UNEMPLOYMENT COMPENSATION AND THE
"STOPPAGE OF WORK" CONCEPT — ABANDONING
STATE NEUTRALITY BY REQUIRING THE
EMPLOYER TO REPLACE STRIKERS OR RESUME
OPERATIONS DURING A LABOR DISPUTE:
IBP v. AANENSON

INTRODUCTION

Commentators have insisted that a delicate balance exists be-
tween a state's interest in "compensating unemployed workers and
the state and federal policies requiring state neutrality in the collective bargaining process between labor and management." The de-
nial or award of unemployment benefits during a labor dispute can greatly affect the balance of power between employer and employee. The receipt of benefits during a strike lessens the workers' economic incentives to compromise. Employers tend to accede to workers' de-
mands because the award of benefits increases unemployment insurance rates. In recognition of this effect, each state has incorporated in its unemployment statutes labor disqualification provisions which deny unemployment benefits to those workers whose unemployment was brought about by a labor dispute.

The labor dispute disqualification provisions have caused much controversy throughout the United States. A striker's eligibility for unemployment compensation benefits depends upon the language of the labor dispute disqualification provision. In Nebraska, a worker at whose place of employment a labor dispute has occurred which has caused a stoppage of work and who becomes unemployed thereby, is disqualified from receiving benefits for the duration of the work stop-

3. Id. at 737.
4. Id.
5. Whitehead, 19 WILLAMETTE L. REV. at 738. See infra notes 81-86 and accompanying text.
This two-part disqualification provision requires (1) that the claimant's unemployment have been caused by a stoppage of work, and (2) that the stoppage of work have been caused by the labor dispute.

In *IBP v. Aanenson*, the Nebraska Supreme Court addressed the issue of whether a stoppage of work was caused by a concurrent labor dispute. Finding that the strike was the original cause of the work stoppage, and that both the strike and the work stoppage continued during the period that the strikers claimed benefits, the court, nevertheless, held that the striking employees were entitled to unemployment compensation. Although the court found that Iowa Beef Packers, Inc. ("IBP") had not resumed substantially normal production during the strike, the court concluded that the work stoppage was in fact caused by IBP, reasoning that a stoppage of work due to a labor dispute continues only until the employer has had a reasonable amount of time to resume normal operations.

This Note reviews the construction and interpretation of the phrase "stoppage of work due to a labor dispute" as used in the disqualification provisions of unemployment compensation statutes. This Note also examines the application and interpretation of the generally accepted rule that a stoppage of work and the resultant disqualification for unemployment benefits may continue until the employer has had a reasonable time to resume normal operations. The original purposes of the unemployment compensation statutes are also discussed. Finally, this Note demonstrates that the court's decision in *IBP* is inconsistent with the purposes of the unemployment security law.

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11. Id. at 610-19, 452 N.W.2d at 64-69.
12. Id. at 616, 452 N.W.2d at 67.
13. Id. at 616-18, 452 N.W.2d at 67-68.
14. Id. at 618-19, 452 N.W.2d at 69.
15. Id. at 618, 452 N.W.2d at 68.
16. Id. at 618-19, 452 N.W.2d at 68-69. The Nebraska Supreme Court found that IBP had only resumed sixty-one percent of the previous year's production. The court estimated that seventy percent of average weekly production would have been reached by May 9, 1987. Id. at 618, 452 N.W.2d at 69.
17. See infra notes 85-193, 229-54 and accompanying text.
18. See infra notes 110-27, 208-10 and accompanying text.
19. See infra notes 229-49 and accompanying text.
20. See infra notes 222-27, 229-54 and accompanying text.
FACTS AND HOLDING

In the fall of 1986, negotiations were underway for a new collective bargaining agreement between Iowa Beef Packers, Inc. ("IBP") and the employees' bargaining unit, United Food and Commercial Workers International Union, Local 222.\(^{21}\) Negotiations for a new agreement reached a standstill, and on December 13, 1986, the parties were without an agreement when the contract expired.\(^{22}\) On that same day, IBP made an offer which the union members rejected.\(^{23}\) The union made a counter offer to continue working under the provisions of the former contract.\(^{24}\) IBP rejected the counter offer and locked out the Dakota City, Nebraska plant employees on December 14, 1986.\(^{25}\)

In January 1987, IBP renewed its earlier offer to the union, but the offer was again rejected by the union members.\(^{26}\) Finally on March 13, 1987, IBP lifted the lockout and extended an offer which permitted the employees to return to work at the terms of IBP's January offer.\(^{27}\) Refusing to return to work, the union members voted to strike.\(^{28}\) The strike began March 16, 1987\(^{29}\) and ended on July 26, 1987.\(^{30}\)

David Aanenson and 2037 other lockout claimants sought unemployment compensation benefits from December 14, 1986, through March 14, 1987, the period in which they were locked out of the Dakota City plant.\(^{31}\) In a separate proceeding, Ann Zoukis and 2037 other striking claimants sought unemployment compensation benefits for March 16 through July 26, 1987, the period of the strike.\(^{32}\) The Nebraska Commissioner of Labor denied the lockout claimants' applications for benefits, citing the Nebraska labor dispute disqualification statute, section 48-628(d), which disqualifies an individual from receiving benefits:

\(^{22}\) Id. at 607, 452 N.W.2d at 63. IBP indicated that it would not extend the existing contract if a new contract was not agreed upon before the existing contract expired. Id.
\(^{23}\) Id.
\(^{24}\) Id.
\(^{25}\) Id. at 607, 452 N.W.2d at 63. In addition to the Dakota City facility, IBP operates and owns nine other beef processing plants located in Texas, Washington, Nebraska, Minnesota, Kansas, Idaho, Iowa, and Illinois. All of the claimants were hourly employees of the Dakota City plant. Id. at 605, 452 N.W.2d at 61.
\(^{26}\) Id. at 608, 452 N.W.2d at 63.
\(^{27}\) Id. at 608, 452 N.W.2d at 63.
\(^{28}\) Id. at 608, 452 N.W.2d at 63.
\(^{29}\) Id.
\(^{30}\) Id. at 613, 452 N.W.2d at 66.
\(^{31}\) Id. at 604, 452 N.W.2d at 61.
\(^{32}\) Id. at 605, 452 N.W.2d at 61.
[f]or any week with respect to which the commissioner finds that his or her total 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 or she is or was last employed. 33

The commissioner held that the lockout and strike were labor disputes within the meaning of the section and determined with respect to the Aanenson lockout claimants that there was a stoppage of work caused by the labor dispute. 34 Thus, the lockout claimants were disqualified from receiving benefits. 35 In deciding the claims of the Zoukis strikers, the Commissioner of Labor held that the work stoppage had ceased to exist as of May 9, 1987, although the strike ended on July 26, 1987. 36 The Commissioner further held that if the striking claimants were otherwise eligible they would be entitled to unemployment benefits as of May 3, 1987. 37

