



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
BOARD OF REVIEW

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## BOARD OF REVIEW DECISION

M-63500 – M-63768 (Aug. 23, 2012) – Board denied benefits to claimants during the first 8 weeks of an 18-week strike at the employer’s refrigerated grocery distribution center based upon the substantial drop in the facility’s production and staffing levels compared to the periods immediately before and after the strike. In rendering its decision, the Board compared strike levels to non-strike levels during the same year rather than to non-strike levels from the prior year, because it was apparent that something other than the labor dispute reduced the demand for the employer’s products during the year of the strike.

*[Note: Decision has been redacted to protect proprietary information, as required by G.L. c. 151A, § 46.]*

### Introduction and Procedural History of this Appeal

The claimant employees of [Employer], Inc. (“[Employer]”), members of the United Food and Commercial Workers Union, Local 791 (“claimants”), appeal a determination by the Department of Unemployment Assistance (“DUA”) to deny unemployment benefits from March 7, 2010 through the week ending April 24, 2010 under G.L. c. 151A, § 25(b). The employer, [Employer], appeals three separate determinations issued by the DUA, also under G.L. c. 151A, § 25(b), which awarded benefits to the claimants beginning the week ending May 1, 2010. Since the underlying determinations were rendered under the same section of law and pertained to the same set of facts, we have consolidated these appeals.

In a determination issued on March 2, 2011, the DUA concluded that during the period March 7, 2010 through the week ending April 24, 2010, the claimants were ineligible for benefits because their unemployment was due to a stoppage of work, which existed due to a labor dispute at their place of employment. The claimants appealed.

In a determination issued on May 10, 2010, the DUA concluded that beginning the week ending May 1, 2010, the claimants’ unemployment was not due to a stoppage of work. On June 11, 2010 and July 13, 2010, the DUA issued subsequent determinations to render additional claimants eligible for the same weeks on the same grounds. The employer appealed each of these determinations.

The DUA referred the claimants' and the employer's appeals directly to the Board of Review, pursuant to G.L. c. 151A, § 39(d). Both parties, represented by counsel, participated in a hearing before the Board. Our decision is based upon our review of entire record, including the hearing testimony, exhibits, and the parties' post-hearing briefs.

Pursuant to our authority under G.L. c. 151A, § 41, we affirm the denial of benefits for the period March 7, 2010 through the week ending April 24, 2010; we affirm in part and reverse in part the award of benefits beginning the week ending May 1, 2010.

The issue on appeal is whether a labor dispute, which resulted in the claimants' unemployment, caused such a substantial curtailment of the employer's business as to constitute a stoppage of work during any week of the strike.

#### Findings of Fact

1. [Employer] operates a facility known as the [City] Distribution Center ("[DC]"), which is a refrigerated distribution center located in [City], Massachusetts. (Testimony of [Manager] at the March 27, 2012 hearing before the Board, transcript, p. 21, hereinafter "[Manager], 3-27-12 tr. at \_\_.")
2. The [DC] is a seven-day a week, three shift operation. ([Manager], 3-27-12 tr. at 22.)
3. Prior to March 7, 2010, the [DC] received fresh produce and seafood, meat, and deli products from vendors and stored them in the facility for subsequent distribution to its retail supermarkets. ([Manager], 3-27-12 tr. at 21-24.)
4. [Employer] and the United Food and Commercial Workers Union, Local 791 ("the Union") were parties to a collective bargaining agreement, which prior to March 7, 2010 covered 306 employees, including general warehouse workers, forklift operators, clerical employees, and maintenance workers. (Exhibit #1, hereinafter "Exh. \_\_"; Exh. 44.)
5. The [DC] also employed 29 management and 20 non-union workers. (Exh. 1.)
6. In early 2010, the parties were engaged in negotiations over the terms of a new collective bargaining agreement, but were unable to reach an agreement. On March 7, 2010, members of the Union at [DC] went on strike. (Exh. 1.)
7. Beginning March 7, 2010, the employer arranged for a third party off-site grocery wholesaler, [X] Wholesale Grocers ("[X]") to supply fresh produce and seafood, meat, and deli products to [Employer] retail supermarkets during the labor dispute. (Exhs. 1 and 6.)

