BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

GEORGE R. ABBOTT & OTHERS
(Claimants)
(See Appendices B, C, D,
E, F and G)
[Appendices removed in accordance
with California Code of Regulations,
title 22, section 5109(e)]

SAN FRANCISCO NEWSPAPER
PRINTING COMPANY & OTHERS
(Employers)

PRECEDENT
BENEFIT DECISION
No. P-B-93
Case No. 69-2732, et al.

The various claimants and employers have appealed from Referee's Decision No. SF-TD-975 which held that some claimants were, and some claimants were not, entitled to benefits under the Unemployment Insurance Code. Individual appeals were filed in the cases listed in Appendix G. The decision also referred the matter to the Department for consideration of the question of entitlement to benefits under section 1252 of the Unemployment Insurance Code and subdivision (c) of section 1253 of the code. Written and oral argument have been received and heard by this board from various parties.

STATEMENT OF FACTS

Preliminary Information

The appeals in this case arose as a consequence of a work stoppage on January 5, 1968, involving the major San Francisco, California newspapers. There are three major employers involved in this case: The San Francisco Newspaper Printing Company, Employer Code Letter A, hereafter sometimes referred to as the Printing Company; The San Francisco Examiner, a division of the Hearst Corporation, hereafter sometimes referred to as the Examiner, Employer Code Letter B; and, The San Francisco Chronicle, hereafter sometimes referred to as the Chronicle, Employer Code Letter C. There are three minor employers: Western Plumbing, Employer Code Letter D; McDonald & Nelson, Employer Code Letter E; and, George R.

Hall, Inc., Employer Code Letter Z. The three minor employers are apparently all in the construction business. Except for a handful of claimants, all claimants in the present case were employees of the Printing Company, the Chronicle or the Examiner at the time of the work stoppage. The claimants were members of various unions as shown in the appendices, except for a few nonunion claimants who are identified by Union Code No. XXI.

Nonappearances

Claimants, except as otherwise noted, who are members of the following unions, although duly notified of the referee hearing, failed to appear at the hearing in person or through a representative:

Building Service Employees Local No. 87, Union Code No. XI, except claimant Jean Goyhenetche, ID No. 270.

International Association of Machinists, San Francisco Lodge No. 68, Union Code No. XII, except claimant C. Fred Russell, ID No. 584.

San Francisco-Oakland Lithographers & Photoengravers Union No. 8-P, Union Code No. XIV, except claimant Arthur Zenner, ID Nos. 738 and 1401.

Local 261, Construction & General Laborers Union, Union Code No. XVIII.

The following individual claimants, although duly notified of the referee hearing, failed to appear at the hearing in person or through a representative:

William Mork	ID No. 478
Jules E. Wyner	ID No. 727
John C. Tamboury	ID No. 1386

Untimely Appeals

The appeals to a referee of claimants Robert East, ID No. 1359, William Rawlinson, ID No. 1379, Cyril Vibert, ID No. 1390 and the employer appeal to a referee with respect to claimant Louis Miller, ID No. 1397, were registered as untimely appeals. However, the evidence established that these four appeals were filed within statutory time limits.

The notice of determination relating to claimant Rosco Teruya, ID No. 1387, shows January 21, 1968 as the date mailed or served. The determination also states, "This decision is final unless an appeal is filed on or before 2-19-68." Claimant Teruya's appeal to a referee was filed February 9, 1968.

The appeals to a referee of claimants with ID Nos. 228, 1349, 1350, 1351, 1353, 1354, 1356, 1357, 1360, 1361, 1362, 1363, 1364, 1365, 1368, 1369, 1370, 1371, 1373, 1375, 1377, 1378, 1380, 1383, 1384, 1385, 1388, 1391 and 1393 were all filed after the expiration of statutory limits under the following circumstances: These claimants are members of the San Francisco Typographical Union No. 21, Union Code No. II. They delivered their appeals to their union. The appeal documents were placed in the union safe and inadvertently overlooked. When the appeal forms were discovered, the appeals to a referee were then filed.

The appeals to a referee of claimants with ID Nos. 1352, 1355, 1367, 1372, 1389 and 1392 were filed beyond statutory limits. No reason was advanced for the late filing of these appeals.

The employer, San Francisco Newspaper Printing Company, filed an untimely appeal to a referee with respect to claimant Donald B. Garrett, ID No. 1395, and concedes that there was no good cause for this untimely appeal. This employer also filed an untimely appeal to a referee with respect to claimant Winifred D. Johnson, ID No. 1396. The employer, San Francisco Examiner, filed an untimely appeal to a referee with respect to claimant Francis A. Raymond, ID No. 1398.

On January 24, 1968 the notice of determination regarding claimant Johnson, ID No. 1396, was mailed to San Francisco Newspaper Printing Company at 1626 Rollins Road, Burlingame, California. At the time of mailing of the notice the employer's facility in Burlingame was not open for business. On February 12, 1968 the notice of determination was eventually received in San Francisco by the employee who handles unemployment insurance matters for the Printing Company. On February 14, 1968 an appeal to a referee was filed on behalf of this employer.

With respect to claimant Francis A. Raymond, ID No. 1398, on February 5, 1968 a notice of determination was mailed to the Hearst Corporation, 959 Eighth Avenue, New York, New York. The Hearst Corporation is the owner of the San Francisco Examiner. The Hearst Corporation has an office at 959

Eighth Avenue, New York, New York, but unemployment insurance claims are not usually processed in that office. The appeal to a referee with respect to claimant Raymond, ID No. 1398, was filed February 21, 1968.

Unemployment insurance matters for the San Francisco Newspaper Printing Company and the San Francisco Examiner are handled by the same person. She made an arrangement with the Department area trade dispute representative that all notices of determination regarding the trade dispute that is the subject matter of this case would be sent to these two employers at 860 Howard Street, San Francisco, California.

Description of Employer Facilities

The Examiner and the Chronicle publish daily newspapers in San Francisco; the Examiner being an afternoon newspaper and the Chronicle being a morning newspaper. On Sunday they jointly publish one newspaper. The Printing Company performs all production and distribution functions for the Examiner and the Chronicle. Since sometime in 1965 the Printing Company has been jointly owned by the Examiner and the Chronicle.

At the time of the events related in this decision the Printing Company maintained production facilities and offices at a building located at Fifth & Mission Streets in San Francisco, Job Site Code Letter G, and at a building using the address of 36 Annie Street, San Francisco, Job Site Code Letter J. This latter building is bounded by Stevenson, Jessie, Third & Annie Streets.

The Printing Company also maintained offices at 860 Howard Street, San Francisco, Job Site Code Letter H, and a garage at 166 Fourth Street, San Francisco, Job Site Code Letter FF. There is a parking lot between the building at 860 Howard Street and the garage at 166 Fourth Street and it is included as part of Job Site Code Letter H.

The Examiner and the Chronicle each maintained offices and editorial departments at the building located at Fifth & Mission Streets, Job Site Code Letter G, and offices at 860 Howard Street, Job Site Code Letter H. There is also a building at Third & Market Streets, San Francisco, Job Site Code Letter F, known as the Hearst Building, at which some of the claimants were employed. The buildings at Fifth & Mission Streets, 860 Howard Street, 36 Annie Street, Third & Market Streets, the garage at 166 Fourth Street and the parking lot between that garage and the 860 Howard Street building are

concentrated within a few blocks of each other. These facilities will sometimes later be referred to as the downtown facilities or jobsites.

The Printing Company also maintained another garage at 200 Brannan Street, San Francisco, Job Site Code Letter W, located several blocks from the jobsites described in the preceding paragraphs.

The Printing Company maintained distribution centers outside of San Francisco at the following locations:

1626 Rollins Road, Burlingame; Job Site Code Letter K
663 Bay Road, Menlo Park; Job Site Code Letter L
534 - 23rd Avenue, Oakland; Job Site Code Letter P
5643 Paradise Drive, Corte Madera; Job Site Code Letter Y

The Printing Company also maintained a few other facilities that will be referred to later as necessary.

Job Locations of Claimants

There are approximately 1,400 claimants involved in this work stoppage. Over 800 (over 60%) of these claimants worked at the downtown jobsites. The following table shows the approximate number of claimant-members in the various unions and the approximate number of such persons who were working at the downtown jobsites.

Union Code No.	Total Number of Claimant-Members Working At All Jobsites	Total Number of Claimant-Members Working At Downtown Jobsites
I	610	180
II	400	400
III	20	15
IV	45	45
V	65	65
VI	1	1
VII	1	1
IX	13	0
XI	6	6
XII	10	10

XIII	19	6
XIV	22	22
XV	175	110
XVI	1	1
XVII	1	0
XVIII	4	4
XIX	1	1
XX	2	0
XXI	5	2
TOTALS	1,401	869

As of January 5, 1968 members of Typographical Union No. 21, Union Code Letter II; Paper Handlers Union No. 24, Union Code No. Ill; Stereotypers & Electrotypers Union No. 29, Union Code No. IV; Web Pressmen's Union No. 4, Union Code No. V; and, Lithographers and Photoengravers Union No. 8-P, Union Code No. XIV, worked at the Fifth & Mission Street building. With the exception of claimants who worked at the San Francisco Hall of Justice, those claimants who were members of the San Francisco-Oakland Newspaper Guild and who worked in San Francisco reported for work at buildings at Fifth & Mission Streets, 860 Howard Street, Third & Market Streets or 36 Annie Street. Claimants who are members of Newspaper and Periodical Drivers and Helpers Union Local 921, Union Code No. I, who worked in San Francisco reported to work at the parking lot adjacent to the 860 Howard Street building or to the garage at 200 Brannan Street. Claimants who were members of Automotive Machinists Lodge 1305, Union Code No. IX, and Garage and Service Station Employees Local 665, Union Code Letter XIII, who worked in San Francisco reported at the 200 Brannan Street Garage and the garage at 166 Fourth Street.

Some members of Newspaper Drivers Local 921, Newspaper Guild, Automotive Machinists Lodge 1305 and Garage & Service Station Employees Local No. 665 reported to work at the distribution centers in Burlingame and Oakland. Some members of Newspaper Drivers Local 921 and of Newspaper Guild reported to work at the Menlo Park distribution center. Some members of Local 921 reported to work at the Corte Madera distribution center. Three nonunion claimants, Code No. XXI, worked at the Oakland distribution center.

Some claimants who were members of the Newspaper Guild worked at other locations away from the downtown San Francisco jobsites. A scattering of other claimants worked at various locations. As necessary they will be referred to later in this decision.

Claimants who were members of the San Francisco-Oakland Newspaper Guild, Union Code No. XV, were employees of the Chronicle, the Examiner or the Printing Company, as shown in Appendix C. With the exception of a few construction industry employees and William Mork, ID No. 478, all other claimants in this case were employees of the Printing Company. William Mork was an employee of the Examiner.

Collective Bargaining Agreements

Insofar as is pertinent to the present case, as of January 5, 1968 the Newspaper employers were parties to collective bargaining agreements with the following unions: Newspaper & Periodical Drivers & Helpers Union Local 921; San Francisco Typographical Union No. 21; San Francisco Stereotypers & Electrotypers Union No. 29; Garage & Service Station Employees Local No. 665; San Francisco Web Pressmen's & Assistant's Union Local No. 4; San Francisco Paper Handlers Union Local No. 24; Automotive Machinists, Lodge 1305; Building Service Employees Union Local 87; Automotive Warehousemen Local No. 241; and, the San Francisco-Oakland Newspaper Guild. These contracts had various termination dates. An agreement with the San Francisco-Oakland Mailers Union Local No. 18 had expired and a new contract was in the process of negotiation. No members of the Mailers Union are claimants in the present proceeding. A contract with the San Francisco-Oakland Lithographers & Photoengravers Union No. 8-P had also expired. Each agreement covers a union member at whatever jobsite he works.

