BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6712 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

JOHN H. SEELEY
(Claimant-Appellant)

DOUGLAS AIRCRAFT COMPANY, INC.
(Employer-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-290

FORMERLY
BENEFIT DECISION
No. 6712

The claimant appealed from Referee's Decision No. VN-05135 which held the claimant was disqualified for benefits for five weeks beginning January 13, 1963 under section 1256 of the Unemployment Insurance Code, and that the employer's account is relieved of benefit charges under section 1032 of the code. Written argument was submitted by the parties. Oral argument was heard by the Appeals Board on May 22, 1963 at Los Angeles.

STATEMENT OF FACTS

The claimant, a tool and die maker, and a nonunion employee of an aircraft company with approximately 27 years of service, was discharged on January 11, 1963 because of his refusal to either join the union which was the certified collective bargaining agent for employees of his unit, or to pay an agency service fee to the union in accordance with the collective bargaining agreement executed between the employer and the union on July 23, 1962. The claimant had been notified twice in writing by the employer that if he did not pay the agency fee, he would be discharged.

The union involved is the International Association of Machinists, Aeronautical Industrial District Lodge No. 1578, and was the sole bargaining agent of the unit where the claimant was employed. The new collective bargaining agreement, effective July 23, 1962, contained the following security provision:

> "ARTICLE V - UNION SECURITY
>
> "Section 1 - Payment of Agency Fee or Membership Dues as a Condition of Employment
>
> "All employees in the bargaining unit must as a condition of employment be a member of the Union and pay union dues or pay an agency fee to the Union, but not both, as set forth below:
>
> "(a) All employees within the bargaining unit on the effective date of the Agreement who are not union members must, as a condition of employment, pay to the union, while on the active payroll, an agency fee equal in amount to monthly membership dues beginning with September, 1962, or the month following the month in which they accumulate thirty (30) days' service in the bargaining unit, whichever is later. . . ."

The claimant, who did not object to unions generally, objected to this particular union because he considered it was not a democratic union. He believed the individual reserves the right to belong or not to belong to the union, and it is up to the union to sell him unionism. He could have joined it, but he never tried to do so. He objected to paying an agency fee to retain the job he had had for so many years, and alleged that there were still other employees who had failed to make the payment but were still on the employer's payroll.

The employer stated that it was obliged by law and by contract to discharge any employee who failed to join the union or to pay the agency service fee, and it endeavored to abide by both the law and the contract.

The issue is whether the claimant, in effect, voluntarily left his most recent work without good cause when his services were terminated by the employer because of his failure to pay the agency service fee to the union.

The claimant contends that the provision in the collective bargaining agreement which bases his retention of his job on the payment of such a fee, or the joining of the union, is illegal, and therefore he had good cause for refusing to pay the fee.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that an individual shall be disqualified for benefits if he leaves his most recent work voluntarily without good cause.

We have held that a discharge occurs where the employer is the moving party in terminating the employment relationship; and, conversely, a voluntary leaving of work occurs where the employee is the moving party in terminating such relationship (Benefit Decisions Nos. 5421 and 6590).

Where an employee's employment is terminated by the employer in compliance with the union's request under the collective bargaining agreement, because of a claimant's failure or refusal to join a bona fide union or to pay his union dues or fines, we have held that the claimant, in effect, leaves his work on a voluntary basis, and the question is whether such leaving was with good cause (Benefit Decisions Nos. 4774, 5040, 5228, 5358, 5410, 6167 and 6710).

The question of whether a provision such as existed in this collective bargaining agreement is legal and not an unfair labor practice was considered by the Supreme Court of the United States in National Labor Relations Board v. General Motors Corporation, 31 U.S.L. Week 4540 (U.S. June 3, 1963). The court stated the issue to be: Whether an employer commits an unfair labor practice under the National Labor Relations Act, Section 8(a)(3) when it refuses to bargain with a certified union over the union's proposal for the adoption of the "agency shop." More narrowly stated, since the employer is not obliged to bargain over a proposal that he commit an unfair labor practice,

the question is whether an agency shop is an unfair labor practice under section 8(a)(3) of the Act, or else is exempted from the prohibitions of that section by the proviso thereto. The court concluded that "this type of arrangement does not constitute an unfair labor practice and that it is not prohibited by section 8."

After setting forth the history of the legislation involved, the Supreme Court stated that the purpose of section 8(a)(3) was to abolish the closed shop, thus eliminating the most serious abuses of compulsory unionism; and to provide that employees sharing the benefits of union's accomplishments pay their share of the cost. Under the new law, expulsion from the union would not be ground for a compulsory discharge from employment so long as the worker was not delinquent in the payment of his initiation fees or dues. "The agency shop arrangement proposed here removes that choice from the union and places the option of membership on the employee while still requiring the same monetary support as does the union shop. . . . To the extent that it has any significance at all it (the agency shop) serves, rather than violates, the desire of Congress to reduce the evils of compulsory unionism while allowing financial support for the bargaining agent."

In this case, the claimant lost his job because he wilfully refused and failed either to join the union, or to pay the agency service fee in accordance with the provisions of the collective bargaining agreement between the union and the employer. In line with our prior decisions, we hold that this was a voluntary leaving of work. Furthermore, in view of the Supreme Court's decision in National Labor Relations Board v. General Motors Corporation, supra, this requirement in the collective bargaining agreement was legal and valid and not an unfair labor practice. Therefore, the claimant had no good cause under the law for failing to pay the fee and he refused to do so for personal reasons which were noncompelling within the meaning of section 1256 of the code (Benefit Decisions Nos. 5686 and 6710). Accordingly, he is subject to disqualification for benefits under this section for five weeks as provided in section 1260 of the code, and the employer's reserve account is entitled to relief from charges under section 1032 of the code.

The claimant has contended that the employer, as of February 11, 1963, still retained on its payroll several employees who were not members of the union and had not paid the agency fee. Whether or not the employer and the union have failed to comply with the provisions of the collective bargaining agreement with respect to these employees is not an issue before us in this proceeding. It is clear that the claimant herein was terminated in accordance with those provisions of the agreement which we have found to be in compliance with the law.

DECISION

The decision of the referee is affirmed. The claimant is disqualified for benefits under section 1256 of the code for five weeks as provided in section 1260 of the code. The employer's account is relieved of charges under section 1032 of the code.

Sacramento, California, July 19, 1963.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6712 is hereby designated as Precedent Decision No. P-B-290.

Sacramento, California, April 6, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

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