8. [X] had been providing the employer's supermarkets with refrigerated dairy products since 1999. ([Manager], 3-27-12 tr. at 26, 42.)
9. Over the first several weeks of the strike, management and non-union personnel shipped out existing [DC] inventory. ([Manager], 3-27-12 tr. at 37.)
10. At some point in March after the strike began, [Employer] decided to return the supply of fresh produce and seafood to the [DC]. (Testimony of [VP Labor Relations] at the 3-27-12 hearing before the Board, transcript, p. 139, hereinafter "[VP Labor Relations], 3-27-12 tr. at \_\_.")
11. It took approximately three weeks to return this work from [X] to the [DC], including the use of at least 20-30 support personnel and Information Technology staff at both [Employer] and [X] to reroute product. The transfer required notifying 800 - 1,000 vendors of the change, deciding which products to move, and getting individual truck drivers to change the line-up of products on their trucks. ([Manager], 3-27-12 tr. at 110-111.) By May 1, 2010, the [DC] was again distributing fresh produce and seafood to [Employer] supermarkets. ([Manager], 3-27-12 tr. at 59.)
12. Once [Employer] decided to move the produce and seafood back to the [DC], it began to hire replacement workers. ([Manager], 3-27-12 tr. at 122.)
13. [Employer] did not return its distribution of meat and deli products to the [DC] until after the strike ended. ([Manager], 3-27-12 tr. at 86) By the first week of August, 2010, all of this volume had returned from [X] to [DC]. ([Manager], 3-27-12 tr. at 27.)
14. The process of returning meat and deli products back to the [DC] took about two to two and a half weeks. It took less time than the produce and seafood because there were fewer meat and deli product vendors. ([Manager], 3-27-12 tr. at 121.)
15. On July 8, 2010, the 18-week strike ended following a mediated strike settlement agreement. (Exhs. 39 and 45.)
16. As part of the settlement agreement, the employer agreed to release all permanent replacements that were hired during the strike and to recall union workers. (Exh. 45.)
17. In August and September, 2010, [Employer] closed its [Town] cross-dock consolidation center and transferred the receipt and distribution of supplies (e.g., plastic wrap, foam trays) to the [DC]. ([Manager], 3-27-12 tr. at 27-28.) The work at the [Town] facility had previously been performed by 15-20 employees working for a third party. ([Manager], 3-27-12 tr. at 58.)

18. At some point in the year or so prior to the labor dispute, [Employer] had ceased operating retail stores in Connecticut. (Exh. 7.)
19. The employer was unable to perform facility and sanitation audits, safety meetings, inspections, and various human resource functions at the [DC] during the strike. ([Manager], 3-27-12 tr. at 46-48.)
20. [Employer] continued to operate its retail supermarkets throughout the labor dispute. [Employer] made no suggestion and offered no evidence that the labor dispute significantly disrupted the employer's operations other than at the [DC].