Description of Publication and Distribution of Newspaper

At the time of the pertinent events in this case, the daily newspapers of both the Examiner and the Chronicle were produced at the building at Fifth & Mission Streets, Job Site Code Letter G. Some of the Sunday edition was produced at the 36 Annie Street Building, Job Site Code Letter J. The production and distribution of a newspaper is a highly integrated operation requiring the cooperative efforts of numerous employees. The editorial materials and advertising copy are first prepared in the editorial departments of the two newspapers, the Examiner and the Chronicle. The materials to be published are then taken to the composing room of the Printing Company. The composing room employees are members of San Francisco Typographical Union No. 21. The material to be published is further processed in the composing room and then transmitted to other employees, also members of Local 21, who operate various machines. When the Typographical Union members have finished their work, their products are transmitted to the stereotyping department.

Certain pictorial materials are taken from the editorial departments to the photoengraving department. There, members of the San Francisco-

Oakland Lithographers & Photoengravers Union No. 8-P, perform their work and they, too, deliver their products to the stereotyping department.

Employees in the stereotyping department are members of the San Francisco Stereotypers & Electrotypers Union No. 29. After receiving material from the typographers and the photoengravers, the Stereotypers prepare printing plates from those materials. The plates are then taken to another part of the building where they are placed on printing presses.

The paper upon which the news is to be printed is brought to the presses by paper handlers, members of the San Francisco Paper Handlers Union No. 24. The presses are then operated by pressmen, members of San Francisco Web Pressmen's Union No. 4. From the presses the printed material is channeled to the mailing room. In the mailing room, members of the Mailers Union assemble the newspapers for later distribution. From the mailroom the assembled papers are sent to a loading dock at Fifth & Mission Street Building.

At the time of the events in this case the loading dock was located at the rear of the building, opening onto an alley. At the loading dock the papers are loaded onto trucks driven by members of Newspaper and Periodical Drivers & Helpers Union Local 921. The papers are driven from the loading dock to various points of distribution.

The newspapers publish editions at various times of the day and night. Consequently, employees have different starting times and varying days off. According to the Printing Company production manager, if employees who are members of one of the mechanical unions did not report for work, the publication process could probably continue. Supervisory personnel could handle the functions of that group of employees. However, if employees in two or more mechanical crafts did not report for work, it would be impossible to publish a paper.

Commencement of Work Stoppage

The work stoppage which is at the heart of the present case occurred at approximately 6 a.m., Friday, January 5, 1968. At that time pickets identified as being from Los Angeles appeared outside the building at Fifth & Mission

Streets, Job Site Code Letter G; 860 Howard Street, including the adjacent parking lot, Job Site Code Letter H; Third & Market, Job Site Code Letter F; and, 36 Annie Street, Job Site Code Letter J.

The Hearst Corporation, owner of the San Francisco Examiner, also publishes a newspaper in Los Angeles, known as the Los Angeles Herald-Examiner. On or about December 15, 1967 a strike commenced at the Los Angeles Herald-Examiner. The dispute expanded and by the end of December 1967 the Los Angeles dispute involved several different unions. In general these unions are affiliated with the same international labor organizations as are the unions whose members are claimants in the present case.

The first pickets appearing in San Francisco generally carried signs referring to the Los Angeles situation. The pickets remained throughout the day of January 5, 1968. At approximately 6 p.m. that day the Mailers Union Local 18 commenced a strike against the Printing Company. Later that evening pickets of the Mailers Union appeared at the locations where the Los Angeles pickets had been. The Los Angeles pickets eventually disappeared, although no witnesses at the hearing could specifically state when. By the morning of January 6, 1968 apparently only members of the Mailers Union were manning the picket line.

After establishment of the picket line by the Los Angelenos, except as otherwise noted and except for personnel exempt from coverage by collective bargaining agreements, no employees reported for work at the buildings and the parking lot being picketed. As a consequence of the lack of manpower, the publication process ceased. With the cessation of publication the claimants in the present case were affected in various ways, as will be later described. The January 5, 1968 edition of the Chronicle, a morning paper, was published and distributed. Commencing with the January 5, 1968 edition of the Examiner no newspapers were published until the end of February 1968. On February 25, 1968 an agreement was reached between the newspaper employers, the Mailers Union Local 18 and various other unions.

Pre-Work Stoppage Activities

Certain events which preceded the work stoppage and which may be related to it will now be described.

Jack Goldberger, President of Newspaper Drivers Union Local 921, is also an international representative of the International Brotherhood of Teamsters. In the latter capacity he traveled to Los Angeles for the purpose of lending his assistance in attempting to settle the Los Angeles dispute. On or about January 4, 1968 he was present at meetings in Los Angeles at which

William McCarthy, Labor Relations Counsel for the Los Angeles Herald-Examiner, was also present along with various other persons.

McCarthy testified as follows: Goldberger stated that he was concerned that the Los Angeles dispute might spread to San Francisco; that the members of his union would respect a picket line and that he did not want his members to be out of work. McCarthy replied that he would not be intimidated by Goldberger's threats.

Goldberger testified as follows: "On the record" he did not express a fear that the Los Angeles situation would spread to San Francisco. He did not inform an assembled group that Local 921 would respect a picket line if one appeared in San Francisco.

On Tuesday, January 2, 1968, the San Francisco Newspaper Printing Company Chapel of Typographical Union Local 21 held a meeting. The purpose of the meeting was to discuss the Los Angeles situation as it related to Typographical Union members in Los Angeles. The San Francisco Chapel passed a resolution in support of the Los Angeles Typographical union members.

On January 3, 1968 the Secretary-Treasurer of the San Francisco Labor Council sent a telegram to Joseph Kolder, Director of Industrial Relations of the Printing Company. The telegram stated that the Los Angeles County Federation of Labor had requested formal support of the strike against the Los Angeles Herald-Examiner. The telegram requested Kolder's attendance at a meeting of the executive board of the San Francisco Labor Council to be held on Tuesday, January 9, 1968.

Prior to the work stoppage on January 5, 1968 officials of the San Francisco-Oakland Newspaper Guild discussed among themselves the prospect of a San Francisco Mailers Union strike and the Los Angeles labor dispute. Prior to January 5, 1968 the Guild issued a bulletin to its members who are employees of the Chronicle, Examiner, Printing Company and another newspaper not involved in this case. The bulletin reported on the

negotiations of the Mailers Union and stated that the Guild's Representative Assembly, its governing body, had directed Guild members to honor Mailer picket lines if a strike occurred and "Don't cross Mailers' picket line."

On the afternoon of January 4, 1968 representatives of some Los Angeles unions appeared in San Francisco and attended a meeting or meetings with representatives of various San Francisco unions. The exact capacity of the individuals from Los Angeles was not made clear at the hearing. Commencing in the afternoon of January 4, 1968, and extending to the early morning hours of January 5, 1968, there was one long meeting or two or more shorter meetings at the office of San Francisco Typographical Union No. 21. At various times there were representatives of the San Francisco unions present, including Fred Fletcher, Executive Secretary of the San Francisco-Oakland Newspaper Guild; Donald Abrams, Second Vice-President of Typographical Union No. 21; Doug Smith, President of the Mailers Union Local 18; James Rice, President of Stereotypers & Electrotypers Union No. 29; and, an official of Newspaper Drivers Union Local No. 921.

Originally the Los Angeles union representatives stated they would not post picket lines until the San Francisco Labor Council gave its approval. Later the Los Angeles union representatives announced there had been a change in policy and that picketing would start in San Francisco at approximately 6 a.m., January 5, 1968.

Prior to the commencement of picketing the San Francisco-Oakland Newspaper Guild took no official position as to picket lines established by the persons from Los Angeles, although it was the hope of at least the Guild's Executive Secretary that Guild members would not cross a picket line.

Post-Work Stoppage Activities

Other events occurring in the days and weeks after the work stoppage may also be pertinent to this case.

For many years there has been in existence the Conference of San Francisco Newspaper Unions. Generally, the Conference is composed of the unions whose members are involved in the publishing and distributing of newspapers. Eventually the strike of the Mailers Union was settled and the unions composing the membership of the Conference of San Francisco

Newspaper Unions participated in the settlement negotiations. For the purposes of this proceeding these unions included: Newspaper Drivers Union Local 921; Typographical Union No. 21; Paper Handlers Union No. 24; Stereotypers & Electrotypers Union No. 29; Web Pressmen's Union No. 4; Automotive Machinists Union Lodge 1305; Garage & Service Station Employees Union Local No. 665. As part of the settlement the employers, i.e., the Printing Company, the Examiner and the Chronicle on one side, and the various unions on the other side, agreed that there would be a common expiration date for all collective bargaining agreements between the newspaper industry employers and various unions. Existing agreements were extended to the common expiration date and some wage increases were added to the existing agreements. Prior to the commencement of the strike some individual union officials had privately entertained the idea of a common expiration date. However, a common expiration date had never been an item of negotiation prior to the Mailers Union strike. The overt prospect of a common expiration date was first advanced late in January 1968 by Jack Goldberger, President of Newspaper Drivers Local 921, to Joseph Kolder, the Printing Company's Director of Industrial Relations.

Following the commencement of the Mailers Union strike, an organization known as the "Strike Unity Committee" came into being. This committee was loosely structured. Witnesses at the hearing could not specify the moment of conception of the "Strike Unity Committee," but apparently it was within 24 hours of the commencement of the Mailers Union strike. The committee consisted of approximately the same unions as comprise the Conference of San Francisco Newspaper Unions and some of the officials and members of those unions. Through the committee the various unions and their members lent their support to the Mailers Union strike. Various sub-committees were formed, including a picketing committee, a commissary committee and a publicity committee. Each newspaper union was called upon to supply pickets. Members of the various unions cooperated in filling picket quotas for particular times and places. Picketing by members of the various unions continued in San Francisco throughout the course of the strike. No pickets were ever posted outside San Francisco.

Refusal to Cross Picket Lines

Turning back to the morning of January 5, 1968, as stated previously, in general, employees scheduled to work that day at Fifth & Mission Streets, 860 Howard Street, 36 Annie Street and Third & Market Streets did not cross picket lines established by persons from Los Angeles at those jobsites. After the commencement of the strike and picketing by Mailers Union Local 18 and after the disappearance of the pickets from Los Angeles, these employees continued to remain away from work. They did not cross the picket lines of

the Mailers Union. Except as otherwise noted, these employees include claimants who were members of Typographical Union No. 21, Union Code No. II; Paper Handlers Union No. 24, Union Code No. Ill; Stereotypers & Electrotypers Union No. 29, Union Code No. IV; Web Pressmen's Union No. 4, Union Code No. V; and, San Francisco-Oakland Newspaper Guild, Union Code No. XV who worked at the downtown San Francisco facilities.

On the morning of January 5, 1968, after the appearance of the pickets from Los Angeles and the nonappearance of the Printing Company employees at work, Joseph Kolder, Director of Industrial Relations of the Printing Company, spoke to various union officials. These included the President and a Vice President of Typographical Union No. 21; the secretary of the Paper Handlers Union Local 24; the President of the Stereotypers Union Local 29; and, the Vice President of Web Pressmen's Union No. 4. Kolder informed these officials that the Printing Company was a separate corporation from the Hearst Corporation and he asked them to instruct their members to work. The various union officials replied they did not have the authority to instruct their members to work. Because of the lack of personnel it was impossible to publish any newspaper and there was no attempt to do so.

Security Measures

Late in the morning of January 5, 1968, Printing Company officials decided it would be necessary to obtain security guards in order to protect the employers' buildings and equipment. Thus the services of such guards were obtained and they were present at the downtown San Francisco buildings thereafter. The instructions to the guards were that employees were not to be refused admittance to the buildings and that the guards were to learn the identity of anyone entering the building. On January 5, 1968 the doors to the buildings were not locked.

