BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6816 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

VERNON B. FELTON
(Claimant-Appellant)

JOHN R. STEELE
(Claimant-Appellant)

LOCKHEED-CALIFORNIA COMPANY
(Employer-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-291

FORMERLY
BENEFIT DECISION
No. 6816

The claimants appealed from Referee's Decisions Nos. BK-2389 and BK-2640 which held them disqualified for unemployment insurance benefits under section 1256 of the Unemployment Insurance Code, and that the employer's reserve account was relieved of charges under section 1032 of the code. On January 25, 1967 we consolidated the matters for oral argument, consideration and decision in accordance with the provisions of section 5107 of Title 22 of the California Administrative Code. We also accepted as additional evidence the collective bargaining agreement in effect during the period in question between the claimants' union and the employer. This agreement has been identified as Appeals Board Exhibit No. 1 and is a part of the record before us. Oral argument was heard on March 2, 1967 at Los Angeles, California.

STATEMENT OF FACTS

The basic facts underlying the present controversy are undisputed. The claimants herein, members of the International Association of Machinists and Aerospace Workers, were employed by the above-mentioned employer for approximately four and one-half years at a base salary of $3.76 per hour.

The claimants became surplus in their classifications and were offered a downgrade to a lower-rated job in lieu of layoffs at a base rate of $3.34 per hour.

The collective bargaining agreement between the employer and the International Association of Machinists and Aerospace Workers contains the following provisions. Article VII, section 1, subsection 5, provides as follows:

> "An employee downgraded to a job classification in a lower-rated labor grade as a result of the application of the surplus and layoff procedure shall have his base rate reduced ten cents (10¢) per hour unless a lesser reduction is required to reach the maximum rate for such job classification in such lower-rated labor grade. Each three weeks thereafter his base rate shall be progressively reduced in increments of ten cents (10¢) per hour or such lesser amount until his base rate reaches the maximum rate for such job classification in such lower-rated labor grade."

Under this provision of the collective bargaining agreement the claimant's salary in Case No. BK-2640 would have been reduced 2.7 percent from a base rate of $3.76 per hour to $3.66 an hour on October 10, 1966. His salary then would have been reduced ten cents an hour at three-week intervals until January 2, 1967, at which time he would be paid at the lower rate of $3.34 an hour for a total reduction of 11.2 percent. The claimant's salary in Case No. BK-2389 would have been reduced from $3.76 an hour to $3.66 an hour effective September 26, 1966. His salary would have been reduced ten cents an hour at three-week intervals until December 19, 1966 at which time he would be paid at the lower rate of $3.34 an hour. His first reduction would have been 2.7 percent and the final reduction which would have occurred 12 weeks later would have been 11.2 percent.

The collective bargaining agreement provides in substance that an employee accepting a downgrade preserves his seniority and recall rights to his former classification for a period of 60 months. An employee accepting a layoff in lieu of a downgrade preserves his seniority and recall rights to the job from which he was laid off for a period of 24 months. In cases where an employee had lost his seniority by reason of being on layoff for a period in excess of 24 months, such employees who apply for rehire will be rehired

in accordance with their qualifications and previous seniority for openings in classifications to which they previously had recall rights or for which the company is on open hire. Also, such employees will be given preferential consideration in accordance with their qualifications for such openings in classifications where they had no previous recall rights.

The agreement also provides that if during this 24-month period the employee is returned to the employer's payroll the employee retains seniority with the employer for the following benefits: The time awaiting recall will be applied towards vesting in the retirement plan, towards seniority for purposes of promotion, displacement rights, time towards vacation and any interim wage increases which may be agreed upon between the union and the employer, the probationary period of 90 days required of new hires is waived, and benefits become available immediately for group insurance and sick leave.

The record also discloses that if the claimants continued working until the progressive reduction in wages became substantial, the only manner in which the claimants could leave the lower-rated job which they had accepted would be by way of resignations. This would result in the claimants' forfeiture of all their seniority, recall rights, and the other contractual benefits hereinabove mentioned.

When the claimant in Case No. BK-2389 accepted the layoff he felt confident that he would get work with another employer. He had made inquiries for other work before electing the layoff and was given some assurance that he would obtain such other work. The claimant in Case No. BK-2640 had heard from fellow employees that work in his regular occupation was available with another company.

