

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:07 a.m. on February 15, 1995 in Room 526-S of the Capitol.

All members were present except: Rep. Candy Ruff - excused
Rep. Greg Packer - excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee:
Bob Nugent, Revisor of Statutes
Rep. Jim Lowther
Robert Lincoln - Interstate Brands Corp.
Terry Leatherman - KCCI
Mitch Wulfekoetter - Kansas AFL/CIO

Others attending: See attached list

The minutes of January 25 and 26, 1995, were passed out. The committee will approve them at a later date. Also handed out was an invitation to attend the Workers Compensation Advisory Council meeting to be held on Friday, February 17, 1995, from 1:00 p.m. to 3:00 p.m. in the ESSI Building (1309 SW Topeka) Conference Room (see Attachment 1). A letter concerning HB 2305's impact on state Medicaid funding from Jeff Chanay, who testified earlier, was also distributed (see Attachment 2).

Hearing on: HB 2308 - Disqualification of employment security benefits during labor disputes.

Bob Nugent, Revisor of Statutes, gave a brief of HB 2308. The bill deals with work stoppage and payment of unemployment benefits. Normally employees are not paid unemployment during labor disputes when the plant is shut down. The bill would amend the law to adding, *or newly employed on a temporary basis*, to line 10 on page 6, and would have the effect of disqualifying workers on strike from benefits when the plant is not shut down and the work is continuing.

Rep. Jim Lowther, the sponsor of HB 2308, gave the history and purpose of the bill (see Attachment 3). It stems from a recent strike by the truck drivers at the Dolly Madison Cake Plant in Emporia. During the strike, the company kept the jobs open for the drivers, and all drivers had the option of returning to work at any time. The striking drivers filed for unemployment benefits. At first, they were turned down, but they appealed and because there was no work stoppage at the plant, the court ruled the strikers were eligible for unemployment benefits. The review board also voted in favor of the strikers. He questioned whether workers who elected to go on strike should be eligible for unemployment benefits when their jobs are available because they have been replaced by temporary employees. The bill would disqualify these workers from collecting unemployment benefits.

Rep. Lowther closed his testimony by saying that unemployment benefits are designed to assist people who are out of work for no fault of their own and who are actively seeking employment. He said that UC benefits should be limited to this purpose and he asked the committee's serious consideration of the bill. He finished by answering questions.

Mitch Wulfekoetter presented his testimony on behalf of the Kansas AFL/CIO (see Attachment 4). He appeared as an opponent to HB 2308. He testified that workers are disqualified from unemployment benefits if: 1) a worker goes on strike or is locked out and the work at issue ceases, and 2) the worker goes on strike or is locked out and the work at issue is continued by the employer's management team and/or other co-employees. In the third instance a worker is not disqualified from unemployment benefits when the worker goes on strike or is locked out and the work at issue is continued by outside individuals. The change to the law contained in HB 2308 would eliminate the right of a striking/locked out worker to draw unemployment when the work he/she was doing is being performed by replacement workers. He believes the motivation to

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:07 a.m. on February 15, 1995.

negotiate quickly and in good faith would be lost if the employees were drawing unemployment benefits. They believe that the primary purpose of unemployment is to provide benefits to a worker who has become involuntarily unemployed. When striking/locked out workers are replaced, their unemployment has become truly "involuntary", and they should be entitled to unemployment benefits as are other workers who lose their jobs to other workers. He concluded by answering questions from the committee.

Robert Lincoln, Interstate Brands Corporation, Personnel Manager at the Dolly Madison Cake Plant in Emporia, appeared as a proponent of HB 2308 (Attachment 5). The Emporia transport drivers voted to put up pickets at his facility on July 26, 1993. The work-stoppage by these drivers continued until September 23, 1993, when a new agreement was ratified. On August 23, 1993, 70 claims for unemployment benefits were received by their company in St. Louis. They were at first denied benefits and they appealed. Because a work-stoppage had not occurred, the appeal hearing was reversed, and the striking workers were ruled eligible, they were not disqualified from receiving unemployment insurance. The appeal process by the company has not been completed and an opinion has not been received at this time. The company believes that when work is available and the employee voluntarily refuses to work, he/she should not be eligible for unemployment benefits. He asked for the committee's support of the bill. He finished by answering questions.