Harry Nesbitt, an employee of the Printing Company and a member of Typographical Union No. 21, but not a claimant in the present proceeding, testified as follows: He is a linotype machinist and he normally maintains linotype and composing room equipment. On January 5, 1968 he reported for work at the Fifth & Mission Street building at approximately 5:30 a.m. Normally he prepared linotype machines so that they can be used by other employees. On the morning of January 5, 1968 the foreman told him to "open up the vises" on the machines, and he did so. When the vises are open, the machines cannot be operated. There were a few other Typographical Union members at work. The Chapel Chairman stated there was a picket line outside and that the employees might as well go home. The employees then left without any objection by the foreman. None of the other employees was identified by Nesbitt.

Picket Line Provision
Typographical Union Agreement

The collective bargaining agreement, section 45, between Typographical Union No. 21 and the Printing Company in existence on January 5, 1968 provided that:

> "No employee covered by this Agreement shall be required to cross a picket line established by any Union with whom the Employer [Printing Company] is required to bargain and whose members are engaged in the production and/or distribution of the Publisher's newspapers, provided such picket line is authorized by the International body of the Union establishing same. . . ."

Typographical Union No. 21

Employees who are members of Typographical Union No. 21 are divided into two classes: "Situation holders" and "Substitutes." "Situation holders" are employees who are scheduled to work five days per week at predetermined times. "Substitutes" are employees who are not "Situation holders" who make themselves available for work at the hours they desire to work. Substitutes do not regularly have a predetermined schedule. They may be hired in two ways. First, if the Printing Company has more work than the situation holders can perform, it will hire the substitutes as extra employees. Second, if a situation holder desires not to work, he may arrange for a substitute to work in his place.

To make himself available for work a substitute places his name on a "slip board." The "hiring" of substitutes is accomplished through an employee designated as a "chapel chairman." The chapel chairman is selected by the union membership but he is on the payroll of the Printing Company. When extra employees are needed, approximately 24 hours in advance a Printing Company foreman notifies the chapel chairman of the number of employees desired. The chapel chairman then "hires" the substitutes. Customarily substitutes congregate in an area within the Printing Company's composing room where the "slip board" is located.

Newspaper Drivers Union Local 921

Claimants who were members of Newspaper and Periodical Union Local 921, Union Code No. I, and who were employed in San Francisco, generally reported to work either at the garage at 200 Brannan Street, Job

Site Code Letter W, or a parking lot adjacent to the building at 860 Howard Street, Job Site Code Letter H. Normally, drivers reporting at 200 Brannan Street obtain vehicles at the garage and then drive many blocks from the Fifth & Mission Street building where the vehicles are loaded. On the morning of January 5, 1968, drivers who reported to 200 Brannan Street were instructed to remain at the garage. As no newspapers were being published, there were no papers to be distributed. Late in the morning of January 5, 1968, pursuant to instructions from Printing Company managerial personnel, the drivers reporting to 200 Brannan Street were sent home. On January 5, 1968 no pickets appeared at the 200 Brannan Street garage. Some employees other than drivers worked at that garage on January 5, 6, 7 and 8, 1968.

The drivers, Local 921 members, who reported to the parking lot adjacent to 860 Howard Street, normally perform certain types of deliveries within the city limits of San Francisco. As stated earlier, on the morning of January 5, 1968, there was a picket line at the parking lot. None of these drivers reported for work at the parking lot on the morning of January 5, 1968 or thereafter until the settlement was reached late in February. Although there were no newspapers to be delivered, such drivers could have performed such work as making collections from dealers and removing old newspapers from stores and street sales newspaper racks.

Conversations Between Employer Officials and Local 921 Officials

On the morning of January 5, 1968, at approximately 10:30 a.m., there was a conversation between Jack Goldberger, President of Local 921, and Kenneth Hobson, Circulation Manager of the Printing Company. Frank Howard, Assistant Circulation Manager of the Printing Company, was also present. The employer witnesses testified as follows: Hobson asked Goldberger if Local 921 members would cross the picket line. Goldberger said "No," that he had instructed the men not to cross the picket line. Goldberger testified as follows: He informed the employer representatives that he had instructed the Local 921 members to work. He further informed them that if the paper was published that "we'll examine" the situation at the time.

At approximately noontime on January 5, 1968 there was a conversation between Goldberger and Joseph Kolder, the Printing Company's Director of Industrial Relations. Again, there is a conflict in the testimony. Kolder testified that he asked if Local 921 members would work and Goldberger replied that Kolder should contact the union's attorney. Goldberger further testified that he informed Kolder he had instructed Local

921 members to work and that Kolder then suggested that Goldberger contact the union's attorney.

Customarily, on Friday mornings, certain drivers, members of Newspaper Drivers Union Local 921, who reported for work at the garage at 200 Brannan Street drove their vehicles to the building at 36 Annie Street, Job Site Code Letter J, to pick up what is known as the "Sunday color," a part of the Sunday edition. At approximately 6 a.m., January 5, 1968, the picket line appeared at the 36 Annie Street building. Some drivers had already made their pickups at that building. After the appearance of the picket line, some drivers, in continuing their work, crossed the picket line and others did not.

At approximately 7 a.m. there was a conversation at or near the 36 Annie Street building between Kendall Chambers, a street sales supervisor for the Printing Company, and Jack Goldberger. Chambers testified as follows: Goldberger asked what was happening. Chambers replied that he understood that it was all right for drivers who had started work to continue their work. Goldberger stated that Chambers' understanding was correct but it didn't apply to the Sunday supplement.

Goldberger testified as follows: He does not recall telling any drivers not to transport Sunday supplements. At all times, whenever asked, he informed Local 921 members to report to work until their employer instructed them not to work.

Following the conversation between Chambers and Goldberger, no drivers already on duty arrived at 36 Annie Street to pick up the "Sunday color." Other drivers were scheduled to report for work there between 7:30 a.m. and 9:30 a.m. Chambers left instructions for such drivers to remain at the 200 Brannan Street garage. The drivers who started their shifts that morning finished their shifts. Chambers told various drivers that they were through for the day and so far as the next day was concerned they should contact their union. At the hearing none of the drivers who reported to 36 Annie Street or who normally would have reported there was identified.

Frank Howard, Assistant Circulation Manager of the Printing Company, testified as follows: On January 5, 1968 he asked a Local 921 official, probably Al Vergez, the Secretary-Treasurer, if the "weekly collectors" could work. Weekly collectors are Local 921 members who collect funds from newspaper vendors. There was no immediate response. The following day,

January 6, 1968, Howard talked to Jack Goldberger. Goldberger's answer was "No," and that he wouldn't allow the men to work.

Vergez testified that he recalled no such conversation with Howard.

Miscellaneous Employees

Claimant Charles P. Yocum, ID No. 732, is a member of Retail Drivers Union Local 278, Union Code No. XX. He is normally assigned to perform duties for the classified advertising department of the San Francisco Newspaper Printing Company. Customarily he obtained a motorcycle at the garage at 200 Brannan Street. He then drove the cycle to 860 Howard Street where he obtained materials to deliver by motorcycle.

Claimant Yocum left work December 29, 1967 for a one-week vacation. He was next scheduled to work Monday, January 8, 1968. He did not report for work as he knew that the newspapers were not publishing and there would be no work.

Claimant Fred Dal Broi, ID No. 152, is not a member of any union. At the time of the events pertinent to this case he was a student at San Jose State College. He worked for the Printing Company only on Saturdays and Sundays on a day shift as a cleanup man in the press room at the Fifth & Mission Street building.

Claimant Dal Broi last worked December 31, 1967. He was next scheduled to work January 6, 1968. Prior to that date, from watching television he learned that there was a picket line at his place of employment and that there was a strike. On the morning of January 6, 1968 claimant Dal Broi went to the intersection of Fifth & Mission Streets. He remained across the street from the building where he normally worked. He observed a picket line and scuffling at the picket line. He heard from bystanders that the building was locked. He telephoned to the pressmen's work area. The person who answered the phone stated there was no work. After remaining in the vicinity of Fifth & Mission Streets for one hour, claimant Dal Broi left.

Claimant Jean B. Goyhenetche, ID No. 270, is a member of Building Service Employees Local No. 87, Union Code No. XI. He customarily worked

for the Printing Company at the building with the address 36 Annie Street, San Francisco, Job Site Code Letter J. His normal work schedule was Monday through Friday, midnight to 8 a.m.

On the night of Friday, January 5, 1968, claimant Goyhenetche's foreman telephoned and instructed him to work that night. Pursuant to these instructions Goyhenetche worked. During the course of his night's work he observed pickets outside the building where he was performing his services. One of the pickets asked him if he knew union rules. Claimant Goyhenetche ignored the picket. The following Monday, January 8, 1968, Goyhenetche telephoned his foreman and asked if there was any work for him. The foreman told him not to work.

In February 1968 claimant Goyhenetche's supervisor contacted him and asked him to work at the building at Fifth & Mission Streets. Commencing February 9, 1968 claimant Goyhenetche worked as a watchman at Fifth & Mission Streets.

As of January 5, 1968 an addition to the building at Fifth & Mission Streets was under construction. Prior to January 5, 1968 claimant Edward Borsi, ID No. 73, had been employed at the construction site. Claimant Borsi is a member of the Plumbing and Pipe Fitting Union No. 38, Union Code No. XVI, and he was an employee of Western Plumbing, Employer Code Letter D.

Claimant Borsi arrived at work on January 5, 1968 at approximately 7:30 a.m. He entered the premises of the construction project. He later observed some pickets and left the premises. He spoke to a foreman who is also a member of the Plumber's Union. The foreman stated there was no work. Claimant Borsi would not have worked in any event behind a picket line. He testified that it was necessary to obtain permission of the union to cross a picket line.

Garages

Employees in the Printing Company's garages at 200 Brannan Street, Job Site Code Letter W, and 166 Fourth Street, Job Site Code Letter FF, worked under the overall supervision of Jack Signorello, the Fleet Superintendent. Robert Nunes was Assistant Garage Fleet Superintendent.

Following the commencement of the work stoppage on January 5, 1968, Signorello and Nunes took certain actions to protect the Printing

Company's motor vehicles and other automotive equipment. Since vehicles were not in use for transport of newspapers, it was necessary to move some of them for safekeeping. Commencing at noon on Saturday, January 6, 1968, a fire guard was posted inside the Brannan Street garage. Various vehicles were moved inside that garage. There are three gates which can be used to enter the Brannan Street garage. On or about January 6, 1968, some, but not all, of the gates were closed. It was still possible to enter the garage with a vehicle. On Friday, January 12, 1968, the garage was completely closed.

Automotive Machinists Union Lodge 1305

Claimants bearing Union Code No. IX are members of Automotive Machinists Union Lodge 1305. Except for claimants F. L. Fobroy, ID No. 881, and claimant James W. Gray, ID No. 902, they all worked at the Printing Company's garage located at 200 Brannan Street. Claimant Fobroy, ID No. 881, was employed at the Printing Company's distribution center at 1626 Rollins Road, Burlingame, Job Site Code Letter K. Claimant Gray, ID No. 902, was employed at the Printing Company's distribution center at 534 - 23rd Avenue, Oakland, Job Site Code Letter P. At the time of the events pertinent to this case, claimant Archie D. Ross, ID No. 1095, was employed at the Brannan Street garage. He was not then a member of Lodge 1305 although he has since become one. For the purpose of this decision claimant Ross will be considered as a member of Lodge 1305.

The Printing Company has appealed from determinations holding claimants Fobroy and Gray eligible for benefits. No testimony was presented with respect to claimants Fobroy and Gray. According to Department records they worked as scheduled until they received notification from their foreman not to report to work.

