

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

TABLE OF CONTENTS

- 5. General

- 35. At the factory, establishment, or other premises:
 - 35.05 General

- 125. Determination of existence:
 - 125.05 General
 - 125.10 Closing of plant or lock-out
 - 125.15 Continuance of employer-employee relationship
 - 125.20 Dispute over conditions of employment:
 - 125.202 Check-off system
 - 125.203 Discharge and reinstatement
 - 125.205 Safety condition
 - 125.206 Transfer
 - 125.25 Judicial or administrative proceedings
 - 125.35 Lack of contract
 - 125.40 Merits of the dispute
 - 125.45 Negotiation with employer
 - 125.50 Sympathetic strike
 - 125.55 Union recognition
 - 125.60 Violation of contract or agreement

- 130. Directly interested in

- 175. Employment subsequent to dispute or stoppage of work

- 190. Evidence:
 - 190.10 Burden of proof and presumptions

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

TABLE OF CONTENTS

- 205. Financing and participating:
 - 205.05 General
 - 205.10 Affiliation with organization
 - 205.15 Payment of union dues
 - 205.20 Picketing or refusal to cross picket line

- 220. Grade or class of worker:
 - 220.15 Membership or nonmembership in union
 - 220.25 Performance of work

- 245. In active progress

- 315. New work

- 350. Period of disqualification:
 - 350.05 General
 - 350.55 Termination of

- 420. Stoppage of work:
 - 420.10 Determination of existence of
 - 420.15 Existing because of labor dispute
 - 420.20 Termination of

- 445. Termination of labor dispute:
 - 445.05 General
 - 445.10 Agreement or arbitration
 - 445.15 Closing of plant or department
 - 445.20 Discharge or replacement of workers
 - 445.25 National Labor Relations Board proceeding or order

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

TABLE OF CONTENTS

465. Unemployment due to labor dispute or stoppage of work:

- 465.05 General
- 465.10 Discharge or resignation
- 465.20 Prevented from working
- 465.25 Temporary, extra, or seasonal work

470. Unemployment prior to labor dispute or stoppage of work:

- 470.05 General
- 470.15 Discharge or resignation
- 470.20 Lack of work
- 470.25 Temporary, extra, or seasonal work

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 5.00

LD GENERAL

LD 5.00 GENERAL.

INCLUDES CASES WHICH DISCUSS (1) THE LEGISLATIVE INTENT TO DISQUALIFY WORKERS, IN SPECIFIC SITUATIONS, UNDER THE LABOR DISPUTE PROVISION RATHER THAN UNDER THE VOLUNTARY LEAVING OR MISCONDUCT DISQUALIFICATION PROVISION, (2) THE EFFECT TO BE GIVEN TO DEFINITIONS OF A TERM SUCH AS "LABOR DISPUTE" FOUND IN OTHER LAWS, (3) GENERAL DISCUSSION OF THE DISQUALIFICATION, ITS PURPOSES, ETC., AND (4) POINTS CONCERNING THE LABOR DISPUTE DISQUALIFICATION PROVISION NOT COVERED BY ANY SPECIFIC LINE IN THE LABOR DISPUTE DIVISION.

Appeal No. 4032-CA-76. The collective bargaining agreement between the employer and the union representing the claimants expired. The claimants continued to work. Subsequently, the employer made an offer which was rejected by the union and a lockout by the employer resulted.

On August 19, 1976, the Waco Court of Civil Appeals held in a different case that, where the cause of involuntary unemployment was an employer lockout, such unemployment was not caused by the "claimant's stoppage of work" and unemployment compensation benefits were payable to claimants during the period of involuntary unemployment. This decision was upheld by the Texas Supreme Court in Brown v. Texas Employment Commission, 540 S.W. 2d 758 (Tex. Civ. App., 1976, err. ref., n.r.e.).

HELD: In view of the decision in the Brown case, the Commission concluded that the thirty-one claimants here involved were involuntarily unemployed when the employer instituted lockout and that the resulting claimants' unemployment was not caused by the "claimant's stoppage of work." The Commission accordingly reversed the decision of the Appeal Tribunal and awarded benefits without disqualification to the claimants.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 5.00 (2)

LD GENERAL

Appeal No. 4032-CA-76

(Cont'd)

The lockout by the employer which caused the claimants unemployment was tantamount to a discharge under the provisions of the Texas Unemployment Compensation Act. Since the claimants were not guilty of any misconduct connected with the work which caused their discharge, the claimants were not subject to disqualification under Section 207.044 of the Act. (Also digested under LD 125.10, 125.35, 420.10, 445.15 and 465.20. Cross-referenced under LD 420.15.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 35.00 - 35.05

LD AT THE FACTORY, ESTABLISHMENT, OR OTHER PREMISES

LD 35.00 AT THE FACTORY, ESTABLISHMENT, OR OTHER PREMISES.

**35.05 AT THE FACTORY, ESTABLISHMENT, OR OTHER PREMISES:
GENERAL.**

INCLUDES CASES WHICH CONTAIN (1) INTERPRETATION OF TERMS "FACTORY," "ESTABLISHMENT," AND "OTHER PREMISES," AND IN WHICH THE APPLICATION OF THE DISQUALIFICATION DEPENDS UPON A FINDING THAT THE DISPUTE WAS LOCALIZED, WITH RESPECT TO THE PLACE OF CLAIMANT'S WORK AND (2) POINTS RELATING TO THE TERMS "FACTORY," "ESTABLISHMENT," AND "OTHER PREMISES" NOT COVERED BY THE OTHER SUBLINES UNDER LINE 35.

Appeal No. 2499-CA-75. The claimant was a member of a laborers union local in Sherman, where he worked for the employer-contractor. The claimant was hired in Sherman to help secure a job site there and to help ship materials to Dallas where a labor dispute existed between this employer and several Dallas-Fort Worth area construction trade locals. The claimant was laid off and not recalled. His union local was not a party to the dispute and no picket lines were established at the Sherman site. HELD: No disqualification under Section 207.048. In order for a Section 207.048 disqualification to be imposed there must be a reasonably proximate causal connection between the claimant's unemployment and a labor dispute at the premises where he was last employed.

Appeal Nos. 44,079-AT-67, 44,080-AT-67, 44,081-AT-67 & 44,086-AT-67 (Affirmed by 752-CA-67). The claimants' unemployment was brought about by a shortage of parts at the plant where they worked due to a strike at a supplying plant owned and operated by the employer. Although the claimants belonged to the same class and grade of workers as the strike members, the local and international union of which claimants were members did not support the striking members. HELD: The claimants did not fall within the escape provisions of Section 207.048 because they belonged to

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 35.05 (2)

LD AT THE FACTORY, ESTABLISHMENT, OR OTHER PREMISES

Appeal Nos. 44,079-AT-67, 44,080-AT-67, 44,081-AT-67 & 44,086-AT-67 (Affirmed by 752-CA-67). (Cont'd)

the same grade or class of workers of which, immediately prior to the commencement of the labor dispute, there were members employed at the premises where the dispute occurred, some of whom were participating in or financing directly interested in the dispute. (Also digested under LD 205.10.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.00 - 125.05

LD DETERMINATION OF EXISTENCE

LD 125.00 DETERMINATION OF EXISTENCE.**125.05 DETERMINATION OF EXISTENCE: GENERAL.**

(1) INTERPRETATION OF OR LIMITATIONS UPON TERM "LABOR DISPUTE," (2) VIOLATIONS OF STATUTE BY EMPLOYER, (3) GENERAL OBSERVATIONS AS TO WHAT CONSTITUTES A LABOR DISPUTE, STRIKE, OR LOCK-OUT, (4) COMPARISON OF VARIOUS STRIKE SITUATIONS, (5) POINTS ON DETERMINATION OF EXISTENCE OF LABOR DISPUTE NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 125, AND (6) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 3308-CA-75. The claimants were pilots working for an American employer overseas. Because of working conditions which they felt were unsafe, they formed an association to attempt to bargain collectively concerning the working conditions. The employer refused to recognize the association or to bargain with it. The claimants engaged in a "sick-out" and refused to report to work. The employer terminated those employees who would not report to work and immediately returned them to the United States. **HELD:** The claimants had engaged in a stoppage of work because of a labor dispute at the place they last worked. However, the employer took actions clearly evidencing an intention to sever the employer-employee relationship. No disqualification under Section 207.048 because of the employer's actions severing the employer-employee relationship prior to the initial claim. (Cross-referenced under LD 125.15, 125.205 and 465.10.)

