M0064 (Sept. 23, 2014) – Factoring in the production shifted to the employer's plant in another state during the strike, there was still a substantial curtailment of revenue and of finished wire products manufactured at its struck Massachusetts facility.

Board of Review
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Multi-Claimant Issue ID: M0064

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimants appeal a decision by the Department of Unemployment Assistance (DUA) to deny unemployment benefits to 160 claimants during the 15 weeks ending April 13, 2013, through July 20, 2013, under G.L. c. 151A, § 25(b). Pursuant to our authority under G.L. c. 151A, § 41, we affirm.

In a determination issued on August 9, 2013, benefits were denied after the DUA concluded that the employer had established that the claimants' participation in a strike during the period from April 10, 2013, through July 14, 2013, resulted in a stoppage of work, under G.L. c. 151A, § 25(b). The claimants appealed, and the DUA referred their appeal directly to the Board of Review, as permitted under G.L. c. 151A, § 39(d). The claimants and the employer participated in a hearing before the Board, with the parties represented by counsel. Our decision is based upon our review of the entire record, including the hearing testimony, exhibits, and the parties' post-hearing submissions.

The issues on appeal are: (1) whether the employer was properly assigned the burden to prove there was a work stoppage; (2) whether federal labor law preempts the Board from determining whether the labor dispute resulted in a stoppage of work; and (3) whether the claimants' participation in a the strike at the employer's [City A] Massachusetts facility resulted in a substantial curtailment of the employer's business such as to constitute a work stoppage, within the meaning of G.L. c. 151A, § 25(b).

Findings of Fact

1. The employer manufactures and sells wire products that conduct electricity.

2. The employer has manufacturing plants located in Massachusetts, Florida, Ohio, and California. (Tr. at 41.)

3. The employer has a facility in Massachusetts located at [Street Address A], [City A] ("[City A] facility"), which had 247 employees during April, 2013. There were 59 salaried employees, 18 non-union employees, and 170 bargaining unit employees. (Tr. at 31.) Within the bargaining unit, 158 workers were involved in the manufacturing process; the remainder worked in distribution. (Tr. at 32.)

4. The 160 claimants were members of the [Union A] ("union") who worked at the [City A] facility. (BOR Exh. 19; Tr. at 31.)

5. The employer's [City A] facility produced two types of products. One was the production of "finished" goods, which were sold directly to customers and which generated revenue. The other was the production of "unfinished" or "in-process" conductors, which required further manufacturing before they were ready for distribution to customers. The in-process conductors were used at the [City A] facility and also shipped for use in the manufacturing process at the employer's facilities in Florida and Ohio. (Tr. at 57–60)

6. The [City A] facility was the only employer facility that produced its in-process conductors. (Tr. 38-39.) Creating in-process conductors is a two-step process involving: (1) stretching copper wire into various gauge diameters; and, (2) coating the copper wire with compounded nylon. (Tr. at 58.)

7. These unfinished conductors are further manufactured into several types of finished cable products. They include the basic copper-content electrical cables armored with aluminum or metal ("Core"); a similarly armored copper cable product of various sizes that are made for a specific industry purpose ("Specials"); products that are flexible in nature for use by electricians on a job site ("Flex"); products which are sent in by customers for custom armoring, ("CPID"); and conduits that are waterproof or lightproof ("Liquid-Tite"). The employer also manufactures a general category of other finished products, such as fixture whips or fittings ("Other"). (Tr. 60-63; 71-72.)

8. In 2013, Core, Specials, Flex, and CPID products were manufactured at the employer's [City A] facility. (ER Exh. 7.) Specials were produced only at the [City A] facility. (ER Exh. 12.) Liquid-Tite products were manufactured in Florida and sold from the [City A] facility. (Tr. 58; ER Exh. 12.)

9. Approximately [ ] bargaining unit members were involved in the manufacture of finished products and [ ]-[ ] were involved in the manufacture of unfinished goods. (Tr. at 59, 66.)