Terry Leatherman, Executive Director, Kansas Industrial Council, KCCI, testified as a proponent for HB 2308 (see Attachment 6). He testified that Kansas like every other state does not view employees involved in a labor dispute "unemployed through no fault of their own." They are considered responsible for their unemployment and should not qualify for unemployment compensation benefits. Kansas law has also permitted employers to take steps to keep their business going without their striking workers qualifying for unemployment benefits. This bill makes it clear that this principle will apply when new temporary employees are used during a strike. KCCI supports HB 2308. He ended by answering questions.

Chairman Lane asked if there were any persons in the audience who wanted to testify on HB 2308. Seeing none he closed the hearings on the bill. There will be possible final action on the bill on Tuesday, February 21.

Seeing the new Director of Employment Security for the Kansas Department of Human Resources, Reggie Davis, in the audience, Chairman Lane asked him to introduce himself to the committee.

The committee adjourned at 9:45 a.m.

The next meeting is scheduled for February 21, 1995.

MEMORANDUM

TO: MEMBERS OF THE HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE

FROM: GEORGE GOMEZ, DIRECTOR OF DIVISION OF WORKERS COMPENSATION

DATE: FEBRUARY 14, 1995

RE: WORKERS COMPENSATION ADVISORY COUNCIL

Please be advised that the Workers Compensation Advisory Council will be holding a meeting on Friday, February 17, 1995, from 1:00 p.m. to 3:00 p.m. in the ESSI Building (1309 S.W. Topeka Boulevard) Conference Room.

You are invited to attend this meeting.

*Business, Commerce
& Labor
2/15/95
Attachment 1*

ENTZ & CHANAY

ATTORNEYS AT LAW

STEWART L. ENTZ
JEFFREY A. CHANAY
J. PHILLIP ORAISON*

8000 SW VAN BUREN STREET
TOPEKA, KANSAS 66611
(913) 867-8004
FAX: (913) 867-7108

*ADMITTED IN KANSAS AND MISSOURI

February 13, 1995

Rep. Al Lane
Chairman, House Business, Commerce
& Labor Committee
State Capitol Building
Topeka, Kansas 66612

Re: *House Bill 2305*

Dear Rep. Lane:

This letter is written to respond to your inquiry of February 10, 1995 concerning the derivative impact of HB 2305 on state Medicaid spending during the two years of the moratorium. I have received data from Mr. Bill Laves of the Department of Human Resources and visited with a Medicaid reimbursement specialist, and would advise as follows.

Utilizing 1993 averages, Medicaid-certified businesses paid some \$3.7 million in unemployment tax contributions in 1993. Businesses included in these averages are skilled nursing care facilities, intermediate care facilities, nursing and personal care facilities, and home health care facilities. The former two categories represent \$3.1 million of the tax contributions and such businesses are reimbursed by Medicaid in accordance with their allowable costs. The latter two categories receive Medicaid reimbursement based upon capitation principles.

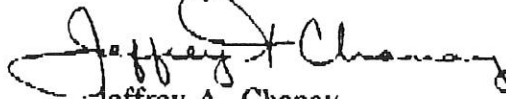
In arriving at my estimates, I am assuming 50% of all long term care recipients are Medicaid eligible and that 47% of all Medicaid reimbursement is paid from state general funds. Also, I am assuming that 94% of the tax contributions are allowable costs (the statewide average for all costs). Thus utilizing these assumptions, and adjusting the numbers for inflation, there should be approximately \$750,000 in state general funds saved per year in Medicaid spending as a result of HB 2305 in the skilled care and intermediate care categories. As to the personal care and home health care categories, Medicaid expenditures are based on a fee schedule and therefore there would not be an immediate and direct savings in those areas. However, there should be an ultimate savings to the state because the moratorium should offset inflationary increases. Therefore, over the two years of the moratorium, it is estimated that \$1.5

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Attachment 2*

million will be saved in state general fund Medicaid expenditures that can be directly traced through the system.