North East Texas Motor Lines, Inc. vs. Dickson, 219 S.W. 2d 795 (Tex. Sup. Ct. 1949). In the absence of any knowledge by the employer of the nature of any demand which any of its employees or the union desired to make, and in the absence of any opportunity to negotiate, there could be no dispute. (Also digested under LD 125.45.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.10 - 125.15

LD DETERMINATION OF EXISTENCE**LD 125.10 DETERMINATION OF EXISTENCE: CLOSING OF PLANT OR LOCK-OUT.**

INCLUDES CASES WHICH DEFINE THE TERM "LOCK-OUT," AND THOSE WHICH CONSIDER THE ACTIONS OF BOTH THE EMPLOYER AND THE WORKER IN DETERMINING WHETHER THERE IS A LOCK-OUT OR A STRIKE.

Appeal No. 2066-CA-77. The claimant was a non-union member but had acquired his job through the union, paid its dues, and received union scale wages. His cessation of work resulted from the expiration of the collective bargaining agreement. He reported for work and was advised by the employer that, since union members were not working, he could not work either. HELD: Because the claimant offered to work and was effectively "locked out," no disqualification under 207.048 was in order. The separation was likewise not disqualifying under Section 207.044

Appeal No. 4032-CA-76. In Texas, a stoppage of work due to a "lock-out" does not constitute "claimant's stoppage of work" and is not disqualifying under Section 207.048 of the Texas Unemployment Compensation Act. (For a more complete summary, see LD 5.00.)

125.15 DETERMINATION OF EXISTENCE: CONTINUANCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.

CONSIDERATION OF WHETHER THE EMPLOYER-EMPLOYEE RELATIONSHIP HAS CONTINUED, OR OF THE DECISIVENESS OF THIS FACTOR IN DETERMINING THE EXISTENCE OF A LABOR DISPUTE.

Appeal No. 4391-CA-50. Even though an employee may be out on strike or unemployed because of a strike at the premises where he was last employed, the employer-employee relationship which existed prior to the strike is not severed by reason of such strike, but is, instead, merely suspended for the duration of the strike. In

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.15 - 125.20

LD DETERMINATION OF EXISTENCE

Appeal No. 4391-CA-50.

(Cont'd)

the absence of a clear showing on the part of the claimant that he intended to sever his relationship with the employer and that the work which he seeks to establish as the L.E.U. was work which he intended to continue regardless of the outcome or duration of the strike or other labor dispute existing, the claimant is subject to disqualification under Section 207.048 of the Act.

Principle of law followed above reaffirmed in Appeal No. 63,109-AT-58 (Affirmed by Appeal No. 6359-CA-58 under LD 205.20.

Also see Appeal No. 3308-CA-75 under LD 125.05.

125.20 DETERMINATION OF EXISTENCE: DISPUTE OVER CONDITIONS OF EMPLOYMENT.

DISCUSSION OF THE COMMON PROBLEMS OR GRIEVANCES WHICH MAY CONSTITUTE THE SUBJECT MATTER OF THE DISPUTE BETWEEN THE EMPLOYEES AND THE EMPLOYER OR BETWEEN THE EMPLOYER AND THE UNION.

International Union of Operating Engineers vs. Cox, 219 S.W. 2d 787 (Tex. Sup. Ct. 1949). Controversies concerning wages, hours or conditions or employment come within the term "labor dispute." (For a more complete summary, see LD 445.20.)

Appeal No. 32,831-AT-50 (Affirmed by 4740-CA-50). The Nation Labor Relations Act defines a "labor dispute" to include "any controversy concerning terms, tenure or conditions of employment, or concerning the association or representative of persons in negotiating, fixing, maintaining, changing, and seeking to arrange terms or conditions or employment regardless of whether disputants stand in the proximate relation of employer and employee." (Also digested under LD 125.205 and 205.05.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.202 - 125.203

LD DETERMINATION OF EXISTENCE

**LD 125.202 DISPUTE OVER CONDITIONS OF EMPLOYMENT:
CHECK-OFF SYSTEM.**

DISPUTES INVOLVING THE PAYMENT OF UNION DUES BY MEANS OF A CHECK-OFF SYSTEM.

Vernon's Ann. Civ. St. art. 5154e. In order to withhold union dues from an employee's check, an employer in Texas must have written authorization from the employee authorizing such retention.

**125.203 DISPUTE OVER CONDITIONS OF EMPLOYMENT:
DISCHARGE AND REINSTATEMENT.**

PROTEST AGAINST DISCHARGE OF FELLOW EMPLOYEE AND STRIKE TO GAIN HIS REINSTATEMENT.

International Union of Operating Engineers vs. Cox, 219 S.W. 2d 787 (Tex. Sup. Ct. 1949). A protest against the discharge of fellow employees was considered a "labor dispute." (For test, see LD 125.20). The Court in this case was interpreting the definition of "labor dispute" in the context of Article 5471(F) concerning a prohibition against secondary boycotts.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.203 - 125.205

LD DETERMINATION OF EXISTENCE

Appeal Nos. 1363-CA-66 through 1367-CA-66.

Layoff of the claimants, because of lack of work, precipitated a labor dispute. The claimants were laid off prior to commencement of the labor dispute and their unemployment was not the result of the dispute.

125.205 DISPUTE OVER CONDITIONS OF EMPLOYMENT: SAFETY CONDITION.

PROTEST OVER NEGLECT BY EMPLOYER WHICH MIGHT RESULT IN INJURY, OR THE EMPLOYEE'S INSISTENCE UPON COMPLIANCE WITH "SAFETY" REGULATIONS.

Appeal No. 32,831-AT-50 (Affirmed by 4740-CA-50).

A dispute arose between the employer and its miners over safety conditions in a salt mine after the employer refused to assign men to remove loose lumps of salt from ceiling and walls. The Commission held that there was a labor dispute between the employer and the miners but that the claimants (all of whom were surface processing workers and not miners, the miners having continued working as work was available), were protected from disqualification by virtue of the escape clauses in subsections (1) and (2) of Section 207.048 of the Act. (Also digested under LD 125.20 and 205.05.)

Also see Appeal No. 3308-CA-75 under LD 125.05.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.206

LD DETERMINATION OF EXISTENCE

**LD 125.206 DISPUTE OVER CONDITIONS OF EMPLOYMENT:
TRANSFER.**

REFUSAL OF, OR PROTEST AGAINST,
TRANSFER TO OTHER WORK: THE EMPLOYEE'S
UNWILLINGNESS TO MAKE SUCH A TRANSFER.

