of the labor dispute.

If in the above case the labor dispute had involved the claimant's employer undoubtedly the Board would have found that the claim-

[52] E.g., Jones v. Pipe Machinery Co., Board of Review Apeals Docket No. 63960 (1948), Hoffman v. Vitrified Products Co., Board of Review Appeals Docket No. 44358 (1947); Abazia v. Cleveland Graphite Bronze Co., 12031-Ref.-47, Appeals Docket No. 39825 (1947).

[53] Jones v. Pipe Machinery Co., *supra*, note 52.

[54] Ohio General Code Section 1345-6-a(4).

[55] In Williams v. T.W.A., Board of Review Appeals Docket No. 65676, claimant reported back from vacation but was unable to resume work due to termination of operations pending a labor dispute. Board held that claimant's unemployment was due to a labor dispute.

[56] See *supra*, note 52.

ant's unemployment was proximately caused by a labor dispute at the factory, establishment, or other premises.[57] This would be true regardless of whether the claimant had participated in the dispute or whether he received any benefits from it.

Other states except claimants from the disqualification if they have not "participated in" or "financed" or are not "directly interested" in the dispute or do not belong to a grade or class of employees any of whose members participate in, finance, or are directly interested in the dispute. These exceptions tend to personalize the disqualification thereby limiting it more sharply to those employees voluntarily unemployed.

CONCLUSION

The broad purpose of unemployment compensation legislation is to remove or shift a portion of the burdens which fall on workmen as a result of adverse business and industrial conditions over which they have little or no control.

The legislature in adopting the labor dispute disqualification may have had in mind any one or all of the suggested reasons at the beginning of this comment. Regardless of the reasons accepted, there is implicit in each an underlying thesis that there should be a causal relationship between the labor dispute and the unemployment. The terms "factory," "establishment," and "other premises" were used to introduce objectivity in determining causal relation. Application of the disqualification seems at times to have exceeded the underlying premise. Acceptance of the broad definition of a labor dispute and the functional integration concept widens the scope of the disqualification. Even so, it is believed that both these established interpretations are sound. To limit them properly, legislative action seems unnecessary. If application of the disqualification, to claimants not obviously participating in the labor dispute is based on a determination whether the dispute has proximately caused their unemployment the desired result may be reached.

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[57] *See*, e.g., Abazia v. Cleveland Graphite Bronze Co., *supra*, note 52; Abbot v. Globe-Wernicke, *supra*, note 15.