The commissioner's decision, which found that a work stoppage had existed regarding the Aanenson lockout claimants, was reversed by the administrative law judge. 38 The administrative tribunal held that because IBP had not proven that a work stoppage had existed during the lockout period or the strike period, section 48-628(d) did not disqualify the claimants from obtaining unemployment compensation benefits. 39

IBP appealed both decisions to the Dakota County District Court. 40 IBP alleged that the administrative tribunal had erred in broadly defining the work stoppage in terms of the entire operations of IBP, and instead should have limited its analysis of work stoppage only to the Dakota City IBP plant. 41 The district court agreed with IBP and held that for the purpose of determining work stoppage, the phrase "factory, establishment or other premises," as used in section 48-628(d), should be restricted to the Dakota City operation. 42 In the appeal regarding the Aanenson lockout claimants, the district court concluded that "but for the labor dispute, the employees would not have been locked out" of the plant, and "[s]ince there was 100% stoppage of work at the Dakota City plant during the time periods relevant to this appeal . . . the labor dispute . . . did create a stoppage of

34. IBP, 234 Neb. at 605, 452 N.W.2d at 62.
35. Id.
36. Id. at 613, 452 N.W.2d at 66.
37. Id.
38. Id. at 605, 452 N.W.2d at 62.
39. Id. at 605-06, 452 N.W.2d at 62.
40. Id. at 606, 452 N.W.2d at 62.
41. Id.
42. Id.
work." 43 In the appeal regarding the Zoukis strike claimants, the district court concluded that the labor dispute was a strike, and that a stoppage of work was caused by the labor dispute throughout the strike period. 44 Therefore, the district court denied the Zoukis strike claimants' request for benefits. 45

On appeal from separate orders of the Dakota County District Court, the Supreme Court of Nebraska consolidated the two cases in IBP v. Aanenson. 46 The Nebraska Supreme Court first addressed the Aanenson lockout claimants' appeal. 47 The lockout claimants contended that the district court had erred by both (1) restricting the meaning of "establishment" as that phrase is used in section 48-628(d) solely to the Dakota City plant, instead of applying it to IBP's entire operations, and (2) holding that a work stoppage existed at the Dakota City IBP plant. 48 The court stated that they were not persuaded that the word "establishment" in the disqualification provision should encompass the entire multi-plant operations of IBP. 49 The supreme court agreed with the district court's conclusion that the words "establishment" and "premises" were universally understood as individual units of place. 50 Accordingly, the Nebraska Supreme Court concluded that the word "establishment" as used in the statute could not be construed to include the entire multi-plant operations of IBP. 51

The Nebraska Supreme Court also addressed the Aanenson lockout claimants' contention that the court should not limit its examination of a work stoppage to the location of the facility, but rather should look to the functional integration of the entire corporate oper-

43. Id. The district court also determined, contrary to the lockout claimants' contention that although IBP had begun substantial renovations while the plant was closed, the work stoppage was nonetheless caused by the labor dispute. Id. at 611-12, 452 N.W.2d at 65.
44. Id. at 606, 452 N.W.2d at 62.
45. Id.
47. Id. at 606, 452 N.W.2d at 62.
48. Id. The lockout claimants also contended that the district court had erroneously held that the work stoppage was caused by the labor dispute and not by the renovation and construction projects which IBP had undertaken. Id.
49. Id. at 609, 452 N.W.2d at 64. For an analysis of the term "establishment" as used in the disqualification provisions of unemployment compensation statutes, see Annotation, 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, 80 A.L.R.3d 11 (1973).
50. IBP, 234 Neb. at 609, 452 N.W.2d at 63-64.
51. Id. at 609, 452 N.W.2d at 64 (citing Ahnne v. Department of Labor & Indus. Relations, 53 Haw. 185, 191, 489 P.2d 1397, 1401 (1971) (stating that the word "establishment" naturally refers to a building or group of proximate buildings, but it should not refer to buildings located many miles apart)).
The court reasoned that functional integration analysis should be applied only if it were proven that there was a dependent relationship between the facility in which there has been a work stoppage and other facilities performing assigned functions. Finding that the Dakota City plant processed orders independently from other IBP plants and was functionally independent, the Nebraska Supreme Court held that the facts in this case did not fit the functional integration theory.

The Nebraska Supreme Court articulated the general rule that a work stoppage exists when a labor dispute causes a substantial curtailment of operations in an establishment. The court noted that the production figures of a plant are the touchstone for determining work stoppage. The supreme court concluded that production at the Dakota City plant was 100% curtailed while the lockout was in progress and therefore a stoppage of work had occurred during that time. Affirming the Dakota County District Court, the Nebraska Supreme Court held that section 48-628(d) disqualified the lockout claimants from receiving unemployment compensation during the period of the lockout — December 14, 1986 through March 14, 1987.

Next, the Nebraska Supreme Court addressed the strike claimants' appeal of the court order which denied unemployment benefits during the period of the strike from March 16, 1987 through July 26, 1987. The supreme court noted that although the commissioner and the Dakota County District Court had reached different results, both had relied on production figures from the Dakota City plant. Although the supreme court agreed that actual production had never exceeded seventy percent, the court, however, held that the existence of a work stoppage was not determined by production figures alone.

The court held that a work stoppage had existed for some time after the lockout was converted into a strike because operations continued to be substantially curtailed at the plant during the beginning week of the strike. However, the Nebraska Supreme Court rejected the argument of IBP that because the work stoppage was ini-

52. IBP, 234 Neb. at 610, 452 N.W.2d at 64.
53. Id.
54. Id.
55. Id. at 610-11, 452 N.W.2d at 64.
56. Id. at 611, 452 N.W.2d at 65.
57. Id.
58. Id. at 612-13, 452 N.W.2d at 66.
59. Id. at 613, 452 N.W.2d at 66.
60. Id. at 614, 452 N.W.2d at 66.
61. Id. at 615-16, 452 N.W.2d at 67.
62. Id. at 616, 452 N.W.2d at 67. By May 9, 1987, the main processing facility had resumed 61% of its normal production. The extension facility did not resume any production until the strike ended. Id. at 618, 452 N.W.2d at 68.
tially caused by the labor dispute, benefits should have been denied to the claimants until the labor dispute was over.\textsuperscript{63}

Recognizing that the claimants had the burden to prove that they were entitled to receive benefits,\textsuperscript{64} the Nebraska Supreme Court concluded that although the claimants were initially disqualified from receiving benefits, continued disqualification could be avoided if, for each week in question, the employer failed to show that the labor dispute had caused the work stoppage.\textsuperscript{65} The court reasoned that "[w]hile the labor dispute may have been the initial cause of the work stoppage, each week of unemployment is the subject of a separate determination and, thus, it is possible for the cause of the stoppage to shift to something other than the labor dispute."\textsuperscript{66}