Appeals No. 253-AT-67 (Affirmed by 1252-CA-67).
The employer became involved in a labor dispute with its taxicab drivers. The claimant crossed the picket lines and performed his customary duties as a dispatcher until no further work as a dispatcher was available due to the decline in business brought about by the strike. Although the claimant was offered, and refused, work as a driver, a position vacant due directly to the strike, the claimant's unemployment was due to lack of work and not to his stoppage of work because of a labor dispute. It was further held that the driving position offered the claimant was not "suitable work" within the meaning of Section 207.008 of the Act, since it was vacant due directly to a labor dispute, and thus the claimant was not subject to the denial of benefits for refusing such work. (Also digested under LD 315.00.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.25 - 125.35

LD DETERMINATION OF EXISTENCE

LD 125.25 DETERMINATION OF EXISTENCE: JUDICIAL OR ADMINISTRATIVE PROCEEDINGS.

COMPLAINTS LODGED WITH NLRB OR OTHER AGENCY:
SUITS IN FEDERAL OR OTHER COURTS, AS EVIDENCE OF
AND INCIDENT TO DISPUTES.

Appeal No. 73,386-AT-60 (Affirmed by 7256-CA-60). A complaint was lodged with the NLRB charging the employer with refusal to bargain with the union even though the union had been certified by the NLRB as the exclusive bargaining agent. The refusal to bargain precipitated a walkout by the employees. HELD: Section 207.048 of the Act was applicable to the claimants. Furthermore, the employer's replacing the claimants and sending them notice of termination during the dispute did not effectively sever the employer-employee relationship since none of the claimants, by an overt act, revealed that they had accepted the employer's action as a discharge. (Also digested under LD 125.55 and 445.25.)

125.35 DETERMINATION OF EXISTENCE: LACK OF CONTRACT.

STATUS OF EMPLOYER-EMPLOYEE RELATIONSHIP AFTER EXPIRATION OF CONTRACT; REFUSAL TO SIGN NEW ONE; EFFECT OF WORKING WITHOUT CONTRACT; REFUSAL TO WORK WITHOUT CONTRACT.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.35 - 125.45

LD DETERMINATION OF EXISTENCE

Appeal No. 4032-CA-76. Where claimants offered to continue working without a contract but the employer instituted a "lock-out" of the claimants, the stoppage was not considered to be "claimant's stoppage of work" as that term is used in Section 5(d) of the Texas Unemployment Compensation Act. No disqualification under Section 207.048 or 207.044 of the Act. (For a more complete summary, see LD 5.00.)

Appeal Nos. 76,691-AT-61 through 76,693-AT-61 (Affirmed by 7537-CA-61). The expiration of a labor- management agreement does not automatically sever the employer-employee relationship. (Cross-referenced under LD 205.10.)

125.40 DETERMINATION OF EXISTENCE: MERITS OF THE DISPUTE.

QUESTIONS OF JURISDICTION UNDER UNEMPLOYMENT INSURANCE LAWS TO DETERMINE MERITS OF DISPUTE.

Nelson vs. TEC, 290 S.W. 2d 708 (Tex. Ct. of Civ. Appeals, 1956, writ refused). The merits of a labor dispute are immaterial to the application of Section 207.048 of the Texas Unemployment Compensation Act.

125.45 DETERMINATION OF EXISTENCE: NEGOTIATION WITH EMPLOYER.

DETERMINATION OF WHETHER NEGOTIATION IS TANTAMOUNT TO A LABOR DISPUTE; REFUSAL BY EMPLOYER OR UNION TO NEGOTIATE; LAYOFF OR WALKOUTS DURING NEGOTIATION; DURATION OF NEGOTIATIONS AS FACTORS IN DECIDING LENGTH OF UNEMPLOYMENT OR LABOR DISPUTE.

North East Texas Motor Lines, Inc. vs. Dickson, 219 S.W. 2d 795 (Tex. Sup. Ct. 1949). In the absence of any knowledge by the employer of the nature of any demand which any of its employees or the union desires to make, and in the absence of any opportunity to negotiate, there could be no labor dispute. (Also digested under LD 125.05.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.50 - 125.55

LD DETERMINATION OF EXISTENCE

LD 125.50 DETERMINATION OF EXISTENCE: SYMPATHETIC STRIKE.

DETERMINATION OF WHETHER PARTICIPATION IN, FAILURE OR REFUSAL TO WORK OR BOYCOTT BECAUSE OF, A LABOR DISPUTE AT ANOTHER FACTORY, ESTABLISHMENT OR PREMISES, CONSTITUTES A LABOR DISPUTE AT THE FACTORY, ESTABLISHMENT, OR OTHER PREMISES AT WHICH THE CLAIMANT IS OR WAS LAST EMPLOYED.

Appeal No. 2725-CA-75. The claimant and other workers in his craft walked off the job at midday due to a picket line established by another union. They did not thereafter return to work or make an unconditional offer to return to work. **HELD:** The claimant's unemployment was due to a labor dispute at the premises where he was last employed. Disqualified under 207.048.

125.55 DETERMINATION OF EXISTENCE: UNION RECOGNITION.

DISTINGUISHED FROM "JURISDICTIONAL DISPUTE" LINE IN THAT ONLY ONE UNION IS INVOLVED.

Appeal No. 73,386-AT-60 (Affirmed by 7256-CA-60). The claimants participated in a strike after the employer refused to recognize their union as the exclusive bargaining agent and failed to bargain with the union in good faith, notwithstanding certification by the NLRB. Section 207.048 of the Act was applicable even though the employer had notified all claimants that they had been replaced. (For a more complete summary on this issue, see LD 445.25; for text, see LD 125.25.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 125.60

LD DETERMINATION OF EXISTENCE

LD 125.60 DETERMINATION OF EXISTENCE: VIOLATION OF CONTRACT OR AGREEMENT.

CONTRACT VIOLATION AS REASON FOR THE CONCERTED ACTION OF EMPLOYEES OF ESPECIAL IMPORTANCE IN THOSE STATES HAVING SPECIFIC EXEMPTION FROM DISQUALIFICATION FOR SUCH VIOLATIONS. ALSO APPLIES IN CASES WHERE EMPLOYEES GO ON STRIKE IN VIOLATION OF THE EMPLOYER-UNION CONTRACT.

Appeal No. 119-CA-69. Claimants who leave their duty stations and establish a picket line at the employer's premises, in violation of a no-strike provision of a working agreement, and are discharged by the employer for such action, are subject to disqualification under Section 207.044 .

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 130.00

LD DIRECTLY INTERESTED IN

LD 130.00 DIRECTLY INTERESTED IN.

INCLUDES CASES WHICH DEFINE OR INTERPRET THIS PHRASE, PARTICULARLY IN CONSIDERING RELIEF FROM DISQUALIFICATION OF NONSTRIKING WORKERS.

Appeal No. 9044-CA-62. The employer operated a stevedoring company and primarily unloaded banana ships by obtaining all labor through a union hiring hall. After the completion of unloading the last ship on October 1, the union struck and all subsequent ships were diverted to other ports. The unemployment of union longshoremen was not due to completion of unloading the last ship, but rather to the strike and the attendant picket line, which was the effective cause of the diversion of subsequent cargoes. Nonunion longshoremen who find their work so consistently through the union connection were "directly interested" in the disqualifying labor dispute as distinguished from those who were not so attached to this union connection and whose recent employment therein was by chance. Section 207.048 of the Texas Unemployment Compensation Act was not applicable to claimants who had other employment after their last employment for this employer, or those whose last assignment for this employer was more remote than two ships' arrivals. (Also digested under LD 420.15 and 465.25.)

Appeal Nos. 76,691-AT-61 through 76,693-AT-61. (Affirmed by 7537-CA-61). Claimants are directly interested in a labor dispute even though they are not union members as long as they are regular employees and stand to receive the benefit of any increase in wages or improved conditions won by the union. (Also digested under LD 125.35 and cross-referenced under LD 205.10.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 175.00

LD EMPLOYMENT SUBSEQUENT TO DISPUTE OR STOPPAGE OF WORK

LD 175.00 EMPLOYMENT SUBSEQUENT TO DISPUTE OR STOPPAGE OF WORK.

PERMANENCY OF EMPLOYMENT OBTAINED DURING THE COURSE OF A DISPUTE OR WORK STOPPAGE AND THE EFFECT OF SUCH EMPLOYMENT UPON DISQUALIFICATION; THOSE WHICH CONSIDER WHETHER NEW EMPLOYMENT TERMINATES A WORKER'S EMPLOYMENT RELATIONSHIP WITH THE "STRUCK" EMPLOYER; AND CASES WHICH DISCUSS THE SIGNIFICANCE OF THE WORKER'S INTENTION TO REMAIN AT WORK OBTAINED DURING THE COURSE OF THE STRIKE AT HIS FORMER ESTABLISHMENT.

Appeal No. 85-05701-10-051485. Citing its holding in Appeal No. 5881-AT-69 (Affirmed by 652-CA-69) (see below), the Commission held that where intervening employment following the inception of a labor dispute either (1) significant in duration or (2) substantially greater in duration than the period of employment with the employer engaged in the labor dispute, such intervening employment is not so casual or temporary as to warrant application of Section 207.048 of the Act to the claimant. Therefore, the claimant's initial claim, naming the intervening employment as the "last work," should not be disallowed under Section 208.002 of the Act. (Also digested under MS 600.20.)

Appeal No. 836-CA-EB-76. The claimant failed to return to his pre-strike employment after the strike ended, even though such work was available, because he was then working on a new job. **HELD:** Disqualified under Section 207.045 of the Act for voluntarily leaving his last work.

Appeal No. 623-CA-76. The claimant last worked for a contractor in Dallas. His union went on strike but the claimant did not directly participate in the strike. He moved to another area and gained other employment from which he was separated by a reduction in force. That separation and the claimant's filing of his initial claim

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 175.00 (2)

LD EMPLOYMENT SUBSEQUENT TO DISPUTE OR STOPPAGE OF WORK

Appeal No. 623-CA-76.

(Cont'd)

occurred prior to the settlement of the strike. HELD: Disqualified under Section 207.048 of the Act but the disqualification was terminated as of the date of the strike settlement. The claimant's unemployment was due to his stoppage of work because of a labor dispute. The fact of relocation and employment alone was not sufficient to terminate the disqualification.

Appeal No. 5881-AT-69 (Affirmed by 652-CA-69). Casual intervening employment of a temporary nature does not sever the employer-employee relationship while a claimant is out on strike. A claimant must name the employer he is on strike against as his last employer prior to the initial claim, as he has not been separated from that employer.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 190.00 - 190.10

LD EVIDENCE

LD 190.00 EVIDENCE.

190.10 EVIDENCE: BURDEN OF PROOF AND PRESUMPTIONS.

APPLIES TO DISCUSSIONS OF WHICH PARTY HAS BURDEN OF PROOF, OR OF LEGAL ADEQUACY OF PARTICULAR EVIDENCE TO OVERCOME PRESUMPTIONS RELATING TO APPLICATION OF THE LABOR DISPUTE PROVISION.

Martinez v. TEC, Cause No 5857 (Tex. Civ. Appeals at El Paso, 1967) (Not reported). Where there was evidence to show that claimants were participating or directly interested in a labor dispute by failing or refusing to cross a picket line and refusing, during the continuance of the labor dispute, to accept and perform their available and customary work at the plant, the burden was on the claimants to establish that they were not disqualified for benefits. (Also digested under LD 205.20.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 205.00 - 205.10

LD FINANCING AND PARTICIPATING

LD 205.00 FINANCING AND PARTICIPATING.

205.05 FINANCING AND PARTICIPATING: GENERAL.

INCLUDES CASES WHICH DISCUSS (1) FINANCING AND PARTICIPATION, ESPECIALLY IN CONSIDERING RELIEF FROM DISQUALIFICATION OF NONSTRIKING WORKERS, (2) POINTS ON FINANCING AND PARTICIPATION NOT COVERED BY OTHER SUBLINES UNDER LINE 205, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 32,831-AT-50 (Affirmed by 4740-CA-50). Claimants had no controversy with the employer, took no part in the controversy, could not expect to receive any benefit from the outcome of the dispute, worked on all occasions when work was made available to them, in no way assisted the cause of the disputing employees, and offered no financial aid, either individually or through the union. HELD: The claimants were not participating in, financing, or directly interested in the dispute which caused the stoppage. (Also digested under LD 125.20 and 125.205.)

205.10 FINANCING AND PARTICIPATING: AFFILIATION WITH ORGANIZATION.

DISCUSSION OF MEMBERSHIP OR NONMEMBERSHIP IN STRIKING UNION AS FACTOR IN PARTICIPATION, PARTICULARLY IN CONSIDERING RELIEF FROM DISQUALIFICATION OF NONSTRIKING WORKERS.

Appeal Nos 44,079-AT-67, 44080-AT-67, 44,081-AT-67, and 44,086-AT-67 (Affirmed by 752-CA-67). Since claimants belonged to the same International Union as the individuals engaged in the labor dispute, the disqualification of the claimants under the labor dispute provision could not be removed as provided in subsection 207.048(b)(2) of the Texas Unemployment Compensation Act. (Also digested under LD 35.05.)

Also see Appeal Nos. 76,691 through 76,693-AT-61 (Affirmed by 7537-CA-61) under LD 125.35 and 130.00.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 205.15 - 205.20

LD FINANCING AND PARTICIPATING

LD 205.15 FINANCING AND PARTICIPATING: PAYMENT OF UNION DUES.

DISCUSSION OF WHETHER PAYMENT OF UNION DUES CONSTITUTES PARTICIPATION IN, OR FINANCING OF, LABOR DISPUTE, PARTICULARLY IN APPLICATION OF RELIEF FROM DISQUALIFICATION CLAUSE.

Appeal Nos. 89,056-AT-62 through 89,060-AT-62. Claimants' payment of union dues, a part of which is used to finance a strike, is considered to be financing of a labor dispute and thereby subjects claimants to disqualification under 207.048 of the Act.

205.20 FINANCING AND PARTICIPATING: PICKETING OR REFUSAL TO PASS PICKET LINE.

INVOLVES QUESTIONS OF PICKETING, OR REFUSAL OR INABILITY TO PASS PICKET LINE AND REASONS FOR SUCH INABILITY AND REFUSAL. USED ESPECIALLY IN APPLICATION OF RELIEF FROM DISQUALIFICATION CLAUSE.