#### *Production Levels*

21. The employer's primary method of measuring its production levels at the [DC] is by the number of cases of product shipped to its retail stores each week. ([Manager], 3-27-12 tr. at 34-35.)
22. During the year prior to the labor dispute, specifically the period from week ending December 6, 2008 – week ending August 1, 2009, the employer's weekly sales and tonnage summaries show that the [DC] distributed an average of [ ] cases per week. (Exhs. 1 and 40).
23. During the year of the labor dispute, specifically including week ending December 5, 2009 – October 2, 2010, during weeks in which the workers were not on strike and excluding the first three weeks following the end of the strike while [Employer] brought its meat and deli back from [X], [Employer] weekly sales and tonnage summaries show that the [DC] distributed an average of [ ] cases per week. (Exhs. 1, 40, and 53.)
24. The volume of business at [DC] is also measured in dollars by value of cases shipped. ([Manager], 3-27-12 tr. at 35.)
25. During the year prior to the labor dispute, specifically the period from week ending December 6, 2008 – week ending August 1, 2009, the employer's weekly sales and tonnage summaries show that the [DC]'s average value of the cases shipped was \$ [ ] per week. (Exhs. 1 and 40).
26. From weeks ending December 5, 2009 – October 2, 2010, during weeks in which the workers were not on strike and excluding the first three weeks following the end of the strike, [Employer] weekly sales and tonnage summaries show that the [DC]'s average value of the cases shipped was \$ [ ] per week. (Exhs. 1, 40, and 53.)

27. In each week of the strike, we find, based upon the employer's weekly sales and tonnage summaries, that the [DC] production levels were as follows (Exh. 40):

Strike week	Week ending	Value of cases shipped	# of cases shipped
#1	3/13/2010	\$ [ ]	[ ]
#2	3/20/2010	\$ [ ]	[ ]
#3	3/27/2010	\$ [ ]	[ ]
#4	4/3/2010	\$ [ ]	[ ]
#5	4/10/2010	\$ [ ]	[ ]
#6	4/17/2010	\$ [ ]	[ ]
#7	4/24/2010	\$ [ ]	[ ]
#8	5/1/2010	\$ [ ]	[ ]
#9	5/8/2010	\$ [ ]	[ ]
#10	5/15/2010	\$ [ ]	[ ]
#11	5/22/2010	\$ [ ]	[ ]
#12	5/29/2010	\$ [ ]	[ ]
#13	6/5/2010	\$ [ ]	[ ]
#14	6/12/2010	\$ [ ]	[ ]
#15	6/19/2010	\$ [ ]	[ ]
#16	6/26/2010	\$ [ ]	[ ]
#17	7/3/2010	\$ [ ]	[ ]
#18	7/10/2010	\$ [ ]	[ ]

28. Every year, there is a spike in demand for food leading up to major holidays. In 2010, this is reflected in the increased production levels for the week leading up to Memorial Day, (i.e., the week ending May 29, 2010,) and for the week leading up to Independence Day, (i.e., the week ending July 3, 2010.) ([Manager], 3-27-12 tr. at 104-105.)

### *Staffing Levels*

29. Although there were 306 members of the bargaining unit before the strike began, a number of these workers were not actually working because they were out sick, on leave of absence, on disability, or out on Worker's Compensation at the time the strike began. ([Manager], 3-27-12 tr. at 55; Testimony of [Shop Steward] at the March 27, 2012 hearing before the Board, transcript, p. 151, hereinafter "[Shop Steward], 3-27-12 tr. at \_\_.")
30. According to the employer's rosters, there were 277 bargaining unit employees actively working the day before the onset of the strike and 218 actively working after conclusion of the strike on July 31, 2010. (Exh. 39.)

31. Shortly after the strike ended, [Employer] laid off a number of bargaining unit employees. During the period July 28, 2010 – September 2, 2010, 13 members of the bargaining unit accepted a voluntary layoff. (Exh. 39.) On September 15, 2010, another 53 bargaining unit workers were involuntarily laid off. (Exh. 39.)
32. On or about April 17, 2010, [Employer] contracted with a company, [Y] Services (“[Y]”), to perform the work of unloading non-[Employer] trucks. This work had previously been done by about 20 bargaining unit workers, though it was unclear how much of their day was devoted to this task. (Exh. 53; [Shop Steward], 3-27-12 tr. at 146.) As part of the strike settlement, [Employer] permanently transferred the bargaining unit work of unloading non-[Employer] trucks to [Y]. ([Shop Steward], 3-27-12 tr. at 143.)
33. The process of hiring a replacement worker during the strike took more than a month from start to finish. After the employer had reviewed on-line applications, scheduled and conducted an interview, it took about another 30 days to conduct a background check, drug screening, and physical capacity evaluation. ([Manager], 3-27-12 tr. at 108-109.)
34. Based upon the employer’s rosters of employees who were actively working during various weeks during and immediately after the strike (Exh. 39), we find that the bargaining unit staffing levels were as follows:

Strike week	Week ending	Bargaining unit staffing
	3/6/2010	277
#1	3/13/2010	Data Not Available (DNA)
#2	3/20/2010	DNA
#3	3/27/2010	DNA
#4	4/3/2010	DNA
#5	4/10/2010	47
#6	4/17/2010	88
#7	4/24/2010	115
#8	5/1/2010	141
#9	5/8/2010	150
#10	5/15/2010	152
#11	5/22/2010	149
#12	5/29/2010	144
#13	6/5/2010	143
#14	6/12/2010	142
#15	6/19/2010	141
#16	6/26/2010	139
#17	7/3/2010	139
#18	7/10/2010	DNA
	7/31/2010	218

35. On various dates in March and April during the strike, a number of bargaining unit members crossed the picket line to return to work. They did not participate in the labor dispute after those dates. (Exh. 56.)

### Ruling of the Board

In this appeal, the Board must decide whether the claimants' unemployment was due to a work stoppage within the meaning of G.L. c. 151A, § 25(b), which provides, in pertinent part, as follows:

Section 25. [N]o . . . benefits shall be paid to an individual under this chapter for—

(b) Any week . . . with respect to which . . . 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 this subsection shall not apply if it is shown to the satisfaction of the commissioner that:--(1) The employee is not participating in . . . the labor dispute which caused the stoppage of work; . . . .

“Stoppage of work” is not defined in the statute. The Supreme Judicial Court has held that in order for there to be a “stoppage of work,” operations must be ‘substantially curtailed.’” Hertz Corporation v. Acting Director of the Division of Employment and Training, 437 Mass. 295, 297 (2002). “How much disruption is required to constitute a substantial curtailment is a fact-specific inquiry; there is no percentage threshold or numerical formula.” Id. at 297. Ascertaining substantial curtailment is a matter of degree. Westinghouse Broadcasting Co., Inc. v. Director of Division of Employment Security, 378 Mass. 51, 55-56 (1979). The Board of Review must examine “[T]he drop in production and the decreased number of employed production workers, as compared with those figures from the previous year, in the context of all the circumstances, including the over-all status of the corporation’s operations.” Reed National Corp. v. Director of Division of Employment Security, 388 Mass. 336, 340 (1983) (“Reed I”).

*Whether a substantial impairment is measured by the impact on the site at which the labor dispute occurred rather than the employer’s overall operations.*

In this case, [Employer] overall retail operations were unaffected by this strike. The company continued to sell refrigerated fresh produce and seafood, meat, and deli, as well as all of its other groceries, throughout the labor dispute. The employer was able to do this because it had contracted with an outside independent wholesale grocer, [X], to purchase all of its fresh produce and seafood, meat, and deli during the strike.

The claimants argue that since the labor dispute did not cause a substantial curtailment of the employer’s overall retail operation, the claimants are entitled to benefits in every week of the

strike. They urge us to follow Hertz, where the SJC held that there was no substantial impairment of the employer's overall operation during the strike, because the company's main business of renting cars continued uncurtailed. Hertz, 437 Mass. at 298. However, in Hertz, clerks, mechanics, and drivers throughout the Massachusetts Hertz operation went on strike. Id. at 296. Consequently, the impact on the overall operation was properly considered. Here, only the workers at the [DC] went on strike.