Therefore, the court concluded that although the initial cause of the work stoppage was the labor dispute, IBP had not proven that the labor dispute was the continuing cause of the work stoppage.\textsuperscript{67}

The Nebraska Supreme Court articulated that a "stoppage of work and its resultant disqualification for unemployment benefits may continue until the employer has had a reasonable time to resume normal operations."\textsuperscript{68} The court found that IBP had a reasonable amount of time to have regained production in the extension facility as of May 9, 1987, and to have resumed substantially normal operations in its entire Dakota City plant as of that date.\textsuperscript{69} Therefore, the court concluded that management's decision not to open the extension facility caused the work stoppage as of May 9, 1987 and thereafter.\textsuperscript{70} Accordingly, the court held that the striking claimants were eligible for unemployment benefits as of May 3, 1987, until the strike ended on July 26, 1987.\textsuperscript{71}

\textsuperscript{63} Id. at 616-18, 452 N.W.2d at 67-69.
\textsuperscript{64} Id. at 615, 452 N.W.2d at 67.
\textsuperscript{65} Id. at 617, 452 N.W.2d at 68.
\textsuperscript{66} Id. at 616, 452 N.W.2d at 68.
\textsuperscript{67} Id. at 619, 452 N.W.2d at 69. Finding that section 48-628(d) requires that the work stoppage exist because of a labor dispute and that such determination must be made on a week-by-week basis, the Nebraska Supreme Court, in a conclusory fashion, shifted the burden of proof to the employer to show that the cause of the work stoppage was the labor dispute for each week in question. Id. at 68, 452 N.W.2d at 616-17.
\textsuperscript{68} Id. at 618, 452 N.W.2d at 69 (quoting Crescent Chevrolet v. Department of Job Serv., 429 N.W.2d 148, 152 (Iowa 1988)).
\textsuperscript{69} IBP, 234 Neb. at 618, 452 N.W.2d at 69.
\textsuperscript{70} Id. The extension facility is a small separate unit, but is a division of the Dakota City plant and basically performs the same functions as the main processing plant. Id. at 618, 452 N.W.2d at 68.
\textsuperscript{71} Id. at 620, 452 N.W.2d at 70.
BACKGROUND

ORIGIN OF UNEMPLOYMENT COMPENSATION STATUTES

In 1935, the Social Security Act established the unemployment security system to provide economic security to workers who were temporarily unemployed.72 The combination of a national pro-union sentiment and the Social Security Act of 1935 encouraged every state in the nation to adopt unemployment compensation legislation.73

To take advantage of federal credit grant provisions of the Social Security Act of 1935, most states hastily adopted one of the several model draft bills that had been proposed by the United States Social Security Board.74 By 1938, every state had adopted unemployment compensation legislation.75 Nebraska enacted its Unemployment Security Law on May 17, 1937.76

Scarce documentation regarding the legislative intent in enacting state unemployment security law is available.77 Due to the scarcity of state legislative history, the purposes of state unemployment compensation legislation is difficult to determine.78 Generally, these statutes contain broad language that purports to protect workers from involuntary unemployment.79 Commentators have noted that the

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76. Id.
77. Comment, 56 Nw. U.L. Rev. at 663; Haggart, 37 NEB. L. REV. at 675.
78. Haggart, 37 NEB. L. REV. at 674. There is some documentation that indicates the congressional intent in establishing the federal program. H.R. Doc. No. 81, 74th Cong., 1st Sess. 10 (1935). The general purpose was indicated to be the accumulation of funds during the cyclical periods of prosperity to be available during periods of depression for relief of the consequences of unemployment. In his message of January 17, 1935, President Franklin D. Roosevelt stated that the purpose of the unemployment compensation program was to combat the widespread unemployment and hardship caused by the depression of the 1930s. Haggart, 37 NEB. L. REV. at 671-72.
79. Comment, 56 Nw. U.L. Rev. at 663 (1961). For example, Illinois unemployment insurance legislation provides:

§ 100. Declaration of public policy. As a guide to the interpretation and application of this act the public policy of the State is declared as follows: Economic insecurity due to involuntary unemployment has become a serious menace to the health, safety, morals and welfare of the people of the State of Illinois. Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Poverty, distress and suffering have prevailed throughout the State because funds have not been accumulated in times of plentiful opportunities for employment for the support of unemployed workers and their families during periods of unemployment, and the
state legislatures adopted a ready-made "Declaration of Public Policy." Although these laws were designed to provide economic assistance to the unemployed, they usually contain a labor dispute disqualification provision that disqualifies certain claimants from receiving benefits. Presently, labor dispute disqualification provisions are included in the unemployment compensation statutes of all jurisdictions.

taxpayers have been unfairly burdened with the cost of supporting able-bodied workers who are unable to secure employment. Farmers and rural communities particularly are unjustly burdened with increasing taxation for the support of industrial workers at the very time when agricultural incomes are reduced by lack of purchasing power in the urban markets. It is the considered judgment of the General Assembly that in order to lessen the menace to the health, safety and morals of the people of Illinois, and to encourage stabilization of employment, compulsory unemployment insurance upon a statewide scale providing for the setting aside of reserves during periods of employment to be used to pay benefits during periods of unemployment, is necessary.

I.LL. ANN. STAT. ch. 48, para. 300 (Smith-Hurd 1986).

80. Shadur, Unemployment Benefits and the "Labor Dispute" Disqualification, 17 U. CHI. L. REV. 294, 296 (1949-50). See also Fierst & Spector, Unemployment Compensation in Labor Disputes, 49 YALE L.J. 461, 463 n.11 (1940) (reciting the wording of the Declaration of State Public Policy in the Social Security Board Draft Bills that is followed by most of the states: "[T]he public good and the general welfare of the citizens of this state require the enactment of this measure . . . for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.").


The Nebraska labor dispute disqualification provisions are very similar to those of most jurisdictions in this country. The Nebraska labor dispute disqualification provision disqualifies an individual from receiving benefits for any week with respect to which his or her total unemployment is due to a stoppage of work which exists because of a labor dispute.

**THE MEANING OF THE TERM "STOPPAGE OF WORK"**

The labor dispute disqualification provisions of many state unemployment security laws use the term "stoppage of work." Most unemployment compensation statutes impose disqualification only when a work stoppage exists during the period for which unemployment benefits are claimed.

The stoppage of work requirement originated in the British Unemployment Insurance Acts. By the time that each of the states of the United States had adopted its unemployment compensation statutes, Britain had already settled the meaning of the phrase "stoppage of work," as referring "not to the cessation of the workman's labor, but to a 'stoppage of work' carried on in the factory, workshop or

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83. Haggart, 37 NEB. L. REV. at 676.
84. The Nebraska statute provides that an individual will be disqualified for benefits:
   
   For any week with respect to which the commissioner finds that his or her total 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 or she is or was last employed, except that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that (1) he or she is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work, and (2) he or she 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, financing, or directly interested in the dispute. If in any case, separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other premises.

86. Shadur, 17 U. CHI. L. REV. at 307-08.
87. Id. at 308.
other premise at which the workman is employed."\textsuperscript{88} This same interpretation has been adopted by a majority of the U.S. states.\textsuperscript{89}

The federal authorities followed the majority construction of the term "stoppage of work" as early as 1936.\textsuperscript{90} This became evident in the state legislation proposals advocated by the Bureau of Employment Security of the United States Department of Labor. The bureau had recommended that as long as a substantial stoppage of the employer's work was caused by the labor dispute, the disqualification for unemployment benefits should continue.\textsuperscript{91} In addition, the United States Supreme Court has stated that the "American Rule" focuses on the level of the employer's operations.\textsuperscript{92}

Courts have also unanimously accepted the proposition that the term "stoppage of work" means a substantial curtailment of the employer's operations rather than the activities of the striking employees.\textsuperscript{93} Many of the decisions adopting this rule have reasoned that a redundancy within the phrase "unemployment due to a stoppage of work" would be created if the phrase is interpreted to refer to the

\textsuperscript{88} Id.

\textsuperscript{89} \textit{Inter-Island Resorts}, 46 Haw. at 147, 377 P.2d at 720 (quoting Shadur, 17 U. CHI. L. REV. at 308). \textit{But see}, Board of Review v. Mid-Continent Petroleum Corp., 193 Okla. 36, 41, 141 P.2d 69, 71-72 (1943) (holding that the term "stoppage of work" was considered synonymous with strike). Oklahoma amended its statute in 1941 and now follows the majority rule. \textit{Shadur}, 17 U. CHI. L. REV. at 308.

\textsuperscript{90} W. Lewis, \textit{The "Stoppage of Work" Concept In Labor Dispute Disqualification Jurisprudence}, 45 J. URB. L. 319, 326 (1967).

\textsuperscript{91} Lewis, 45 J. URB. L. at 326.

\textsuperscript{92} Crescent Chevrolet v. Iowa Department of Job Serv., 429 N.W.2d 148, 151 (Iowa 1988) (citing New York Tel. Co. v. New York State Labor Dept., 440 U.S. 519, 534 (1979)).

\textsuperscript{93} \textit{Inter-Island Resorts v. Akahane}, 46 Haw. 140, \textemdash, 377 P.2d 715, 720 (1962) (stating that "[T]here has been unanimous acceptance of the proposition that stoppage of work means a substantial curtailment of . . . business activities."). \textit{See} Mountain States Tel. Co. v. Sakrison, 71 Ariz. 219, \textemdash, 225 P.2d 707, 712 (1950) (holding that a marked decrease in services, revenue, and employment caused by a strike establishes a substantial curtailment of operations); Sakrison v. Pierce, 66 Ariz. 162, 170, 185 P.2d 528, 533 (1947) (reasoning that a disqualifying stoppage of work ends when the employer resumes normal operations); Monsanto Chemical Co. v. Thornbrough, 229 Ark. 362, \textemdash, 314 S.W.2d 493, 496 (1958) (holding that the stoppage of work ceases when the employer returns the level of production to a point at which his business operations are substantially normal); M.A. Ferst, Ltd. v. Huet, 78 Ga. App. 855, \textemdash, 52 S.E.2d 336, 339 (1949) (holding that a work stoppage due to a labor dispute ceased when normal operations were resumed); Robert S. Abbott Publishing Co. v. Annunzio, 414 Ill. 559, \textemdash, 112 N.E.2d 101, 105-06 (1953) (holding that if the employer has resumed normal operations or replaced strikers, unemployment is no longer due to a stoppage of work because of a labor dispute); George A. Hormel and Co. v. Hair, 229 Neb. 284, 289, 426 N.W.2d 281, 285 (1988) (affirming that a work stoppage ends when the employer resumes substantially normal operations); Magner v. Kinney, 141 Neb. 122, 128, 2 N.W.2d 699, 692 (1942) (construing the term "stoppage of work" as a substantial curtailment of work). \textit{See also} Lewis, 45 J. URB. L. at 331 (summarizing that an established line of cases generally accept the proposition that a substantial curtailment of operations is sufficient to disqualify unemployed claimants from receiving unemployment benefits).
employee's status. Recognizing the difficulty of composing any precise definition of "substantial curtailment" that could be applied to all cases, courts have held that the substantial curtailment requirement, which would be necessary to establish that a stoppage of work existed as a result of a labor dispute, must be determined in relation to the facts of each case.

In Ahnne v. Department of Labor & Industrial Relations, the Supreme Court of Hawaii articulated that the substantial curtailment requirement was followed because it softened the harsh consequences of the labor dispute disqualification provision. In Ahnne, the court held that although operations were substantially curtailed, the labor dispute disqualification provision was not applicable to office employees who had not participated in the airline strike.

Magnier v. Kinney was an early Nebraska case which construed the term "stoppage of work." In Magnier, the employer suffered a thirty percent decrease in its total business when the claimants left work in response to a strike by their union. The Nebraska Supreme Court held that this thirty percent reduction amounted to a substantial stoppage of work and therefore denied unemployment compensation benefits. Magnier established a bright line rule that

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94. Crescent Chev., 429 N.W. at 151 (citations omitted). See also Sakrison, 66 Ariz. at 168, 185 P.2d at 532 (stating that work stoppage does not refer to the individual worker because it would be superfluous); Inter-Island Resorts, 46 Haw. at 148, 377 P.2d at 720 (asserting that to interpret stoppage of work as cessation of work by the individual worker would make this phrase synonymous with unemployment); Pickman v. Weltmer, 191 Kan. 543, —, 382 P.2d 298, 303 (1963) (stating that the authorities unanimously hold that the concurrent existence of the stoppage of work and labor dispute is not essential); Lawrence Baking Co. v. Mich. Unemployment Compensation Comm'n, 308 Mich. 198, —, 13 N.W.2d 260, 263 (1944) (reasoning that to interpret stoppage of work as cessation of work by the individual employee would make this phrase practically synonymous with unemployment).