Appeal No. 2725-CA-75. A claimant who left the job at midday because of a picket line established by a different craft union and who did not subsequently attempt to return or make an unconditional offer to return to work by crossing the picket line, was held subject to disqualification under 207.048 of the Act.

Martinez v. TEC, Cause No. 5857 (Tex. Civ. Appeals at El Paso, 1967) (Not reported). Claimants are subject to disqualification under Section 207.048 for refusing during the continuance of a labor dispute to accept and perform their available and customary work at the struck plant. (Also digested under LD 190.10.)

Appeal Nos. 63,244-AT-58, and 63,248-AT-58 (Affirmed by 6389-CA-58 and 6390-CA-58). Claimants who would have been required to cross a picket line established by another union against another employer at the premises where the claimants' work was located and who refused to cross such picket line are considered to have been participating and interested in a labor dispute.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 205.20 (2)

LD FINANCING AND PARTICIPATING

Appeal No. 63,109-AT-58 (Affirmed by 6359-CA-58). The claimants' unemployment was found to be due to their stoppage of work because of a labor dispute at the premises where they last worked. The claimants returned to the job site during the dispute at the request of the employer to perform a short period of clean-up work to preserve employer's property. HELD: The claimants were subject to disqualification under 207.048. Their crossing of the picket lines was with the knowledge and consent of their union and did not alter the fact that they were honoring the picket line. (Also digested under LD 220.25 and cross-referenced under LD 125.15.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 220.00 - 220.15

LD GRADE OR CLASS OF WORKER

LD 220.00 GRADE OR CLASS OF WORKER.**220.15 GRADE OR CLASS OF WORKER: MEMBERSHIP OR NONMEMBERSHIP IN UNION.**

DISCUSSION OF STATUS OF NONUNION MEMBERS, MEMBERSHIP IN DIFFERENT UNION OR TYPE OF UNION, IN RELATION TO "GRADE OR CLASS." APPLIES ESPECIALLY IN CONSIDERATION OF RELIEF FROM DISQUALIFICATION CLAUSE.

Appeal No. 2919-CA-75. The claimants, electricians who were members of the International Brotherhood of Electrical Workers (IBEW), worked for an electrical contractor with whom their union had an existing collective bargaining agreement. However, the general contractor at the construction site where the claimants worked instituted a lockout at the site directed against other construction unions. Other IBEW members who were employed by the claimants' employer continued working at other sites not subject to the lockout. At all times, the claimants made themselves available for reassignment to other work sites or for work at the secured site. The claimants' union was not a party to the dispute and there was no demonstrated refusal to cross a picket line. **HELD:** The claimants were not themselves, nor were they members of a grade or class of workers which was, participating in or financing or directly interested in the dispute. Accordingly, by virtue of paragraphs (1) and (2) of 207.048(b) - (f) of the Act, the claimants were not subject to disqualification under the general provision of Section 207.048(a).

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 220.15 - 220.25

LD GRADE OR CLASS OF WORKER

220.25 GRADE OR CLASS OF WORKER: PERFORMANCE OF WORK.

DETERMINATION OF "GRADE OR CLASS" UPON BASIS OF TYPE OR WORK PERFORMED. USED ESPECIALLY IN CONSIDERING RELIEF FROM DISQUALIFICATION OF NONSTRIKING WORKERS.

Appeal No. 63,109-AT-58 (Affirmed by 6359-CA-58). Claimant had a supervisory, non-manual classification and was not a member of a grade or class of workers, many of whom were participating in the strike. He continued crossing a picket line until laid off due to lack of work. Consequently, his disqualification under 207.048 of the Act was reserved. (Also digested under LD 205.20 and cross-referenced under LD 125.15.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 245.00

LD IN ACTIVE PROGRESS

LD 245.00 IN ACTIVE PROGRESS.

INCLUDES CASES WHICH DETERMINE (1) PERIOD IN WHICH AN EXISTING LABOR DISPUTE IS IN ACTIVE PROGRESS, OR (2) WHAT CONSTITUTES "ACTIVE PROGRESS."

Appeal No. 9581-CA-63. The testimony of the employer and the statement of a union official established that the labor dispute was still in progress even though the picket lines were removed and the striking employees replaced. (Also digested under LD 445.05.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 315.00

LD NEW WORK

LD 315.00 NEW WORK.

THIS LINE IS USED IN CASES WHICH CONSIDER WHETHER WORK FOR A STRUCK EMPLOYER WOULD BE "NEW WORK" FOR A CLAIMANT, UNDER THE PROVISIONS OF THE UNEMPLOYMENT INSURANCE LAW OF THE STATE WHICH CORRESPONDS TO SECTION 3304(a)(5) OF SOCIAL SECURITY ACT (FORMERLY SECTION 1603(a)(5)) OF THE INTERNAL REVENUE CODE, FOR THE PURPOSE OF DETERMINING WHETHER THE APPLICATION OF THE LABOR DISPUTE DISQUALIFICATION PROVISION TO THAT INDIVIDUAL WOULD CONFLICT WITH THE REQUIREMENTS OF THE LABOR STANDARD.

Appeal No. 7362-AT-68 (Affirmed by 853-CA-68). A claimant who was laid off prior to the beginning of a strike is not subject to a disqualification under Section 207.008 for failing to accept an offer of "new work" in a position which was vacant because of the strike.

Appeal No. 253-AT-67 (Affirmed by 1252-CA-67). Claimant's refusal to accept a transfer to a position vacant because of a labor dispute after claimant's regular work became unavailable by virtue of such dispute is considered a refusal of "new work" and claimant is not subject to a disqualification as provided in 207.008 of the Act. (Also digested under LD 125.206.)

Also see Unemployment Insurance Program Letter No. 9-84 under VL 315.00.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 350.00 - 350.05

LD PERIOD OF DISQUALIFICATION

LD 350.00 PERIOD OF DISQUALIFICATION.

350.05 PERIOD OF DISQUALIFICATION: GENERAL.

INCLUDES CASES WHICH DISCUSS (1) THE IMPOSITION OF DISQUALIFICATION DURING A PERIOD OF INELIGIBILITY, (2) AN ADDITIONAL DISQUALIFICATION FOR SECOND LEAVING IN SAME LABOR DISPUTE, AND (3) POINTS CONCERNING PERIOD OF DISQUALIFICATION NOT COVERED BY OTHER SUBLINES UNDER LINE 350.

Appeal No. 3605-CA-75. When the claimant's union signed a contract with the employer and the claimant indicated a willingness to return to his customary work with the employer, but was told that since other unions were not working the employer did not have any work for the claimant, his unemployment ceased to be due to a stoppage of work because of a labor dispute. Accordingly, the claimant's labor dispute disqualification was terminated as of the date the claimant's union signed its contract with the employer. (Also digested under LD 420.20 and 445.10.)

Appeal No. 74,364-AT-60 (Affirmed by 7336-CA-60). Claimants who do not attempt to return to work after a strike is over are subject to disqualification under 207.045 of the Act. Those claimants who seek re-employment immediately after the end of a strike and are not hired because they have been replaced are not disqualified under Section 207.044 of the Act. (Also digested under LD 350.55 and 445.10.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 350.55

LD PERIOD OF DISQUALIFICATION

LD 350.55 PERIOD OF DISQUALIFICATION: TERMINATION OF.