Moreover, G.L. c. 151A, § 25(b) directs us to consider whether the unemployment is due to a work stoppage that exists because of a labor dispute *at the factory, establishment or other premises* at which the claimant was last employed. "The statute . . . impresses us as laying stress upon geographical location rather than upon a combination of widely scattered plants used for the business operation of one employer." Ford Motor Co. v. Director of Division of Employment Security, 326 Mass. 757, 762 (1951). In the Ford case, when the workers at parts plants in Michigan went on strike, the lack of available parts caused a four-week shutdown at the Somerville assembly plant. The Court affirmed the Board of Review's conclusion that this did not constitute a work stoppage and that the claimants at the Somerville assembly plant were entitled to benefits because the labor dispute at issue took place at the Michigan plants, not at the premises in Somerville where the claimants performed their labor. Id. at 758-764.

Unlike in Ford, the labor dispute in this case took place at the premises where the claimants were last employed—at the [DC]. Therefore, we will restrict our analysis to the impact of the labor dispute on the [DC] operation. If the labor dispute caused a stoppage of work at the [DC], the claimants are ineligible for benefits.

*Whether [Employer] transfer of work to [X] was a transfer to an outside entity.*

In General Electric Co. v. Director of Division of Employment Security, 349 Mass. 358 (1965), the company was able to avoid disrupting the delivery of its end products, because management transferred the striking welders' work to an outside entity. The SJC denied benefits, concluding on these facts that there was a stoppage of work at the plant. "The pressure exerted by the strike upon the production process has prevented the company from having a substantial amount of work performed in its own plant." Id. at 364. However, if a company relocates the plant's production process to another of its own facilities, as opposed to an outside entity, the SJC has stated that the Board may look at whether the total production of the corporation was substantially curtailed. Reed National Corp. v. Director of Division of Employment Security, 393 Mass. 721, 724, n. 5 (1985) ("Reed II"); Reed I, 388 Mass. at n. 8.

In light of the Court's distinction between transferring work internally and contracting out to an outside entity, the Union argues that [Employer's] pre-existing contractual relationship with [X] to supply the employer's dairy products rendered the transfer of produce, seafood, meat, and deli during the strike an internal transfer of work. We find no legal basis to support this argument. The transfer of work to [X] during the labor dispute was a transfer to an outside entity. Therefore, we follow General Electric and consider whether the transfer to [X] caused a substantial impairment of operations at the [DC] during the labor dispute.



*Whether, given the particular circumstances of this case, the proper benchmark for determining if a substantial curtailment of the employer's operations has occurred should be a year-to-year analysis, or rather requires a comparison of same-year strike period production and staffing levels with non-strike period production levels.*

In Reed I, the SJC directed the Board of Review to compare the levels of production and workers with levels from the previous year, “*in the context of all the circumstances*,” including the over-all status of the corporation's operations. Reed I, 388 Mass. at 340 (emphasis supplied). [Employer] would have the Board limit its inquiry to a comparison of the 2010 strike levels to the figures from 2009. However, the SJC directs us to look further. When we factor in “all the circumstances” particular to this employer's business at the time of the strike, including trends in the over-all status of the company's operations over the course of 2010, the picture changes.

There were 277 bargaining unit employees actively working at the [DC] before the 2010 strike on March 6, 2010.<sup>1</sup> On July 31, 2010, which was several weeks after the strike had ended, the roster was down to 218— after the employer had transferred the meat and deli work back to the [DC], and after the employer had released the permanent replacements and the striking employees had returned to work. Over a period of the next six to seven weeks, 66 bargaining unit members were laid off, bringing the active bargaining unit workforce down to about 152 by the week ending September 25, 2010. It is evident that the demand for labor at the [DC] was declining during 2010 quite independent of any impact of the labor dispute.

At some point before the strike, [Employer] had ceased operating its retail supermarkets in Connecticut. This may also explain the reduced demand for the [DC]'s refrigerated products. In August and September, 2010, when the company closed its [Town] cross-dock consolidation center, the [DC] was able to absorb this work. The overall volume of business at the [DC] was also down in 2010.