Thank you for your attention to this matter, and please advise if I can answer any additional questions.

Sincerely,



Jeffrey A. Chanay

jac/sja
cc: Rep. Greg Packer

2/13/95

2-2

JAMES E. LOWTHER
 REPRESENTATIVE, 80TH DISTRICT
 LYON COUNTY
 1549 BERKELEY ROAD
 EMPORIA, KANSAS 66801



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRMAN: LEGISLATIVE POST AUDIT COMMITTEE
 SUBCOMMITTEE CHAIRMAN: APPROPRIATIONS
 MEMBER: EDUCATION
 TAXATION

House Business Commerce and Labor Committee

2-15-95

Testimony in Support of HB 2308 - Disqualification of employer security benefits during labor disputes by Rep. Jim Lowther

Legislation to amend the law that disqualifies striking employees from being eligible to receive unemployment benefit payments.

This legislation stems from a recent strike by the truck drivers at the Dolly Madison Cake Plant in Emporia. The drivers had gone on strike due to disagreements over certain benefits. A picket line was maintained and according to the information I have, strikers received \$200 per week from a strike fund. During the work stoppage, the company kept the jobs open for the drivers - their jobs were available throughout the strike - however all but 15 drivers honored the picket line.

The company continued operating during the strike and replaced the striking drivers with temporary drivers from personnel currently and previously employed plus some new drivers. Again, all drivers had the option of returning to work at any time.

The striking drivers filed for unemployment benefits. Initially they were turned down in a ruling by the Department of Human Resources. The strikers appealed and a hearing was held. The attorney for the strikers used case law in arguing their claim. It is my understanding he sighted a 1963 Supreme Court decision in a case that found that if an employer continued to operate with other personnel, then there was no work stoppage. Because there was no work stoppage, the court ruled the strikers were eligible for unemployment benefits. The review board found for the strikers in a 2 to 1 vote.

The question should not hinge on whether there was work stoppage or not if indeed this was the ruling. In this case the employer did not deprive the drivers of their jobs and the jobs were available to the strikers throughout the period of the strike. Notwithstanding the finding under case law, the question is whether workers who elect to go on strike should be eligible for unemployment benefits when their jobs are available because they have been replaced by temporary employees?

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 Attachment 3*

Under current law, striking employees are disqualified for unemployment benefits if the company uses former or current employees to replace the striking employees. There is no provision for using other people, however, and this is why I think this legislation should be considered. The bill would change the law so that striking workers would normally not qualify for unemployment benefits, providing they haven't lost their jobs and/or been permanently replaced. We are not talking about a lock-out here. We are not talking about the employer going out of business. We are not talking about an employer terminating strikers or eliminating their jobs or hiring permanent replacements.

Under current law, a company that continues operations is limited to who it can hire without penalizing itself. This is backward, because even the striking employees want their jobs back at the best wages possible. Higher unemployment taxes run up expenses and work against wage increases. Legislation now before this committee addresses the burden of unemployment taxes on Kansas businesses.

Unemployment benefits are designed to assist people who are out of work for no fault of their own and who are actively seeking employment. I think that UC benefits should be limited to this purpose and I ask you to give serious consideration to passing this legislation.

HOUSE BILL NO. 2308

CONFEREES: MITCHELL WULFEKOETTER
Presented on Behalf of
KANSAS AFL/CIO

I would like to thank the Chair and the Committee for the opportunity to express the views of the Kansas AFL/CIO on House Bill 2308. My name is Mitchell Wulfekoetter. I am a Topeka attorney and have been involved in private practice with the firm of McCullough, Wareheim & LaBunker, P.A. since 1987.

Although the number of words involved in the proposed amendment are few (7), the effect is a major policy change including a major shift in bargaining leverage in labor strike/lockout situations.

The statute is difficult to read at first glance. To best express the position of the Kansas AFL/CIO I will first explain the current status of the law and how it is working. I will then point out the monumental change that would occur by amending K.S.A. 44-706 (d) with these seven words.

Currently the law disqualifies a worker who has become unemployed as a result of (1) a stoppage of work which exists because of a labor dispute or (2) there would have been a stoppage of work had normal operations not been maintained with other personnel previously and currently employed by the same employer.

The current statute addresses two scenarios but as you will see, three scenarios are involved.

The first scenario is where a worker goes on strike or is locked out and the work at issue ceases. In this scenario the worker is disqualified from unemployment benefits.

The second scenario is where a worker goes on strike or is locked out and the work at issue is continued by the employer's management team and/or other co-employees. In this scenario the worker is disqualified from unemployment benefits.

The third scenario is where a worker goes on strike or is locked out and the work at issue is continued by outside individuals. In this scenario the worker is not disqualified from unemployment benefits.

The proposed amendment in H.B. 2308 would eliminate the right of a striking/locked out worker to draw unemployment when the work he/she was doing is being performed by replacement workers. Although it took only seven words, the effect is monumental. Let me explain.

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Attachment 4*

A primary principle involved in the successful relationship between labor and industry is the right to strike and lockout workers. When a strike or a lockout occurs, both sides suffer losses which motivates them to negotiate quickly and in good faith. The current law keeps the players on a level playing field as both sides realize losses during the strike/lockout. The employer suffers lost production and the worker suffers a lost paycheck, including unemployment. This is important as it motivates both sides to negotiate an agreement so that work can resume.

As the law is now, the employer can replace the striking/locked out work force with outside individuals. Thus, the employer can reduce it's losses by continuing production. If that happens, the striking/locked out workers can reduce their losses by drawing a period of unemployment benefits. This keeps the players on a level playing field as they attempt to negotiate an agreement.

If H.B. 2308 is passed, the playing field can be manipulated and tilted to the degree that an agreement will be substantially delayed, never reached, or at a minimum, substantially unfair. Let me explain.

If H.B. 2308 is passed, employers will replace striking/locked out workers with outside individuals. The employer will not suffer any loss as production will continue. The employer will have little or no motivation to negotiate quickly and in good faith. On the other side of the fence is the striking/locked out worker who cannot draw unemployment benefits and does not have a paycheck. The playing field being tilted against them and the fact that they cannot feed their family makes them overly vulnerable to unfair negotiations. The employer will have the opportunity to take advantage of the "starved out" workers. Negotiations will either be unduly delayed, will not occur or will result in an unfair resolution.

It is the position of the Kansas AFL/CIO that if H.B. 2308 is passed, the positive and effective relations between labor and industry will be undermined.

The final point that the Kansas AFL/CIO wants to make relates to the primary purpose of our unemployment laws. K.S.A. 44-702 declares the state public policy of Kansas. Therein it states that:

". . . Economic insecurity, due to unemployment, is a serious menace to health morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. . . "

Clearly the primary purpose of unemployment is to provide benefits to a worker who has become involuntarily unemployed. It is arguable that a striking worker is not "involuntarily" unemployed. Assuming arguendo that that is the case, you must look back at the law and the proposed change. If the worker strikes and the work involved is stopped, the worker does not get unemployment. However, if the striking work force is replaced by people from outside the company, the situation has drastically changed. There is no job for the striking worker to return to. Although the replacement workers might be characterized as "temporary", in reality they are or at the very least will likely become "permanent". There are no jobs available for the striking/locked out workers to return to. In the scenario where striking/locked out workers are replaced, their unemployment has become truly "involuntary". They should be entitled to unemployment benefits as are other workers who lose their jobs to other workers.

The Kansas AFL/CIO opposes the passage of House Bill 2308. I will now entertain any questions from the Chair or the Committee.



INTERSTATE BRANDS CORPORATION

1525 Industrial Road, Emporia, KS 66801
(316) 342-6811



February 14, 1995

Mr. Al Lane, Chairman
House Business, Commerce & Labor Committee

My name is Robert Lincoln. I'm currently employed by Interstate Brands Corporation as the Personnel Manager at the Dolly Madison Cake Plant located in Emporia, Kansas.

Our company manufactures food products from a large production facility in Emporia, Kansas. The facility produces products to be distributed in some 18 states involving a three shift assembly line process. Distribution of product is made by some 100 over-the-road drivers who are represented by Local 955, International Brotherhood of Teamsters. Note: Local 335 IBT was merged into Local 955 in December 1994.

Four (4) other labor agreements exist in our plant. Representing the bake shop, retail clerks and clerical employees is Local 218 Bakery Confectionery Tobacco Workers, Local 6 International Brotherhood of Electrical Workers representing our maintenance engineers.

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Attachment 5*

The transport drivers' agreement expired on March 6, 1993. Even though the current contract had expired, the parties continued to meet. Meetings continued between the company and the union addressing economics and certain language issues. The parties were unable to resolve all the issues and the Emporia transport drivers voted to put up pickets at our facility in Emporia on July 26, 1993. The work stoppage continued until September 23, 1993 when the new three-year agreement was ratified.

Specifically why I'm here today is to speak in support of HB 2308 "disqualification of employment security benefits during a labor dispute". In a condensed format let me explain the facts as they occurred.

August 23, 1993 claims were received from the Kansas Division of Employment, by our representative James P. Frick Company in St. Louis, identifying seventy some individuals who had made applications for unemployment benefits.

September 13, 1993 examiner's determination was issued disqualifying those drivers for unemployment due to labor dispute or work stoppage. This determination was later appealed by some of the drivers.

October 20, 1993 appealed hearings were held. Counsel representing the drivers identified to the referee that a work stoppage had not occurred, and the drivers should be eligible for benefits and be allowed to back date their claims. Company response work was available and they, the drivers, voluntarily refused to work.

November 22, 1993 referee reversed the examiner's decision by affirming there was no work stoppage. (Exhibit I.)

Opinion: The Kansas Employment Security Law provides that "an individual shall be disqualified for benefits: (d) for any week with respect to which the secretary of human resources, or a person or persons designated by the secretary finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute, or there would have been a work stoppage had normal operations not been maintained without personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed KSA 44706(d).

The Supreme Court of this state has ruled that the decisive test of eligibility to unemployment insurance in cases of work stoppage is whether a labor dispute caused the work stoppage Pickman v Weltmer 191 Kansas 543 382P.2d 298(1963).

Decision: The examiner's determination, issue code 24106, is reversed. The claimant is not subject to disqualification under the above statute as there was no stoppage of work at the employer's facility. The claimant is cleared for the receipt of unemployment benefits beginning August 15, 1993.

The examiner's determination, issue code 21177, is reversed. It has been established there was good cause for backdating of the claim and backdating will be allowed beginning July 25, 1993 and ending August 14, 1993, under K.S.A. 44-705 and K.A.R. 50-3-2.

December 3, 1993 the company appealed the referee's decision to the Employment Security Board of Review.

February 25, 1994 Employment Security Board of Review issued their decision. (Exhibit II)

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Following the Security Board of Review decision affirming the referee's decision that there was no work stoppage by 2 to 1 vote and denying by 2 to 1 vote the back dating of claims, drivers appealed the back dating issue to Lyon County District Court and that hearing was held in December, 1994. To date, no ruling has been received.

In summary, when work is available and the employee voluntarily refuses to work, he/she should not be eligible for unemployment benefits.

Sincerely,

INTERSTATE BRANDS CORPORATION



Robert E. Lincoln
Personnel Manager

REL:ab

enclosures

EKN I

KANSAS DEPARTMENT OF HUMAN RESOURCES Office of Appeals, 1430 SW Topeka Blvd., Topeka, KS 66612

BEFORE THE APPEALS REFEREE:

In The Matter Of:

Docket Number: 311871 & 311872
d/c 310

Claimant:

Social Security #: _____

Employer: INTERSTATE BRANDS CORP
BOX 283 JAMES E FRICK
ST LOUIS MO 63166-0283

Hearing: October 20, 1993
Emporia, Kansas

NOV 22 1993

*Decision Mailed: NOV 18 1993

REFEREE'S DECISION

APPEARANCES: _____ appeared for the claimant. Robert Lincoln appeared for the employer.

FINDINGS OF FACT: The claimant timely appeals two examiner's determinations. The first determination, issue code 24106, found the claimant disqualified from the receipt of unemployment benefits. The disqualification period begins August 15, 1993 and ends when the claimant's unemployment is no longer due to a labor dispute, or stoppage of work. A stoppage of work would have resulted from a labor dispute between the claimant and the employer had normal operations not been maintained with other personnel previously or currently employed by the same employer. The claimant is unemployed solely as a result of the labor dispute. As wages and other conditions of work of the claimant are a subject of the labor dispute, this constitutes direct interest and participation in the labor dispute. This determination is made under K.S.A. 44-706(d).

The second determination, issue code 21117, found the claimant ineligible to receive benefits beginning July 25, 1993 and ending August 14, 1993. The examiner found the claimant reported and established a claim. The claimant requested that the claim begin prior to the effective date. The claimant has not established good cause for late filing of the claim. ~~Backdating of the claim is denied under K.S.A. 44-705 and K.A.R. 50-3-2.~~

On July 26, 1993, at approximately 10 p.m., a strike began with respect to Interstate Brands, Incorporated and Teamsters Local #335. Picket lines were set up and the individual drivers did not cross the picket lines.

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There was no stoppage of work at the plant as the work was maintained by previously employed individuals, some drivers not involved in the strike, contract carriers from other companies with their own drivers, and replacement workers that were hired by the employer.

The contract carriers were already in line to immediately work in the place of the striking drivers of Teamster Local #335.

On August 26, 1993, a letter was sent to Mr. _____, Secretary/Treasurer of Teamsters Local #335 as well as the individual members of the union working for Interstate Brands. This letter advised the drivers who had been on strike and wished to return to work should call Mr. Lincoln to be processed and returned to work in available positions.

The strike ended September 23, 1993, when the employer and the union agreed to a contract. Workers were eligible to return to work on September 24, 1993. All drivers that were hired either prior to or during the strike did not maintain their employment after the strike ended. The contract carriers were never employed by Interstate Brands but were employed by other employers on contract to Interstate Brands.

The claimant was not aware that he could file a claim for unemployment compensation benefits when he was on strike. The claimant found out by word of mouth that he was able to file a claim for unemployment benefits and came in as soon as he could after receiving this information to file the claim for unemployment compensation benefits.

OPINION: The Kansas Employment Security Law provides that "an individual shall be disqualified for benefits: (d) for any week with respect to which the secretary of human resources, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute, or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed..." (K.S.A. 44-706(d))

~~The Supreme Court of this state has ruled that the decisive test of eligibility to unemployment insurance in cases of a work stoppage is whether a labor dispute caused the work stoppage. *Pickman v. Welmer*, 191 Kan. 543, 382 P.2d 298 (1963).~~

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The Secretary's regulations provide that: "(a) a worker shall be deemed to have good cause for late filing of an initial claim if at the time he or she intended to report and during the balance of the calendar week, or to have good cause for failure to report to continue his or her claim at his or her assigned report time, or to report as otherwise directed, if at that time: the local office to which he or she reports was closed or if itinerant service was not conducted as scheduled; he or she was employed for wages; he or she experienced a failure of the transportation facilities upon which he or she relied; he or she was ill or disabled; he or she was influenced by coercion or intimidation exercised by an employer to prevent him or her from reporting; he or she had a definite appointment or prospects for employment for which he or she applied; he or she made reasonable efforts to file a claim, but was prevented by circumstances beyond his or her control from actually doing so; there were impelling personal reasons or necessitous circumstances which prevented his or her reporting; or if his or her failure to report resulted from erroneous information or instructions given him or her by a representative of the Division." (K.A.R. 50-3-4)

"A worker shall be deemed to have good cause for late filing of an initial claim if at the time which he or she intended to report and during the balance of the calendar week, or to have good cause for failure to report to continue his or her claim at his or her assigned report time, or to report as otherwise directed, if at that time: the local office to which he or she reports was closed or if itinerant service was not conducted as scheduled; he or she was employed for wages; he or she experienced a failure of the transportation facilities upon which he or she relied; he or she was ill or disabled; he or she was influenced by coercion or intimidation exercised by an employer to prevent him or her from reporting; he or she had a definite appointment or prospects for employment for which he or she applied; he or she made reasonable efforts to file claim but was prevented by circumstances beyond his control from actually doing so; there were impelling personal reasons or necessitous circumstances which prevented his or her reporting; or if his or her failure to report resulted from erroneous information or instructions given him or her by a representative of the Division." (K.A.R. 50-3-4(a))

With respect to issue code 24106, the facts in the case show that there was, in fact, a strike by Teamsters Local #335 against the above employer, Interstate Brands, Incorporated. However, the facts do not establish that there was a stoppage of work or there would have been a stoppage of work had normal operations not been maintained with other personnel previously or currently employed by the same employer. The facts clearly show that some of the drivers that were hired either before or during the strike are no longer employed by Interstate Brands. The facts further show that the contract labor that was utilized by the

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employer did not maintain work with Interstate Brands once the strike was over. Therefore, there was no stoppage of work as defined by the statute as a result of the strike or labor dispute.

As there was no stoppage of work, the issue as to whether or not the individual drivers crossed the picket line is a moot one. In order for there to be a disqualification from the receipt of unemployment benefits as a result of a strike, there must first be a stoppage of work. The referee will therefore find that the claimant is not subject to disqualification under K.S.A. 44-706(d) and the examiner's determination will be reversed.

With respect to issue code 21177, the facts in this case show that the individual claimant would have good cause for late filing an initial claim for unemployment compensation benefits. It would be in the interest of equity and good conscience to allow backdating in this case because the individual was not aware that he could file a claim for unemployment benefits. The individual was not made aware by the employer that he could do so or anyone else. When the individual found out that he could file a claim, he immediately came in and did so. This examiner's determination will be reversed also.

DECISION: The examiner's determination, issue code 24106, is reversed. The claimant is not subject to disqualification under the above statute as there was no stoppage of work at the employer's facility. The claimant is cleared for the receipt of unemployment benefits beginning August 15, 1993.

The examiner's determination, issue code 21177, is reversed. It has been established there was good cause for backdating of the claim and backdating will be allowed beginning July 25, 1993 and ending August 14, 1993, under K.S.A. 44-705 and K.A.R. 50-3-2.

IT IS SO ORDERED.



Edward R. McClelland III,
Referee

NOTICE: Appeal rights if you disagree with this decision: You have 16 days after the "Decision Mailed" date to file an appeal to the Employment Security Board of Review. You may file either in writing at your Department of Human Resources local office or by letter postmarked within 16 days and mailed to the Employment Security Board of Review, 1430 SW Topeka Blvd, Topeka, KS 66612. The Board will affirm or reverse this decision after reviewing the evidence presented at the referee's hearing.

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NOV 24 1993

State of Kansas
EMPLOYMENT SECURITY BOARD OF REVIEW

Social Security Number _____

Appeal No. HR-24-419 K

Claimant

Appellant EMPLOYER

Decision Mailing Date MAR 8 1984

Employer

INTERSTATE BRANDS CORP
PO BOX 283-J E FRICK
ST LOUIS MO 63166-0283

The Board's decision becomes final sixteen (16) days after the above mailing date. If any aggrieved party desires to appeal, it must be filed in the district court within this period of time. The procedure for appealing to district court is provided for in K.S.A. 44-708 (f) 1986 and K.S.A. 77-801 et seq, 1987, as amended. Service of notice of appeal, after filing in court, can be served on Carol Kelly, Executive Secretary, Employment Security Board of Review, 1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1870.

DECISION

Now on this 25th day of February 1984 the above-entitled matter comes on for consideration by the Board.

The Board finds that the employer has timely appealed the decision of the Referee mailed November 18, 1983 wherein the Referee issued a decision pursuant to K.S.A. 44-708 (d) and a decision regarding backdating of claimed benefits pursuant to K.S.A. 44-705 and K.A.R. 50-3-2.