EFFECT OF FACTORS EVIDENCING END OF DISQUALIFICATION, SUCH AS RETURN TO WORK; ABANDONMENT OF BUSINESS BY EMPLOYER; CONCURRENCE OF STOPPAGE AND LABOR DISPUTE AS AFFECTING RETURN TO NORMAL OPERATION.

Appeal No. 3557-VS-76. The Commission followed the principle of the Kraft case by stating that when a worker makes an unconditional offer to go to work and employment is refused, his unemployment is no longer due to a labor dispute. The Kraft case, Kraft, et al v. TEC, et al, 418 S.W. 2d 482 (Tex. Sup. Ct., 1967), is digested under LD 465.05.

Appeal No 74,364-AT-60 (Affirmed by 7336-CA-60). When the claimants agreed to remove the pickets and to abandon the strike, the labor dispute ceased to exist, despite the fact that the union did not notify the employer of such abandonment. No negotiations were pending, no demands were being made, and no pickets were in existence. The disqualification under Section 207.048 of the Act ceased to be applicable. (Also digested under LD 350.05 and 445.10.)

Appeal No. 63,253-AT-58 (Affirmed by 6421-CA-58). During the strike, the employer notified all employees that, due to conditions beyond their control, all employees were being terminated as of August 12. Since the employer had no further work for the claimants and would have none at the termination of the strike, the claimant's disqualification under Section 207.048 of the Act was removed effective August 12.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 420.00 - 420.15

LD STOPPAGE OF WORK

LD 420.00 STOPPAGE OF WORK.

420.10 STOPPAGE OF WORK: DETERMINATION OF EXISTENCE OF.

INCLUDES CASE WHICH (1) DEFINE "STOPPAGE OF WORK," (2) DETERMINE DEGREE OF CURTAILMENT OF OPERATIONS NECESSARY TO CONSTITUTE STOPPAGE OF WORK, AND (3) DISCUSS PURPOSE OF DISQUALIFICATION ONLY DURING STOPPAGE OF WORK.

Appeal No. 4032-CA-76. A "stoppage of work," in order to be disqualifying under Section 207.048 of the Act, must be a "claimant's stoppage of work." Involuntary unemployment due to an employer "lock-out" is not due to a "claimant's stoppage of work." (For a more complete summary, see Code LD 5.00.)

420.15 STOPPAGE OF WORK: EXISTING BECAUSE OF LABOR DISPUTE.

DISCUSSION OF ALL THE PROBABLE CAUSES OF STOPPAGE OF WORK, INCLUDING A LABOR DISPUTE. DURATION OF STOPPAGE OF WORK DETERMINED; POINT AT WHICH STOPPAGE OF WORK CEASES TO BE DUE TO LABOR DISPUTE; CAUSAL RELATIONSHIP BETWEEN STOPPAGE OF WORK AND LABOR DISPUTE.

See Appeal No. 4032-CA-76, under LD 5.00.

Appeal No. 9044-CA-62. The employer operated a stevedoring company and primarily unloaded banana ships by obtaining all labor through a union hiring hall. After the completion of unloading the last ship on October 1, the union struck and all subsequent ships were diverted to other ports. The unemployment of union longshoremen was not due to completion of unloading the last ship, but rather to the strike and attendant picket line, which was the effective cause of the diversion of subsequent cargoes. Nonunion longshoremen who find their work so consistently through the union connection were "directly interested" in the disqualifying

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 420.15 - 420.20

LD STOPPAGE OF WORK

Appeal No. 9044-CA-62.

(Cont'd)

labor dispute as distinguished from those who were not so attached to this union connection and whose recent employment therein was by chance. Section 207.048 of the Act was not applicable to claimants who had other employment after their last employment for this employer or those whose last assignment for this employer was more remote than two ships' arrivals. (Also digested under LD 130.00 and 465.25.)

420.20 STOPPAGE OF WORK: TERMINATION OF.

DETERMINATION OF FACTORS ENDING STOPPAGE OF WORK.

Appeal No. 3605-CA-75. When the claimant's union signed a contract with the employer and the claimant indicated a willingness to return to his customary work with the employer, but was told that since other unions were not working the employer did not have any work for the claimant, his unemployment ceased to be due to a stoppage of work because of a labor dispute. Accordingly, the claimant's labor dispute disqualification was terminated as of the date the claimant's union signed its contract with the employer. (Also digested under LD 350.05 and 445.10.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 445.00 - 445.10

LD TERMINATION OF LABOR DISPUTE

LD 445.00 TERMINATION OF LABOR DISPUTE.

445.05 TERMINATION OF LABOR DISPUTE: GENERAL.

INCLUDES CASES WHICH DISCUSS (1) FACTORS EVIDENCING TERMINATION OF LABOR DISPUTE NOT COVERED BY OTHER SUBLINES UNDER LINE 445, (2) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 9581-CA-63. The testimony of the employer and the statement of a union official established that the labor dispute was still in progress even though the picket lines were removed and the striking employees replaced. (Also digested under LD 245.00.)

445.10 TERMINATION OF LABOR DISPUTE: AGREEMENT OR ARBITRATION.

DETERMINATION OF WHETHER (1) STRIKE IS ENDED BY AGREEMENT, TEMPORARY OR OTHERWISE, (2) ARBITRATION OR AGREEMENT TO ARBITRATE, (3) RETURN TO WORK IN ACCORDANCE WITH AGREEMENT, (4) ACCEPTANCE OF EMPLOYER'S TERMS BY STRIKERS, OR (5) ABANDONMENT OF PICKETING.

Appeal No. 3605-CA-75. When the claimant's union signed a contract with his employer and the claimant indicated his willingness to return to his customary work with the employer, his unemployment ceased to be due to his stoppage of work because of a labor dispute at the premises where he last worked. (Also digested under LD 350.05 and 420.20.)

Appeal No. 74,364-AT-60 (Affirmed by 7336-CA-60). When the claimants agreed to remove the pickets and to abandon the strike, the labor dispute ceased to exist, despite the fact that the union did not notify the employer of such abandonment. At that time no negotiations were pending, no demands were being made and no pickets were in existence. (Also digested under LD 350.05 and 350.55.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 445.15 - 445.20

LD TERMINATION OF LABOR DISPUTE

LD 445.15 TERMINATION OF LABOR DISPUTE: CLOSING OF PLANT OR DEPARTMENT.

EFFECT OF CLOSING OF PLANT OR DEPARTMENT BY THE EMPLOYER UPON EXISTENCE OF LABOR DISPUTE AND ITS TERMINATION.

Appeal No. 4032-CA-76. In Texas, a "lock-out" by an employer does not fall within the language of Section 207.048 providing that a disqualification will be applicable for "claimant's stoppage of work" because of a labor dispute in existence at premises where claimant last worked. (For a more complete summary, see LD 5.00.)

445.20 TERMINATION OF LABOR DISPUTE: DISCHARGE OR REPLACEMENT OF WORKERS.

EFFECT OF DISCHARGE OR REPLACEMENT OF WORKERS ON EXISTENCE OF LABOR DISPUTE AND ITS TERMINATION.

Appeal No. 73,386-AT-60 (Affirmed by 7256-CA-60). A purported discharge of an individual after a strike begins is not in fact a severance of the employment relationship, unless the employee so discharged by some overt act reveals that he accepted the employer's action as a discharge. (For a more complete summary, see LD 445.25; also digested under LD 125.25.)