10. The employer and the union were parties to a collective bargaining agreement that expired on February 9, 2013. (Tr. at 32.)

11. On April 10, 2013, the union went on strike at the [City A] facility. (Tr. at 32.) The striking employees returned to work on July 14, 2013, when the employer and the union reached a settlement agreement. (Tr. at 32.) None of the bargaining unit members crossed the picket line and worked for the employer during the strike. (Tr. at 33.)

12. During the course of the strike, the employer transferred one supervisor from its Florida facility, a mechanic from its other Massachusetts facility, and three workers from its California facility to the [City A] facility. It also reassigned from 5 to 10 of its managers and 2 to 3 non-union personnel at the [City A] facility to perform bargaining unit work there. (Tr. 49; 96-97; 131.)

13. Additionally, beginning in the week ending April 27, 2013, the employer hired temporary workers to perform certain bargaining unit distribution and manufacturing functions. (ER Exh. 1.) During the week ending April 27, 2013, 11 temporary workers began performing bargaining unit work. (ER Exh. 1.) During the weeks ending May 4, 2013 through July 13, 2013, the employer used from 17 to 29 temporary workers to perform bargaining unit work. None of the temporary workers were hired or trained in advance of the strike. (Tr. at 55.)

14. None of the manufacturing or distribution work normally performed at the [City A] facility was transferred to the employer's Ohio or California facility during the strike. (Tr. at 98-99; ER Exh. 11.)

15. During the strike, the employer increased production of its Core and Flex finished products at its Florida facility by increasing the production hours from a 24-hour per day, five-day operation to a 24-hour per day, seven-day operation. (Tr. at 76-77.)

16. On May 31, 2013, six armoring machines were moved from storage at the employer's [City A] facility to its California facility. (ER Exh. 11.) The six machines did not become operational at the California facility until September, 2013. (ER Exh. 11.)

17. Prior to 2013, the employer had one Canadian customer. (Tr. at 105.) This customer purchased the employer's basic finished Core product. (Tr. at 106.) In February, 2013, the employer initiated a new product line to manufacture a very specific conductor required for use in the Canadian market. (Tr. at 106.) At some point, the employer received a customer complaint in connection with the new product. (Tr. at 91-92). In April, 2013, this product was discontinued and the employer did not re-commence production until seven months after the strike ended. (Tr. at 90-91).

18. The employer measures its production levels based upon the number of linear feet of cable produced. (ER Exh. 7.)

19. During the strike, the employer prioritized the production of unfinished conductors at its [City A] facility, particularly those necessary for the manufacture of its highest demand finished products. (Tr. at 82-83). It is unknown how many linear feet of unfinished product the employer produced before, during, and after the strike, or during the same period the year before. However, during the strike, the [City A] facility continued to produce 78% to 80% of its normal output of unfinished product. (Tr. at 68.)

20. During January–March, 2012, the employer had produced 80,862,146 linear feet of finished goods in its Core, Specials, Flex, and CPID product categories at its [City A] facility. During August–October, 2012, it produced 81,355,679 linear feet of the same product categories.

The total amount of finished goods produced in these categories during these two periods in 2012 from the [City A] facility was 162,217,825 linear feet. (ER Exh. 7.)

21. During the non-strike period January–March, 2013, the employer produced 70,571,502 linear feet of finished goods in its Core, Specials, Flex, and CPID categories at the [City A] facility. During the non-strike period August–October, it produced 76,574,062 linear feet of the same product categories. The total amount of finished goods produced at the [City A] facility in these categories during these two non-strike periods in 2013 was 147,145,564 linear feet. (ER Exh. 7.)

22. In 2012, during the period mid-April – mid-July, the employer produced 66,954,230 linear feet of finished goods in its Core, Specials, Flex, and CPID categories at the [City A] facility. (ER Exh. 7.)