At the Brannan Street garage no pickets appeared on Friday, January 5, 1968. Some pickets appeared there sometime on January 6, 1968 but no members of Lodge 1305 left work then. On the morning of January 8, 1968 pickets appeared outside the Brannan Street garage. A business representative of Lodge 1305 went to the garage that morning and he saw the pickets. He went into the garage. He informed the members of Lodge 1305 who were then at work that there were pickets outside. He stated that he knew what he would do if he were working. The business representative left thereafter. The members of Lodge 1305 who were working at that time left the garage. None of the claimants in the present case who was a member of Lodge 1305 was on duty when the business representative visited the garage.

Jack Signorello, the Fleet Superintendent for the Printing Company, heard the remarks of the 1305 business representative. He instructed Erwin Early Flynn, the Garage Foreman, to finish his shift; to call the mechanics who were not on duty; and, to inform them of what had occurred. Flynn is a member of Lodge 1305. At various times thereafter Flynn either telephoned to various Lodge 1305 members, received calls from them, or spoke to them in person. He informed them that the day crew had walked off the job; that there were pickets; and, that the garage was shut down.

Some Lodge 1305 members were told by Signorello, on January 6, 1968, to finish their shifts and then to go home until further notice. Some Lodge 1305 members reported to the Brannan Street garage and found it locked. One Lodge 1305 member, Archie Ross, ID No. 1095, was informed by another member, Edson Russell, ID No. 585, that Signorello and Flynn had asked Russell to tell Ross there was no work.

The Lodge 1305 members who are claimants in the present proceeding all worked their scheduled shifts prior to January 8, 1968. They all were told by Signorello to go home and wait until further notification; or were told by Flynn that the garage was shut down; or they received messages from other employees to the same effect.

Garage & Service Station Employees Union
Local 665

Claimants with Union Code No. XIII are members of Garage & Service Station Employees Union Local 665. As noted earlier, they worked at the employer's garage at 200 Brannan Street, San Francisco; at the employer's facility at 1626 Rollins Road, Burlingame; at the employer's facility at 534 - 23rd Street; and, at the garage located at 166 Fourth Street, San Francisco.

The garagemen worked as scheduled on January 5 and 6, 1968. On January 5, 1968 no pickets appeared outside the Brannan Street garage or the Fourth Street garage. There were pickets at these garages for brief periods Saturday, January 6, 1968.

On the morning of January 6, 1968, Joe Brennfleck, President & Business Agent of Local 665, spoke to Jack Signorello, the Printing Company's Fleet Superintendent, and informed him that Local 665 had no objection to its members continuing to work. On the afternoon of January 6, 1968, Brennfleck received a telephone call from Jack Goldberger, President of

Newspaper Drivers Union Local 921. Goldberger informed Brennfleck that there was a possibility of violence at the employer's garages. However, Brennfleck observed no violence and knew of no incidents of violence.

Shortly after 6 p.m., January 6, 1968, Brennfleck went to the Brannan Street garage in the company of Ken Ward, an Assistant Business Agent of Local No. 665. He instructed the Local 665 men on duty that it would be in their best interests to leave. These men left shortly thereafter. From the Brannan Street garage, Brennfleck telephoned to Signorello at the latter's home. He informed Signorello that he was pulling the 665 members off the job. He also requested the employer's telephone numbers at the Oakland and Burlingame distribution centers. Signorello provided the requested numbers.

Brennfleck telephoned to the employer's distribution center in Burlingame and instructed Loren C. Jerdet, ID No. 1347, a Local 665 member, to leave. Jerdet left immediately thereafter.

Brennfleck and Ward left the Brannan Street garage and went to the Fourth Street garage where they met Robert Nunes, Assistant Garage Fleet Superintendent. Brennfleck and Ward advised the members of Local 665 then on duty at that garage to leave, which they did. According to Brennfleck, he gave no instructions to any other members of Local 665 and some members of that union reported for work on Sunday, January 7, and Monday, January 8, 1968.

Nunes telephoned to the few Local 665 men who were scheduled to report for work later that night. He first testified that he did this on his own initiative; that he did not recall which members he telephoned; that he did not remember calling any other Local 665 members at any other time; and, that he did not remember any Local 665 members reporting for work January 7, 1968.

On Sunday morning, January 7, 1968, claimant Lloyd W. Wilkerson, ID No. 716, a member of Local 665, reported for work as scheduled at the Brannan Street garage. That same morning George Garrett, a member of Local 665, but not a claimant in the present proceeding also reported for work at the Brannan Street garage. Signorello and Nunes reported to the Brannan Street garage at 8:30 or 9 a.m. on January 7, 1968. They saw Wilkerson and Garrett at work at different locations within the garage.

Wilkerson testified as follows: Signorello and Nunes told him to go home and that the garage would be closed. He then left.

Signorello testified as follows: When he first saw Wilkerson, he asked him why he was working and if he knew there was a strike. He informed Wilkerson that Brennfleck had pulled everyone off the job and that he should contact his union. He gave Wilkerson no instructions to work or not to work. Wilkerson then left.

Nunes further testified as follows: He remembered that Wilkerson had been at work. He informed Wilkerson that the union had pulled the men off and that Wilkerson should contact his union. He further informed Wilkerson that there was work to do.

George Garrett testified as follows: On the morning of January 7, 1968 Signorello stated to him that he thought Garrett should go home; that he should not leave with his coveralls on. Signorello further stated, "We will let you know when to report for work." Garrett then left.

Signorello originally testified that on the morning of January 7, 1968, Wilkerson was the only Local 665 member that he observed at work. Although he testified later in the hearing, he was not questioned concerning George Garrett.

Jobsites Outside San Francisco

As stated earlier, the Printing Company maintains certain distribution facilities outside San Francisco. These are located at 1620 Rollins Road, Burlingame, Job Site Letter K; 663 Bay. Menlo Park, Job Site Letter L; 534 - 23rd Street, Oakland, Job Site P; and, at 5643 Paradise Drive. Corte Madera, Job Site Y. There is also an office at 969 Parket Court, Santa Clara, Job Site Code Letter N. Only members of the San Francisco-Oakland Newspaper Guild work at this office. The groups of employees at the other locations have previously been described.

Under normal circumstances newspapers are transported from the Printing Company plant to the distribution centers in the outlying areas. The drivers at the distribution centers then deliver the newspapers either to delivery boys or to sales points such as stores or street newspaper racks. The drivers at the distribution centers are members of Newspaper Drivers

Union Local 921, Union Code No. I. The employees at the outlying areas worked as scheduled on January 5, 1968. Some drivers who delivered the Examiner did not perform their usual duties on January 5, 1968, but they performed other tasks such as making collections from customers.

At approximately midnight on January 5, 1968, Lyle Johnson, Vice President of the Printing Company, informed Kenneth Hobson, the Circulation Director, that the Mailers had commenced a strike and that if any members of Local 921 reported to work, they were to be placed on a temporary furlough and informed that they should report to their union. Between 1 a.m. and 2:30 a.m., and again at approximately 8 a.m., January 6, 1968, Hobson telephoned to the managers at the Burlingame, Menlo Park, Corte Madera and Oakland facilities and informed them to place the employees at those locations on temporary furloughs.

Richard Johnson, the Manager of the Menlo Park distribution center, on Friday, January 5, 1968, had already instructed some Newspaper Guild members to stop work. On January 6, 1968 Johnson instructed all other employees at that facility, or left instructions for them, that they were on furlough and to go home.

Ralph Holm, East Bay Manager, informed all employees at the Oakland distribution center, or left instructions, that there was no work for them.

Paul Madden, the Printing Company's Marin County Supervisor, testified as follows: He received instructions from Hobson to inform the drivers that they were on furlough. Most of the drivers reported to the Corte Madera location. He only spoke to two of them. He informed one that he was on furlough and the other that he did not think it was a good idea for the man to work. The remaining drivers congregated outside the building at the Corte Madera distribution center. They did not attempt to work and they left after approximately 35 minutes.

Emil Moscone, ID No. 1020, is a member of Local 921 who normally works at the Corte Madera distribution center. He testified as follows: He was scheduled to work at 10 a.m. on January 6, 1968 and he reported as scheduled. There were other drivers in the vicinity. He spoke to Madden that morning. Madden informed him there was no work that day and that he should go home.

Donald Thompson, Manager at the Burlingame distribution center, received a telephone call from Hobson at approximately 2:30 a.m., January 6, 1968. At Burlingame some drivers, known as Chronicle drivers, reported for work. Between 5 a.m. and 6 a.m. that morning, Thompson telephoned to Hobson and stated that he would like to put these drivers to work as there was some work that they could perform. Hobson gave his approval to Thompson's plan. Thompson instructed the drivers on the premises to work by making collections that day. With one exception the drivers then left and went to their trucks.

At approximately 6 a.m. Andrew Herzig, Vice-President of Local 921, telephoned to Burlingame and Thompson took the call. Herzig desired to speak to a union official who was not present. The only driver still at the office was claimant Santos DiMare, ID No. 850. Thompson then turned the telephone over to DiMare. DiMare left after the phone call, without explaining to Thompson why he was leaving.

Later, some of the drivers who had left the office telephoned to Thompson and asked what had happened. Thompson could provide them with no information, and he informed some of them that they might as well return to the office. Some drivers returned to the office. Thompson informed them that as long as they were in the office they might as well go home. Some drivers returned to the Burlingame distribution center, deposited money, parked their trucks and departed without talking to Thompson. The Printing Company presented at the hearing a list of early morning Local 921 members working in Burlingame. The list shows the time they "left the office." However, Thompson did not recall which drivers he had spoken to and which drivers he had not spoken to.

Santos DiMare testified as follows: Herzig was in Oakland at the time of his telephone call. He informed DiMare that in Oakland the employer was telling the employees to go home. Herzig gave DiMare no instructions as to what to tell the other drivers. DiMare then left Burlingame and traveled to San Francisco to "see what was going on." He remained all day in San Francisco. The following day he reported to the Burlingame office and discovered that it was closed.

Two Chronicle drivers, L. J. Martino, ID No. 1005, and T. G. Muller, ID No. 1022, did not report to the Burlingame distribution center as scheduled on January 6, 1968. However, they were informed by Thompson and another supervisor that they were on furlough.

At approximately 8:35 a.m., January 6, 1968, Thompson received a telephone call from Frank Howard, the Printing Company's Assistant Circulation Director. Howard informed Thompson that the Newspaper Guild members should be sent home, that they were on furlough and they should contact their union for further information. The Guild members who were on duty were sent home. Drivers who reported later in the morning were also told they were on furlough. Thompson further instructed all other employees who contacted him that they were on furlough.

The Printing Company's office at 969 Parker Court, Santa Clara, Job Site Code Letter N, is primarily an answering service. On January 6, 1968 the office was closed and the employees, Newspaper Guild members, were sent home.

Newspaper Reporters - Outlying Areas

Various claimants were employed by employers San Francisco Chronicle, Employer Code Letter C, and San Francisco Examiner, Employer Code Letter B, in newsgathering capacities away from headquarters of these employers. They worked at such places as San Francisco Hall of Justice, Job Site Code Letter GG; Oakland, Job Site Code Letters Q and R; University of California, Job Site Code Letter S; Sacramento, Job Site Code Letter HH; San Mateo Race Tracks, Job Site Code Letter O; Marin County, Code Letter T; and, Hall of Justice, Redwood City, Job Site Code Letter JJ. These claimants were all members of the San Francisco-Oakland Newspaper Guild, Union Code Letter XV. None of these claimants testified at the hearing. Department interview forms state that these claimants continued to perform their work until the publication of the newspapers stopped; that thereafter there was no work for them to perform; and, that they were told by supervisory personnel that there was no work.

The only witness who testified as to the activities of newsgathering personnel was Thomas Eastham, Executive Editor of the Examiner. He testified as follows: On January 5, 1968 he received numerous telephone calls from "beat men." He generally informed them there were pickets from Los Angeles; that union members were observing picket lines; and, that there was no production. He generally informed the "beat men" to make their own decisions as to what they should do. Eastham received a telephone call from claimant Frank Piazzi, ID No. 1328, manager of the Examiner's East Bay Bureau, and C. K. Houwer, ID No. 1403, an Examiner reporter in Oakland. He informed them that no newspapers were being published; that the plant was shut down. Otherwise Eastham did not identify any of the "beat men."