International Union of Operating Engineers V. Cox, 219 S.W. 2d 787 (Tex. Sup. Ct., 1949). A laborer on strike has not abandoned his employment; he has only ceased from his labor. Nor has his status changed when he is discharged because of his expressed dissatisfaction over wages, hours, or working conditions. To hold that a laborer ceases to be an employee when he strikes in protest of working conditions, or when he is discharged for union activities, would place in the hands of the employer complete control over labor controversies and would prevent a "labor dispute" from ever arising against his will. (Also digested under LD 125.20.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 445.20 - 445.25

LD TERMINATION OF LABOR DISPUTE
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Appeal Nos. 64,234-AT-68 and 64,235-AT-58 (Affirmed by 6503 and 6504-CA-59). The claimants went on strike on September 16th. While they were on strike, the employer hired replacements for them. On October 27th, the claimants removed their picket lines and sent the employer a certified letter conveying their unconditional offer to return to work. The employer had no job openings and refused to reemploy the claimants. HELD: The labor dispute ended on the date of the claimants' unconditional offer to return. Since the employer-employee relationship continued during the dispute and since the dispute ended on October 27th, the claimants' Section 207.048 disqualification was removed as of October 27. Since the claimants were separated by being replaced, no disqualification under 207.044 of the Act was applicable.

Appeal No. 63,253-AT-58 (Affirmed by 6421-CA-58). Where employer notified claimants that no further work was available and none would be at the termination of the strike, the employer-employee relationship was severed and no further disqualification was applicable under Section 207.048 of the Act. (Also digested under LD 350.55.)

445.25 TERMINATION OF LABOR DISPUTE: NATIONAL LABOR RELATIONS BOARD PROCEEDINGS OR ORDER.

EFFECT OF (1) NLRB STIPULATIONS OR ORDER ON TERMINATION OF LABOR DISPUTE, (2) CERTIFICATION BY NLRB OF BARGAINING AGENCY, (3) ELECTION UNDER NLRB AUSPICES, OR (4) REFUSAL TO ACCEDE TO NLRB ORDERS ON LABOR DISPUTE'S TERMINATION.

Appeal No. 73,386-AT-60 (Affirmed by 7256-CA-60). The claimants were members of a union on strike. The employer hired replacements for most of the strikers. The NLRB effected a compromise agreement whereby the employer agreed to reinstate all strikers upon their application even if it required terminating their replacements. The striking workers argued that the notice of

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 445.25 (2)

LD TERMINATION OF LABOR DISPUTE

Appeal No. 73,386-AT-60 (Affirmed by 7256-CA-60) (Cont'd)

replacement constituted a discharge and Section 207.048 should not be applicable thereafter. HELD: Since, subsequent to the issuance of the letter of termination, none of the claimants by any overt act manifested any intent to accept such letter as an effective termination of employment, the letter of termination did not sever the employer-employee relationship and does not justify closing the claimant's Section 207.048 disqualification as of the date of its issuance. As to the compromise settlement, those claimants who did not apply for reinstatement under the settlement continued to be unemployed as a result of the labor dispute. (Also digested under LD 125.25 and 125.55.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 465.00 - 465.05

LD UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK**LD 465.00 UNEMPLOYMENT DUE TO A LABOR DISPUTE OR STOPPAGE OF WORK.****465.05 UNEMPLOYMENT DUE TO A LABOR DISPUTE OR STOPPAGE OF WORK: GENERAL.**

INCLUDES CASES WHICH INVOLVE (1) STATUS OF CLAIMANT'S LEAVING WORK FOR REASONS OTHER THAN LABOR DISPUTE, (2) UNEMPLOYMENT DUE TO TEMPORARY TERMINATION OF A UNION CONTRACT, (3) UNEMPLOYMENT SUBSEQUENT TO TERMINATION OF DISPUTE (4) DISCUSSION OF PHRASE "DIRECTLY DUE TO LABOR DISPUTE," (5) ANY PRESUMPTION OF CAUSE OF THE WORKER'S UNEMPLOYMENT DURING A STOPPAGE OF WORK AT THE PLANT, (6) POINTS RELATING TO WHETHER CLAIMANT'S UNEMPLOYMENT IS DUE TO LABOR DISPUTE OR STOPPAGE OF WORK NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 456, AND (7) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 623-CA-76. During a strike, the claimant moved to another city and secured other work from which he was subsequently laid off due to a reduction in force. At that time, the strike was still in progress. **HELD:** Although the claimant relocated to another area and found interim employment from which he was laid off, this was held insufficient to terminate the disqualification under Section 207.048. The latter was terminated as of the date the strike was subsequently settled.

Kraft vs. TEC, et al, 418 S.W. 2d. 482, (Tex. Sup. Ct., 1967). It was recognized as a practical matter that the strike had failed to gain the objective sought by the striking workers and the union granted permission to its members to cross that picket line and unconditionally agree to resume labor for the company. Claimants voluntarily crossed the union picket lines and made an unconditional offer to go to work for the employer. Employment was denied by the company on the ground that there were no jobs open as all available positions which could be held by claimants

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 465.05 - 465.10

LD UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK

Kraft vs. TEC.

(Cont'd)

had been filled by re-employed persons or new personnel hired since the commencement of the strike. In the present case, as in Hodson (below), the basic disqualification no longer existed after claimants were refused work because no jobs were available, and there is no necessity to resort to the exceptions or escape clauses set forth in Section 207.048. (Cross-referenced under LD 350.55.)

TEC v. Hodson, 346 S.W. 2d 665 (Tex. Civ. Appeals, Waco 1961, writ refused, n.r.e.). Although claimant originally became unemployed as a result of his stoppage of work because of a labor dispute at the factory at which he was last employed, a new cause of involuntary unemployment had displaced the original disqualifying cause when claimant crossed his own picket line during the strike and was refused employment because there was no work available due to his job having been filled by another. Claimant's unemployment was due to a lack of work for him.

LD 465.10 UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK: DISCHARGE OR RESIGNATION.

DISCUSSION OF EFFECT OF (1) DISCHARGE OF WORKER DURING OR SUBSEQUENT TO LABOR DISPUTE, (2) RESIGNATION, (3) REMOVAL OF STRIKER'S NAME FROM THOSE ENTITLED TO INSURANCE UNDER COMPANY PLAN, (4) ANY BREAK IN EMPLOYER-EMPLOYEE RELATIONSHIP, (5) REPLACEMENT OF STRIKERS, (6) LETTER OF DISCHARGE WHEN NOT ACTED UPON BY WORKER AND EMPLOYER, OR WHEN ACCEPTED AS EVIDENCE OR DISCHARGE, OR (7) DISCHARGE AND SUBSEQUENT PICKETING.

See Appeal No. 3308-CA-75 under LD 125.05.

Appeal Nos. 4092-AT-68 through 4101-AT-68 (Affirmed by 528-CA-68 through 534-CA-68). Upon the termination of the strike the claimants reapplied for their jobs and were told that they had been replaced. Thereafter, they filed their initial claims for benefits. Claims were approved without disqualification under Section 207.048 or 207.044 and the employer's account was charged.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 465.10 (2)

LD UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK

Appeal No. 594-CA-72. Even though the employer notified the claimant she had been terminated during the strike, the employer-employee relationship continued during the period of the strike. Upon termination of the strike, the claimant reapplied for work but was not permitted to work. HELD: The claimant was effectively discharged when she reapplied for work following termination of the strike but was not returned to work and no disqualification under Section 207.044 .