In fact, when compared to the 2009 levels, the [DC] was shipping fewer cases and bringing in less money during the *non-strike weeks* in 2010. Disregarding the weeks during and immediately after the strike, when the employer's average weekly production figures in 2010<sup>2</sup> are compared with the average weekly figures from 2009<sup>3</sup>, we find that the employer supplied 19% fewer cases and experienced a 29% drop in the dollar value of those cases in 2010.

Given the significantly lower overall (non-strike) production and staffing numbers in 2010, something other than the labor dispute had reduced the demand for [Employer's] products. Therefore, we believe that attempting to gauge the impact of the labor dispute on the [DC]'s operations by

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<sup>1</sup> Although there is no evidence about the staffing levels in 2009, neither party suggested that the staffing levels had been different.

<sup>2</sup> This includes the 22 non-strike weeks from December, 2009 through September 30, 2010 and excluding all of July.

<sup>3</sup> This includes 35 non-strike weeks from December, 2008 through August 1, 2009.

merely comparing the production levels during each week of the strike against the same weeks in 2009 would present an inaccurate picture. Rather, we believe that the more accurate way to measure the impact of the labor dispute on the company's operations is to compare the 2010 strike period production and staffing levels to the 2010 *non-strike* production and staffing levels.

*Whether the labor dispute caused a work stoppage, and, if so, when.*

Although there is no percentage threshold or numerical formula for measuring what constitutes a substantial impairment of an employer's operations, we are guided by the SJC's decisions in other labor disputes where the Board was able to quantify the dispute's impact on production. The Court agreed with the Board's ruling that a drop of about 35% from normal production and a 35% cut in man hours at a wool processing plant constituted a work stoppage. Adomaitis v. Director of Division of Employment Security, 334 Mass. 520, 522-524 (1956). However, in another case, the Court affirmed the Board's determination that a 25% drop in production at a single plant, "without more," did not constitute a work stoppage. Reed II, 393 Mass. at 724.

Measured against the average 2010 production levels during 22 non-strike weeks, the employer's weekly sales and tonnage summaries show that production levels during each week of the strike were as follows:

Strike week	Week ending	% drop in value of cases shipped	% drop in # of cases shipped
	3/6/2010		
#1	3/13/2010	-76%	-88%
#2	3/20/2010	-89%	-95%
#3	3/27/2010	-90%	-96%
#4	4/3/2010	-70%	-80%
#5	4/10/2010	-86%	-92%
#6	4/17/2010	-80%	-83%
#7	4/24/2010	-71%	-72%
#8	5/1/2010	-56%	-45%
#9	5/8/2010	-30%	-23%
#10	5/15/2010	-38%	-26%
#11	5/22/2010	-37%	-25%
#12	5/29/2010	-21%	0%
#13	6/5/2010	-37%	-26%
#14	6/12/2010	-31%	-20%
#15	6/19/2010	-31%	-18%
#16	6/26/2010	-32%	-15%
#17	7/3/2010	-1%	15%
#18	7/10/2010	-31%	-21%

With the exception of the Memorial Day and Independence Day holiday weeks, there was a sharp increase in the employer's production levels, beginning in week #8 of the strike. Beginning strike week #9, the level of curtailment in the number of cases shipped fell below 25%, and it remained at or below the mid-20% range throughout the rest of the strike period.<sup>4</sup> The dollar value of cases shipped exhibited a similar degree of recovery to non-strike levels beginning in week #9, with the extent of the curtailment in this measure of operations generally running around 30% for the remainder of the strike period.

We also observe that the [DC] staffing level during week #9, at 150 workers, is nearly the same as the number of workers remaining in the bargaining unit post-strike after the layoffs later in the summer of 2010. Thus, 218 workers were on the roster on July 31, 2010, but 13 bargaining unit members subsequently accepted a voluntary layoff, and another 53 members were laid off on September 15, 2010, leaving a bargaining unit workforce as of September 15, 2010 of 152 workers. It appears that, in week #9, the employer had just about reached what would become its ultimate equilibrium workforce level.