Other Newspaper Guild Members - Outlying Areas

Two Printing Company employees, Frank Smith, ID No. 1270, and Wayne Brand, ID No. 1293, work in Marin County, Job Site Code Letter T, as classified advertisement salesmen. They were members of the Newspaper Guild. They were provided with automobiles by their employer for use in their work and when they were not working the cars were stored at two different service stations. When the publication of the newspaper ceased, both these claimants were relieved of the use of the vehicles by their employer.

Claimant Robert Borgman, ID No. 1291, was an employee of the Printing Company and a member of the Newspaper Guild. He worked as an advertising salesman out of an address at 1700 El Camino, San Carlos, Job Site Code Letter M. According to Department records, his supervisor instructed him, "Do not take your company car; do not work!!"

Claimant Grace W. Lambert, ID No. 1316, was an employee of the Printing Company and a member of the Newspaper Guild. She worked out of her home at 3242 Magowan Drive, Santa Rosa, Job Site Code Letter U. She last worked January 5, 1968. According to a Department determination, her supervisor told her there would be no work for her and not to drive the company automobile.

Disability Cases

Three claimants, Edward J. Mahoney, ID No. 1399; Gerald Ottoman, ID No. 1400; and, Arthur Zenner, ID Nos. 738 and 1401, filed appeals from Department determinations which denied claims for disability benefits. Claimant Zenner also filed an appeal from a determination holding him ineligible for unemployment benefits.

Claimant Zenner is a member of the San Francisco-Oakland Lithographers & Photoengravers Union No. 8-P, Union Code No. XIV. He customarily worked as a photoengraver at the Fifth & Mission Street building. On the morning of January 5, 1968, as was his custom, he traveled to work with his supervisor, who is also a member of the Lithographers & Photoengravers Union. Claimant Zenner observed pickets outside the buildings at 860 Howard Street and Fifth & Mission Streets and did not report to work. His supervisor did not report for work, and the supervisor informed Zenner that the photoengravers were not working. Later, a shop steward of his union advised Zenner and other photoengravers not to work.

Claimant Zenner filed a claim for unemployment benefits effective January 7, 1968. He was held ineligible for unemployment benefits under section 1262 of the code.

On January 22, 1968 claimant Zenner entered a hospital because of a left inguinal hernia. On January 23, 1968 a left inguinal herniorrhaphy was performed. Claimant Zenner had original consulted a physician concerning his hernia sometime in 1967. At that time surgery was advised. On January 8, 1968 claimant Zenner first consulted the physician who ultimately performed the operation. This physician has reported that the operation of January 23, 1968 could have been postponed but surgery was advised at that time. The physician further reported that claimant Zenner could have worked in January and February 1968 but surgery was advised.

Claimant Gerald Ottoman, ID No. 1400, is a member of the Newspaper & Periodical Drivers & Helpers Union Local 921. He customarily worked as a street sales driver. Prior to the commencement of picketing, he last worked on January 4, 1968. On January 5, 1968 he consulted his physician for an ailment which had been troubling him intermittently since the summer of 1967. The physician advised claimant Ottoman not to work. The physician has reported he attended claimant Ottoman beginning January 5, 1968 and he gave a diagnosis of acute diverticulitis.

Claimant Edward Mahoney, ID No. 1399, was deceased at the time of the hearing. He was a member of the Newspaper Guild and worked at 860 Howard Street. Prior to the commencement of picketing, according to Department records, he last worked on January 2 or January 4, 1968. He filed a claim for unemployment benefits effective January 14, 1968. On or about January 29, 1968 claimant Mahoney filed a claim for disability benefits. The doctor's certificate portion of the first claim for disability benefits gives a diagnosis of coronary heart disease, peptic ulcer. The physician stated he attended the claimant for his "present medical problem" beginning January 10, 1968.

Strike Benefits

There was testimony that claimant Jean Goyhenetche, ID No. 270, received payments from his union during the periods he was out of work after January 5, 1968.

REASONS FOR DECISION

Because of a failure to appear at the referee hearing, the referee, under section 5045(c), Title 22, California Administrative Code, dismissed the appeals of claimants, except as noted, who are members of the following labor unions:

Building Service Employees Local No. 87, Union Code No. XI, except claimant Jean Goyhenetche, ID No. 270;

International Association of Machinists, San Francisco Lodge No. 68, Union Code No. XII, except claimant C. Fred Russell, ID No. 584;

San Francisco-Oakland Lithographers & Photoengravers Union No. 8-P, Union Code No. XIV, except claimant Arthur Zenner, ID Nos. 738 and 1401; and

Construction and General Laborers Union Local 2611, Union Code No. XVIII.

The following claimant appeals were also dismissed by the referee for nonappearance:

William Mark, ID No. 478
Jules E. Wyner, ID No. 727
John C. Tomboury, ID No. 1386

The three appeals were properly dismissed by the referee.

The following appeals were dismissed by the referee because the appeals to a referee were filed beyond the ten-day appeal period and no good cause was shown for such late filing as provided by section 1328 of the code:

Claimants with ID Nos. 228, 1349 through 1351, 1353, 1354, 1356, 1357, 1360 through 1365, 1368 through 1371, 1373 through 1375, 1377, 1378, 1380, 1383 through 1385, 1388, 1391 and 1393 who are members of San Francisco Typographical Union No. 21, Union Code No. II; and, claimants with ID Nos. 1352, 1355, 1367, 1372, 1389, 1392 and 1395.

The referee properly found there was no good cause and, therefore, the appeals were correctly dismissed.

The trade dispute provision has been a part of the California unemployment insurance law without substantial change since the inception of the program by the enactment of the Unemployment Reserves Act in 1935. Section 56 of that act provided in part:

> "An employee is not eligible for benefits for total unemployment based on past weeks of employment, and no such benefit shall be payable to him under any of the following conditions:
>
> "(a) If he left his employment because of a trade dispute and continues out of employment by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed."

The current law, section 1262 of the code, reads as follows:

> "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."

There have been at least 16 reported decisions by the appellate courts of California which have interpreted and applied the trade dispute provision.

It has been stated that "The California law is unique, since the labor dispute qualification found in section 56, based solely on a voluntary leaving of work, does not appear in the unemployment insurance acts of any other jurisdiction today." (dissenting opinion of Chief Justice Gibson in McKinley v. California Employment Stabilization Commission (1949), 34 C. 2d 239, 209 P. 2d 602)

There are three basic questions before us, under the facts of this case, regarding the claimants' entitlement to benefits under section 1262 of the code:

1. Was there a trade dispute?

2. Was there a trade dispute in the establishment in which all or some of the claimants were employed?

3. Did all or some of the claimants leave their work because of a trade dispute?

In deciding whether a trade dispute was present in Precedent Decision No. P-B-24, we stated:

> "The term "trade dispute" is not defined in the Unemployment Insurance Code or in regulations of the Department of Employment [now Department of Human Resources Development] or of this board. Federal law as contained in the Norris-LaGuardia Act provides the following definition:"
>
> "'The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer or employee.'
>
> "This board in years past has had many occasions to consider the nature of a trade dispute, and in Benefit Decision No. 6566 we set out the following:
>
> "'The term "trade dispute" is a broad one and may be properly applied to any controversy which is reasonably related to employment and to the purpose of collective bargaining (Benefit Decisions Nos. 5527 and 5719). It is broader than "strike" or "lockout" (Benefit Decision No. 4838), and the
>
> existence of a trade dispute is not dependent upon the stoppage of work. . . .'
>
> "This board has held in Benefit Decisions Nos. 1020 and 5799 that rejection of an offer made during the course of

> negotiations, taking of a strike vote, a walkout or a lockout are all actions which would constitute or are indicative of a trade dispute.
>
> "Judicial consideration of the term is found in People v. Smith, 133 C. A. 2d Supp. 777, 284 P. 2d 203, in which the court stated:
>
> '". . . The scope and meaning of the term "trade dispute" in this statute have been frequently before the courts, and while no decision has formulated a definition of it, the courts have apparently had no difficulty in ascertaining whether a particular situation was or was not within its meaning, nor have any of the decisions suggested that there was any uncertainty about it. [Numerous citations followed] In all of these cases the term "trade dispute" has been regarded as relating to the relations between employers and those who did or might work for them. It extends to contentions between employers and unions, even though no members of the union are then working for such employers. . . .'"

We conclude under the facts of this case, and available controlling principles, that a trade dispute or trade disputes were in existence in this case within the meaning of section 1262 of the code commencing January 5, 1968 and continuing until publication was resumed towards the end of February 1968.

In regard to the question of "establishment," this board held in Benefit Decision No. 5534 that the entire nationwide Ford Motor Company organization was not a single establishment. This holding has little or no significance in the instant case. In the case now before us, we are not concerned with a nationwide organization with plants and other facilities performing highly divergent activities. The facts in the case before us present a situation of a complex, highly integrated, closely knit, interdependent number of jobsites situated relatively close together as to physical location. In the situation just described, courts in many states, including California, have held the entire operation to be a single establishment.

In Matson Terminals, Inc. v. California Employment Commission (1944), 24 C. 2d 695, 151 P. 2d 202, the court held that the term "establishment" in section 56 of the act comprised all of the pier and terminal facilities in the San Francisco Bay Area operated by various steamship and stevedoring companies which belong to the Waterfront Employers' Association of San

Francisco. A single collective bargaining agreement covered this area. This was the area where union employees worked. The court rejected the contention that each place of business of each employer was a separate establishment. The court stated that the legislature did not intend that the payment or withholding of unemployment benefits should turn on nice distinctions in the definition of words like "establishment."

Other states which we have found that have adopted the "functional integration" test of the meaning of establishment adopted in the Matson Terminals, Inc. case are:

WISCONSIN - Spielmann v. Industrial Commission (1940), 236 Wis. 240, 295 N.W. 1

ARIZONA - Mt. States Tel. & Tel. Co. v. Sakrison (1950), 71 Ariz. 219, 22 P. 2d 707

PENNSYLVANIA - Neidlinger v. Unemployment Compensation Board of Review (1951), 170 Pa. Super. 166, 84 A. 2d 363

OHIO - Adamski v. State, Bureau of Unemployment Compensation (1959), 108 Ohio App. 198, 161 N.E. 2d 907

MINNESOTA - Weiss v. Klein Super Markets, Inc. (1961), 259 Minn. 502, 108 N.W. 2d 4 (this decision is interesting in that in a factual situation like Benefit Decision No. 5534, the court rejected the "functional integration" test, Nordling v. Ford Motor Co. (1950), 231 Minn. 68, 42 N.W. 2d 576)

NEW JERSEY - Basso v. News Syndicate Co., Inc. (1966), 90 N.J. Super. 150, 216 A. 2d 597.

It appears from cases we have read that states which have rejected the "functional integration" test have done so mainly in Ford Motor Co. factual situations, e.g., Ford Motor Co. v. Kentucky Unemployment Compensation Comm. (Ky. 1951), 243 S.W. 2d 657; Ford Motor Co. v. Division of Employment Security (1951), 326 Mass. 757, 96 N.E. 2d 859; Ford Motor Co. v. Unemployment Compensation Comm. (1951), 191 Va. 812, 63 S.E. 2d 28; and, the Nordling case, above.

Of particular interest is the above Basso case from New Jersey since it also involves a newspaper trade dispute. The facts in the Basso case are in many respects identical to the facts in the instant case. The trade dispute

involved four New York City daily newspapers. A strike was called by the printers' union and pickets established in New York City only, at the business locations of the four publishers. The 23 claimants involved were members of the New York Newspaper Guild who performed various functions in various places in New Jersey for the four publishers. Close and instant contact by telephone and other means were maintained between the New Jersey locations and the four publishers in New York City. About a month before the strike by the printers' union, the Guild had settled a trade dispute of its own with the publishers for a new labor contract. The Guild, therefore, had no contract grievance with the four publishers when the printers' union strike began.