95. See, e.g., Mountain States, 71 Ariz. at —, 225 P.2d at 712 (1950) (recognizing the impossibility of fixing definite curtailment percentages and stating that each case must be determined by its own peculiar facts); Meadow Gold Dairies-Hawaii Ltd. v. Wilg, 50 Haw. 225, 230, 457 P.2d 317, 320 (1968) (agreeing that an arbitrary percentage as to when a work stoppage exists should not be set); Crescent Chevrolet, 429 N.W.2d at 150 (citations omitted) (stating that substantial curtailment of operations depends on the circumstances of each case); Reed Nat'l Corp. v. Director of Div. of Employment Sec., 393 Mass. 721, —, 473 N.E.2d 190, 192 (1985) (stating that the diversity of factual situations which arise militates against applying a single formula to determine the existence of a work stoppage); IBP v. Aanenson, 234 Neb. 603, 614, 452 N.W.2d 59, 67 (1990) (contending that the determination of work stoppage requires a review of the particular facts unique to each case) (citing George A. Hormel & Co. v. Hair, 229 Neb. 284, 289, 426 N.W.2d 281, 284 (1988)).

96. 53 Haw. 185, 489 P.2d 1397 (1971).
97. Id. at 188-89, 489 P.2d at 1399-1400.
98. Id. at 194-95, 489 P.2d at 1401-03.
99. 141 Neb. 122, 2 N.W.2d 689 (1942).
100. Id. at 130-31, 2 N.W.2d at 693.
101. Id. at 131, 2 N.W.2d at 692-93.
a disqualifying stoppage of work exists when an employer's operations have been curtailed by a thirty percent decrease in operations.\footnote{102}

Another leading case construing the term "stoppage of work" was Lawrence Baking Company v. Michigan Unemployment Compensation Commission.\footnote{103} In that case, sixteen out of ninety-eight employees went on strike.\footnote{104} The employer immediately hired new employees and resumed normal operations.\footnote{105} The strike interrupted the employer's operations for about fifteen minutes.\footnote{106} Although the strike was not abandoned and the picketing continued, the Michigan Supreme Court allowed unemployment compensation benefits to the strikers because there was no work stoppage at the employer's factory.\footnote{107}

DETERMINING WHEN THE STOPPAGE OF WORK ENDS

The determination as to when a work stoppage has occurred is correlative to the determination of when the work stoppage ends.\footnote{108} A review of the cases reveals that the test that is usually followed is the resumption of "substantially normal production."\footnote{109} The leading case adopting this test is Monsanto Chemical Co. v. Thornborough.\footnote{110} In Monsanto, the employer was able to resume partial production by utilizing supervisory employees.\footnote{111} The striking employees filed claims covering the three week period of the labor dispute.\footnote{112} The employer insisted that the stoppage of work continued until the pro-

\footnotesize{102. Id. at 130-31, 2 N.W.2d at 693.}
\footnotesize{103. 308 Mich. 198, 13 N.W.2d at 260 (1944), cert. denied, 323 U.S. 738 (1944).}
\footnotesize{104. Id. at —, 13 N.W.2d at 261.}
\footnotesize{105. Id. at —, 13 N.W.2d at 261.}
\footnotesize{106. Id. at —, 13 N.W.2d at 261.}
\footnotesize{107. Id. at —, 13 N.W.2d at 262-66.}
\footnotesize{108. Lewis, 45 J. URB. L. at 328.}
\footnotesize{109. Lewis, 45 J. URB. L. at 328 (citations omitted). See, e.g., Travis v. Garbiec, 52 Ill. 2d 175, —, 287 N.E.2d 468, 471 (1972) (agreeing that the stoppage of work ends when the employer's operations are substantially normal); Robert S. Abbott Publishing Co., 414 Ill. at —, 112 N.E.2d at 105 (stating that it was adhering to majority rule that where an employer had replaced workers whose employment was terminated as a result of a labor dispute or had fully resumed normal operations, the unemployment was no longer due to a work stoppage because of a labor dispute); Aaron v. Review Bd. of the Indiana Employment Sec. Div., 440 N.E.2d 1, 3 (Ind. Ct. App. 1982) (holding that a stoppage of work ceases when the employer has been able to resume normal operations); Crescent Chevrolet, 429 N.W.2d at 153 (stating that a work stoppage ceases when operations are returned to a substantially normal basis); LaClede Gas Co. v. Labor & Indus. Relations Comm'n, 657 S.W. 644, 650 (Mo. Ct. App. 1983) (finding that a substantial diminution of production, services, or activities constitutes a work stoppage according to the disqualification statute).}
\footnotesize{110. 229 Ark. 362, 314 S.W.2d at 493 (1958).}
\footnotesize{111. Id. at —, 314 S.W.2d at 495.}
\footnotesize{112. Id. at —, 314 S.W.2d at 495.}
duction was again entirely normal.\footnote{113}

Stating that the purpose of the unemployment compensation statute was to alleviate involuntary unemployment, the Supreme Court of Arkansas expressed the opinion that a stoppage of work ends when the employer regains substantially normal production.\footnote{114} It would not be logical, the court noted, to hold that a stoppage of work did not occur until production decreased by twenty or thirty percent, and also hold that a work stoppage continued until one-hundred percent of productivity was again reached.\footnote{115} Accordingly, the court held that the employees were entitled to unemployment compensation benefits.\footnote{116}

**Reasonable Time to Resume Operations**

Courts also generally agree that a stoppage of work and the claimants' resulting disqualification for unemployment benefits may continue only until the employer has had a reasonable time to resume substantially normal operations.\footnote{117} This rule was established in *Carnegie-Illinois Steel Corp. v. Review Board of Indiana Employment Security Division*.\footnote{118} In *Carnegie*, the stoppage of work contin-

\footnotesize

113. Id. at —, 314 S.W.2d at 496.
114. Id. at —, 314 S.W.2d at 495-96.
115. Id. at —, 314 S.W.2d at 496.
116. Id. at —, 314 S.W.2d at 496.
117. Crescent Chevrolet, 429 N.W.2d at 152. See American Steel Foundries v. Gordon, 404 Ill. 174, —, 88 N.E.2d 465, 472 (1949) (declaring that where employees were not able to return to work for some time after the labor dispute was settled because of preparations that were necessary, the work stoppage during such period was caused by the labor dispute); Aaron v. Review Bd., 416 N.E.2d 125, 134 (Ind. Ct. App. 1981) (holding that claimants were ineligible for benefits for any post-strike unemployment that resulted from the start-up delay); Pickman v. Weltmer, 191 Kan. 543, —, 382 P.2d 298, 302-04 (1963) (finding that the work stoppage after termination of the strike was due to a time which was reasonably required for the employer to resume normal operations); Legacy v. Clarostat Mfg. Co., 99 N.H. 483, —, 115 A.2d 424, 425-26 (1955) (holding that the work stoppage continued after termination of labor dispute and did not cease until normal operations could reasonably be resumed); Ablondi v. Board of Review, 8 N.J. Super 71, —, 73 A.2d 262, 266 (1950) (finding that even though the labor dispute had been terminated, the employer's delay in resuming normal production and the resultant work stoppage was caused by the labor dispute); Bako v. Unemployment Compensation Bd., 171 Pa. Super 222, —, 90 A.2d 308, 312 (1952) (holding that the work stoppage was not limited to time of strike but included a reasonable period following the strike until the employer returns to normal operations); G.C. Murphy Co. v. Unemployment Compensation Bd., 72 Pa. Commw. 248, 456 A.2d 700, 701 (1983) (stating that labor dispute disqualification provision disqualifies claimants from receiving benefits for the time reasonably necessary to put the plant in normal operation after the strike ends); Moultrup Steel Products Co. v. Unemployment Compensation Bd., 10 Pa. Commw. 404, —, 310 A.2d 715, 716 (1973) (affirming that after a strike ends, unemployment benefits may be denied for the time reasonably necessary to regain normal operations).
118. 117 Ind. App. 379, 72 N.E.2d 662 (1947) (en banc).
ued for several weeks after an agreement had been reached.\textsuperscript{119} Finding that it was necessary to have certain repairs performed before the employer could resume full production after the labor dispute was settled, the Indiana Appellate Court held that the claimant's unemployment and the stoppage of work was caused by the labor dispute.\textsuperscript{120}

Recognizing that a work stoppage does not continue in every case until the employer is able to resume normal operations, the court held that the duration of work stoppage caused by the labor dispute should not exceed the reasonable amount of time necessary to physically resume normal operations.\textsuperscript{121} The court determined that the period of disqualification should be limited to the delay caused by the labor dispute and by the physical conditions and factors created by the labor dispute.\textsuperscript{122}

In \textit{Crescent Chevrolet v. Iowa Department of Job Service},\textsuperscript{123} the Iowa Supreme Court agreed that the work stoppage may continue only until the employer has had a reasonable amount of time to resume normal operations.\textsuperscript{124} Asserting that a number of factors impact upon the determination of substantial curtailment of operations, the court found that repair orders and sales revenue during the strike were significantly lower than the same period of the previous year.\textsuperscript{125} The court also found that the striking claimants had been replaced and that the business continued to operate.\textsuperscript{126} The court, nevertheless, held that the striking claimants were disqualified from receiving unemployment benefits because the stoppage of work was caused by the labor dispute and the stoppage of work continued until the employer's operations were \textit{in fact} returned to a substantially normal basis.\textsuperscript{127}

\textbf{The Relevance of Fault}

One of the basic principles of unemployment compensation is that benefits should be used only to compensate those who have become unemployed through \textit{no fault} of their own.\textsuperscript{128} An employee on

\begin{itemize}
\item \textsuperscript{119} \textit{Id.} at \textemdash, 72 N.E.2d at 663.
\item \textsuperscript{120} \textit{Id.} at \textemdash, 72 N.E.2d at 667.
\item \textsuperscript{121} \textit{Id.} at \textemdash, 72 N.E.2d at 667.
\item \textsuperscript{122} \textit{Id.} at \textemdash, 72 N.E.2d at 667.
\item \textsuperscript{123} 429 N.W.2d 148 (Iowa 1988).
\item \textsuperscript{124} \textit{Id.} at 152.
\item \textsuperscript{125} \textit{Id.} at 151-52.
\item \textsuperscript{126} \textit{Id.} at 149.
\item \textsuperscript{127} \textit{Id.} at 149-50, 153.
\item \textsuperscript{128} Comment, \textit{Unemployment Benefits, Laid-Off Workers and Labor Disputes: The Unemployment Benefit Conflict}, 19 \textit{WILLAMETTE L. REV.} 737, 740 (1983). See, \textit{e.g.}, Local Union No. 11 v. Gordon, 396 Ill. 293, 303, 71 N.E.2d 637, 642 (1947) (holding that}
\end{itemize}
strike, however, is not always disqualified from receiving unemployment compensation benefits.\textsuperscript{129} In \textit{Lawrence Baking Co. v. Michigan Unemployment Compensation Commission},\textsuperscript{130} the employer contended that the employees who were on strike were unemployed because of their own fault.\textsuperscript{131} Agreeing that the disqualification provision should not be imposed on a claimant unless a stoppage of work resulted from the labor dispute, the Michigan Supreme Court stated that it could not establish a rule that in all instances a striking employee was necessarily unemployed because of his own fault.\textsuperscript{132} The court held that the labor dispute disqualification provision did not operate to disqualify employees who participated in a strike which did not result in the stoppage of the employer’s work.\textsuperscript{133} Therefore, the court allowed unemployment compensation benefits to the strikers who had lost their jobs when they were permanently replaced.\textsuperscript{134}

However, in \textit{Deshler Broom Factory v. Kinney},\textsuperscript{135} the Nebraska Supreme Court concluded that workers who are on strike leave their work voluntarily and are not entitled to unemployment benefits.\textsuperscript{136} Finding that ninety percent of the employees were on strike, the Nebraska Supreme Court held that this caused a substantial curtailment of operations which constituted a stoppage of work.\textsuperscript{137} The Nebraska

the strike was a stoppage of work and that workers who strike are not entitled to unemployment compensation because they are not involuntarily unemployed); Muncie Foundry Div. of Borg-Warner Corp. v. Review Bd., 114 Ind. App. 475, —, 51 N.E.2d 891, 893 (1943) (stating that the purpose of employment security is to provide benefits to workers who are involuntarily out of work and not to benefit workers who willingly refuse to work because of a labor dispute). See infra notes 130-34 and accompanying text. \textit{See also} Sakrison v. Pierce, 66 Ariz. 162, 170, 185 P.2d 528, 533 (1947) (holding that striking employees were not disqualified from receiving unemployment compensation benefits under the stoppage of work disqualification provision for the period after the employer resumed normal operations); \textit{Inter-Island Resorts, Ltd.}, 46 Haw. at 157, 377 P.2d at 724 (concluding that striking employees were not disqualified from receiving unemployment benefits if a stoppage of work did not exist); Aaron v. Review Bd., 416 N.E.2d 125, 132 (Ind. Ct. App. 1981) (holding that fault is not essential to determine eligibility for unemployment benefits); Barnes v. Employment Sec. Bd., 210 Kan. 664, —, 504 P.2d 591, 600-01 (1972) (holding that the mere fact that the striking claimants refused to return to work and that the labor dispute had caused their unemployment did not disqualify the claimants from receiving unemployment compensation benefits, regardless of the conclusion reached as to the existence of a work stoppage). \textit{But cf.} Walgreen Co. v. Murphy, 386 Ill. 32, 36-40, 53 N.E.2d 390, 393-94 (1944) (holding that workers who strike are voluntarily unemployed and are not entitled to unemployment benefits).

