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Unemployment Compensation Benefits—Eligibility—Refusal to Accept "New Work"

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The doctrine of the inchoate and general lien works hardship upon lien claimants. Many commentators believe that it should be removed by legislation as to both sections. In only one case, *United States v. New Britain*, 347 U.S. 81 (1954), has the Court held a lien to be specific and perfected. Kennedy, *supra* at 927. Comparing the *New Britain* case with the *Security Bank* case, *supra*, the impression is received that the standards of specificity and perfection are more easily met by a competing lien under section 3670 than under section 3466. *Id.* at 929. Amendment to alleviate the hardship upon lien claimants seems desirable. It might well be of the following tenor: the lien created by this section shall have the same rank and priority as a corresponding state lien has, provided that it shall have priority over and immediately before the corresponding state lien. This would prevent the very general defeat of the security of lien claimants occasioned by the doctrine as currently developed while discouraging any shaping of law by state courts or legislatures in behalf of residents as against the federal government through the consequences which would ensue for the state's own claims.

C. W. G.

UNEMPLOYMENT COMPENSATION BENEFITS—ELIGIBILITY—REFUSAL TO ACCEPT “NEW WORK”.—Claimants sought unemployment benefits for a period in which a general work stoppage, resulting from a labor dispute, occurred in the coal mining industry. Claimants were coal miners with experience in that occupation who either quit or were separated from their employment prior to the general work stoppage. There was work available during this period at claimants' former places of employment, but each claimant stated that he would not have accepted a job there. Each was a member of the United Mine Workers of America. Held, that the work which each claimant "refused to accept" was "new work" and that claimants were not disqualified for benefits since their unemployment was not due to a stoppage of work resulting from a labor dispute. *Davis v. Hix*, 84 S.E.2d 404 (W. Va. 1954).

The controversy in this case resolved itself mainly into two points. First, were the claimants "available" for full time work during the period in question, and second, were they disqualified because of "participation" in a labor dispute which caused the work stoppage?
W. VA. CODE c. 21A, art. 6, § 1 (Michie, 1949), provides for eligibility for unemployment benefits if the claimant is found to be "available" for work for which he is fitted by prior training and experience. It has generally been held that an employee engaged in a strike is not available for work within the meaning of unemployment compensation statutes. *Tucker v. American Smelting & Refining Co.*, 189 Md. 250, 55 A.2d 692 (1947); *Muncie Foundry Div. of Borg-Warner Corp. v. Review Board*, 114 Ind. App. 475, 51 N.E.2d 891 (1944); *Board of Review v. Mid-Continent Petroleum Corp.*, 193 Okla. 36, 141 P.2d 69 (1943).

But the West Virginia statute further provides in section 6, as do statutes in many other states, that no work is suitable and benefits shall not be denied for failure to accept "new work" if the position is vacant due directly to a labor dispute. Where a claimant refuses to accept work vacant for such reason, he is still "available" for work by reason of the legislative fiat that such work is not suitable. *Buckeye Coal Co. v. Unemployment Compensation Board of Review*, 161 Pa. Super. 594, 56 A.2d 393 (1948) (work offered by employer, whose men including claimant had ceased working because of a labor dispute; claimant not disqualified for benefits by refusal to take such work after four-week-disqualification period had ended). Although the words of the statute seem clear enough, this is the only case found which rules as to its effect. See *Bergen Point Iron Works v. Board of Review of Unemployment Compensation Comm'n*, 137 N.J.L. 685, 61 A.2d 267 (1948), and *Miners in General Group v. Hix*, 123 W. Va. 637, 17 S.E.2d 810 (1941), which contained dicta ascribing to this type of statute the same effect as the court in the instant case has given it. In *Sakrison v. Pierce*, 66 Ariz. 162, 185 P.2d 528 (1947), a similar dictum is to be found.

In order for a claimant to be qualified, the work must not only be vacant for the above stated reason but it must also be "new work". No cases were found which disposed of the problem of what is "new work". The term is capable of different interpretations when being used as a criterion for determining an unemployed person's duty to accept—or right to refuse—a vacant job. It could mean work contrasting wholly in character with former work, that is, of a new type as compared to one's former job; it could refer to work distinguished from the former job only in chronological sequence of time; the term could be said to mean any work other than that offered by a former employer; or it could mean any work which might be offered an unemployed person. The court held that the term did not refer solely to work of a completely new type in
a different industry than the one in which the individual had theretofore been employed, but that it meant any work which may be offered to an individual who has no employment relationship with any employer. The court reasoned that to adopt a more restricted meaning would frustrate the remedial purpose of the statute in that it would make section 6 inapplicable unless the job vacant due to a labor dispute was in a wholly different industry from that of a claimant's usual and customary employment and would thus greatly restrict the beneficial operation of the entire unemployment compensation statute.

An applicant for benefits is disqualified under section 4 of the statute if his unemployment is due to a stoppage of work because of a labor dispute unless he was not "participating, financing, or directly interested" in such dispute and was not a "member of a grade or class of workers who were". In a prior case wherein the claimants were employed up to the date of the beginning of the work stoppage, the court had said, "If they [claimants] can satisfy the director that they were not involved in any of the manners specified in the act, then their ineligibility is removed. . . . The burden plainly is placed upon the claimant by the showing that the work stoppage exists because of a labor dispute." *Copen v. Hix*, 130 W. Va. 343, 349, 43 S.E.2d 382, 385 (1947). Noting that the record in the present case contained no evidence showing that claimants were "participating", the court held that because of the fact that the employer-employee relationship had been totally severed prior to the date of the beginning of the work stoppage, the presumption of fault set forth in the *Copen* case was not here applicable.

To disqualify a claimant under section 4, whether through his own "participation" or through membership in a "participating" grade or class, his unemployment must have been "caused by" or "sustained in consequence of" the work stoppage and that work stoppage must exist because of a labor dispute. Claimants' unemployment in the present case was not "caused by" the work stoppage, for it began long before such stoppage and there was no labor dispute between them and their former employers. An employer-employee relationship must exist before there can be a labor dispute between individuals and their employers. *Thomas v. California Employment Stabilization Comm'n*, 39 Cal.2d 505, 247 P.2d 561 (1952) (mill employees entitled to benefits after their employment was terminated because employer had to close mill due to strike of logging employees). The opposite view is expressed,
but only by dictum, in *Milne Chair Co. v. Hake*, 190 Tenn. 395, 230 S.W.2d 393 (1950), and in *Block Coal & Coke Co. v. United Mine Workers of America*, 177 Tenn. 247, 148 S.W.2d 364 (1941). The *Thomas* case, *supra*, appears to be the only actual prior holding on this point.

Having thus determined that no dispute existed between claimants and their former employers and that claimants' unemployment was not due to any work stoppage caused by a labor dispute, the court ruled that mere mutual membership in the same trade union with the workers who were involved in a dispute could not disqualify the claimants. The court reasoned that to hold otherwise would be to automatically disqualify all union members—no matter what the reasons for their unemployment—so long as a strike by workers of the same union caused jobs to be available which claimants stated that they would not accept.

B. F. D.

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**United States—Federal Enclaves—Residents as State Citizens.**—Relators sought to strike *D's* name from voters' records and ballot as mayoral candidate of South Charleston. *D* resided on the United States Naval Reservation in South Charleston, a tract purchased from the state but was not a federal employee. Relators asserted *D* was not a state citizen and could not become a candidate for office. *Held*, mandamus denied. West Virginia retains concurrent jurisdiction with the federal government and the state's sovereignty extends to those purposes which do not interfere with federal use of the property. The purposes for which the federal government acquired the land have no relation to the right of state citizens residing thereon to vote. *Adams v. Londeree*, 83 S.E.2d 127 (W. Va. 1954).

The case presents a clash of principle with precedent as to the effect of the federal-state relationship on residents of federal enclaves. *U.S. Const.* Art. 1, § 8, clause 17, gives Congress the power to "exercise exclusive legislation" over areas ceded to the United States by the states. Older authority was explicit that "exclusive legislation" meant wholly "exclusive jurisdiction" in the absence of an express reservation by the state. *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525 (1885); *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930) (state could not tax personal property thereon); *Lowe v. Lowe*, 150 Md. 592, 133 Atl. 729 (1926) (residents not entitled