

**The claimant refused to cross a picket line set up by striking coworkers who belonged to a different union. Because the claimant risked jeopardizing his own union membership in good standing if he crossed the picket line, and he would lose his job if he did not maintain membership in good standing, held the claimant was in unemployment and entitled to benefits pursuant to G.L. c. 151A, §§ 29 and 1(r). While the other union maintained its picket line, the claimant’s job had become unsuitable.**

**Board of Review  
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**Issue ID: 0075 5579 22**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective February 20, 2022, which was denied in a determination issued on May 17, 2022. He appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant,<sup>1</sup> the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on April 8, 2023. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), and, thus, he was not eligible for benefits. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal.

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant did not meet the statutory definition of unemployment because he had turned down suitable full-time work when he refused to cross another union’s picket line, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

The review examiner’s findings of fact and credibility assessment are set forth below in their entirety:

1. Prior to filing for benefits, the claimant worked as a parts salesman for the employer, a company that sells and repairs engines, trucks, generators, and the

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<sup>1</sup> The employer was invited to participate in the hearing as a witness only, but did not appear.

parts for them. The claimant began working for the employer on 3/8/1999. He worked a full-time, set schedule, Monday through Friday, and currently earns \$37.84 per hour.

2. The claimant's supervisor is the employer's parts manager.
3. The claimant is a member of the [Union A], located in [City A] (Union). The claimant signed a contract with the Union in 1999 and has been a member since that time.
4. The Union contract states that Union members are not allowed to cross "any" union picket line.
5. There are six members of the Union working for the employer.
6. On or about 2/10/2022 and 2/11/2022, the Union's business agent met with Union members at the employer's location and informed them that the employer is a two-union employer, and that the employer's machinists union was going on strike the following week due to a contract dispute.
7. The Union business agent advised Union members that due to their contract with the Union, they were not allowed to cross the picket line. He further stated that crossing the picket line would result in potential fines, loss of benefits, and the termination of the Union member's employment once the strike was over.
8. The claimant did not contact the Union office to verify whether the information provided by the Union business agent was correct.
9. The claimant did not contact the employer's human resources department to confirm whether the information provided by the Union business agent was true.
10. The employer's machinists' union was on strike beginning 2/14/2022 and through 4/7/2022.
11. During the period beginning 2/14/2022 through 4/7/2022, the claimant drove to work each day, checked that the machinists' union remained on strike and left. He did not perform any work for the employer during this time.
12. During the period beginning 2/14/2022 through 4/7/2022, the claimant was capable of and available to work a full-time job.
13. During the period beginning 2/14/2022 and through 4/7/2022, the claimant looked for warehouse manager positions locally and online. The claimant did not apply to any open positions because he did not believe that the available positions were suitable.

14. During the period beginning 2/14/2022 and ending 4/7/2022, the employer did not shut out employees and had work available for the claimant.
15. On 2/21/2022, the claimant filed for unemployment benefits with the Department of Unemployment Assistance (DUA), effective 2/20/2022.
16. On 4/7/2022, the Union shop steward called the claimant to inform him that the machinists strike ended that day and to return to work the following day.
17. The claimant returned to work on 4/8/2022.
18. On 5/17/2022, the DUA issued a Notice of Disqualification to the claimant within Sections 29(b) and 1(r) of the Law for the period beginning 2/11/2022 and subsequent weeks thereafter. The claimant appealed that determination.

[Credibility Assessment:]<sup>2</sup>

In this case, the claimant candidly and credibly testified that he remained out of work at the directive of his union business agent due to another union at the employer's place of business being on strike beginning 2/14/2022 and through 4/7/2022. The claimant stated that he was required not to cross "any" union picket line at the employer's place of employment.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is ineligible for benefits.