The Guild aided in the strike, however, in that it was a member of a Labor Unity Committee along with the various craft unions, including the printers' union. The Guild members were also urged by their union to honor the printers' union picket line. The Guild members also shared in the settlement of the printers' union strike in joining in a common expiration date of the various union contracts and receiving increases in wages to coincide with the increases won by the printers' union. The strike of the printers' union resulted in the stoppage of publication of the four newspapers, thus resulting in the unemployment of the claimants in New Jersey.

The claimants contended that the labor dispute was at the newspaper "establishment, or premises" in New York City where the picket lines were set up and that no labor dispute existed at the "establishment, or premises" in the various places in New Jersey where they worked.

The court stated:

> "It is clear that the unemployment of claimants was due 'to a stoppage of work . . . because of a labor dispute.' But claimants maintain that the labor dispute was not 'at' the establishment or other premises, 'at which' the claimants were employed. Geographically, the physical location of their work area was generally in New Jersey, with periodic or occasional visits in some instances to the New York offices of the newspaper publishers. Claimants also argue that there was no labor dispute to which they were a party; that there were no picket lines in New Jersey where they performed their duties principally or entirely; and that the 'establishment' at which they worked was physically separated from the newspaper establishment in New York. On these facts, they contend that

they were not disqualified from receiving unemployment benefits under [the New Jersey law]. . . ."

The court goes on to distinguish the case before it from the factual situation in cases like Benefit Decision No. 5534 by pointing out the interdependence of the operations between New York City and the various locations in New Jersey.

The court then discusses various cases, cited above, that have adopted the "functional integration" test to point out that mere physical separation of various plants and business locations should not of necessity lead to the conclusion that the various plants and business locations are separate establishments. The court concludes that the operations in the New York City area and the various locations in New Jersey were functionally integrated to the extent that they all formed but one establishment.

Since we are discussing the Basso case, we will continue with other contentions made by the claimants and dispositions made of these contentions by the court, which are not concerned with the question of "establishment," but are pertinent to the third question to be discussed hereafter.

The claimants contended that they should not be disqualified since they did not participate in the labor dispute nor were they directly interested in it since they had already settled their dispute.

The court responded to these contentions by concluding that the claimants did participate in the labor dispute in honoring the printers' union picket line. Also, the Guild participated in the Labor Unity Committee. Further, the Guild became directly involved in the dispute when one of the terms of the settlement was an insistence that there should be a common expiration date for all union contracts.

The court continued that in ". . . the absence of dissent [by the claimants] on their part or noncompliance with the directive of their chosen officials, claimants may not escape the consequences of the conduct of the officers of the Guild and their fellow members in aiding and abetting the printers' strike * * * [I]n view of their [the claimants] acquiescence and lack of dissent from the conduct of their officers and associate members, [they] were

participating in and directly interested in the labor dispute which caused the stoppage of work. "

The claimants were accordingly held to be disqualified for unemployment insurance benefits under the trade dispute provision of the New Jersey law.

From the above authorities we are persuaded to conclude that the various jobsites involved in this case were but one "establishment" due to the high integration and interdependence of the functions and operations involved at the various jobsites.

We next turn our attention to the third question posed; namely, whether there was a leaving of work because of a trade dispute. In so doing, we will analyze most of the reported California cases which have interpreted the trade dispute provision.

Bodinson Mfg. Co. v. California Unemployment Comm. (1941), 17 C. 2d 321, 109 P. 2d 935, established the "volitional test" in applying the labor dispute provision of the law. In that case certain workers refused to cross the picket line formed by fellow union members and thereby they became unemployed. The picket line was apparently peaceful and no physical compulsion was exerted to prevent the workers from crossing the picket line. The court held that the workers in refusing to cross the picket line voluntarily left their work because of a trade dispute. The court stated:

> "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. Correspondents in this proceeding in fact 'left their work because of a trade dispute' and are consequently ineligible to receive benefit payments . . . ."

In W. R. Grace & Co. v. California Employment Commission (1944), 24 C.2d 720, 151 P. 2d 215, the court pointed out that:

"It is not the function of the commission to evaluate the merits of a controversy between an employer and his employees; if a trade dispute exists and the employee leaves his work because of it, he may not receive benefits even though his employer is in the wrong. . . . the disqualification imposed by section 56(a) is not contingent upon the merits of the controversy nor was it intended that the commission should become an arbiter of industrial disputes. . . ."

The court in the Grace case also enunciated the following principle:

". . . it was not essential to disqualification that a dispute exist directly between the longshoremen [the claimants] and the employers; if the former left their work because of the dispute between the employers and the ship clerks, they [the claimants] in effect made the latter dispute their own and are within the disqualification of section 56 (a). . . ."

In Bunny's Waffle Shop v. California Employment Commission (1944), 24 C. 2d 735, 151 P. 2d 224, the court pointed out the distinction between leaving work during the course of a trade dispute and leaving work because of a trade dispute. A claimant is ineligible for benefits only under the latter situation.

In Bunny's, during the course of a trade dispute, the employer threatened to cut wages to 75% of what the employers had been paying and to change the number of working hours and the type of shifts unless the union agreed to bargain collectively. When this action was taken by the employers following the refusal by the union to bargain collectively, the employees quit and the employers closed their establishments. The court held that the leaving of work was because of the actions of the employers, and not because of the voluntary action of the claimants. The court indicated that the party who first exercises an economic weapon is the party who is responsible for the unemployment. Although the union involved received a strike sanction, the court said that this is only a threat of economic action, not its exercise. The court concluded:

". . . The economic weapon in the present case was created by the employers and directed against their employees, and it alone, rather than the trade dispute that occasioned it, was the cause of the leaving of work."

McKinley v. California Employment Stabilization Commission (1949), 34 C. 2d 239, 209 P. 2d 602, involved a trade dispute between a wholesale bakers association and a bakery workers' union. Historically, it was the practice of the employers to all close down if any one of them were struck by the union. The union was aware of this policy. Negotiations for a new union contract broke down and the union struck one of the employers. In accordance with the policy of the employers, all of them closed down their operations. The court concluded that the unemployed bakery workers were ineligible for benefits under subdivision (a) of section 56 of the act. In reaching this conclusion, the court had the following to say:

> ". . . That decision [Bodinson] recognized the obvious legislative intent that persons who are involuntarily and innocently out of work as the result of a labor dispute should not suffer by loss of unemployment benefits. Accordingly, the right to benefits under section 56 of the statute was said to depend upon whether the worker left his job of his own free will or was forced to do so because of the acts of others."

The court stated that the union was the first to apply the economic weapon of a strike and, therefore, it was responsible for the workers' unemployment, just as the employers were responsible for the workers' unemployment in Bunny's since they, the employers in Bunny's, were first to apply the economic weapon of lockout in that case. The court stated:

> ". . . In the waffle shop case, the unemployment was due to a lockout; here the lockout of the bakers was due to a strike. . . . The volitional test itself is based upon a just analysis of a substantial subjective element and it cannot properly be extended or perverted by insistence upon mere form. In this case the union members knew from letters and statements as well as from prior strike action that any strike during negotiations would result in stoppage of all work. When, in the face of that information, union members authorized a strike, they placed themselves outside the class of persons who are properly protected by the subjective volitional exception to section 56 which was stated and applied in the Bodinson case."

Chrysler Corporation v. California Employment Stabilization Commission (1953), 116 C.A. 2d 8, 253 P. 2d 68, involved a trade dispute between an automobile manufacturer and the autoworkers' union. The union workers were in four groups:

1. production and maintenance workers

2. engineers

3. office workers

4. cafeteria workers

The employer also employed nonunion employees. When negotiations faltered, the production workers went on strike. As a matter of strike strategy, the union decided that office workers would continue to work by crossing picket lines. Nonunion office workers also continued to work. The union, including the union office workers, voted for the strike action taken. Some weeks later, due to the continuation of the strike, all the office workers were laid off due to lack of work. When the strike was over, all groups of workers, including the office workers, benefited as a result of the strike. The claimants for benefits were office workers only, both union and nonunion. The court held the union workers to be ineligible for benefits and the nonunion workers to be eligible. The court stated:

> ". . . this section [56(a)] has been interpreted by the courts to require an analysis of whether the unemployment resulted from 'the fact of voluntary action' by the claimant or whether he was compelled to leave his job because of the acts of others. (Bodinson . . . .) This 'volitional' test postulates the need for an inquiry into the dynamics of the circumstances which have created the unemployment, the criteria for denial or awarding of benefits being the personal responsibility of the claimant for his unemployment in the former case (McKinley . . .), or the fault of the employer in the latter case. (Bunny's. . . .) 'The volitional test itself is based upon a just analysis of a substantial subjective element, and it cannot properly be extended or perverted by insistence upon mere form.' (McKinley. . . .) This language epitomizes the crucial essence of the 'volitional' test, clearly refuting a mechanical reading of the statute, and requiring a searching evaluation of the economic realities involved in a particular trade dispute, a study of the interplay of pressure and counterpressure by the contending factions, and a weighing of all the anterior events which have molded and inexorably evolved the pattern of resultant unemployment. Only by the equitable application of such a standard may we achieve the fundamental purpose of unemployment insurance, which is designed to cushion the impact of such impersonal industrial blights as seasonal, cyclical and technological idleness, and realize the

policy expressed in the act of furnishing 'benefits for persons unemployed through no fault of their own. . . .'

". . . In participating in the events leading up to the strike, in supporting the tactical decisions made by their union officials empowered to conduct negotiations and formulate strike policy, in acting in concert with the production workers at all stages of the controversy, and, through identical union representatives, permitting the use of a production workers' strike as the instrumentality for the effective implementation of the overall strike strategy, it is manifest that the union office claimants were protagonists in a struggle involving a calculated risk of paralyzing petitioner's operations before the new contracts, of which they would be beneficiaries, would be consummated."

* * *

"It is unmistakably patent that we are confronted here with an ingenious attempt of a group of workers to promote the demands of their union by choosing a weapon, in a trade dispute concerning all union workers, potent enough to annihilate the employer's efforts to maintain its operations, while adopting the position that union members, laid off by the employer's enforced suspension of activity, are unemployed through the fault of the employer."

In discussing the applicability of the holding in the McKinley case, the court stated:

". . . There the court recognized that where a union uses the tactical maneuver of a strike against only one employer, and where a termination of employment is reasonably foreseeable by the use of such strategy, the consequent unemployment of nonstriking workers who are members of the union must be regarded as voluntary. This is precisely the situation which, in the present case, could reasonably have been envisaged as a consequence of calling a strike of production workers whose uninterrupted employment was necessary to the functioning of the assembly plant. It may be remarked that in the McKinley case, the remaining employers were not impeded from continuing their operations by the strike called at one plant. In the present case, there is the stronger fact that the strike of the production workers brought petitioner's operations to a physical standstill. It would oblige us to completely ignore the realities to hold that the union office workers' employment was terminated

> by petitioner and not by a choice they themselves freely made by their participation in a labor dispute in which they and their representatives selected the economic weapons.

The nonunion office workers were held eligible for benefits because they were "helpless and inarticulate pawns situated in the no-man's land of the area of combat between employer and union."

Gardner v. State of California (1959), 53 C. 2d 23, 346 P. 2d 193, was a McKinley type factual situation. A strike by the union against one employer would be considered a strike against all. In denying benefits to the claimants, the court stated:

> ". . . the only reasonable conclusion consistent with the volitional theory, as it is accepted and applied in this state, is that the claimants were out of work after the lockout because of their own conduct and that of their authorized unions."
>
> * * *
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> "As applied [the "volitional" test] . . . works impartially as to both employees and employers and puts each group on notice that the one which creates and first applies the economic weapon in a trade dispute under circumstances such as those present in Bunny's Waffle Shop, or McKinley or here, may have to bear responsibility for foreseeable reprisals."