The employer asks the Board to also consider the labor dispute's impact on its managerial functions, including the employer's inability to perform audits, hold safety meetings, conduct inspections, and perform various human resource functions. Even if the record included sufficient evidence to compare the levels of performance in these areas during the labor dispute with those during normal operations, which it does not, we need not examine these support functions because we were able to measure the labor dispute's impact based upon the employer's production output. See Hertz, 437 Mass. at 300 (citations omitted) (high levels of disruption in support operations may still constitute a substantial curtailment in the employer's operations where output and revenues are unaffected).

*Whether the employer prolonged the work stoppage by choosing not to bring back distribution of meat and deli until the strike ended.*

The claimants argue that the employer was not *forced* to continue contracting out its meat and deli product to [X], but that it chose to as part of a business plan to reorganize the [DC] operation, thereby prolonging the time that was reasonably necessary to physically resume normal operations. If the employer takes any action, or fails to take action, which has the effect of continuing the substantial curtailment of operations, the Board may take this into account in evaluating what caused the work stoppage. See Reed I, 388 Mass. at n. 8; Reed II, 393 Mass. at 723.

There is no substantial evidence that the employer deliberately prolonged the work stoppage in this case. The claimants established that it took up to two-and-a-half weeks to return the meat and deli products from [X]. The employer established that this involved communicating with

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<sup>4</sup> For our purposes, we believe the employer's number of cases shipped may be a somewhat more reliable indicator of production level than the dollar rate of the cases, inasmuch as the dollar value of a case may be influenced by fluctuating seasonal and cyclical market conditions.

individual vendors and truck drivers to change the delivery destination and line up of products and involved the use of support personnel and IT staff at both [Employer] and [X]. It also took at least 30 days to put new hires to work. In light of the time and effort involved in transferring this work, we do not believe the employer's decision to hold off returning the meat and deli unreasonably extended the work stoppage.

### *Conclusion*

We, therefore, conclude as a matter of law that, under G.L. c. 151A, § 25(b), the claimants' unemployment was due to a stoppage of work, which existed because of a labor dispute at the [DC] resulting in a substantial curtailment of the employer's operations, from week ending March 13, 2010 through week ending May 1, 2010. However, we further conclude, under the same provision of law, that there was no similar substantial curtailment of operations resulting in a stoppage of work from week ending May 8, 2010 through week ending July 10, 2010. Therefore, the claimants are not disqualified during those weeks.

The portion of the DUA determination that denied benefits to the claimants for the week ending March 13, 2010 through week ending April 24, 2010 is affirmed. That portion of the DUA determinations that awarded benefits to the claimants during the week ending May 1, 2010 is reversed. That portion of the DUA determinations that awarded benefits to the claimants beginning the week ending May 8, 2010 and thereafter is affirmed.

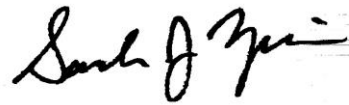
The claimants are denied benefits for the weeks ending March 13, 2010 through the week ending May 1, 2010. The claimants are eligible for benefits beginning the week ending May 8, 2010 and for subsequent weeks if otherwise eligible.

**N.B.** – All claimants whose names appear in Exhibit 56 as returning to work prior to week ending May 8, 2010 are ineligible for benefits, under G.L. c. 151A, § 25(b), because they did not participate in the labor dispute during the period of eligibility and are disqualified, under G.L. c. 151A, § 25(b)(1).

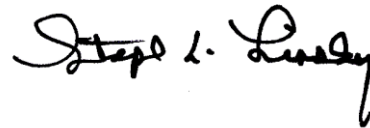


John A. King, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING - August 23, 2012**



Sandor J. Zapolin  
Member



Stephen M. Linsky, Esq.  
Member

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

**LAST DAY TO FILE AN APPEAL IN COURT – September 24, 2012**