BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

F. E. ADAMS AND OTHERS
(Claimants)
(See Appendices)
[Appendices removed in accordance with California Code of Regulations, title 22, section 5109(e)]

ANCHOR HOCKING GLASS COMPANY
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-112
Case No. 69-4267

The employer appealed from that portion of Referee's Decision No. LA-TD-60 (Anchor Hocking Glass Company) which held that the claimants set forth in Appendix A thereof were not ineligible for benefits under section 1262 of the Unemployment Insurance Code. The decision also held that the claimants set forth in Appendix B were ineligible for benefits under section 1262 of the code; that the appeals of the claimants set forth in Appendix C were dismissed as untimely filed under section 1328 of the code; that the appeals of the claimants set forth in Appendix D were dismissed for failure to appear and submit to examination; and that the appeals of Henry Gannuscio, ID No. 10 and L. H. Dubois, ID No. 0539 were dismissed pursuant to their request for withdrawal of their appeals. Written argument was submitted by the employer. On behalf of the claimants, counsel submitted a copy of its letter dated June 6, 1969 addressed to the Los Angeles Referee Office as a reminder of his position in this matter and waived any additional reply to the employer's brief.

STATEMENT OF FACTS

The employer has two plants in the Los Angeles area which were involved in this proceeding. One is located in Maywood, California and is known as the Maywood Container Plant. Of the 134 claimants involved in this matter, 121 were employed at the Maywood Container Plant. The second plant is located in South Gate, California and is known as the Cap and Closure Plant. The remainder of the claimants, 13 in number, were employed at this plant.

On or about March 1, 1968 the following unions represented the following employees at these two plants:

UNION	EMPLOYEES
-Maywood Container Plant-	
1. Local 29, G.B.B.A.	Approximately 65 operators
2. Local 137, G.B.B.A.	Approximately 330 production and maintenance employees
3. Local 139, American Flint Glass Workers	11 moldmakers
4. Local 396, Teamsters	8 truckdrivers
-Cap and Closure Plant-	
Local 137, G.B.B.A.	96 production and maintenance employees

Each of these unions had a collective bargaining agreement with the employer that was in full force and effect during the strike here in question. Although the nationwide agreement covering the operators was due to expire at midnight on February 29, 1968, it was extended by an agreement between the President of the G.B.B.A. and the multiemployer association of which the employer was a member. Local 29, G.B.B.A., however, refused to recognize the validity of this extension agreement. Accordingly, it struck the employer on March 1, 1968, establishing a picket line at the Maywood Container Plant at 12:01 a.m. and at the Cap and Closure Plant at 2:30 p.m. The picketing temporarily ceased at the Maywood Container Plant between approximately 3 p.m. on March 15 and the morning of March 19, and finally terminated in the late afternoon of March 27. At the Cap and Closure Plant, the picketing terminated finally at approximately 10 a.m. on March 15. The strike against the employer was part of a statewide strike by operators against the glass bottle manufacturers over the issue of whether the G.B.B.A. President was authorized to enter into the above-referenced extension agreement.

Most of the union employees at the Maywood Container Plant, except for the Teamsters, respected Local 29's picket line as long as it was up. At the Cap and Closure Plant, however, a minimum of approximately 20 percent and a maximum of approximately 40 percent of the union employees reported to work on each of the nine full weekdays in which the picketing was in progress.

Of the 134 claimants, all but two were members of Local 137, G.B.B.A. The two exceptions were both mold-makers and members of Local 139, American Flint Glass Workers. The Department issued its determinations that each of the 134 claimants involved were ineligible for unemployment compensation benefits for the period March 1 through March 28, 1968, under section 1262 of the Unemployment Insurance Code because he or she had left work due to a trade dispute and continued out of work by reason of the fact that a trade dispute was still in active progress.

The 134 claimants each filed an appeal to the referee from the determinations of the Department. The appeals of these claimants were consolidated for hearing. At the conclusion of such hearing the referee filed his decision ("Adams decision") in which he disposed of the 134 appeals as follows:

(1) Held the 118 claimants whose names are set forth in Appendix A to the decision, all of whom were employed at the Maywood Container Plant, were not ineligible for benefits under section 1262 of the code. The referee found that, although work was available for these claimants to perform, each of them failed to report for work because he or she had a reasonable and valid fear for his or her bodily safety in crossing the picket line.

(2) Affirmed the determination of the Department as to the eight claimants whose names are set forth in Appendix B to the decision, all of whom were members of Local 137, G.B.B.A., and employed at the Cap and Closure Plant, on the ground that these claimants did not have a reasonable and valid fear for their bodily safety in crossing the picket line at the Cap and Closure Plant.

The names of M. G. Page (or M. F. Page), J. G. Uhrim and A. S. Vein, III are listed in Appendix A to the referee's decision. Each of these claimants was employed at the Cap and Closure Plant and should have been entered in Appendix B of the referee's decision. The referee's decision is corrected accordingly.

(3) Dismissed the appeals of the two claimants whose names are set forth in Appendix C to the decision on the ground that such appeals were not timely filed.

(4) Dismissed the appeals of the four claimants whose names are set forth in Appendix D to the decision on the ground they had failed to appear and submit to cross-examination at the request of the employer after being permitted to submit written declarations in support of their position.

(5) Dismissed the appeals of two claimants from the Cap and Closure Plant pursuant to their request to withdraw from the proceedings.

None of the 16 claimants denied benefits in the Adams decision have filed appeals therefrom.

The agreement extending the contract provided in pertinent part for "all the terms and conditions of the April 4th, 1965 National Automatic Machine Contract including section 1, of Article 33 [no strike ~~Clause~~clause] on the following basis: Such extension will be on a day to day basis and either party may terminate the extension at any time upon 72 hours prior written notice to the other." This extension was entered into on behalf of the Glass Bottle Blowers Association by the International President.

Local 29 of the Glass Bottle Blowers Association refused to recognize the extension of the contract. Local 29 refused to recognize that the agreement could be extended by the International President and voted to go on strike. At a meeting of Local 29 at which many members of Local 137 were present, loud and boisterous threats were made by the members of Local 29, generally to the effect that if members of the other locals attempted to cross the picket lines and work, they would be sorry and could be subject to physical injury.

The strike was called to commence March 1, 1968 and attorneys for Anchor Hocking Glass Corporation filed a complaint for injunction in the Superior Court of the State of California for the County of Los Angeles. On March 1, 1968 the Superior Court issued a temporary restraining order enjoining the defendants from taking part in any strike, walkout, slowdown, work stoppage, or engaging in any picketing with the purpose of causing or aiding any strike, walkout, slowdown, or work stoppage in the plaintiff's plants.

Formatted: Left, Right: 0.01", Space Befor 0 pt, Lock anchor

Local 29 chose to disregard the temporary restraining order and established picket lines at the employer's Maywood and South Gate plants.

On March 15, 1968 the Superior Court issued a preliminary injunction which enjoined Local 29 officers and members from "either directly or indirectly, engaging in, participating in, or acting in furtherance of, or inducing or encouraging others to engage in, any strike, sympathetic or otherwise, walkout, slowdown or work stoppage of any nature (at the employer's plants) and from establishing, maintaining, or participating in any picketing or other conduct at or around such location in furtherance of any such strike, walkout, slowdown, or work stoppage of any nature until after expiration of the 72-hour notice specified in the extension agreement of February 27, 1968, extending the collective bargaining agreement between Glass Container Manufacturers Institute and Glass Bottle Blowers Association of the United States and Canada originally effective March 1, 1965."

On March 15, 1968 the court entered and modified the preliminary injunction clarifying the manner of effecting the 72-hour to wit: "Notice from the International Union, Glass Bottle Blowers of the United States and Canada or notice from the Glass Container Manufacturers Institute."

Local 29 and not the International Union gave the 72-hour notice. At that time the pickets were withdrawn on March 15, 1968 until March 19, 1968, and the picket line was then reestablished.

On March 15, 1968 the employer sent letters to all employees directing them to report to work on their regular shift on Tuesday, March 19, 1968. The date to report for work was set on Tuesday because the employer was of the opinion that many workers would not get the notice until Monday due to the intervening weekend. Only three people reported to work during the days the picket line was called off. When workers reported to work on Tuesday the picket lines had been reestablished.

The picket line consisted of two or three pickets at each gate. There was no mass picketing and no violence on the picket line or destruction of property. However, threats were made to a number of members of Local 137 who approached the picket line. These threats were not necessarily that these members of Local 137 would be physically accosted upon crossing the picket line but they were to the effect that once the picket lines were crossed these individuals who did cross would be noticed and for that reason they would have cause to fear for their physical well-being after leaving the plant or to fear damage to their property, such as to their automobiles. Many of the members of Local 137 expressed fear as to what might happen to them as they left their place of work to go to the washroom and many were fearful what might happen when they left the employer's premises.

Some of the threats were of the following general nature:

(1) "Go home, if you know what is good for you."

(2) "Come ahead and try it."

(3) "You better not try to cross if you know what's good for you."

(4) "If you know what's good for you, you'll go home and stay."

(5) "You'll be sorry if you cross."

(6) "What would happen if I crossed the line. Why don't you come ahead and try it."

(7) "You don't want to go in there do you? You know you don't want to go in there."

(8) "You don't belong here. Get the hell home."

(9) One of the claimants asked a picket if she could go into work. He told her to go ahead but that she might have four flat tires on her car when she returned.

(10) A picket stated that, although the crossing workers might get in the plant, there was no guarantee they would get out.

(11) "Why don't you go home where you belong."

(12) "If you go in you will not have a car when you get out."

(13) "You better not cross the picket line if you know what is good for you. You know what you are if you cross.

(14) "It wouldn't be advisable to cross the picket line."

(15) "Nobody is in and nobody is going in."

Formatted: Left, Indent: Left: 0.49", Hanging: 0.49", Right: 0.64", Space Before 0 pt, Lock anchor

Formatted: Indent: Left: 0.49", Hanging: 0.49", Right: 0.64", Space Before: 0 pt, Lo anchor

Formatted: Left, Indent: Left: 0.49", Hanging: 0.49", Right: 0.64", Space Before 0 pt, Lock anchor

Formatted: Left, Indent: Left: 0.49", Hanging: 0.49", Right: 0.64", Space Before 0 pt, Lock anchor

One claimant testified that she approached the picket line and was confronted by a picket. She went to walk around him and the picket stepped to the side so that she was again confronted by this picket. One of the pickets or operators was intoxicated and boisterous in or about the picket line and

made numerous threats but this individual's conduct was so obnoxious that other pickets or operators removed him from the area.

Twenty-nine of the claimants in this case failed to appear at the referee's hearing and consequently offered no testimony and presented no declaration in explanation of why, in their individual cases, they failed to cross the picket line. Thirty-four claimants testified orally, by declaration, or by stipulation that they failed to report for work during the strike for reasons other than fear or because of fear based either on incidents that allegedly took place at the Cap and Closure Plant, at other glass plants in the Los Angeles area or at the Maywood Container Plant during the mold-makers' strike several years before or on their general knowledge about strikes which they gained by listening to the radio, watching television and reading newspapers. A number of these claimants mentioned the Herald Examiner strike. Fifty-two of the claimants testified orally, by declaration, or by stipulation that they were afraid to cross the picket line and that their fear was caused by some event or occurrence which allegedly took place at or in connection with the Maywood Container Plant at or about the time of the strike.

A claimant who was employed at the Maywood Container Plant was a widow and her own self-support. In the third week of the strike she organized a group of six to eight women and notified the employer that she and the others would cross the picket lines on March 21, 1968 at the beginning of her shift. The employer had a member of the Vernon Police Department on the premises at that time. However, the night before this claimant received two anonymous telephone calls on her unlisted telephone number in which she was threatened to the effect that nothing would happen to her when she crossed the picket line but they did not guarantee her safety when she came out. The claimant had eight blocks to go home and decided not to cross the line. This claimant did not file an appeal to the referee.

REASONS FOR DECISION

Section 1262 of the Unemployment Insurance Code provides:

> "An individual is not eligible for unemployment compensation benefits, and no such benefit shall be payable to him, if he left his work because of a trade dispute. Such individual shall remain ineligible for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed."

In Bodinson Manufacturing Company v. California Employment Commission (1941), 17 Cal. 2d 321, 109 P. 2d 935, the Supreme Court of California considered a case where the claimants, machinists union members, employed by the Bodinson Manufacturing Company, refused to pass through a picket line established at the employer's plant by the striking welders union, also employed by Bodinson, and contended that they were entitled to benefit payments on the ground that they had not left their work voluntarily but were prevented by the picket lines from going to work. The court rejected this contention:

> ". . . If the picket line was maintained within the limits permitted by law, as this one presumably was, no physical compulsion was exerted to prevent co-respondents from working. They were unemployed solely because, in accordance with their union principles, they did not choose to work in a plant where certain of their fellow employees were on strike. Their own consciences and faith in their union principles dictated their action. This choice is one which members of organized labor are frequently called upon to make, and in the eyes of the law this kind of choice has never been deemed involuntary. . . ."
>
> * * *
>
> "In brief, disqualification under the act depends upon the fact of voluntary action, and not the motives which led to it. The Legislature did not seek to interfere with union principles or practices. The act merely sets up certain conditions as a prerequisite to the right to receive compensation, and declares that in certain situations the worker shall be ineligible to receive compensation. Fairly interpreted, it was intended to disqualify those workers who voluntarily leave their work because of a trade dispute. Co-respondents in this proceeding in fact 'left their work because of a trade dispute' and are consequently ineligible to receive benefit payments."

In Benefit Decision No. 3403 the claimants, ship-fitters and helpers, refused to pass a picket line established by the striking machinist union. The evidence clearly shows that the picket line was menacing and intimidating from the first, and that actual physical violence was employed at such times that pickets were put to the test. The evidence indicated that the nonstriking employees were clearly given to understand that attempts to report for work would be forcibly resisted. We held that the claimants were prevented by force from reporting to work, that they did not voluntarily leave their work because of a trade dispute and were not disqualified for benefits under the provisions of section 56(a) of the Unemployment Insurance Act.

In this case the picket line consisted of two or three pickets at each gate and there is no evidence of mass picketing or violence on the picket line. We find that the picket line was peaceful and the claimants were not forcibly prevented from reporting to work.

The issue in this case is whether the threats and intimidations spoken to certain of the claimants by members of Local 29 and pickets on the picket line justifiably created such a fear in the claimants that it must be said that the claimants did not voluntarily leave their work.

We are not aware of any California decision which has considered the above issue. However, the courts of a number of states have considered this issue.

In Meyer v. Industrial Commission of Missouri (1949), 240 Mo. App. 1022, 223 S.W. 2d 835, the machinists union had just completed negotiations for a new labor contract and had no grievance or dispute with the employer. When the Molders and Foundry Workers Union went on strike, none of the machinists tried to cross the picket line and those who testified stated they were afraid to do so. The court there stated:

> "Robert E. Clark, a machinist, testified that as he walked toward the employees' entrance on the morning of June 10, one of the pickets stepped out of the line and asked him where he was going, and the testimony continues as follows:
>
> 'Q. Now, this man came from where? The one who asked you a question. A. He came from the picket line.
>
> 'Q. From the picket line? A. I found afterwards it was a picket line.
>
> 'Q. And what happened when he approached you? A. I says, "Well, I come to report for work." He says, "Well, there's no work here this morning. He says, "The molders are on strike." "Well," I says, "Does that keep the machinists out? He says, "Well, no, not necessarily, but I wouldn't advise you to go in." * * *
>
> 'Q. What happened after that statement was made? A. Well, I said, "I don't see why. We have no grievance with the

company." "Well," he says, "we have, and we don't want anybody to go in while we are out."