The claimant seeks benefits for the period that he did not work while the machinists were on strike from February 14, 2022, until April 7, 2022. In order to be eligible for unemployment benefits, the claimant must have been in a state of unemployment as defined under unemployment statute. Because he did not work at all during that period, we consider whether he qualified for benefits pursuant to G.L. c. 151A, § 29(a), which authorizes benefits be paid only to those in "total unemployment." This term is defined by G.L. c. 151A, § 1(r)(2), which provides, in relevant part, as follows:

- (2) "Total unemployment", an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services

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<sup>2</sup> We have copied and pasted here the review examiner's credibility assessment, which appears in the Conclusions and Reasoning section of the hearing decision.

whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work. . . .

During the period February 14, 2022, until April 7, 2022, the claimant did not perform any work for the employer, because another union was on strike, and he refused to cross the picket line. *See* Findings of Fact ## 4, 6, 7, 10, 11, 16, and 17. There is no question that, during this time, the claimant remained capable of, and available for, full-time work. *See* Finding of Fact # 12. The issue is whether he was unable to obtain any suitable work. The review examiner concluded that because the claimant's regular full-time job with the employer remained available to him during the machinists' strike, the claimant failed to show that he was unable to obtain any suitable work. We disagree.

At the outset, it is important to note that, while employed, the claimant was subject to separate rules, including those derived from his membership with the union and those derived from an agreement negotiated between his union and the employer. Findings of Fact ## 3, 4, and 7 refer to a union contract. It is apparent from the record that the review examiner is referring to rules that sets forth the terms and conditions of maintaining membership in the [Union A] (union membership contract). *See* Finding of Fact # 3. This union membership contract is distinguishable from the collective bargaining agreement between the claimant's union and the employer (collective bargaining agreement).<sup>3</sup>

The union membership contract states that union members were not permitted to cross *any* picket line. Finding of Fact # 4. If they did cross a picket line, they would be fined, lose benefits, and, according to the union business agent, fired from their jobs once the strike was over. Finding of Fact # 7. Although the employer did not participate in the hearing, a letter from the employer to the claimant, dated February 17, 2022, acknowledges that the claimant could have been fined or subject to other discipline by the union for working during the strike.

During the hearing, the claimant further explained that, if he had crossed the picket line, he could have been fined, and he would have been terminated when the strike settled because the contract states that it is a union shop.<sup>4</sup> We believe that he was referring to the collective bargaining agreement's Union Shop provision, which requires all employees to become union members and remain members in good standing as a condition of employment.

Thus, both the union business agent and the employer had advised the claimant that crossing the picket line subject him to union discipline. We can reasonably infer from the business agent's statement that the discipline imposed by the union would have jeopardized his membership in good standing. If he did not remain a union member in good standing, the collective bargaining agreement's Union Shop provision would not permit him to work for the employer.

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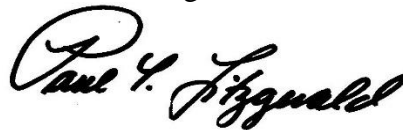
<sup>3</sup> The DUA's electronic record-keeping system, UI Online, shows that the claimant submitted a copy of the collective bargaining agreement, as well as a letter from the employer to the claimant, dated Feb. 17, 2022, (both discussed below) for admission into evidence prior to hearing. However, for some reason, the review examiner failed to enter these documents as exhibits.

<sup>4</sup> While not explicitly incorporated into the review examiner's findings, this portion of the claimant's testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

In short, even though the employer made the claimant's regular full-time job available to him during the machinists' strike, accepting that work put his job at risk when the strike ended. In our view, this confluence of rules and circumstances rendered the claimant's regular job unsuitable between February 14, 2022, and April 7, 2022, while the machinists maintained their picket line. Inasmuch as the findings indicate that the claimant had also actively searched for, but did not find, other suitable employment during this period, we conclude that he was unable to obtain suitable work. *See* Finding of Fact # 13.

We, therefore, conclude as a matter of law that the claimant did not turn down suitable work. He was in total unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r), during the relevant period.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning February 20, 2022, through April 9, 2022, if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 28, 2023**



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

AB/rh