23. In 2013, during the strike period (mid-April to mid-July), the employer's [City A] facility produced 21,774,821 linear feet of its finished Core, Specials, Flex, and CPID products. (ER Exh. 7.)

24. During the strike period, the employer's Florida facility was able to increase production of the employer's finished Core and Flex products by 8,281,151 million more linear feet than the Florida facility had produced in the three months prior to the strike. (Tr. at 93; ER Exhs. 12 and 13.)

25. Some of the revenue generated from the employer's [City A] facility is from distribution of the employers finished product that is manufactured in advance and kept as inventory. (Tr. at 103; ER Exh. 8.)

26. In January–March, 2012, the employer distributed 75,393,615 linear feet of finished goods, including inventory, in its Core, Specials, Flex, and CPID product categories from the [City A] facility. This generated $38,383,206 in revenue. (ER Exh. 8.)

27. In August–October, 2012, the employer's [City A] facility distributed 71,909,581 linear feet of finished goods, including inventory, in its Core, Specials, Flex, and CPID product categories. This generated $36,745,543 in revenue. (ER Exh. 8).

28. In 2012, the total revenue generated from the [City A]'s distribution of finished product during the combined periods of January–March and August–October was $75,128,749. (ER Exh. 8.)

29. In the non-strike period January–March, 2013, the employer's [City A] facility distributed 66,102,524 linear feet of finished goods, including inventory, in its Core, Specials, Flex, and CPID product categories. This generated $34,423,484 in revenue. (ER Exh. 8.)

30. In the non-strike period August–October, 2013, the [City A] facility distributed 67,691,184 linear feet of finished goods, including inventory, in the Core, Specials, Flex, and CPID product categories. This generated $32,402,207 in revenue. (ER Exh. 8.)

31. In 2013, the total revenue generated from [City A]'s distribution of finished product during the combined periods of January–March and August–October was $66,825,691. (ER Exh. 8.)

32. During the strike period, mid-April–mid-July, 2013, the [City A] facility distributed 30,797,733 linear feet of finished goods, including inventory, in the Core, Specials, Flex, and CPID product categories. This generated $16,073,095 in revenue. (ER Exh. 8.)

33. During the period mid-April–mid-July, 2012, the [City A] facility had distributed 71,434,833 linear feet of finished goods, including inventory, in the Core, Specials, Flex, and CPID product categories. This generated $36,615,777 in revenue. (ER Exh. 8.)

34. In a Notice of Disqualification issued on August 9, 2013, DUA concluded that, under G.L. c. 151A, § 25(b), the claimants were ineligible for unemployment benefits for the duration of the strike, because the employer had produced data showing that it had suffered a considerable loss of production, shipment, inventory, and revenue and that this amounted to a stoppage of work caused by the labor dispute.

Ruling of the Board

In this appeal, the Board must determine the claimants' eligibility for unemployment benefits under G.L. c. 151A, § 25(b). This provision provides, in relevant 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; . . .

I. The employer bears the burden of establishing a work stoppage.

The employer urges the Board to assign to the claimants the burden to establish that there was not a work stoppage, under G.L. c. 151A, § 25(b). Specifically, the employer draws the analogy to the burden of proof, under G.L. c. 151A, § 25(e)(1), which is placed upon claimants who abandon their jobs. In our most recent decision involving a labor dispute, M-63772–M-69116 (Apr. 24, 2013) ("M-62772"), we rejected this argument.

As we stated in M-63772, "[T]he term "stoppage of work" . . . refers to the effect upon the employer's operations produced by the labor dispute . . . It does not refer to the cessation of work by the individual employee or employees." General Electric Co. v. Dir. of Division of Employment Security, 349 Mass. 358, 363 (1965). Unlike most other unemployment insurance eligibility questions, where an employee is discharged or leaves work voluntarily and our focus is on the employee's actions, our focus in labor disputes is centered upon the *employer's* circumstances. As noted above, the employer asserts that, in analyzing the instant labor dispute,

we should apply the burden of proof, under G.L. c. 151A, § 25(e)(1). When a claimant quits a job and contends that the separation was for good cause attributable to the employer, under G.L. c. 151A, § 25(e)(1), the inquiry is on the employee's reason for leaving and the parties' conduct *prior* to the separation. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). However, in a labor dispute, our role, under G.L. c. 151A, § 25(b), is not to decide the reasons for the employees' decision to go on strike — we focus simply on the strike's impact upon the employer's operation *after* the claimants stopped working. General Electric, 349 Mass. at 363.