'Q. Now, did this man, when he was speaking to you, had he left the picket line and was speaking to you, or was he still in the picket line while he was speaking to you? A. He left the picket line.

'Q. And what were the other men who remained in the picket line doing while he was talking to you? A. Well, some of them kept walking and two or three of them stopped to hear the conversation.

'Q. And after you had this conversation, what did you do? A. Well, I figured the best thing for me to do was not try to go in and see what developed.'

"A witness named Williford, who belonged to the machinists' union, arrived at the plant on the morning of June 10, and one of the pickets said to him: 'If you are planning on going in there, or any of your buddies are planning on going in there, you can tell them there will be plenty of trouble if they do.' After this conversation Williford left. He stated that the picket was 'belligerent' and 'pugilistic' and said that he 'did not cross the picket line because I knew this fellow or some one else would punch my head if I did.'

"Others testified to similar statements made by the molders who were in the picket line or gathered together in a nearby barroom. None of the pickets were armed and there is no evidence that there was any violence, although the strike continued for a number of weeks."

* * *

"The determination of this case rests chiefly upon whether or not the commission could have reasonably arrived at the finding that the machinists did not have actual reason to fear bodily harm at the hands of the pickets. If such a finding could have been reasonably reached from all of the evidence then the trial court erred in reversing the finding."

* * *

"In the absence of proof to the contrary, we must indulge in the presumption that the picket line was maintained and conducted in an orderly manner and with no intention to violate

> the law. . . . The evidence was that one picket said 'I wouldn't advise you to go in' and another picket said 'If you are planning on going in there, or any of your buddies are planning on going in there, you can tell them there will be plenty of trouble if they do', and still another said that 'it would not be healthy.' These and similar remarks by the molders could reasonably have been classified by the referee as mere blustering bravado. It would not be logical to say that the evidence presented was sufficient, as a matter of law, to overcome the presumption that the molders were lawful and orderly and if they were lawful and orderly the machinists had no reason to fear bodily harm. The machinists had the legal right to go to their work but none of them said 'We are going to cross your line', and none of them attempted to do so. There was no violence or direct threat against anyone. The commission could upon the state of facts presented properly find that the machinists had no actual reason to fear that the molders would have illegally restrained them from working. This appears to be the most logical conclusion to be drawn from all of the evidence."

In McGann v. Unemployment Compensation Board of Review (1948), 163 Pa. Super. 379, 62 A (2d) 87, where the claimants for unemployment compensation refused to pass the picket line of the striking union because of fear, the court stated:

> "The mere statement by a claimant that he refused to cross a picket line because of fear of bodily harm is not enough to demonstrate that his unemployment was involuntary in a situation where there was not a single overt act of violence of any character, leading a reasonable person to believe that he would be in physical danger in the event he attempted to cross the picket lines. A non-striker's fear of injury must be real and substantial and not nebulous. Strike and picket lines are not always accompanied by violence, intimidation and physical restraint. In the absence of evidence to the contrary we may assume that picketing is carried on peacefully and within the limits permitted by law.
>
> "Steamship Trade Ass'n of Baltimore, Inc., v. Davis et al., Md., 57 A. 2d 818, illustrates the principle. Seemingly, it relates to the Baltimore counterpart of the same labor dispute with which this appeal is concerned. The Masters, Mates and Pilots Union and the Marine Engineers Beneficial Association called the strike. The claimants were members of the Longshoremen's Association who became unemployed due to the labor dispute.

