THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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BOARD OF REVIEW
DECISION

**** CORRECTED DECISION ****

M-61677 – M-61683 (Mar. 1, 2006) -- Two-month strike against regional transit bus company was a work stoppage, as the buses stopped running and no revenue came in. When the prior collective bargaining contract expired, the employer's unilateral change of terms of employment was not a lockout, because employment remained available.

At a hearing before the full Board of Review on February 8, 2006, the claimants were present and represented by their Union's business agent; the employer was represented by its Director of Administration, its Chief Financial Officer, and an agent.

The appeals of the claimants are from determinations of the Commissioner which found that the unemployment of the claimants was due to a stoppage of work which existed because of a labor dispute at their place of employment and that they were subject to disqualification under section 25(b) of Chapter 151A of the General Law, with respect to claims filed by them beginning in July 2004, and various dates thereafter. In accordance with G. L. c. 151A, § 39(d), the Commissioner referred the cases to the Board for a hearing and a decision.

Section 25(b) of Chapter 151A of the General Laws provides, in part, as follows:

> **Section 25.** No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—
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> (b) Any week with respect to which the commissioner finds that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he was last employed; provided, however, that nothing in this subsection shall be construed so as to deny benefits to an otherwise eligible individual (1) who becomes involuntarily unemployed during the period of the negotiation of a collective bargaining contract, in which case the individual shall receive benefits for the period of his unemployment but in no event beyond the date of the commencement of a strike; or (2) who is not recalled to work within one week following the termination of the labor dispute; and provided, further, that this subsection shall not apply if it is shown to the satisfaction of the commissioner that:--
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> (1) The employee is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and that
>
> (2) The employee does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute, except that an individual for whom no work is available and who is not a member of or eligible to membership in the group or organization which caused the stoppage, shall not be considered as belonging to the same grade or class of workers as

those who are responsible for the stoppage of work; provided, further, that if, in any case, separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department may, for the purposes of this subsection, be deemed a separate factory, establishment or other premises.

(3) For the purposes of this chapter, the payment of regular Union dues or assessments shall not be construed as participating in or financing or being directly interested in a labor dispute.

(4) The individual has, subsequent to his unemployment because of a labor dispute, obtained employment, and has been paid wages of not less than the amount specified in clause (a) of section twenty-four; provided, however, that during the existence of such labor dispute the wages of such individual used for the determination of his benefit rights shall not include any wages such individual earned from the employer involved in such labor dispute.

In addition to the foregoing, an employee shall not be denied benefits as the result of an employer's lockout, whether or not there is a stoppage of work, if such employees are ready, willing and able to work under the terms and conditions of the existing or expired contract pending the negotiation of a new contract unless the employer shows by a preponderance of evidence that the lockout is in response to: (a) acts of repeated and substantial damage to the employer's property, or (b) repeated threats of imminent, substantial damage; provided, however, that such damage or threats of damage are caused or directed by members of the bargaining unit with the express or implied approval of the officers of such unit, and the employer has taken all reasonable measures to prevent such damage to property and such efforts have been unsuccessful.

A lockout, as used in this subsection, shall exist whether or not such action is to obtain for the employer more advantageous terms when an employer fails to provide employment to his employees with whom he is engaged in a labor dispute, either by physically closing his plant or informing his employees that there will be no work until the labor dispute has terminated.

Findings of Fact:

1. The employer, [Employer] provides fixed route and paratransit bus and van service for people in and around the city of [City], Massachusetts, as well as thirteen towns surrounding [City]. It operates out of only one facility located at [Location].

2. [Employer] employs a total of approximately 150 individuals at the facility, approximately 135 of whom are represented by a collective bargaining unit, [Union].

3. The claimants, all members of [Union], were part of the Union workforce that included bus-drivers, van-drivers, maintenance workers, mechanics, and a counting-room clerk.

4. [Union] and [Employer] were parties to a collective bargaining agreement governing the terms and conditions of employment for [Union] members, and expired on June 30, 2004.

5. Efforts to negotiate an immediate successor agreement were unsuccessful. Although [Union] membership was ready, willing, and able to work under the terms and conditions of the expired contract pending the negotiation of a new contract, on July 7, 2004, [Employer] unilaterally imposed new working terms and conditions on the members. Those terms and conditions raised employee contributions for health insurance premiums, froze vacation progressions, froze wages, and discontinued overtime for some safety checks performed by drivers.

6. Because of [Employer]'s actions, [Union] called a strike against [Employer] effective July 7, 2004.

7. [Union] erected picket lines at [Employer]'s facility. The pickets were orderly, and there was no evidence of violence, damage, or threats of damage. Pickets were maintained 24 hours a day, 7 days a week.