Chrysler Corp. v. California Unemployment Insurance Appeals Board (1962), 199 C. A. 2d 683, 18 Cal. Rptr. 843, involved a trade dispute between the same employer and same union as the Chrysler case discussed above. A dispute arose between the production and maintenance workers over rates of production. These workers went on strike over this issue. The labor contract covering these employees had a provision on this subject. The 81 claimants for benefits were the office and clerical workers and engineers. The contract covering these workers had no provision regarding the rates of production. The latter workers had no right to vote on that issue and they voted against the strike. They had no grievance with the employer. When the strike was ended, the settlement had no effect on the office and clerical workers and engineers. These workers crossed the picket line and worked as long as work was available. They were laid off at various times due to the lack of work caused by the strike. The court held that the 81 claimants were not ineligible for benefits under section 1262 of the code. In reaching this conclusion, the court stated:

"To carry out the intent of the Legislature, the courts in a given case inquire into the economic realities of the circumstances resulting in unemployment to determine whether there was any personal responsibility on the part of the claimant for his unemployment, or whether he was compelled to leave his work because of the acts of others. . . ."

* * *

"In the light of the established principle that innocent victims of a trade dispute should not suffer loss of their unemployment insurance rights, and the prevailing unusual factual situation, we believe there must be something more than mere membership in the union authorizing the strike against their common employer, to make the nonstriking members personally responsible for the same, such as -- their voluntary joint activity, concert of action of the strikers and nonstrikers, and identity of interest in the dispute or strike, or union strategy ultimately resulting in the unemployment of nonstriking members."

* * *

". . . a claimant is not disqualified under the act [under California court decisions] as having voluntarily left his work unless he bears some personal responsibility for his unemployment; and in each, the act or conduct or interest in the dispute placing claimant in league with the strikers was one directly related to the impelling cause of the unemployment. No importance was laid on the fact of membership in the union; personal responsibility was contemplated as the criteria. This principle appears to eliminate mere union membership as either the 'impelling cause of the unemployment' (the strike), or sufficient to make a nonstriking member responsible for the act of his union officials in calling a strike of other members, under circumstances where he had no interest in the dispute, derived no strike benefit, had no control over the strike and did no act or engaged in no conduct relating to the same. . . ."

In Coast Packing Co. v. California Unemployment Insurance Appeals Board (1966), 64 C. 2d 76, 48 Cal. Rptr. 854, 410 P. 2d 358, in discussing prior court decisions involving the trade dispute provision, the court stated that eligibility depends on which party caused the work stoppage; if the employer causes the stoppage, the claimants are not ineligible under section 1262 of the code; if, on the other hand, the claimants have caused the stoppage, they

are ineligible. The court concluded that the mere threat of a strike, as distinguished from a strike that has been announced, cannot be held to cause a work stoppage.

General Motors Corp. v. California Unemployment Insurance Appeals Board (1967), 253 C.A. 2d 540, 61 Cal. Rptr. 483, involved the question of the eligibility for benefits of Fisher Body Division employees at two plants of General Motors in Van Nuys and Oakland under section 1262 of the code. Each plant produced automobiles on an assembly line basis and each plant had two highly coordinated groups of employees to accomplish this. One group was the Fisher Body Division and another group, the Chevrolet Division, prepared the chassis to receive its Fisher body. During negotiations for a new contract, the autoworkers' union, to which each of the above two groups of employees belonged, authorized a nationwide strike. The above employees partook in this vote. When negotiations faltered, a strike was called. Strike action was taken at both plants by Chevrolet Division employees. At Oakland, the Fisher Body Division employees took no strike action and offered to work, but there was no work for them because of the strike of Chevrolet Division employees - the bodies they would produce could not be used or stored. At Van Nuys, the Fisher Body Division employees took strike action, but they settled their dispute in a few days and offered to return to work. There was also no work for them because of the continuing strike of Chevrolet Division employees. When the strike ended, the settlement, which was economically favorable to all employees, was ratified by all employees. It was recognized that the employer's operation was highly integrated and that it was "only a matter of a couple of days anyway before all of the corporation will be closed down" by the strike. Fisher Body Division employees only, filed claims for unemployment benefits. The court denied benefits. In reaching this conclusion, the court sustained the trial court's finding that the offer to work by Fisher Body Division employees was "part of the strategy of the UAW to force a complete shutdown of all operations of each of the plants, yet at the same time obtain state unemployment benefits in lieu of strike benefits for Fisher Body employees who were not on strike or who had offered to return to their employment."

After concluding that the facts reveal such things as that the contract demands were for the benefit of all employees; that the union represented all employees; that the employer's entire operation was shut down in a day or two by the strike; and, that all employees voted to authorize the strike, the court stated:

> "When these facts are viewed in the light of the complex and highly integrated operations of General Motors Corporation, it is clear that the unemployment of the Fisher Body claimants

resulted from their own voluntary action and that the voluntary test applied in Bodinson, supra, is fulfilled. It cannot reasonably be denied that a labor dispute, engendered in part at least by their own demands, was in progress and that the claimants were furthering its progress by all means at their command. Their personal responsibility for their own unemployment is evident. It cannot be laid at the door of their employer. . . ."

The court in John Morrell & Co. v. California Unemployment Insurance Appeals Board (1967), 254 C.A. 2d 455, 62 Cal. Rptr. 245, had the following comments regarding the application of section 1262 of the code:

". . . Although guideposts have been erected and directions given, the only clear rule established is that each case must be decided upon its own peculiar facts. . . ."

* * *

"The volitional test is a subjective test to determine who is responsible for claimants' unemployment. . . ."

Referring to prior California court decisions, the court stated in Artigues v. California Department of Employment (1968), 259 C.A. 2d 409, 66 Cal. Rptr. 390:

". . . the policy of the Unemployment Insurance Act as one of neutrality in trade disputes, designed to insure that the payment or withholding of benefits will not be used to aid either party in such a dispute. . . ."

* * *

". . . that the only sound and fair way to apply the subjective volitional test of Bodinson is to enforce it where there is a trade dispute between parties negotiating a master collective bargaining contract, each acting through authorized representatives 'against the party who strikes the first blow with the drastic economic weapon of strike or lockout.' "

The court also stated that the fact that the strike by the union may have been "illegal" because it was not sanctioned, is not of moment because the economic weapon of a strike was in fact used by the union.

We learn many things from the above case analyses on how to examine the question of benefit eligibility in a trade dispute factual situation. We learn that we must probe into the real cause of the claimants' unemployment. In so doing, we cannot be content with a surface examination of the situation presented, since matters may not actually be as they first appear, or appear after only a superficial examination. We must probe deeply into the dynamics of the situation, the economic realities involved, the pressures and counter-pressures and events which in fact caused the unemployment. We must ponder such questions as was the unemployment the fault of the claimants or was it the fault of the employer or employers? Which party caused the work stoppage? Which party was first to exercise an economic weapon (strike or lockout) against the other party? Which party first left the bargaining table to apply economic pressure? Are the claimants innocent as to the cause of their unemployment? Were they responsible for their unemployment? Did they take all appropriate action in an attempt to allay their unemployment? Did the claimants benefit from the settlement of the dispute? If the claimants are not directly involved in the dispute, did they aid the cause of fellow union members in any way and thereby adopt the dispute of their fellow union members as their own? We must also keep in mind that it is not our function to examine the merits of the controversy; that the party that caused the work stoppage must be prepared to suffer the consequences; that benefits are payable only if the claimants are unemployed through no fault of their own; and, that mere union membership is not sufficient to render a claimant ineligible for benefits under the trade dispute provision.

The above are some of the guides which must be applied to our thinking in reaching a decision in this case, after a reading of the above cases.

The cases analyzed which most closely resemble the instant case are the two Chrysler decisions, the Basso case from New Jersey, and the General Motors case. All of these cases present business operations which are highly integrated and interdependent. Accordingly, a cessation of one or a few of the activities which go into the making of the whole operation is certain to bring the entire operation to a sudden and decisive halt.

Considering the actions of the claimants, the case least like the instant case, of the last four mentioned decisions, is the 1962 Chrysler decision. In that case, the claimants in no way gave aid to the employees who were on strike and they took all appropriate action to allay their own unemployment. They voted against the strike; they had no controversy with the employer; they had no interest in the matter that was in dispute; they did not share in the benefits of the settlement of the dispute; and, they crossed the picket line and

worked as long as work was available. The claimants were the innocent victims of the trade dispute and in no way responsible or at fault for their unemployment. The same cannot be said for the claimants in the instant case.

A thoughtful probing of the realities of the situation presented in the instant case shows that both sides to the present trade dispute are very articulate and knowledgeable in matters concerning labor and management, and the negotiations and dealings which go on between the representatives of these two factions. As in the General Motors case where it was undisputed that the strike would close down operations in a couple of days, it is undisputed in the instant case that a failure to report to work by two or more of the mechanical crafts would cause an almost immediate shutdown of the employers' operations. Such a shutdown did occur on January 5, 1968. We are unable to find a scintilla of evidence in this case that the cause of this shutdown can "be laid at the door of their employer[s]."

The picketing of the workers from Los Angeles, followed by the strike and picketing of the Mailers' Union, and the honoring of these picket lines by over 60% of the claimants involved in this case caused the shutdown and the resulting work stoppage and unemployment of the some 1,400 claimants involved in this case. There can be no doubt or question that the various union officials and union members that partook in this activity, or allowed this activity to take place, knew that the failure of such a high percentage of personnel to show up for work would halt all operations almost immediately in the entire establishment of the employers, thus throwing all employees out of work.

We note in passing that we do not consider that following the failure of the claimants to cross the picket lines, the fact that certain activities such as washing and servicing of the employers' trucks and the collecting of papers and money from coin boxes, meant that the employers still had work for its employees. Such activities were but a one-time operation and only minor when considering the employers' overall operation of preparing, publishing, and distributing newspapers. We note in this regard that the court in the General Motors case did not go into the fact at all that it might take a couple of days for the strike to close down operations. The important point made of this was that the strike had this effect and it was assumed without need for discussion that minor activities would continue for a couple of days following the strike before operations would come to a complete halt.

With the knowledge that a failure of such a high percentage of personnel to show up for work at the key downtown jobsites of the employers would almost immediately shut down the employers' entire operation, we can only conclude that as in the 1953 Chrysler case and the General Motors case, it was a matter of strategy by the unions to have employees show up for work at the nondowntown jobsites in an attempt to assume the role of laid off employees, when in fact, they were responsible for the work stoppage and their own resulting unemployment.

In concluding that the claimants who worked at the nondowntown jobsites are ineligible for benefits, we recognize that, except for a brief period at Job Site W, there were no pickets at these locations and, therefore, the Bodinson case, except for the brief period and location mentioned, is not applicable at these locations.

We conclude that the claimants at the nondowntown jobsites are ineligible for benefits because of the activity of their fellow union members and union officials at the downtown jobsites. The above table shows that except for Union Code No. IX, each of the unions had a significant number of members who worked at the downtown jobsites and who refused to cross the picket lines. We also cannot conclude from the evidence presented that the union officials involved in this case took any meaningful action to encourage the union members to continue working at the downtown jobsites. In fact, a number of the unions issued statements or instructions to the effect that the Mailers' Union picket line should be honored. The employees at the nondowntown jobsites must be responsible for the foreseeable consequences of the actions of their fellow union members and union officials. This being the case, they are responsible for their own unemployment. In Benefit Decision No. 6250, this board stated:

> ". . . it is sufficient that the worker's unemployment arose out of the collective action of the members acting through their union. Only by the application of this view is the objective attained 'of furnishing benefits for persons unemployed through no fault of their own' and of applying principles of law 'in harmony with the legislative objective of providing only for the innocent victims of trade disputes'; to borrow language from the decision of the court in the [1953] Chrysler case cited above."