In the oral argument presented on March 2, 1967, the representatives of the claimants argued that Appeals Board Decision No. 6796 should not be controlling in the instant cases. The union representatives pointed out that in the cited case the loss of seniority rights and the forfeiture of other benefits by the claimant therein were not part of the record before the referee or the Appeals Board, while in the instant cases these factors are in the record and should be taken into consideration.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits and section 1032 of the code provides that an employer's reserve account may be relieved of benefit charges if the individual left his most recent work voluntarily and without good cause.

We have held in Benefit Decisions Nos. 5512 and 5906 that a claimant who elects to give up employment rather than accept a transfer to another position with the same employer leaves work voluntarily.

Since the claimants herein rejected offers of transfers to lower classifications, the matter becomes one of a voluntary leaving and the issue of good cause is before us.

We held in Benefit Decision No. 5686 that there is good cause for the voluntary leaving of work where the facts disclose a real, substantial, and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action.

In Benefit Decision No. 6054, we held that good cause must necessarily be judged as of the time of leaving.

In Benefit Decisions Nos. 6633, 6639, and 6640, where the reductions in pay were 10.7 percent, 12.7 percent, and 6.7 percent respectively, we held that in deciding if a reduction in wages constitutes good cause for leaving work, the following facts, among other things, must be considered:

(1) The extent of the reduction in pay;
(2) The claimant's prospects for securing other work at a wage commensurate with his prior earnings;
(3) Whether the claimant was aware of the condition of the labor market as it affected him; and
(4) The comparative skills required.

In each of the above cases we held that the claimant had good cause to leave his employment.

As pointed out in the cited decisions above, the reduction in pay alone is not the sole and controlling factor.

Other decisions directly in point with the facts presently before us are Benefit Decisions Nos. 6251 and 6796. In Benefit Decision No. 6251 the claimant had originally been employed as a mechanic and over a period of years had received periodic increases in pay to $2 per hour. Because of a reduction in force the claimant was scheduled to be laid off. His seniority under the collective bargaining agreement entitled him to accept either a layoff or a job in a lower classification. The claimant accepted the lower-rated job with a reduced wage rate of $1.55 per hour, plus a ten-cent shift differential. One week later the claimant was given a new classification with an increase to a basic rate of $1.60 an hour and with potential increases to $1.80 per hour. Two weeks later the claimant resigned because of his dissatisfaction with the wages received. In that case we held that the claimant had left work without good cause. We stated:

> ". . . Herein the claimant was obliged to decide whether he would accept the layoff and continue in employment on a lower paying job just as were the claimants in the cited cases [Benefit Decisions Nos. 5512 and 5978]. In those cases, however, the claimants chose to terminate their employment and it was held they had good cause for so doing. The claimant in the instant matter made his decision to accept the work with the lower pay scale and was so engaged for a period of almost a month before he terminated the employment. . . . The claimant herein was obliged by the circumstances to make a decision with respect to the course he would pursue. The time of decision occurred when he sought and obtained the lower paid work when he was laid off from his former position. Having made the decision to accept the lower paid employment, the claimant thereafter does not have good cause for voluntarily leaving his employment because of his later dissatisfaction with the wage. The employment was accepted by the claimant with full knowledge of the wages, hours, and the working conditions; and his conclusion to leave some three weeks thereafter must be for substantial and compelling reasons in order to come within the good cause provisions of section 1256 of the code (Benefit Decision No. 5686). . . ."

In Benefit Decision No. 6796, we considered the situation wherein the claimant on February 18, 1966 rejected a transfer to another position in lieu of a layoff under a provision in a collective bargaining agreement similar to the one now before us. Under that agreement, if the claimant had elected to accept the downgraded job, he would have had progressive rate reductions of ten cents per hour until he reached the maximum wage of the lower-rated job. The final reduction would not have been accomplished until May 14, 1966 and at that time would have extended over a 12-week period. The employer conceded that had the reduction not been progressive, the claimant would have been in the position of having good cause to accept the layoff. However, it was argued that, because of the progressive rate of reduction, the claimant did not have good cause to leave until such time as the wage reduction exceeded ten percent of his former salary.