> The board found the longshoremen had attempted to cross picket lines but withdrew when the threatening attitude of the strikers indicated that there might be considerable trouble. The Superior Court of Baltimore City and the Court of Appeals affirmed the board's decision that the claimants' unemployment was due to a fear of physical violence, and they were allowed compensation. The evidence disclosed the pickets were armed with clubs and other weapons. They dared the longshoremen to go through the picket lines and threatened the lives of the longshoremen on various occasions. The appellants, who were the employers, admitted that the claimants had good reason to fear violence. Had the record before us disclosed that the strike in Philadelphia had developed a similar situation, appellant would have made out a case for benefits."

Further, in Steamship Trade Association of Baltimore v. Davis (1948), 190 Md. 215, 57 A (2d) 818, the Court affirmed the finding of the Maryland Unemployment Compensation Board that violence existed on the picket line and the claimants refused to pass the picket line because of fear of bodily harm. However, in doing so, it stated:

> "The courts must presume that strikers are law-abiding. There must be more than a mere theatrical threat of violence. The fear of violence must be real and not nebulous. Just because claimants say that they are afraid of the pickets is not enough and the mere presence of the pickets is not enough to excuse claimants from crossing picket lines."

In Marczi v. Board of Review, Division of Employment Security, New Jersey Department of Labor and Industry (1960), 63 New Jersey Super. 75, 163 A (2d) 723, the claimants, electrical workers, sought to recover benefits for a period during which they did not report to work at the employer's plant while members of other unions were on strike. The court there said:

> "The initial determination of the Division, made upon the information then before it, was that claimants were eligible for unemployment benefits without disqualification for the period March 3 through March 21, 1959, because they were afraid to go to work. The Division investigator found there was a reasonable basis for such fear. On appeal by the employer, the Appeal Tribunal, after a full hearing, modified the Division's determination. It held that from March 3 through March 7, the date copies of the restraining order were mailed to all employees, the mass picketing and threats gave the power

house employees good reason to believe that any effort to cross the picket lines might result in personal injury, so that no disqualification arose for that period. The Appeal Tribunal further held that claimants had failed to establish that their failure to report to work from March 8 on was due to a genuine fear for their personal safety, and they were therefore disqualified for benefits under N.J.S.A. 43:21-5(d) from March 8 through March 21, 1959. . . . "

* * *

"We find that the conditions prevailing at and in the vicinity of the company's plants after the issuance of the restraining order on March 6, and thereafter until March 19, 1959, when claimants returned to work, were not such as to create in any of them a real and genuine fear of harm had they attempted to cross the picket lines to pursue their employment. The testimony before the Appeal Tribunal clearly demonstrates that after the restraining order issued there was no justifiable excuse for their failure, or the failure of any member of the IBEW, to pass through the lines and return to work. There were no acts of violence or threats, and the picket lines at all the plants were maintained in obedience to the injunctive order. The testimony of the company's personnel director, as well as of the three union officials who testified, demonstrates this aspect of the matter quite clearly. As already noted, clerical and supervisory employees crossed the picket lines and continued at their work throughout the strike. A number of the production and maintenance workers whose union called the strike also returned to work after the issuance of the injunctive order. Further, trucks and freight cars were loaded at the plants with finished products for shipment while the strike was in progress."

* * *

"The mere statement by a claimant that his refusal to cross the picket line was due to fear of harm is not in itself sufficient to demonstrate that his unemployment was in-voluntary - certainly so in a situation where there was not a single act of violence subsequent to the injunctive order which might lead one reasonably to believe that the claimant would have been in physical danger had he attempted to cross the picket line. The proofs establish that the issuance of the restraining order had a completely quieting influence on the strikers. Such minor incidents as occurred thereafter were, however assessed, clearly insufficient to instill in the claimants

any real and genuine fear of harm. Fear of violence must be real, not nebulous."

In Achenbach v. Review Board of the Indiana Employment Security Division (1962), 242 Ind. 655, 179 N.E. (2d) 873, the claimants, members of a nonstriking union, refused to cross the picket line after the president of the nonstriking union asked the picket captain if his members could cross the line, to which the captain replied: "No . . . he wasn't allowing nobody to cross." The court stated:

> "A mere verbal refusal by the pickets under the circumstances here is not sufficient to excuse claimants-appellants from crossing the picket lines. They had the legal right to do so but none of them made any attempt to enforce his right, to cross the picket lines, further than to ask permission to do so. As has been hereinabove stated, the picketing was peaceful, and there was no violence or threats of violence. The Review Board could have properly inferred from these facts that claimants-appellants had no real reason to fear bodily harm if they crossed the picket lines, but such fear, if any, was only imaginary and nebulous. . . ."

In Appeals Board Decision No. P-B-10, we stated:

> "It has been well established that, in reviewing appeals from decisions of referees, this board follows the spirit of the juridical principle that the findings of the trier of fact who heard the evidence and observed the witnesses in the tribunal below will be disturbed only if arbitrary or against the weight of the evidence (Benefit Decision No. 6721). . . ."

Formatted: Indent: Left: 0.49", First line: 0.49", Right: 0.64", Space Before: 0 pt, Lo anchor

In Appeals Board Decision No. P-T-13, we stated:

> "Accordingly, we have consistently held that this board must reweigh the evidence and that upholding of the referee's findings will depend upon whether the referee's findings are or are not against the weight of the evidence (Benefit Decisions Nos. 4829, 4830, 5070, 5479, 5954, 6444, 6483, and 6721)."

The referee found that the claimants set out in Appendix A of his decision had a reasonable fear for their bodily safety and their failure to pass the picket line was justified and did not disqualify them under section 1262 of

the code. We do not agree that this finding is supported by the weight of the evidence for the following reasons.

Twenty-nine of the claimants did not appear and offered no testimony and no evidence of any kind as to why they refused to pass the picket line. Another group consisting of thirty-four claimants testified they refused to pass the picket line because of fear engendered by events which did not occur at the Maywood Container Plant and because of general information obtained by listening to the radio, watching television or reading newspapers. Certainly, as to these claimants, the weight of the evidence did not establish that they had a reasonable fear for bodily safety in failing to cross the picket line.

As to those claimants who testified concerning threats directed at them by pickets or generally in the course of the meeting called by Local 29, it is our opinion that statements to which the claimants referred and which are set out in part in the statement of facts are statements of a type which could be expected generally at any strike or any picket line where the striking union does not wish other union members to cross the line. However, we are of the opinion that statements of this nature, which we believe are common to any strike, do not establish a reasonable fear in the nonstriking workers which would justify the failure to cross the picket line. The fear of violence must be real and not nebulous. Because the claimants say that they are afraid of the pickets is not enough and the mere presence of the pickets is not enough to excuse the claimants from crossing the picket lines.

Accordingly, we conclude that none of the claimants listed in Appendix A had a reasonable fear for his or her safety and that their failure to cross the picket line was a volitional act which renders them ineligible for benefits under section 1262 of the code.

Appendix A of the referee's decision is amended by deleting therefrom the names of M. F. Page, J. G. Uhrim and A. S. Vien, III, and Appendix B of the referee's decision is amended by adding those names thereto. Benefits are denied to those three claimants.

DECISION

That portion of the decision of the referee from which the employer appealed is reversed. The claimants named in Appendix A are ineligible for

benefits under section ~~1252~~ 1262 of the code. The claimants Page, Uhrim and Vien, III are denied benefits as previously set forth. In all other respects the decision of the referee shall stand, no appeal having been filed therefrom.

Sacramento, California, July 27, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

CARL A. BRITSCHGI

DISSENTING - Written Opinion Attached

DON BLEWETT

DISSENTING OPINION

I dissent.

The majority opinion holds that the claimants did not have a real fear of bodily injury if they crossed the picket lines but such fear, if any, was nebulous, in this case where there was no violence on the picket lines.