Appeal No. 8347-CA-62. The claimant last worked as a union plasterer at that employer's job site. He reported for work and was instructed that the job had been shut down because of a work stoppage by other crafts. No picket lines were established at the time. The Appeal Tribunal decision disqualifying the claimant under Section 207.048 turned on his answer to a hypothetical question as to whether he would have crossed a picket line. HELD: The claimant's answer to a hypothetical question cannot alter the fact that he was laid off because of lack of work for him. No disqualification under Section 207.048.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 465.20 - 465.25

LD UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK

LD 465.20 UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK: PREVENTED FROM WORKING.

DISCUSSION OF (1) PRESSURES EXERTED ON NONPARTICIPATING CLAIMANTS, SUCH AS STRONG PICKET LINES, FEAR OF INJURY, (2) FAILURE TO OBSERVE UNION RULES, OR (3) PREVENTION OF ENTRANCE BY EMPLOYER, WHO MAY LOCK GATES IN ANTICIPATION OF, OR AT OUTBREAK OF, STRIKE.

Appeal No. 4032-CA-76. In Texas, a stoppage of work due to a "lock-out" does not constitute "claimant's stoppage of work" and is not disqualifying under Section 207.048 of the Act. (For a more complete summary, see LD 5.00.)

465.25 UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK: TEMPORARY, EXTRA, OR SEASONAL WORK.

PROBLEMS AS TO INTERMITTENT WORKERS, TEMPORARY, EXTRA, AND SEASONAL WORKERS, WHOSE UNEMPLOYMENT MAY OR MAY NOT BE DUE TO EXISTENCE OF LABOR DISPUTE, PARTICULARLY WHEN THEY ARE SCHEDULED TO WORK OR WOULD NORMALLY BE EXPECTED TO WORK AT THE TIME THE LABOR DISPUTE BEGINS OR WHILE IT REMAINS IN EXISTENCE.

Appeal No. 9044-CA-62. Regarding nonunion longshoremen claimants, a distinction must be made between those who find work so consistently through this union connection that they must be held to be "directly interested" in the disqualifying labor dispute, on the one hand; and, on the other hand, those who are not so attached to this union connection and whose recent employment therein was by chance. The Commission held not disqualified those claimants who had other employment after their last employment for employer, and those whose last employment for employer was more remote than two ship arrivals. (Also digested under LD 130.00 and 420.15.)

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 470.00 - 470.05

LD UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK

LD 470.00 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK.

470.05 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK: GENERAL.

INCLUDES CASES WHICH DISCUSS (1) EFFECT OF LOSING WORK OR FAILURE TO BE REINSTATED PRIOR TO LABOR DISPUTE, (2) POINTS CONCERNING UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK COVERED BY THREE OR MORE SUBLINES UNDER LINE 470, AND (3) POINTS NOT COVERED BY ANY OTHER SUBLINE.

Appeal No. 2760-CA-75. The claimant was a member of the laborer's union and normally obtained work by calling in each day for assignment. Several days prior to the beginning of a strike by other unions, the claimant was informed by the employer that there was no further work. He consistently called in and occasionally was offered work. When offered work assignments he accepted them. HELD: Claimant was separated because of lack of work. No disqualification under Section 207.048 or 207. (Cross-referenced under 470.20.)

APPEALS POLICY AND PRECEDENT MANUAL**LABOR DISPUTE****LD 470.15****LD UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK****LD 470.15 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK: DISCHARGE OR RESIGNATION.**

INVOLVES (1) STATUS OF CLAIMANT DISCHARGED ORALLY OR BY LETTER BEFORE LABOR DISPUTE OR FOR WHOSE DISCHARGE THE OTHER WORKERS GO OUT ON STRIKE, (2) DISCUSSION OF WHAT CONSTITUTES A DISCHARGE STATUS OF CLAIMANT FOR WHOSE DISCHARGE THE OTHER WORKERS GO OUT ON STRIKE, (3) EFFECT OF VOLUNTARY LEAVING OR RESIGNATION PRIOR TO LABOR DISPUTE, (4) INTENTION AS A FACTOR IN DETERMINING WHETHER EMPLOYER-EMPLOYEE RELATIONSHIP WAS SEVERED, OR (5) RESIGNATION BECAUSE OF IMPENDING STRIKE.

Appeal Nos. 2518-CA-75 and 2520-CA-75. The claimants were pipefitters who were originally hired to work a job scheduled for Wednesday, Thursday, and Friday. The claimants worked the first two days and then were requested to take Friday off due to the fact that the equipment necessary for the job had not arrived at the site. They were requested to return Saturday to complete the work and they would have received double time wages for Saturday. The claimants refused to work on Saturday and were fired for failing to report on Saturday. A labor dispute ensued with the union contract expiration several days later. HELD: The claimants were separated prior to the beginning of the labor dispute, thus, Section 207.048 was not applicable. Since the Commission held that the employer's request that they work on Saturday was reasonable, the claimants were disqualified under 207.044.

Appeal No. 358-CA-74. The claimant's unemployment was caused by a discharge prior to the beginning of a labor dispute. After the inception of the labor dispute, the claimant secured other employment. Later, he was offered reinstatement by the earlier employer but declined the offer. Still later, he was laid off by his more recent employer due to lack of work. Subsequently, the claimant filed his initial claim, naming the more recent employer as his last work. HELD: Since the claimant was discharged prior to the inception of the labor dispute and since he did not accept re-employment by the employer involved in the labor dispute, he named his correct last employer on his initial claim.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 470.15 - 470.25

LD UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK

Appeal Nos. 1363-CA-66 through 1367-CA-66. The claimants' layoff because of lack of work precipitated a labor dispute. HELD: The claimants were not subject to disqualification under Section 207.048 of the Act as they were laid off prior to the dispute. (Also digested under LD 125.203.)

LD 470.20 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK: LACK OF WORK.

CONSIDERATION OF (1) VARIOUS CAUSES OF LACK OF WORK, WHETHER DUE TO LABOR DISPUTE, CUSTOMARY SLACK SEASON, OR LACK OF ORDERS, OR (2) PROBLEM OF WORKERS IN NONSTRIKING DEPARTMENTS BEING THROWN OUT OF WORK BECAUSE OF WALKOUT IN OTHER DEPARTMENTS.

See Appeal No. 2760-CA-75 under LD 470.05.

470.25 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK: TEMPORARY, EXTRA, OR SEASONAL WORK.

SAME TYPE OF CASES AS UNDER "TEMPORARY, EXTRA, OR SEASONAL WORK" LINE UNDER 465, WITH SPECIFIC APPLICATION TO PERIOD PRIOR TO DISPUTE.

Appeal No. 133-CA-69. The claimant, a nonunion longshoreman, completed the job on which he was working immediately before the commencement of a labor dispute at the premises where he was last employed. Although he belonged to a grade or class of workers some members of which were participating in or financing or directly interested in the dispute, the claimant was not subject to disqualification under Section 207.048 of the Act as it was held that his unemployment was due to completion of the job rather than to the labor dispute because (1) his earnings were derived for the most part from employers not involved in the labor dispute, and (2) he had worked only occasionally with the employers so involved.

APPEALS POLICY AND PRECEDENT MANUAL

LABOR DISPUTE

LD 470.25 (2)

LD UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK

Appeal No. 9044-CA-62. The claimants, who were not members of the longshoreman's union and whose employment with the employer prior to the strike was by chance, were not subject to disqualification under the labor dispute provision. (Also digested under LD 130.00, 420.15 and 465.25.)