In that case, when the claimant left his work, the first reduction in his wages would have amounted to 3.3 percent. In deciding the case we cited Benefit Decision No. 6639 wherein the claimant, on June 29, 1959, was promoted to an aircraft assembler "A" at $2.36 per hour. He worked on the second shift until June 6, 1960 when his rate of pay was $2.67 per hour. This included the shift bonus of 12 cents an hour. On June 6, 1960 the claimant was transferred to the first shift and his pay was reduced to $2.55 per hour. After a series of increases he was earning $2.61 per hour on October 28, 1960. On that date he was offered a transfer to work as an aircraft assembler "B" at $2.33 an hour in lieu of a layoff. The claimant elected the layoff. In that case we stated:

> "In the instant case, the claimant suffered 12.7 percent decrease in rate of pay through a combination of two changes in his employment. One of the changes resulted in the loss of his swing-shift bonus when he was transferred from the swing shift to the day shift. The second would have resulted in a further reduction in pay had he elected to accept the transfer to a lower classification. In our opinion, these two changes in the claimant's working conditions are so related to the termination of his employment that both reductions in pay should be considered."

In commenting on Benefit Decision No. 6639, we stated in Benefit Decision No. 6796 as follows:

> "We recognized that a combination of two or more changes in the claimant's working conditions may be so related to the termination of his employment as to constitute good cause for leaving work when considered together, and should be so considered. So, in the instant case, had the claimant continued working until the combination of his wage reductions became substantial, and if the possibility of recall continued to be uncertain, he then may have had good cause for leaving his work.
>
> "As the claimant, in anticipation of a reduction in his wage from $3.06 per hour to $2.52 per hour, left his work at a time when his wage had been reduced only to $2.96 per hour, we hold the claimant left his work without good cause."

When we were faced with the problem presented in Benefit Decision No. 6796, the record before us was devoid of any evidence pertaining to the claimant's forfeiture of accumulated rights under the seniority provisions of the collective bargaining agreement. In the instant case, the evidence relating to the jeopardy of these rights is in the record before us. Based upon the present record, we are forced to reach a different result than the one reached in Benefit Decision No. 6796.

As we now view the matter, the collective bargaining agreement constituted the conditions of the claimants' contracts of employment. The agreement included emoluments of value such as seniority rights, recall rights, pensions, and insurance benefits. The claimants herein had four and one-half years' seniority with the employer and because of a cut back in production were to be transferred to other jobs with a reduction in wage rates which would exceed 11 percent in 12 weeks. Once having committed themselves to accepting the transfer in lieu of the layoff there would be no turning back thereafter, and the layoff privilege granted by way of the collective bargaining agreement would be forfeited by the claimants. Had the claimants continued working until the combination of wage reductions became substantial, the claimants would have found themselves in a position where they would be forced either to resign or to remain in the downgraded jobs. Resignations at that point would result in a complete loss of the claimants' accumulative rights under the seniority provisions of the bargaining agreement. Realistically viewed, the benefits accruing from this agreement were an integral part of the claimants' entire wage structure. The loss of the claimants' interests in the agreement and the terms of its grants and attendant guarantees must be viewed along with the reduction in wages.

The evidence in the present record also indicates that the claimants had reasonable bases for their belief that they could secure other work at wages commensurate with their prior earnings. The leaving of the claimants' jobs must be measured by the reasonableness of their separation in the light of the entire situation and the total effect on the claimants' employment rights at the time they were offered the choice of a downgrading in lieu of a layoff. In our opinion, the combination of progressive wage rate reductions, the changes of the claimants' working conditions and status under the collective bargaining agreement, and the claimants' prospects of securing new work were so related at the time of the claimants' rejection of the lower-rated jobs as to justify their acceptance of the layoff. We therefore find that the claimants left their work with good cause.

As previously indicated, Benefit Decision No. 6796 is distinguished on its facts, since we did not have evidence before us pertaining to the forfeiture of accumulated rights under the seniority provisions of the collective bargaining agreement.

DECISION

The decision of the referee is reversed. The claimants are not subject to disqualification under section 1256 of the code. The employer's reserve account is not relieved of charges under section 1032 of the code.

Sacramento, California, April 27, 1967.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

P-B-291

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6816 is hereby designated as Precedent Decision No. P-B-291.

Sacramento, California, April 6, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT