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1 GENERAL

Law: AS 23.20.383

(a) An insured worker is disqualified for waiting-week credit or benefits for a week of the insured worker's unemployment if, for that week, the department finds the insured worker's unemployment is due to a stoppage of work caused by a labor dispute at the immediate establishment or other premises at which the insured worker is or was last employed. For the purposes of this section, each separate department of the same premises which is commonly conducted as a separate business in separate premises is considered a separate establishment or other premises.

(b) This section does not apply if the department finds that

(1) the insured worker was not participating in or directly interested in the labor dispute that caused the insured worker's unemployment, and the insured worker did not belong to a grade or class of workers that, immediately before the commencement of the dispute, had members employed at the premises at which the labor dispute occurred who were participating in or directly interested in the labor dispute; or

(2) the labor dispute is caused by the failure or refusal of the employer to comply with an agreement or contract between the employer and the insured worker, or a state or federal law pertaining to hours, wages, or other conditions of work.

Law: AS 23.20.530(a)

In this chapter, "wages" means all remuneration for service from whatever source, including, but not limited to, insured work, noninsured work, or self-employment; commissions, bonuses, back pay and the cash value of all remuneration in a medium other than cash shall be treated as wages; gratuities customarily received by an individual in the course of service from persons other than the individual's employing unit may be treated as wages received only to the extent the individual reports the gratuities to the employing unit. . . .

20 CFR Chapter V §653.9 Labor Disputes

(a) State agencies shall make no job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(b) Written notification shall be provided to all applicants referred to jobs not at issue in the labor dispute that a labor dispute exists in the employing establishment and that the job to which the applicant is being referred is not at issue in the dispute.

(c) When a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage, State agencies shall:

(1) Verify the existence of the labor dispute and determine its significance with respect to each vacancy involved in the job order; and

(2) Notify all potentially affected staff concerning the labor dispute.

(d) State agencies shall resume full referral services when they have been notified of, and verified with the employer and the workers' representative(s), that the labor dispute has been terminated.

Adjudications and fact-finding are generally a function of the UI Technical Unit. See the UIPM for a complete description of the duties of the local offices, the call centers and of the tech unit.

The Alaska unemployment compensation law provides generally that persons are disqualified for benefits for any week in which their unemployment is due to a stoppage of work because of a labor dispute at the immediate establishment where they were last working and in which they are directly involved, unless the dispute is caused by the failure of the employer to comply with either the law or the contract.

The term "labor dispute" is nowhere defined in statute or regulation. However in Aragon v. Unemployment Comp. Comm'n, 10 Alaska 236 (1942), the Commission held that the definition of a labor dispute contained in the federal statutes is persuasive of what should be the definition of such a dispute, and not out of line with the general and common acceptance of the meaning of the term. We may consider a labor dispute to be:

* a **disagreement** between an employer and employee(s) over wages, hours, conditions of work, right to representation, or failure to comply with law or contracts regarding these

* resulting in the **employee(s) not working**, either because they leave the job or because the employer does not permit them to work, but

* where the intention on the part of the disputing parties is that the **employer/employee relationship will resume** at the resolution of the dispute.

Note: There does not need to be a union or a contract involved for a labor dispute to exist.

To determine whether or not the statutory disqualification applies:

* Determine if the claimant's unemployment is due to a labor dispute.

* Then determine if there is a substantial stoppage of work at the immediate establishment at which the person is employed.

If there is no substantial stoppage of work at the immediate establishment, the disqualification does not apply.

If there is a substantial stoppage of work at the immediate establishment, continue with the tests below.

* If there is such a stoppage, determine whether the claimant is directly interested in the dispute.

* If the worker is not directly interested, determine whether the claimant is participating in the dispute.

* If the worker is neither directly interested nor participating, determine whether the claimant is of the same grade or class as those workers who were directly interested or participating in the dispute.

  If the claimant is not directly interested in the dispute, not participating in the dispute, **and** not of the same grade or class as the workers who are directly interested or participating, the disqualification does not apply.

  If the claimant is **either** directly interested in the dispute, **or** participating in the dispute, **or** of the same grade or class as the workers who are directly interested or participating, continue with the test below.

* Determine whether the dispute has occurred because the employer has violated provisions of the law or of a contract.

  If the employer has violated provisions of the law or of a contract, the disqualification does not apply.

  If the employer has not violated provisions of the law or of a contract, the disqualification applies.

The purpose of the statute is to require the Agency to be neutral with regard to the dispute, neither to subsidize the workers by paying benefits when the employer's business is affected nor to penalize them while the employer is not detrimentally affected by the dispute. Unless we are looking at a dispute over failure to meet legal or contractual obligations, we do not need to concern ourselves with the reasons for the dispute.

For a discussion of job referrals where there is a labor dispute, see LD 8.

2 DETERMINATION OF THE EXISTENCE

2.1 General

A labor dispute exists when workers are unemployed due to a controversy over wages, hours, conditions of work, right to representation, or failure to comply with law or contracts regarding these. Negotiations or discussion do not constitute a labor dispute. Example:

> In one case, the workers and employer met to discuss a raise in pay. When the employer showed the workers his books, proving that he could not afford the raise, the workers quit, and the employer abandoned the business. There was no controversy, and therefore the labor dispute statutes did not come into play.

2.2 Closing of Plant or Lockout

A lockout occurs when the employer closes the establishment **temporarily**, intending to force the disputants into compliance with the employer's position. No Alaska court has ruled upon the question as to whether a lockout constitutes a labor dispute, but in other states with similar statutes the rulings have universally held this to be the case. The definition of a "labor dispute" in 1 above would also bolster this interpretation. Therefore, whoever initiates the action leading to the stoppage of work, the labor dispute exists. However, if the employer closes the establishment, **not intending to reopen it**, there is no labor dispute from the time of the closure. Example:

> In the case of Retail Clerks 1496 vs. Safeway, after the dispute had come into active progress, the employer closed his bakery. Since there was no longer anything for the bakers to dispute about, from the time of the closure there was no longer a labor dispute regarding the workers employed there.

2.3 Other Action of the Employer

When a worker, not otherwise participating or involved in the dispute, is told by the employer that there is no work available, even though the cause of the unavailability of the work is a labor dispute, the worker is not unemployed due to the labor dispute. Examples:

> The employer told an on-call truck driver that that there was no work for him due to an ongoing labor dispute, in which the claimant was neither a participant nor directly involved. The claimant was unemployed due to a lay-off and not due to the labor dispute. (Rosin, 78H-232LD, 2/22/79)
>
> The employer laid a 17 year old stocker off during a labor dispute to conform with the Alaska Child Labor Law which prohibits work by a child under 18 where there is a strike in progress. His unemployment was due to a layoff to conform with the law, and not the labor dispute *per se*.
> (Galvin, 81H-60LD, 4/30/81)

2.4 Employer/Employee Relationship

A severance of the employer/employee relationship terminates the labor dispute, unless it is protested through legal means. Examples:

> The employer ordered the striking workers to return to work or be terminated. The employees who did not return to work were terminated. The labor dispute was not the cause of the unemployment from the time that the workers were terminated. (81H-168LD, 55 Members of PATCO, 12/24/81)
>
> The union went on strike against the employer. The claimant, in this case, had previously given notice of quitting to the employer for reasons unrelated to the strike. He was disqualified for the period for which he was unemployed due to the labor dispute, but allowed benefits from the time that his notice took effect. (Naranjo, 83H-LD-208, 2/24/84)
>
> In the case of Sprinklers and Fitters 669 vs. Grinnell, however, although the employer fired and replaced the striking workers, the union protested this action through the courts. The labor dispute was not ended until the decision was issued by the court.

There is not necessarily an employer/employee relationship between either the disputant and the employer or between the unemployed workers and the employer. Examples:

> In the case of OCAW 1-367 vs. Unocal, the employer had contract workers, employed by another firm, on the premises where the dispute occurred. Although the contract workers were not employees of the employer against whom the strike was taking place, they were unemployed as a result of the labor dispute.
>
> If Union A is picketing Employer B in order to cause the employer to hire union, rather than non-union members, and the members of Union C refuse to cross the picket line, and so cannot work, the members of Union C are unemployed as a result of a labor dispute, even though the employees of Employer B are not parties to the dispute.

2.41 Employer/Employee Relationship: Last Employed

Although in general, Alaska law concerns itself only with separation from the **last employer**, since in fact it is **not** a separation issue, an ongoing labor dispute will be adjudicated even if the worker had other previous employment. For purposes of labor dispute adjudication in the case of Alin v. Alaska Emp. Sec. Comm'n, 17 Alaska 607 (1958), the Commission held that the proper construction of "last employed" was "last regularly employed." Examples:

> In the case of OCAW vs. Unocal, some union members took leave without pay in order to conduct negotiations with the employer. The union planned to reimburse them for the lost wages, which would make the union the last employer. When the negotiations broke off, the workers were unemployed, as they could not return to Unocal due to the ongoing labor dispute. However, the workers were unemployed due to the labor dispute, as the union was not their last **regular** employer.
>
> In the same dispute, Worker D held two jobs, one with Unocal, and one with Employer E. The job with Employer E ended the day after the beginning of the labor dispute. Since Worker D intended to return to Unocal, it was necessary to adjudicate both the last employment and the labor dispute.
>
> The claimant was on vacation at the time the rig on which he had previously been working was shut down due to a labor dispute. Therefore, he was notified that he was laid off by the employer. Because he was now unemployed due to the labor dispute, and was of the grade and class of workers affected by the dispute, he was denied benefits. (Bradford, 75H-57LD, 9/15/76)

2.42 Employer/Employee Relationship: Other Subsequent Employment

A worker who takes stop-gap employment during an ongoing labor dispute does not terminate the labor dispute disqualification, as long as the worker's intention is to return to the original employer once the labor dispute ends. If the worker takes the job with the intention of permanently severing the relationship with the original employer, the subsequent employment lifts the labor dispute disqualification. The Commission held, in the case of Alin v. Alaska Emp. Sec. Comm'n, 17 Alaska 607 (1958), that the burden of proof is on the claimant to establish eligibility for benefits and to establish that a labor dispute was not the cause of the claimant's continued unemployment. Examples:

> The claimant was unemployed because of a labor dispute and accepted casual temporary stop-gap employment. The Commission held that such temporary employment did not make the new employer the place where he was "last employed." (Alin v. Alaska Emp. Sec. Comm'n, 17 Alaska 607, 1958)
>
> The claimant began picketing his employer when a labor dispute came into being. He then resigned from that employer and took a permanent full-time job from which he was laid off for reasons unrelated to the previous labor dispute. Even though the labor dispute was ongoing, he was not unemployed due to the labor dispute. (Sherburne, 81H-228-LD, 9/29/82)
>
> Worker F, who was disqualified due to a labor dispute, moves to another state where he takes a three-day job as a laborer. When the job ends, although the labor dispute is ongoing, the labor dispute disqualification is lifted, since it is clear that he has severed the relationship with the employer. However, the mere fact of the relocation is not itself enough; the relocation must be shown to be permanent.

3 STOPPAGE OF WORK

3.1 General

In the case of Twenty-Eight Members of Oil Workers Local 1-1978 v. Employment Sec. Div., 659 P.2d 583 (Alaska 1983) the Court held that the phrase "stoppage of work" refers to substantial curtailment of employer operations, not to cessation of work by individual employees. The burden of proof is on the employer to show that a stoppage of work is occurring.

3.2 Substantial Stoppage

In the case of Twenty-Eight Members of Oil Workers Local 1-1978 v. Employment Sec. Div., 659 P.2d 583 (Alaska 1983) the Court held that a "substantial" stoppage of work was a curtailment of the employer's operations of 20-30%. The Court further held that increased costs to the employer are not in themselves determinative of a stoppage of work. They may be persuasive in conjunction with other factors. Also changes in production methodology cause by a labor dispute, such as the transfer of work to outside contractors, may also be considered, although they are not in themselves determinative. In addition, failure to perform maintenance or other ongoing activities is not evidence of substantial work stoppage if the employer's main business purpose is still being carried out. The "traditional" approach is the inability of the employer to meet the demands of its customers. This may be measured by decreased production, decreased business revenue, or decreased service.

Where the employer manufactures a product, it is relatively easy to determine the degree of stoppage. However, even in that case, the employer or the employee's representatives may successfully dispute the calculations upon which the stoppage is determined. Examples:

> In this case 75-80% of the workers refused to work, causing a 60% delay in contract accomplishment. However, the higher priority work continued and the delay did not cause the employer undue effort or expense. There was not a substantial stoppage of work. (Ballow, 87H-LD-332, 2/23/88)
>
> In anticipation of a strike and prior to it, the employer steps up production in order to have supplies on hand to outlast a work stoppage. The stoppage must be measured compared to the normal production, not to the artificially high levels immediately prior to the strike.
>
> The labor dispute occurs at a time when the production would have experienced a marked seasonal upswing. The stoppage must be measured against what is usual for the season, not to the low levels prior to the dispute.

Where the employer provides a service, the degree of stoppage is measured against the degree to which that service is no longer provided to the employer's customers. Examples:

> In the case of Ketchikan Public Utilities, (87H-LD-221, 5/5/88) even though most of the employees were striking, the employer continued to provide full electric services to its customers and to collect full payment from them. There was no stoppage of work.
>
> The employer, a school district, maintained its educational program sufficiently to receive state funding during the dispute. There was no stoppage of work. (Edenshaw, 79H-186LD, 1/18/80)

Where the employer sells goods, the degree of stoppage is measured against the lessening of sales compared to that prior to the dispute. There again the employer or the employee's representative may dispute the calculations on the grounds that the period immediately prior to the strike is not representative of the season generally. Example:

> The employer contended that the office sales were less during the labor dispute. However, the appliance sales, which were not affected by the dispute, were correspondingly also less and the Commissioner therefore held that the labor dispute was not the cause of the stoppage of work. (Christensen, LD-398, 10/29/75)

3.3 At the Immediate Establishment

In order for the statutory disqualification to apply, the labor dispute resulting in the stoppage of work must be at the **immediate establishment** at which the claimant was working at the time of the dispute.

The term "immediate establishment" means the precise discrete location where the worker was employed or to which the worker reported for assignment. Examples:

> In the case of IBEW 1547 vs. Chugach Electric, in addition to the main plant, the employer had sites in several malls staffed by customer service representatives. Each of those sites was a separate establishment for purposes of the labor dispute.
>
> The employer in this case had several different work sites where employees reported directly to their place of work. At each site where the work had stopped, there was a stoppage of work, although the majority of the total employees were still working. (Britschgi and Olmstead, 9428112, 9/6/94)
>
> Employer G has a restaurant. On the premises is a gift shop under separate management. The restaurant and gift shop are two separate establishments, even though they are under the same roof, because they are independent of each other. The restaurant workers engage in a dispute that causes the gift shop to lose business. Nevertheless, the gift shop workers are separately adjudicated.

3.31 At the Immediate Establishment: Where the Worker is Employed

The establishment where the worker is employed is the site to which the worker reports for assignment. Examples:

> In the case of OCAW 1-369 vs. Unocal, the employer had six separate plants at the same facility, plus a maintenance site to which maintenance workers reported daily for assignment. Since the workers reported daily to the maintenance site, it was regarded as a separate establishment for the purposes of adjudicating the dispute. On the other hand, if the maintenance employees had reported directly to one of the plants, that would have been considered their work site.

4 DIRECTLY INTERESTED IN THE DISPUTE

A worker is directly interested in the dispute if the results of the dispute will **necessarily** involve the worker's wages, hours, or working conditions. Whether or not the worker is personally concerned or not is immaterial. If the worker is involved and of the grade or class of workers so affected, it does not matter whether or not the worker is actively participating; **the worker is subject to disqualification**. Examples:

> The claimant was working on a permit from the union involved in the labor dispute. The Commissioner held that he was therefore directly interested in the labor dispute and subject to disqualification. (Fritz III, LD-173, 1/29/70)
>
> The claimant voted against the strike. Nevertheless, because he was a member of the disputing union, and of the grade and class of workers involved, he was subject to disqualification under the statute. (Novak, 8H-39LD, 9/29/78)
>
> Worker H is a member of Union J, whose contract with the employer states that its wages are dependent upon the wages paid to Union K. When Union K goes on strike, Worker H is a beneficiary, subject to disqualification under the statute.
>
> Worker L is not a union member. The employer has always in the past adjusted the salaries and hours of the non-union members to correspond to those of the members, but is not required to do so. Because the employer is under no compulsion to continue this practice, if there is a labor dispute involving wages and hours, Worker L is not a beneficiary **under the statute** and so is not subject to disqualification for this reason.

5 PARTICIPATING IN THE DISPUTE

5.1 General

A worker is participating in the dispute if the worker is **actively** and **directly** furthering the dispute. Commissioner decisions have held that a worker who belongs to a striking union does not by the mere act of belonging nor by the payment of dues to the union participate in a dispute.

5.2 Refusal to Cross a Picket Line

A worker who refuses to cross a picket line in order to work is actively furthering the dispute, by adding the weight of this failure to report to work to that of the striking workers. However, a conviction that it is wrong to cross the picket line is not enough; there must have been work available for the worker had the picket line been crossed. Only if the worker can show that crossing the picket line was inherently physically dangerous can a disqualification be avoided. Courts have held that the fear must be real and substantial, not nebulous. Examples:

> The claimant refused to cross a picket line where the striking workers had refused to allow members of other unions into the plant to assist in its orderly shutdown. In addition, the striking workers had gathered in a near-by tavern and were available to prevent persons from crossing the picket line. The Commissioner held that the claimant had a real fear for his personal safety which gave him good reason not to cross the picket line. (Dix, LD-359, 5/11/73)
>
> On the other hand, the claimant refused to cross a picket line because he felt that to do so would jeopardize his employment future where he lived. No threats were made to him concerning what might happen, and the picket line was peaceful. Benefits were denied. (Frank, 76H-213LD, 12/21/76)

6 MEMBER OF THE SAME GRADE OR CLASS

The question of whether a worker is of the same grade or class comes up rarely, as ordinarily all members of the same grade or class will benefit from the results of a labor dispute. However, there are cases where the dispute concerns one or more members of a grade or class, but not the whole bargaining unit. In that case, the determination of grade and class may need to be made.

A worker is of the same grade as another if they are in the same pay scale. They are of the same class if both follow the same precise occupation. Membership in the same union does not in and of itself constitute membership in the same grade or class. On the other hand, non-membership proves that the two members are not of the same grade or class. Generally, workers who perform substantially the same kind of work are members of the same grade or class. Example:

> The claimant was not one of the workers directly affected by the labor dispute. But he was, by his own unrebutted testimony, a member of the same grade and class as one of the workers whose benefits were affected by the dispute. He was disqualified. (Chapin, Sr., LD-397, 10/21/75)

7 FAILURE OF EMPLOYER TO CONFORM TO LAW OR CONTRACT

7.1 General

A labor dispute disqualification does not apply if the dispute is caused by the failure or refusal of the employer to conform to State or Federal law or to the contract between the employer and the workers. The burden of proof is upon the claimant to show that the violation is actual and not merely alleged.

7.2 Failure of Employer to Conform to Law

A labor dispute disqualification does not apply if the dispute is caused by the failure or refusal of the employer to conform to State or Federal law regarding hours, wages, or conditions of work.

7.3 Failure of Employer to Conform to Contract

A labor dispute disqualification does not apply if the dispute is caused by the failure or refusal of the employer to conform to the contract between the employer and the workers. Note that this does **not** mean the lack of a contract, but rather the failure of the employer to conform to one already in existence. Example:

> In this case, the finding of the National Labor Relations Board was that the employer had unilaterally changed the contract. Although the worker was unemployed due to the labor dispute, was participating, and was of the grade or class of workers involved, the employer's failure to conform to the contract caused benefits to be allowed. (Pitcher *et alii*, 75H-44, 8/24/76)

8 JOB REFERRALS

8.1 General

The Federal statute states that, "State agencies shall make no job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage."

8.2 Direct Aid

If workers are striking or locked out, the employer may choose to fill their positions with other workers. As a State agency, we are forbidden by Federal law from taking job orders from the employer that will enable this process. Example:

> An employer's electrical workers go on strike, and the employer plans to replace them with other electrical workers. The Agency may not take orders for these positions, and must place on hold any such job orders for this employer already on file.

8.3 Indirect Aid

Not only must the Agency not refer to any job which directly fills a position made vacant by a worker who is striking or locked out due to a labor dispute, the Agency may not assist indirectly in filling these positions. Examples:

> An employer whose clerical workers are on strike goes to a temporary employment service to secure replacement workers. The temporary service, in turn, comes to the local office for referrals for the position. The Agency must refuse to refer any workers to the temporary service who will be sent to the work site of the striking workers, although the Agency may continue to make other referrals to the temporary service.
>
> In the case of IBEW vs. Chilkat Electrical Construction, Inc., the employer wanted to hire new security guards in order to allow his replacement workers to cross picket lines to enter his premises without molestation. The Division determined that these guards indirectly assisted in filling the positions made vacant by the striking workers, and therefore the positions could not be filled. On the other hand, if the employer had employed security guards immediately previous to the dispute, the positions could have been filled, although not augmented.

8.4 Filling a Position at Issue

In some cases a labor dispute may occur because the employer wishes to fill a position which is at the time of the dispute empty with a non-union person, as opposed to requiring union membership. The Agency may not take job orders for such positions, and must place on hold any that are in existence for such positions. Example:

> A hospital wishes to hire a nurses' aide to fill a new position. The nurses' union strikes because it believes that the position should be filled by a nurse. No referrals may be made for the nurse's aide position, or of course for the striking nurses.

8.5 Written Notification

Not only may no referrals be made to any position vacant because of a labor dispute, no referral may be made to any other position at the site of a labor dispute without informing the prospective referral in writing that such a dispute exists, but that the position to which the person is being referred is not vacant as a result of the dispute.

8.6 Resumption of Full Referral Services

When the labor dispute has ended in the view of both the employer and the employees' representative, full service may be resumed for the employer. In some cases, this may be a lengthy process, where the union and the employer are appealing issues through the courts. However, until the process is complete, the Agency may not fill any positions at issue.

9 STRIKE BENEFITS

Unions sometimes pay striking workers benefits while the workers are on strike.

1. If the workers receive these benefits without obligation on their part, other than union membership and affected employment, the benefits are not wages.

2. If, as condition for receipt of the benefits, the workers are required to perform picket line or other duties:

   a. These benefits are wages if the amount of the benefits is directly related to the hours of work performed.

   b. These benefits are not wages if the amount of the benefits is not related to the hours of work performed.

   Examples:

   In the case of Teamsters vs. UPS, the local branch of the union paid the striking workers strike benefits. A condition for receipt of the benefits was the performance of picket duty, but there was no requirement as to the amount of picket duty. The benefits were not wages.

   Hotel and Restaurant Employees & Bartenders Local 879 (81T- 41, 11/05/81) paid persons, striking workers and others, to picket. The money paid for picketing was wages.

NOTES TO DECISIONS

Construction of labor dispute disqualification in light of AS 23.20.010. - See Twenty-Eight (28) Members of Oil Workers Local 1-1978 v. Employment Sec. Div., 659 P.2d 583 (Alaska 1983).

Collateral references

Construction and application of provisions of unemployment compensation or social security acts regarding disqualification for benefits because of labor disputes or strikes. 28 ALR2d 287; 60 ALR3d 11; 61 ALR3d 693; 61 ALR3d 746; 62 ALR3d 314; 62 ALR3d 380; 62 ALR3d 437; 63 ALR3d 88.

Termination of employment as a result of union action or pursuant to union contract as "voluntary." 90 ALR2d 835.

Construction of phrase "establishment" or "factory, establishment or other premises" within unemployment compensation statute rendering employee ineligible during labor dispute or strike at such location. 60 ALR3d 11.

Construction of phrase "stoppage of work" in statutory provision denying unemployment compensation benefits during stoppage resulting from labor dispute. 61 ALR3d 693.

Eligibility of participants in sympathy strike or slow down. 61 ALR3d 746.

Labor dispute disqualification as applicable to striking employee who is laid off subsequent employment during strike period. 61 ALR3d 766.

What constitutes participation or direct interest in, or financing of, labor dispute or strike within disqualification provisions of unemployment compensation acts. 62 ALR3d 314.

Refusal of nonstriking employee to cross picket line as justifying denial of unemployment compensation benefits. 62 ALR3d 380.

Application of labor dispute disqualification for benefits to locked out employee. 62 ALR3d 437.

General principles pertaining to statutory disqualification for unemployment compensation benefits because of strike or labor dispute. 63 ALR3d 88.

Section 156. Appeals Involving a Labor Dispute.

(a) If the payment or denial of benefits depends on whether a claimant's unemployment is due to a stoppage of work because of a labor dispute, the

monetary or nonmonetary determination shall be made by the assistant director, unemployment insurance.

(b) An appeal under this section must be filed with the commissioner in accordance with 8 AAC 85.151.

(c) After the commissioner is notified that an appeal has been filed, he or she will appoint a referee to conduct a hearing on the appeal as provided in 8 AAC 85.153. After the hearing, the referee shall prepare a proposed written decision stating findings of fact and the reasons for the proposed decision. The proposed decision, along with the hearing record, must be sent to the commissioner with all pertinent agency records.

(d) The commissioner will consider all evidence contained in the record and the referee's proposed decision, and will decide the appeal. The commissioner will, in his or her discretion, direct the referee to take additional evidence, or hear the evidence himself as provided in 8 AAC 85.153.

(e) A decision of the commissioner under this section will be issued in accordance with 8 AAC 85.155(e).

Eff. 11/7/80, Register 76; am 3/24/85, Register 93.