8. During the strike, the facility was open and all of the approximately 15 non-Union employees reported to work without incident. [Employer] did not hire temporary workers.

9. [Employer] measures production by ridership; that is, the number or passengers transported.

10. Production figures for the three months prior to the dispute compared to the same three months in the prior year were as follows:

April 2004	217,941	April 2003	246,696
May 2004	213,384	May 2003	246,179
June 2004	233,586	June 2003	231,478

11. During the dispute, there was no ridership and no revenue from ridership, and no buses ran.

12. During the strike, [Employer] had work available for all its employees. Although police officers guarded the [Employer] facility, no employee was prevented from entering to report for work, and [Employer] never informed [Union] or its members that they could not work. No [Union] members, however, crossed the picket line to work.

13. During the dispute, [Employer] stopped paying the premiums on health insurance for the [Union] members. They were able to maintain health insurance coverage, however, by paying the entire premium on their own.

14. On September 11, 2004, [Employer] and [Union] orally agreed to a tentative contract and all the [Union] members returned to work. A summary agreement, which defined the changes made in the expired contract, was signed by the parties in October 2004. As of the date of the Board's hearing, February 8, 2006, a new contract has not been executed.

Conclusions of Law:

The issue in this case is whether the unemployment of the claimants was due to a work stoppage because of a labor dispute at their place of employment in accordance with section 25(b) of G. L. c. 151A. If the Board so finds, it must then determine whether the claimants meet any of the exemptions contained in subsections (1) through (4) of section 25(b).

The unemployment of the claimants during the weeks here under consideration was caused by a labor dispute between the employing unit and the [Union], when the latter called a strike on July 7, 2004. The claimants, by not reporting to work, participated in the labor dispute and were, as [Union] bargaining unit members, directly interested in its outcome.

The proper inquiry for the Board in determining the existence of a stoppage of work is whether the employer's operations were substantially curtailed as a result of a labor dispute. Westinghouse Broadcasting Co., Inc. v. Director of Div. of Employment Security, 378 Mass. 51, 55 (1979); Hertz Corporation v. Acting Director of the Div. of Employment and Training, 437 Mass. 295, 298 (2002). The question of how much disruption of normal operations is necessary to constitute a stoppage of work is a matter of degree. Westinghouse, 378 Mass. at 56. Where a labor dispute blocks a substantial amount of work which would otherwise be done, a work stoppage exists. Adomaitis v. Director of the Div. of Employment Security, 334 Mass. 520, 524 (1956).

In applying the legal standard to the facts found, the Board concludes that the normal activities and daily operations of the employing unit were substantially curtailed because of the labor dispute.

During the dispute, there was no ridership and no revenue from ridership, and no buses ran. Although [Union] alleges that [Employer] did provide some van service for certain riders in its capacity as a vendor for what it called "Paratransit Brokerage Services," it is unclear from the evidence presented by [Union] who provided such services and to what extent van services were provided to the general public.

[Union] argues that when the old collective bargaining agreement expired, its members were ready, willing, and able to work under the terms and conditions of the expired contract pending the negotiation of a new contract, but that [employer] unilaterally imposed new working terms and conditions on the members causing them to strike. That imposition, the Union claims, constituted a "Lockout" under G. L. c. 151A, § 25(b)(4), and the claimants should not be denied benefits. A "Lockout" is defined under section 25(b)(4) as a point in time "…when an employer fails to provide employment to his employees with whom he is engaged in a labor dispute, either by physically closing his plant or informing his employees that there will be no work until the labor dispute has terminated." Neither of those conditions was present in these cases. During the labor dispute, [Employer] had work for all its employees. It never informed the [Union] members that they could not work; the facility was physically open, and no employees were prevented from entering or leaving. In fact, all non-Union employees reported for work. In summary, there is no basis to conclude that [Employer] engaged in a lockout as defined by the statute.

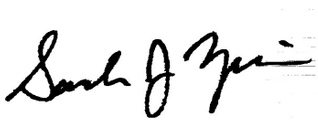
Accordingly, the Board concludes that under G. L. c. 151A, § 25(b), the normal activities and daily operations of the employing unit were substantially curtailed because of the labor dispute and that curtailment caused a stoppage of work. Further, the claimants do not meet any of the requirements for exemption from disqualification under section 25(b).

The determination of the Commissioner is affirmed. The claimants are denied benefits.

BOSTON, MASSACHUSETTS
**** DATE OF MAILING – March 1, 2006**

Kevin P. Foley
Chairman

Donna A. Freni
Member



Sandor J. Zapolin
Member

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

jv

**** LAST DAY – March 31, 2006**