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ATTORNEY GENERAL OPINION NO. 83- 152

The Honorable Kenneth W. Green
State Representative, Seventy-Fifth District
327 Marmaton Rd.
El Dorado, Kansas 67042

Re: Labor and Industry--Employment Security Law--
Unemployment Compensation; Lock Outs

Synopsis: A lock out is ordinarily a manifestation of a labor dispute, and where such a dispute exists, an employee (otherwise qualified) who is refused work by an employer, through a lock out, is not entitled to unemployment compensation benefits, except as provided in subsection (d) of K.S.A. 1982 Supp. 44-706 (as amended). However, an employee is not disqualified from receiving such benefits where the lock out is a result of arbitrary actions of an employer, which actions are unrelated to a recognized labor dispute. Cited herein: K.S.A. 44-701, 44-702, K.S.A. 1982 Supp. 44-705, 44-706, as amended by L. 1983, chs. 169, 170, K.S.A. 44-819(m).

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Dear Representative Green:

You have requested our opinion as to whether an employee who has been locked out of his employment premises by his employer pursuant to a labor dispute is eligible for unemployment compensation benefits pursuant to K.S.A. 44-701 et seq. While you have not provided the details surrounding the lock out or

the labor dispute, we assume for purposes of this opinion that the lock out occurred during a labor dispute concerning contract negotiations or working conditions and was not the result of the closing the premises because of natural disasters or arbitrary actions by the employer unrelated to a labor dispute.

K.S.A. 44-701 et seq. was enacted to provide unemployment compensation for those employees who are involuntary unemployed through no fault of their own. K.S.A. 44-702. See, e.g., Goodyear Tire and Rubber Company v. Employment Security Board of Review, 205 Kan. 279 (1970). Generally, all eligible unemployed persons can receive benefits if they have met the eligibility conditions of K.S.A. 1982 Supp. 44-705. However, there are several exceptions to this general rule which make unemployed persons ineligible for benefits. The relevant exception appears at K.S.A. 1982 Supp. 44-706, as amended, and reads in pertinent part as follows:

"An individual shall be disqualified for benefits:

. . . .

"(d) For any week with respect to which the secretary of human resources, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment, or other premises at which the individual is or was last employed, except that this subsection shall not apply if it is shown to the satisfaction of the secretary of human resources, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual 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. . . ." (Emphasis added.)

Your particular question concerns whether a lock out produces a "stoppage of work" resulting from a "labor dispute" within the meaning of the above quoted section. Although the Employment Security Act does not specifically define the term lock out in terms of a labor dispute, K.S.A. 44-819(m) does define lock out as "action taken by the employer to provoke interruptions of or prevent the continuity of work normally, and usually performed by the employees for the purpose of coercing the employees into relinquishing rights guaranteed by this act."

Further, the Kansas Supreme Court, by way of dicta, has observed on this subject, as follows:

"While this court has not determined whether a 'lock out' is a 'labor dispute', the great weight of authority in other jurisdictions is that a 'lock out' is one form in which a labor dispute may be manifested. (Citations omitted). Consistent with that general rule of law, the board [Employment Security Board] has promulgated Kansas Administrative Regulation 50-3-1(d) which explicitly recognizes a lock out as a form of labor dispute." Barnes v. Employment Security Board of Review, 210 Kan. 664, 675 (1972).

The above-quoted dicta from the Barnes case does not, in our judgment, imply that a lock out is always indicative of a labor dispute. In cases where a lock out is a result of arbitrary actions of an employer, unrelated to any legitimate labor dispute, it is our opinion that an employee is not disqualified from receiving unemployment benefits under K.S.A. 1982 Supp. 44-706, as amended by L. 1983, ch. 170, §2.

Since eligibility for unemployment benefits (for unemployment resulting from a lock out) depends, in part, upon the existence of a labor dispute, it is necessary to consider the nature of such a dispute. In Gorecki v. State, 335 A.2d 647, 648 (1975), the Supreme Court of New Hampshire observed that a labor dispute is generally held to encompass

"'a situation involving any controversy concerning wages, hours, working conditions,

or broadly speaking, 'any controversy arising out of the respective interest of employer and employee. . . .'" (Citations omitted.)

. . . .

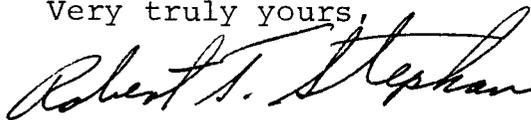
"Such unemployment if caused by the labor dispute is generally considered voluntary and not within the purpose of an unemployment compensation act intended to provide some measure of relief against involuntary unemployment."

Finally, we note the Kansas Supreme Courts' comments in Barnes, supra:

"[I]n considering eligibility for unemployment compensation where the employment was terminated initially by a labor dispute, we have held that the plaintiff has the burden of proving that his continued unemployment is not the result of a labor dispute, but is caused by some conditions beyond his control." Id. at 676. See also, Pickmen v. Weltner, 191 Kan. 543 (1963).

In summary, an individual who is unemployed due to a stoppage of work which exists because of a labor dispute is, except as provided in subsection (d) of K.S.A. 1982 Supp. 44-706 (as amended), disqualified from receiving unemployment compensation benefits. Also, a lock out is ordinarily a manifestation of a labor dispute, and where such a dispute exists, an employee (otherwise qualified) who is refused work by an employer, through a lock out, is not entitled to unemployment compensation benefits. However, an employee is not disqualified from receiving such benefits where the lock out is a result of arbitrary actions of an employer, which actions are unrelated to any legitimate labor dispute.

Very truly yours,



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