Moreover, under principles of statutory construction, the party raising the exception or defense must bear the burden of persuasion. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 231 (1985).

To qualify for unemployment benefits, the claimant has the initial burden to establish monetary eligibility, under G.L. c. 151A, § 24. *See* Id. The provisions, under G.L. c. 151A, § 25, set forth circumstances that constitute exceptions to that eligibility. G.L. c. 151A, § 25(b), does not disqualify claimants who are out of work due to a strike; rather it does so *only if* the strike caused a stoppage of work — *i.e.*, a substantial curtailment of operations. Thus, in order to meet the contingent exception set forth in G.L. c. 151A, § 25(b), it must be established that the strike caused a substantial curtailment of the employer's operations. Since it is the employer that urges the Board to rule that the strike caused a substantial curtailment, the employer should bear the burden of proof.

Finally, the burdens of production and persuasion should be assigned to the party most likely to have access to the relevant evidence. Cantres, 396 Mass. at 231, *citing* P.J. Liacos, Massachusetts Evidence 41 (5th ed. 1981) ("burden of persuasion is on the party . . . who has freer access to the evidence.") There is no question that in the instant matter the employer is the party most likely to have access to the information bearing on whether its operations were substantially curtailed.

II. The application of G.L. c. 151A, § 25(b) is not pre-empted by federal labor law.

The employer also challenges, under the doctrine of federal preemption, the Board's authority to grant unemployment benefits, pursuant to G.L. c. 151A, § 25(b). Specifically, the employer asserts that federal labor law bars the state from granting unemployment benefits to strikers, because doing so interferes with the "free play of economic forces"[1] between labor and management. We believe that this argument has already been rejected by the United States Supreme Court.

In New York Telephone Co. v. New York State Department of Labor, the Supreme Court held that the legislative history of both the National Labor Relations Act (NLRA) and the Social Security Act showed no intent by Congress to deny states the power to provide unemployment benefits to striking workers. 440 U.S. 519, 540-544 (1979). It observed that "Congress was aware of the possible impact of unemployment compensation on the bargaining process," and on two subsequent occasions, Congress had considered and rejected amendments to federal statutes

[1] Machinists v. Wisconsin Emp. Relations Comm'n, 427 U.S. 132, 139 (1976).

that would have excluded strikers from receiving unemployment benefits. Id. at 544-545 n. 44. The Court expressly noted that "many States, pursuant to the so-called 'American rule,' allow strikers to collect benefits so long as their activities have not substantially curtailed the productive operations of their employer." Id. at 534 n. 24. The Supreme Court further noted that it had previously upheld (by dismissing an appeal for want of a substantial federal question) a New Mexico decision holding that its award of benefits to strikers under a substantial curtailment provision was not preempted. Id. *See also* Westinghouse Broadcasting Co. v. Dir. of Division of Employment Security, 378 Mass. 51, 56-57 (1979).

Thus, we are satisfied, based upon long standing precedent, that G.L. c. 151A, § 25(b) is not pre-empted by federal labor law.

III. Determining a work stoppage.

Although the term "stoppage of work" is not defined under G.L. c. 151A, § 25(b), it has acquired a cognizable meaning through judicial construction. As the Massachusetts Supreme Judicial Court has stated, in order for there to be a "'stoppage of work,' operations must be 'substantially curtailed.'" Hertz Corporation v. Acting Dir. of Division of Employment and Training, 437 Mass. 295, 297 (2002), *citing* Reed National Corp. v. Dir. of Division of Employment Security, 388 Mass. 336, 338 (1983) ("Reed I"). "How much disruption is required to constitute a substantial curtailment is a fact-specific inquiry; there is no percentage threshold or numerical formula." Hertz, 437 Mass. at 297. It is a matter of degree. Westinghouse, 378 Mass. at 55-56.