\textsuperscript{129} 308 Mich. 198, 13 N.W.2d 260 (1944), \textit{cert. denied}, 323 U.S. 738 (1944).
\textsuperscript{130} \textit{Id.} at —, 13 N.W.2d at 263.
\textsuperscript{131} \textit{Id.} at —, 13 N.W.2d at 263-64.
\textsuperscript{132} \textit{Id.} at —, 13 N.W.2d at 264.
\textsuperscript{133} \textit{Id.} at —, 13 N.W.2d at 261, 264-66.
\textsuperscript{134} \textit{Id.} at 816, 2 N.W.2d at 335.
\textsuperscript{135} 2 N.W.2d at 893, 2 N.W.2d at 835.
Supreme Court reasoned that employees who elect to strike are voluntarily out of work.\(^{138}\)

**CAUSAL RELATIONSHIP REQUIRED BY THE PHRASE “STOPPAGE OF WORK BECAUSE OF A LABOR DISPUTE”**

Courts have generally agreed that an individual is disqualified from receiving unemployment benefits only when the stoppage of work occurs because of a labor dispute.\(^{139}\) The disqualification provision imposes a two-step causation test.\(^{140}\) First, the court must determine that the stoppage of work exists because of a labor dispute.\(^{141}\) Second, the court must determine that the claimant’s unemployment is caused by the labor dispute during each week that benefits are claimed.\(^{142}\)

The work stoppage may be caused by the employer’s intervening acts.\(^{143}\) A stoppage of work which is not caused by a labor dispute or which results from an intervening non-labor dispute cause does not provide a basis for denying unemployment compensation.\(^{144}\) The disqualification is lifted if the work stoppage is no longer caused by the labor dispute.\(^{145}\)

138. Id. at 896, 2 N.W.2d at 336.
139. See Lewis, 45 J. Urb. L. at 333, 340 (emphasizing that a settled line of cases has established that benefit disqualification depends upon whether unemployment is caused by a work stoppage due to a labor dispute). See also, Chrysler Corp. v. Review Bd., 120 Ind. App. 425, —, 92 N.E.2d 565, 568 (1950) (stating that employees involved in a labor dispute which resulted in a work stoppage were not eligible for benefits where repairs were necessary before the plant could resume production); Blakely v. Review Bd., 120 Ind. App. 257, —, 90 N.E.2d 353, 361-62 (1950) (holding that unemployed workers who engaged in retaliatory work slow-down tactics which resulted in a work stoppage were disqualified from receiving benefits); Meyer v. Iowa Dept. of Job Service, 385 N.W.2d 524, 526 (Iowa 1986) (finding that the labor dispute caused a substantial stoppage of work and disqualified the claimants from receiving benefits); Adomaitis v. Director of Div. of Employment Sec., 334 Mass. 520, —, 136 N.E.2d 259, 261 (1956) (concluding that a disqualifying work stoppage due to a labor dispute existed where the threat of a strike blocked a substantial amount of work which would otherwise be done).
140. Lewis, 45 J. Urb. L. at 333. See, e.g., Inter-Island Resorts, 46 Haw. at 150, 377 P.2d at 721 (concluding that once a determination is made that the claimant’s unemployment was due to a labor dispute, the final test is whether the unemployment is caused by the work stoppage); George A. Hormel & Co. v. Hair, 229 Neb. 284, 288, 426 N.W.2d 281, 284 (1988) (stating that the disqualification provision provides a two-part disqualification test); Magner v. Kinney, 141 Neb. 122, 129, 2 N.W.2d 689, 693 (1942) (applying the two-part disqualification provision to determine the claimant’s eligibility for benefits).
141. Lewis, 45 J. Urb. L. at 333.
142. Id.
144. Lewis, 45 J. Urb. L. at 333.
145. Fierst & Spector, Unemployment Compensation in Labor Disputes, 49 YALE L.J. 461, 484-85 (1940). English decisions have also held that a stoppage of work due to
Commentators have stated that the work stoppage is not due to the labor dispute if the lack of work was principally caused by the employer's actions. According to one commentator, any act of the employer that is not related to the labor dispute is an intervening act which interrupts the causal relationship between the labor dispute and the work stoppage. For example, in *Gladieux Food Services, Inc. v. Unemployment Compensation Board*, the Pennsylvania Supreme Court found that the requisite causal connection between a concurring labor dispute and stoppage of work did not exist. In *Gladieux*, the employer's customers ceased placing orders due to unsettled labor conditions that were brought about by the termination of a labor agreement. Although the bargaining agreement had expired on April 30, 1974 and the labor dispute remained unsettled at the time that the employer had ceased operations on May 9, 1974, the employees continued to report for work during this period. The court found that the employment relationship continued until work was no longer available. Noting there was no work available because the employer had closed the facilities, the Pennsylvania Supreme Court concluded that the work stoppage had not been caused by the labor dispute.

However, in cases where the employer's acts were motivated by the labor dispute or were a direct and natural consequence of the labor dispute, claimants could not successfully contend that the work stoppage was not the result of a labor dispute. In *Adomaitis v. Director of Division of Employment Security*, the Massachusetts
Supreme Judicial Court addressed the issue of whether the stoppage of work and resultant unemployment was caused by the threat of a strike or by the lack of work. In *Adomaitis*, the employees of a wool processing plant threatened to strike during two months of negotiations over a proposed wage cut. Fearing a strike, the customers communicated closely with the employer and eventually stopped sending wool to be processed. Finding that a thirty-five percent decrease in hours worked had resulted at the plant, the court held that the employees who had merely threatened to strike were not entitled to employment benefits because a substantial stoppage of work was caused by the threat of a strike.

Similarly, in *Blakely v. Review Board of Indiana Employment Security Division*, the Indiana Appellate Court held that a labor dispute caused the stoppage of work. In *Blakely*, employees of the composing room of a printing plant had engaged in retaliatory slowdown tactics that had resulted in a substantial decrease in production. The employer subsequently ordered the composing room closed until further notice which caused a work stoppage for the composing room employees. Noting that during the work stoppage the employer was willing and ready to take the employees back if they were willing to work, and that the employees were engaged in slowdown tactics, the Indiana Appellate Court held that the employees were unemployed because of a stoppage of work resulting from the labor dispute. Therefore, the court denied unemployment compensation benefits to the striking claimants.