I believe that Judge Arterburn, dissenting in the case of Achenbach et al. v. Review Board of Indiana Employment Security Division et al. (1962), 242 Ind. 655, 179 N.E. (2d) 873, well expresses the opposing position to that of the majority in a case similar to the instant case in the respect that there was no violence on the picket line. He stated:

> "The question here is whether or not the appellants' unemployment was involuntary or voluntary. The facts show without dispute that appellants were not members of the union that was striking at the plants at which they were employed. There is no evidence that they sympathized with or cooperated with the strikers and pickets who were strung across the entrance of the plant to which the appellants desired entrance in order to continue their employment."
>
> * * *
>
> "The majority opinion is not realistic. It should not be necessary, in order to establish an involuntary unemployment where picketing exists, that the employee actually use force to push aside pickets in order to get through the picket line, nor should it be necessary to use an automobile to break through the line. The majority opinion says that there was no evidence that any of the pickets were carrying weapons. Fear may be instilled and threats can be made without weapons and even without words.
>
> "It is no answer to say that 'they had the legal right' to cross the picket line. The question is--could they have done so without physical contact with the pickets and without being put in fear of harm for themselves, their families and property? I do not believe the law requires that a workman, who is not a member of the striking organization, subject himself to such

> risks in crossing a picket line in order to show that his unemployment is involuntary, after he has asked to go through and been told he cannot by pickets who are actually blocking the entrance and maintaining an effective blockade."

As pointed out, a real fear of crossing the picket line need not consist merely of fear of physical harm by the individual, but also consists of fear for the safety of one's family and property.

In Texas Co. v. Texas Employment Commission et al. (1953), 261 S.W. (2d) 178, the court stated:

> ". . . They must have felt fairly certain at the time they refused to cross the lines, when notified by the striking strategy committee that retaliation would occur if they did cross the lines, that the same things would happen to them which this record shows happened to many other workers who crossed the picket lines. We believe that, as pointed out by the appellees in their brief, the passage of the various laws against strike threats and violence has not prevented such threats and violence from occurring, but has removed such threats and violence from the immediate area of the picket lines to other places in the community and to the homes of the workers themselves. In such instances the guilty ones are not usually identified or apprehended, since the acts usually occur at times and places away from the vicinity of the plants, where police officers are not likely to be present. Even if the perpetrators of these acts were apprehended, tried and punished by the law, the injured persons might very well and very sensibly prefer not to have themselves maimed and injured and terrorized by entering into physical combat in such a one-sided battle."

It appears here that the strike and picketing by Local 29 was initiated and maintained in violation of the orders of the Superior Court of the State of California, County of Los Angeles. There is no evidence that the claimants sympathized with or cooperated with the strikers and pickets. Prior to the strike Local 29 members at a meeting threatened and intimidated the nonstriking members of other unions employed at the employer's plants. There were veiled threats of physical injury made to members of Local 137 who approached the picket lines. There were threats of retaliation by physical injury or damage to property at times and places away from the picketing and picket lines.

In Dynamic Manufacturers, Inc. v. Employment Security Commission (1963), 369 Mich. 556, 120 H.W. (2d) 173, the court stated:

> "The attorney general, appearing for the employment security commission, says in his brief:
>
> 'Whether there was violence on the picket line and whether the claimants were fearful of crossing the picket line because of violence or the threat of violence presents a pure question of fact and nothing more. The determination of this issue involves the weighing of evidence and the credibility of the claimants. This function rests with the trier of the facts. The referee heard the witnesses, weighed the evidence, and found that the claimants refused to cross the picket line because they actually feared that they would subject themselves to physical harm. The record fully supports these findings of the referee, and the appeal board was completely warranted in accepting such findings.'"

The referee found that the claimants could and should reasonably fear for their safety. I am of the opinion that the findings of the referee are substantially supported by the weight of the evidence and that the referee's decision should be affirmed. (Appeals Board Decision No. P-B-10)

DON BLEWETT