The nature of the employer's business affects how we measure substantial curtailment. In 1991, the Supreme Judicial Court considered how to measure "stoppage of work" in the context of a strike against a public utility, which had a duty to maintain essential services to its customers. Boguszewski v. Comm'r of Department of Employment and Training, 410 Mass. 337, 345 (1991). The Court considered how a labor dispute might differently impact a public utility as compared to a manufacturing firm and how the Board could approach each of these situations to measure the impact. Whereas the manufacturing firm might be more likely to curtail its end product and revenue, a public utility was more likely to absorb the impact in business operations which are not tied to output and revenue. Id. at 340, 345. Careful to avoid setting a rule, the Court instructed the Board to "follow an empirical approach, evaluating each situation on its facts." Id. at 344.

The case before us involves a strike against a manufacturing firm. Therefore, consistent with Boguszewski, we rely on measurable levels of disruption to the employer's end production and revenue.

> a. Substantial impairment is measured by the impact at the facility where the strike occurred, taking into account any production recovered by shifting work to a non-striking plant.

G.L. c. 151A, § 25(b), expressly directs us to consider whether the claimants' unemployment is due to a stoppage of work that exists because of a labor dispute *at the factory, establishment, or other premises* at which the claimants were 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. Dir. of Division of Employment Security, 326 Mass. 757, 762 (1951). In order to determine whether the claimants' strike caused a work stoppage, our primary focus is the degree of disruption the strike caused to the employer's operations at the factory where the claimants last worked — the [City A] facility. We make this determination "in the context of all the circumstances, including the overall status of the corporation's operations." Reed I at 341.

As the claimants argue, in determining the degree of disruption at the [City A] plant, it can be relevant to consider whether and how much [City A] work was performed in other company locations during the strike. Thus, in Reed I, the Supreme Judicial Court, reviewing a decision of this Board holding that a stoppage of work had occurred as the result of a labor dispute, remanded the matter back to the Board for, *inter alia*, findings about how much work from the struck plant was sent to the employer's non-striking plants. 388 Mass. at 340-341 n. 8. After remand, finding that "a considerable, but *unspecified amount of work*" relocated internally to another employer plant, the Board relied only upon production levels at the plant where the strike took place in rendering its new decision, again holding that a work stoppage had occurred. This decision was subsequently affirmed by the Supreme Judicial Court. Reed National Corp. v. Dir. of Division of Employment Security, 393 Mass. 721, 723 (1985) ("Reed II").

In the instant case, the employer acknowledges having sent a portion of the [City A] production of finished Core and Flex products to its Florida facility during the strike. Moreover, unlike in Reed II, the amount of transferred production in the present case is measurable. Therefore, we incorporate it into our analysis below.

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 court decisions in other labor disputes where the Board was able to quantify the dispute's impact on production. The Supreme Judicial Court agreed with the Board's ruling that a drop of about 35% from normal production at a wool processing plant constituted a work stoppage. Adomaitis v. Director of Division of Employment Security, 334 Mass. 520, 522-524 (1956). In Reed II, 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.

On the basis of the previously cited precedent, we first measure the strike's impact on the finished product manufactured at the [City A] facility. Production levels of the employer's finished Core, Specials, Flex, and CPID products from the [City A] facility were as follows[2]:

Production of finished goods *at [City A]*: 01-Core, 02-Specials, 03-Flex, and 04-CPID (not including Liquid-tite and Other)

[2] Although Employer Exhibit 7 includes production figures for the employer's Liquid-Tite product, we exclude these figures because this product was not produced at the [City A] facility. We also exclude Exhibit 7's "other" category, as this category does not appear to have been produced consistently or in significant numbers at the [City A] facility.