This principle of "collective action" is applicable herein to all of the claimants. The action of over 60% of the claimants resulted in the unemployment of 100% of the claimants. The 100% must bear the responsibility for foreseeable result of the actions of the fellow union members

who made up the lesser percentage. In this connection there are a number of individual unions involved in this case. Undoubtedly, because of the interdependence of their work and the common employers in crisis and negotiations regarding their work, it is obvious from the facts before us, that the various unions bind together and act more or less as a single unit. Evidence of this is the Conference of San Francisco Newspaper Unions whose membership was made up of most of the unions involved in this case and the Strike Unity Committee which automatically evolved at the start of the strike on January 5, 1968 and whose membership was composed of the same unions that made up the conference. Union Code No. XV joined in the latter group. Other evidence of this is the meeting or meetings of various unions on the eve of the strike.

Other matters which lead us to the conclusion that all of the claimants (except one) should be held ineligible for benefits under section 1262 of the code are that they aided the Mailers' Union in their strike by not crossing their picket line, they shared in the responsibility of performing picket duty, they shared in benefits of the settlement of the strike of the Mailers' Union and they took no meaningful action to disavow the strike.

In reality, in light of the hard cold facts of this case, no meaningful action could have been taken to disavow the strike following the course of conduct followed by so large a percentage of employees. This state of affairs must have been foreseeable by all persons involved in the dispute.

We again call attention to the decision in the Basso case, which in many respects is similar to the case before us. We agree with the decision reached by the court in that case, and believe that the result reached therein calls for a denial of benefits to all of the claimants (except one) in the instant case. We note in this regard that the New Jersey law is different from section 1262 of the code. This does not reduce the precedent value of that decision however. From our above analysis and quotation of that decision, the concepts used by the New Jersey court in reaching its decision are the same concepts used by the courts in California in trade dispute decisions.

We singled out Union Code No. IX since none of its members worked at the downtown jobsites. This fact does not separate them from the other unions regarding benefit eligibility. In all other respects, their situation is the same as the other union members. Also, in response to the remarks of a business representative of this union, the day crew walked off the job. And, another union member told other members on the telephone that the day crew had walked off the job and that the garage was shut down. It cannot be said

that the members of this union are not responsible for their own unemployment.

A few claimants require individual attention. Claimant Fred Del Broi, ID No. 152, is the only nonunion claimant on appeal to this board. We cannot find from the facts that he made any sincere effort to disavow the strike. He is, therefore, ineligible for benefits under section 1262 of code. We reach the same decision regarding claimant Charles P. Yocum, ID No. 732.

Claimant Edward Borsi, ID No. 73, left his place of employment at Job Site G when he saw the picket line. In doing this, he left his work because of a trade dispute and is, therefore, ineligible for benefits under section 1262 of the code.

Claimant Arthur Zenner, ID No. 738, refused to cross the picket line to go to his place of work at Job Site G. He, therefore, left his work because of a trade dispute and is ineligible for benefits under section 1262 of the code.

From the available evidence, it appears that claimant Jean B. Goyhenetche, ID No. 270, did what could reasonably be expected of him in disavowing the strike. His place of work was a downtown jobsite and, despite the strike, he worked whenever work was available for him to perform. He is, therefore, not disqualified for benefits under section 1262 of the code.

We are concerned next with three claims for disability benefits.

Section 2677 of the code provides:

> "
>
> An individual who is disqualified from receiving unemployment compensation benefits under Section 1262 shall be presumed to be ineligible to receive disability benefits under this part for the same period or periods unless the individual establishes, pursuant to authorized regulations, that his alleged disability was the result of an accident or required a period of hospitalization, that it was not caused by and did not arise out of the trade dispute, and that it would have occurred and would have prevented him from continuing his work if the trade dispute had not occurred. . . ."

In Disability Decisions Nos. 508 and 540, this board held that if a claimant has left work because of a trade dispute, the claimant is ineligible for disability benefits unless he meets the conditions set forth in section 2677 of the code; that is, the claimant must prove;

1. That the disability was the result of an accident or required a period of hospitalization;

2. That the disability was not caused by and did not arise out of the trade dispute; and

3. The disability would have occurred and would have prevented the claimant from continuing work if the trade dispute had not occurred.

In Disability Decision No. 508, it is stated that the language contained in the third condition which must be proved by a claimant "was intended to apply in general to those situations where a worker, having left his work because of a trade dispute, uses the ensuing period of idleness to indulge in what may be commonly referred to as elective hospitalization or surgery."

In Disability Decision No. 339, this board held that a claimant was entitled to disability benefits and was not ineligible for benefits when he became disabled prior to the commencement of a trade dispute. In that case the claimant last worked September 30, 1949. He was scheduled to work October 3, 1949. His union called a strike effective October 1, 1949. The claimant became ill on October 1, 1949; consulted a doctor on October 2, 1949; and, entered a hospital on October 3, 1949.

In the present case, claimant Arthur Zenner, ID No. 1401, filed an appeal from a Department determination which denied him disability benefits. The evidence establishes that he left work because of a trade dispute on January 5, 1968. There were pickets at his place of work. He did not cross the picket line or attempt to do so.

In order for claimant Zenner to be eligible for disability benefits, he must fulfill the three conditions contained in section 2677 of the code. He fulfills the first two conditions in that his disability required a period of hospitalization and that it was not caused by and did not arise out of the trade dispute. However, he does not fulfill the third condition. Claimant Zenner's operation was optional. According to the physician who performed the operation the

claimant could have continued working in spite of his inguinal hernia. Thus, to use the wording of Disability Decision No. 508, claimant Zenner used the period of idleness following his leaving of work because of a trade dispute to indulge in elective hospitalization and surgery. His disability would not have occurred or prevented him from working if the trade dispute had not occurred. Therefore, claimant Zenner does not fulfill the three conditions contained in section 2677 of the code and he is ineligible for disability benefits.

Although little evidence was presented with respect to Edward Mahoney, ID No. 1399, it may be assumed he left work because of a trade dispute. He last worked immediately preceding the commencement of the work stoppage. He was a member of a union, whose members working in San Francisco, have been held to have left work because of a trade dispute. He filed a claim for benefits effective January 14, 1968.

As with claimant Arthur Zenner, it is also necessary for claimant Mahoney to meet the three conditions set forth in section 2677 of the code in order to be eligible for disability benefits. He does not meet the first condition. His disability was not the result of an accident and did not require a period of hospitalization. Therefore, claimant Mahoney is ineligible for disability benefits.

A different situation is presented with respect to claimant Gerald Ottoman, ID No. 1400. He last worked January 4, 1968. He did not report for work January 5, 1968. He consulted his physician that day and the physician advised him to remain off work. He failed to report for work on January 5, 1968 because of his disability. Therefore, the disability was the cause of his unemployment. He did not leave work because of a trade dispute and he is eligible for disability benefits under section 2677 of the code.

Lastly, under section 1252 of the code:

> "An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount . . . ."

In Benefit Decisions Nos. 4526 and 5544, this board held that, in some circumstances, "strike benefits" paid by a union to its members during a trade

dispute are wages, and that members receiving such benefits are not unemployed.

In the present case, there is evidence that claimant Jean Goyhenetche, ID No. 270, who has been held eligible for benefits under section 1262 of the code, received benefits from his union while he was out of work. Thus, there may be an issue as to his eligibility for benefits under section 1252 of the code. It is suggested that the Department investigate the matter.

In light of our decision on the main issue in this case, there is no need to consider other potential issues.

DECISION

The decision of the referee is modified. All claimants, except claimant Jean B. Goyhenetche, ID No. 270, are ineligible for unemployment benefits under section 1262 of the code. Benefits are payable to claimant Goyhenetche if he is otherwise eligible. Claimants Arthur Zenner, ID No. 1401, and Edward Mahoney, ID No. 1399, are ineligible for disability benefits under section 2677 of the code. Claimant Gerald Ottoman, ID No. 1400, is not ineligible for disability benefits under section 2677 of the code. Benefits are payable to claimant Ottoman if he is otherwise eligible. The matter is referred to the Department for consideration of the eligibility for benefits of claimant Jean Goyhenetche, ID No. 270, under section 1252 of the code only.

Sacramento, California, January 19, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

DISSENTING - Written Opinion Attached

LOWELL NELSON

DON BLEWETT

DISSENTING OPINION

We disagree with the conclusion of our fellow board members as it applies to claimants who worked away from downtown San Francisco locations.

To support their conclusion to deny benefits, the majority of this board relies mainly on Basso v. News Syndicate Co., Inc., 216 A. 2d 597. The law regarding trade disputes in New Jersey is different from our law, as it has been interpreted in the California courts.

The California law is found in section 1262 of the code. It says:

> "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."

The New Jersey law (N.J.S.A. 43:-21-5(d)) in issue says:

> "'An individual shall be disqualified for benefits: * * *
>
> "(d) For any week with respect to which it is found that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he is or was last employed, * * *.'
>
> "There is a proviso that this subsection shall not apply if it is shown that:
>
> "'(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and
>
> "(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the

stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; * * *.'"

A quick, surface comparison of this law with the California law makes it apparent that to compare trade dispute cases from the two jurisdictions is like comparing apples and oranges. (It should also be noted that the decision relied on was rendered by an intermediate appellate court rather than the highest court in the State of New Jersey.)

The main issue treated by the court in the Basso case was whether the claimants were unemployed because of a work stoppage at the establishment where they last worked. Here we are not interested in satisfying the establishment test but whether the volitional test evolved under California law has been met.

Let us look at the dynamics of the circumstances which created the unemployment for workers away from downtown San Francisco locations. The elements set forth by the California courts which tend to indicate a "volitional" participation in the trade dispute are as follows:

1. Membership in a striking union.

2. Nonmember of a striking union but member of a union that worked in concert with the striking union, prior to the trade dispute.

3. Refusal of work offered by the employer at any location.

4. Refusal to cross a picket line.

5. Some grievance with the employer.

6. Not being laid off for lack of work, but rather refusing to work or being locked out.

7. Participation in the settlement of the dispute.

8. A trade dispute at the location of employment.

Applying these criteria to this case, it can be seen that the claimants who did not work in the downtown area were in some way informed by the

employer their services were no longer needed. This type of employer action tends to show the claimants did not voluntarily participate in the trade dispute.

These claimants were not members of the striking union and they did not have the same goals as the strikers. The facts failed to show the concerted type of action necessary to prove an overall strategy of fellow union members. At best, there is some after-the-fact support for a trade dispute in which they were not originally involved. This has never been said to have been cause for disqualification under section 1262 of the code.

Applying the reasoning of the majority, a nonunion, nonstriking employee who was laid off from work by the employer would be ineligible for benefits if he at any time answered in the affirmative, the question, "Do you now support the trade dispute involving your fellow workers who are union members?" This is not what the law says or what the courts have said the law says.

None of the workers in question refused an offer of work at another location of the employer. None refused to cross a picket line. They had no grievance with the employer.

For the sake of argument it could be said that their work location was part of the establishment affected by the trade dispute. This does make them unemployed because of the trade dispute. However, they did not volitionally, leave their work because of a trade dispute.

The only element that tends to make the claimants part of the trade dispute is some gains realized from the eventual settlement. This element alone can never be said to make the claimant's actions volitional. If this were so any worker (union or nonunion) unemployed as a result of a trade dispute, where the striking union obtains gains in employment status, could be held ineligible for benefits on the theory that the gains will result in better employment conditions for the nonstriking employee.

In summary, what we are saying is that any connection these claimants had with the trade dispute is so remote and so negligible that the volitional test has not been met.

We therefore would sustain the referee's decision holding the above claimants eligible for benefits while denying benefits to the others.

LOWELL NELSON

DON BLEWETT