It is the finding of the majority of the Board that the Referee's decision regarding the issues set forth in K.S.A. 44-706 (d) specifically being that claimant's unemployment was no longer due to a labor dispute in that the employer did not have a stoppage of work at their facilities. This is affirmed by the Board in a 2-1 decision with a dissenting opinion set forth at the end of this decision.

The majority of the Board further finds that the second issue regarding the backdating of claims as provided in K.S.A. 44-705 and K.A.R. 50-3-2 should be reversed. The majority is of the opinion that the claimants herein, have failed to provide any evidence that would support the exceptions as provided in K.A.R. 50-3-2. The evidence is clear that the employer did not at any time inform the claimant's that they should not file for unemployment benefits. The basic reason claimants did not file is that they were not aware they could do so. This, in the opinion of the majority of the Board does not constitute a compelling personal reason that would have prevented them from claiming benefits.

CC:

5-10

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that the decision of the Referee rendered herein, is modified and claimants are found to be eligible for the receipt of benefits without disqualification in that no stoppage of work existed at the employer's business facilities.

IT IS FURTHER ORDERED that claimants have failed to establish good cause for the backdating of claims and backdating of said claims from July 25, 1993 through August 14, 1993 and from August 20, 1993 through September 26, 1993 is hereby denied.

The Board's vote on the issues hereinbefore set forth are as follows:

The issue covered under K.S.A. 44-708 (d).

BOARD OF REVIEW



Larry Turnquist, Chairman



Garold G. Good, Member

DISSENT

The evidence is clear that a labor dispute did exist at employer's place of business. The claimants involved were on strike and in fact were picketing in an attempt to obtain certain financial or work benefits from this employer. I am also of the opinion that there was a stoppage of work or would have been a stoppage of work had the employer not obtained the services of other drivers to complete the duties performed by those individuals on strike. The evidence does not support the Referee's finding that the individuals hired by the employer were terminated when the strike was ended. In fact the evidence is contrary to this finding in that employer states that none of the drivers hired were terminated upon a settlement of the strike. I am therefore of the opinion that the evidence would support the original decision issued by the examiner finding claimant's disqualified for the receipt of benefits as having participated in a labor dispute.

I therefore respectfully dissent from the majority's opinion herein.



Dan C. McClenny, Vice Chairman

5-11

On the vote concerning backdating of benefits pursuant to K.A.R. 50-3-2.

BOARD OF REVIEW

Larry Turnquist

Larry Turnquist, Chairman

Dan C. McClenny

Dan C. McClenny, Vice Chairman

DISSENT

Garold G. Good

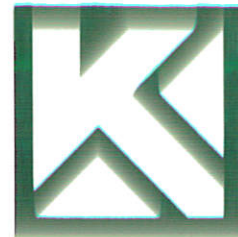
Garold G. Good, Member

I dissent.

5-12

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1871 (913) 357-8321 FAX (913) 357-4732
HB 2308

February 15, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce and Labor

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why KCCI supports passage of HB 2308.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

~~Unemployment compensation is intended for workers who become unemployed "through no fault of their own."~~ The key question regarding HB 2308 is how it relates to this fundamental principle of the Kansas Employment Security Law.

*Business, Commerce
& Labor
2/15/95*

Like every other state, Kansas does not view employees involved in a labor dispute as "unemployed through no fault of their own." Instead, they are considered responsible for their

Attachment 6

unemployment and should not qualify for unemployment compensation benefits. In addition, Kansas law has also permitted employers to take steps to keep their business afloat without qualifying their striking workers for unemployment compensation benefits. HB 2308 makes it clear that this principle will apply when new temporary employees are used during a strike.

Please consider the situation an employer faces without the opportunity to replace striking workers on a temporary basis. If an employer doesn't keep producing their product, the employer is out of business. If the employer produces their product using temporary help, the company's striking workers qualify for unemployment compensation, which will finance a continuing strike action.

The key to HB 2308 is its permitted use of workers on a "temporary" basis. It continues the balance that has existed for years in Kansas that striking workers do not become qualified for benefits simply because an employer takes temporary measures to keep a business operational during a work stoppage.

Thank you for this opportunity to explain why KCCI supports HB 2308. I would be happy to attempt to answer any questions.