2012	linear feet
January–March	80,862,146
Mid-April–mid-July	66,954,230
August–October	81,355,679
Total	229,172,055

2013	linear feet
January–March	70,571,502
Mid-April–mid-July (strike period)	21,774,821
August–October	76,574,062
Total	168,920,385

In Reed I, the Supreme Judicial Court instructed the Board to evaluate substantial curtailment by comparing the employer's data during the period of the labor dispute with the same weeks or months in the previous year, but to do so "in the context of all the circumstances, including the over-all status of the corporation's operations." 388 Mass. at 340. In Hertz, where the Court looked to measure the normal rate of customer complaints, it compared the levels during the strike with those during the period before and after the strike in the same year. 437 Mass. at 299. Similarly, in M-63500, we chose not to compare strike levels of revenue and production in that retail grocery chain with those from the prior year, because we found an overall downward trend in the size of employer's workforce and operations from the prior year. Under those circumstances, we believed that a more accurate measure of the labor dispute's impact would be to compare the weeks during the strike with non-strike levels immediately before and after the strike.

In the present case, the evidence also shows a downward trend in the employer's [City A] production and revenue figures from the prior year. Total production of Core, Specials, Flex, and CPID products at the [City A] facility during the non-strike periods of 2013 (January through March and August through October) was 147,145,564 linear feet.[3] Total production of the same product categories during these same periods in 2012 was 162,217,825. This constitutes a reduction in [City A] production of these finished products of 9.3% from the prior year. Similarly, total revenue from distributing the same products during the non-strike periods of 2013 was $ 66,825,691. Total revenue from these products during the same periods in 2012 was $ 75,128,749 (see table below). This was a reduction of 11.1% from the prior year. Rather than attempt to adjust for this reduction in a year-over-year comparison of the strike period, the most practical method to measure the 2013 strike's impact on the facility's production and revenue in this case is to compare the strike period numbers with those generated in the months before and after the strike.

In 2013, the [City A] facility produced 70,571,502 linear feet of Core, Specials, Flex, and CPID finished goods during the three months preceding the strike, January through March. During the strike period, mid-April through mid-July, the [City A] facility produced 21,774,821 linear feet of these same product categories. This reflects a drop of 69.1%.

[3] This data is derived exclusively from Employer Exhibit 7 and not from Employer Exhibit 8, because the latter includes existing inventory in its calculation of linear feet distributed from [City A].

During the three months following the 2013 strike, August through October, the [City A] facility produced 76,574,062 linear feet of Core, Specials, Flex, and CPID finished goods. Thus, the [City A] facility generated 71.6 % fewer linear feet during the strike than it did in the months after the strike.

However, during the strike period, the employer had its Florida facility ramp up production from five to seven days a week. Production levels of the employer's Core and Flex finished goods from its Florida facility were as follows:[4]

Production of finished goods *at Florida*: 01-Core, 03-Flex, (not including Liquid-tite and Other)

2013	linear feet
January–March	42,528,243
Mid-April–mid-July (strike period)	50,809,394
August–October	45,909,382
Total	139,247,019

In the three months prior to the [City A] strike, the employer's Florida facility was manufacturing 42,528,243 linear feet of the employer's Core and Flex finished product. During mid-April through mid-July, when the claimants were on strike in [City A], the Florida facility increased production of these product categories to 50,809,394. This is an increase of 8,281,151 linear feet.

If we follow the Supreme Judicial Court's guidance in Reed I, and consider that the employer made up for some of the lost production at [City A] by increasing production in Florida, the strike's measurable impact decreases somewhat. Adding Florida's 8,281,151 linear feet to the 21,774,821 linear feet of finished goods produced in [City A] during mid-April through mid-July, 2013, the total production figure during the strike period is 30,055,972 linear feet. The 30,055,972 is 57.4% fewer linear feet than the 70,571,502 produced in [City A] during the three months preceding the strike, and it is 60.7% fewer linear feet than the 76,574,062 produced at the facility during the three months following the strike. A drop of 57.4% or 60.7% from normal finished good production levels during non-strike periods represents a substantial curtailment of production.

