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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Gayln L. Olson, Bradley L. Nelson, and Rebecca L. Harstad,, et al.	
Appellants,	**Supreme Court No. 20120250**
vs.	
Job Service of North Dakota and American Crystal Sugar Company,	
Appellees.	

REPLY BRIEF OF APPELLANTS

APPEAL FROM MEMORANDUM OPINION AND ORDER DATED MARCH 26, 2012, AFFIRMING DECISION OF JOB SERVICE NORTH DAKOTA AND JUDGMENT DATED APRIL 2, 2012, TRAILL COUNTY DISTRICT COURT EAST CENTRAL JUDICIAL DISTRICT THE HONORABLE STEVEN L. MARQUART

Daniel E. Phillips ID #05092
SOLBERG STEWART MILLER
P.O. Box 1897
1129 Fifth Avenue South
Fargo, ND 58107-1897
Phone: (701) 237-3166
Fax: (701) 237-4627

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

Para No.

TABLE OF AUTHORITIES

CASES **Para No.**

STATUTES AND REGULATIONS

LAW AND ARGUMENT

I. Job Service Is not Being "Neutral" By Denying Crystal Sugar's Locked Out Employees Unemployment Insurance Benefits But, Instead, Job Service Is Acting On The Side Of The Employer In This Labor Dispute.

1 Both Job Service of North Dakota ("Job Service") and American Crystal Sugar Company ("Crystal Sugar") argue that unemployment insurance ("UI") for the employees locked out from their jobs at Crystal Sugar **MUST** be denied so the State can remain "neutral." (Job Service Brief, pp. 5-6; Crystal Sugar Brief, ¶¶ 20-22). Indeed, Crystal Sugar raises this supposed "neutrality" in a labor dispute to the level of "ND Public Policy." (Crystal Sugar Brief, ¶ 22). This is inaccurate.

2 There is not a single reference in Unemployment Compensation Act (N.D.C.C. Title 52) to applying provisions therein in a "neutral manner" in a labor dispute. Conversely, the "Declaration of Public Policy" for application of the entire Act is specifically set out in N.D.C.C. § 52-01-05. Application of this "public policy" for the Act was previously discussed in Appellants' Brief (Part VI, ¶¶ 52-56) and will not be repeated. The "balance" of the interests of the unemployed worker and the employer was discussed by this Court in Newland v. Job Serv., 460 N.W.2d 118, 121; 2 A.L.R.5th 1112 (N.D. 1990) where the Court observed that as remedial legislation, the "balance should be struck in favor of the employee." N.D.C.C. § 52-06-02(4) is the provision within the Act concerning application of the Act in a "labor dispute" and there is no reference to "neutrality in a labor dispute." To accept Job Service's and Crystal Sugar's argument that the only way for Job Service to remain neutral is to deny benefits for workers when it is Crystal Sugar that has withheld those workers' employment would most certainly strike the balance in favor of the employer.

3 Being "neutral" in a labor dispute is most certainly from whose perspective one looks – employer versus worker. In N.D.C.C. § 52-06-02(4), the Legislature has clearly attempted to "balance" the interests of employer and worker in a labor dispute. As argued throughout Appellants' Brief previously filed, it is apparent that the Legislature has struck that balance for Job Service to only deny benefits when "...unemployment is due to a strike, sympathy strike, or a **claimant's** work stoppage dispute of any kind which exists because of a labor dispute...." Again, possessive to when the **claimant** is the cause of the work stoppage in a labor dispute. It is the ownership of the decision to create the work stoppage that the North Dakota Legislature determined to be the key for denial of UI benefits in the case of a labor dispute which, of course, is consistent with a determination of "voluntariness" of the lack of employment utilized throughout the Act.

4 It is beyond dispute that when workers are unemployed, entire families suffer and struggle to meet even the most basic needs like food and shelter. Communities suffer as well, as local economies lose out due to the slump in purchasing power. Public programs like welfare, Medicaid, assistance programs, and both public and private programs like food pantries and charity programs are stressed. These factors create a strong public purpose for the UI program to pay the benefits to which the locked out workers are otherwise clearly entitled.

5 Indeed, in New York Telephone v. New York State Department of Labor, 440 U.S. 519 (1979), the plurality Court ruled against New York Telephone's contention that paying UI benefits amounted to state interference in a long and costly labor dispute and was, therefore, preempted by federal law. The Court's opinion in the case made three key points.

First, the Court rejected the claim that the payment of UI benefits to striking workers amounts to the kind of state regulation of labor-management relations that would be preempted by the National Labor Relations Act ("NLRA") (29 USCS § 151 et seq.). It found instead that unemployment laws were of general applicability and were for the purpose of minimizing economic insecurity. Second, the Court pointed to the Legislative history of both the Social Security Act ("SSA") (26 USCS § 3301 et seq., 42 USCS § 501 et seq. and 1101 et seq.) and the NLRA. Both acts were passed in 1935, and the issue of the payment of UI benefits in labor disputes had surfaced in several existing state unemployment programs prior to the SSA. Congress could have prevented the payment of unemployment benefits in labor disputes – and did indeed set up several federal exclusions in other circumstances – but chose not to address labor dispute in the SSA. Third, the Court reaffirmed the broad latitude of states in setting the contours of its UI program.

6 What is most pertinent in the New York Telephone decision is that the Court reviewed whether New York paying UI benefits to strikers – which North Dakota law obviously denies UI benefits to strikers – does not mean that a state is being non-neutral in a labor dispute and totally within the State's purview to make such a determination. So, Job Service's and Crystal Sugar's argument that North Dakota paying UI benefits to locked out workers would be non-neutral is clearly wrong and must be rejected.

CONCLUSION

7 Plainly reading and applying North Dakota law to this situation where the claimants are involuntarily locked out from their employment can only lead to the conclusion that the claimants so locked out must receive UI benefits. In North Dakota, the unemployment

statutes are remedial in nature and must be interpreted liberally to pursue the public policy of those statutes as enunciated by the Legislature of this State and interpreted in favor of the unemployed workers. Interpreting the statutes to require Job Service to pay UI benefits to locked out workers from which Crystal Sugar has withheld employment does not make the State non-neutral in a labor dispute.

Respectfully submitted this 17th day of August, 2012.

SOLBERG STEWART MILLER, LTD.
Attorneys for Appellants

By: _____

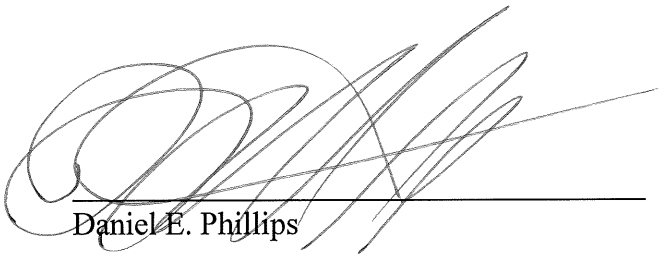
Daniel E. Phillips (ND #05092)
1129 Fifth Avenue South
P.O. Box 1897
Fargo, ND 58107-1897
Phone: 701-237-3166
Fax: 701-237-4627

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2012, I emailed a true and correct copy of the **REPLY BRIEF OF APPELLANTS** to the following:

Michael Pitcher
Assistant Attorney General
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
mtpitcher@nd.gov

Paul Zech
Attorney at Law
220 South Sixth Street, Suite 2200
Minneapolis, MN 55402-4504
PZech@Felhaber.com



Daniel E. Phillips