The employer's [City A] facility also produced unfinished goods. It was the only facility that produced these "in-process" cables, which were needed to complete the manufacture of its finished, revenue-generating cable products. Although it is unknown how many linear feet of unfinished cables the employer produced, we know that, during the strike, the [City A] facility continued to produce 78% to 80% of its normal output. By itself, this 18% to 20% drop in production falls short of a substantial impairment.

[4] This production data is derived from Employer Exhibit 13. For the sake of comparison, we exclude the production figures for the Liquid-Tite and Other categories.

In this case, the employer's revenue figures follow its production figures. Revenue generated from distribution of the employer's finished Core, Specials, Flex, and CPID products from the [City A] facility are summarized as follows[5]:

Revenue from fulfilling orders of 01-Core, 02-Specials, 03-Flex, and 04-CPID (not including revenue from Liquid-tite and Other)

2012	linear feet[6]	invoice
January–March	75,393,615	$ 38,383,206
Mid-April–mid-July	71,434,833	$ 36,615,777
August–October	71,909,581	$ 36,745,543
Total	218,738,029	$111,744,526

2013	linear feet	invoice
January–March	66,102,524	$ 34,423,484
Mid-April–mid July (strike period)	30,797,733	$ 16,073,095
August - October	67,691,184	$ 32,402,207
Total	164,591,441	$ 82,898,786

During the three months prior to the 2013 strike, from January through March, the employer's [City A] facility generated $34,423,484 from its distribution of finished goods. In the three months of the strike, mid-April through mid-July, 2013, it distributed $16,073,095 in finished goods. This was a drop of 53.3%.

During the three months following the strike, August through October, 2013, the [City A] facility generated $32,402,207 from its distribution of the same categories of finished goods. The $16,073,095 brought in during the strike period was 50.4% less revenue than the employer generated in the three month period immediately after the claimants returned to work.

A reduction in revenue during the strike period of 53.3% or 50.4% of normal levels of revenue during non-strike periods is a substantial reduction.

In sum, the employer has proven that it sustained a substantial reduction in revenue and in the production of its finished product during the strike period and that these reductions were attributable to the labor dispute. We recognize that the employer has not shown a substantial reduction in the production of its in-process cables. However, we attribute less weight to the strike's impact on production of these cables, because the employer's business was selling finished wire products. Essentially, the in-process conductors had little market value until the employer converted them into a product which could be distributed for sale.

[5] Although Employer Exhibit 8 includes revenue figures for its Liquid-Tite product, we exclude these figures because this product was not produced at the [City A] facility. We also exclude Exhibit 8's "other" category, as this category does not appear to have been produced consistently or in significant numbers at the [City A] facility.

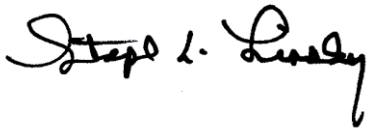
[6] The number of linear feet in this table includes the distribution of [City A] inventory, which may have been produced prior to the period in which it was distributed. *See* Employer Exhibit 8.

We, therefore, conclude as a matter of law as follows: (1) the employer had the burden to prove that the strike caused a substantial curtailment of its operations; (2) federal labor law does not preempt a determination as to whether the claimants' strike caused a stoppage of work, under G.L. c. 151A, § 25(b); and (3) the employer has shown that the claimants' unemployment was due to a stoppage of work, within the meaning of G.L. c. 151A, § 25(b).

The DUA determination is affirmed. The claimants are denied benefits for the weeks ending April 13, 2013, through July 20, 2013

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 23, 2014

Paul T. Fitzgerald, Esq.
Chairman



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Member

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Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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