In *Frank Foundries Corp. v. Review Board*, the Indiana Appellate Court refused to speculate as to the cause of a work stoppage. In *Frank Foundries*, workers walked out and refused to return to work unless two discharged employees were reinstated. At a subsequent meeting, the plant manager told the strikers that the foundry would have to be closed unless they returned to work because production would be disrupted. After the employees refused to re-

156. Id. at —, 136 N.E.2d at 260.
157. Id. at —, 136 N.E.2d at 260.
158. Id. at —, 136 N.E.2d at 260.
159. Id. at —, 136 N.E.2d at 261.
160. 120 Ind. App. 257, 90 N.E.2d 259 (1950) (en banc).
161. Id. at —, 90 N.E.2d at 356, 362.
162. Id. at —, 90 N.E.2d at 355.
163. Id. at —, 90 N.E.2d at 355-56.
164. Id. at —, 90 N.E.2d at 356, 361-62.
165. Id. at —, 90 N.E.2d at 36.
166. 119 Ind. App. 693, 88 N.E.2d 160 (1949) (en banc).
167. Id. at —, 88 N.E.2d at 163.
168. Id. at —, 88 N.E.2d at 161.
169. Id. at —, 88 N.E.2d at 161.
turn to work, the foundry closed down. Because the employees had refused to return to work and the employer had sufficient material to continue operations, the court held that the labor dispute caused the work stoppage and subsequent unemployment of the claimants.

Similarly, in *Kennecott Copper Corp. v. Department of Employment Security*, the Utah Supreme Court asserted that the party that had initially caused the work stoppage must bear responsibility because the initial cause is the fundamental and real cause of the stoppage. In *Kennecott*, 188 electrical union workers commenced a strike on August 17, 1961. Approximately 6000 other employees did not report to work until the strike was settled on September 8, 1961. While the employees contended that they were willing to work and that there was no work available because operations could not continue without the electricians, the employer insisted that it intended to maintain operations even without the services of the electrical workers. Finding that the employees were responsible for the work stoppage because they left their jobs, the court held that they were ineligible for benefits.

**Neutrality of the Unemployment Compensation Law**

In *Inter-Island Resorts v. Akahane*, the Hawaii Supreme Court stated that a basic tenet of unemployment compensation is that the state should maintain a neutral position regarding the merits of the labor dispute. In *Inter-Island Resorts*, hotel employees went on strike and refused work offered by the employer. Resumption of substantially normal operations occurred within a week after the strike began. Asserting that the unemployment compensation

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170. *Id.* at —, 88 N.E.2d at 161.
171. *Id.* at —, 88 N.E.2d at 164.
173. *Id.* at —, 372 P.2d at 989.
174. *Id.* at —, 372 P.2d at 988.
175. *Id.* at —, 372 P.2d at 988.
176. *Id.* at —, 372 P.2d at 988-89.
177. *Id.* at —, 372 P.2d at 989-90.
179. *Id.* at 156-57, 377 P.2d at 724. In *IBP v. Aanenson*, the Nebraska Supreme Court agreed with the Hawaii Supreme Court that the granting of benefits to strikers cannot be determined by considering the merits of the labor dispute. *IBP*, 234 Neb. at 617, 452 N.W.2d at 68. See also Robert S. Abbott Publishing Co. v. Annunzio, 414 Ill. 559, —, 112 N.E.2d 101, 106 (1953) (reasoning that the state should maintain a neutral position regarding the merits of the labor dispute); Lawrence Baking Co. v. Michigan Unemployment Compensation Comm’n, 308 Mich. 198, —, 13 N.W.2d 260, 264-65 (1944) (agreeing that the state should seek to be neutral in granting unemployment benefits).
180. *Inter-Island Resorts*, 46 Haw. at —, 377 P.2d at 721, 723.
181. *Id.* at —, 377 P.2d at 721.
fund should not be used to enable an employer to break a strike any
more than it should be used to finance a labor dispute.\textsuperscript{182} the Hawaii
Supreme Court held that because the stoppage of work had ceased to
exist during the strike, the claimants should not be prevented from
receiving unemployment compensation.\textsuperscript{183}

In \textit{LaClede Gas Co. v. Labor & Industrial Relations Commis-
sion},\textsuperscript{184} the Missouri Court of Appeals agreed that the state should
maintain a neutral position in a labor dispute.\textsuperscript{185} In \textit{LaClede}, a strike
occurred on September 12, 1979 and continued until the claimants re-
turned to work on February 11, 1980.\textsuperscript{186} Finding that the employer’s
services and activities had been substantially diminished during the
strike, the Missouri Court of Appeals held that the striking claimants
were disqualified from receiving unemployment benefits.\textsuperscript{187} The
court reasoned that the state would abandon its neutrality in the la-
bor dispute if it were to require the employer to continue paying
wages to strikers through the use of unemployment benefits.\textsuperscript{188}

In \textit{Robert S. Abbott Publishing Co. v. Annunzio},\textsuperscript{189} the Illinois
Supreme Court reasoned that state neutrality regarding the merits of
the labor dispute could be maintained only if the court refused to
consider which party was responsible for the work stoppage.\textsuperscript{190} In
\textit{Abbott}, the composing room employees of a publishing company went
on strike.\textsuperscript{191} The employer permanently replaced the striking em-
ployees and resumed normal operations.\textsuperscript{192} The Illinois Supreme
Court refused to consider which party was responsible for the work
stoppage and held that a disqualifying stoppage of work had ceased to
exist.\textsuperscript{193}

\textbf{ANALYSIS}

\textbf{MAINTAINING STATE NEUTRALITY IN THE LABOR DISPUTE}

In \textit{IBP v. Aanenson},\textsuperscript{194} the Nebraska Supreme Court appropriately
denied unemployment compensation benefits to the lockout claimants
during the \textit{lockout} period starting December 14, 1986, and

\begin{itemize}
  \item \textsuperscript{182} \textit{Id. at }\textsuperscript{—}, 377 P.2d at 724.
  \item \textsuperscript{183} \textit{Id. at }\textsuperscript{—}, 377 P.2d at 721-22.
  \item \textsuperscript{184} 657 S.W.2d 644 (Mo. Ct. App. 1983).
  \item \textsuperscript{185} \textit{Id. at }654-55.
  \item \textsuperscript{186} \textit{Id. at }646.
  \item \textsuperscript{187} \textit{Id. at }651-52, 656.
  \item \textsuperscript{188} \textit{Id. at }655.
  \item \textsuperscript{189} 414 Ill. 559, 112 N.E.2d 101 (1953).
  \item \textsuperscript{190} \textit{Id. at }\textsuperscript{—}, 112 N.E.2d at 106-07.
  \item \textsuperscript{191} \textit{Id. at }\textsuperscript{—}, 112 N.E.2d at 103.
  \item \textsuperscript{192} \textit{Id. at }\textsuperscript{—}, 112 N.E.2d at 103.
  \item \textsuperscript{193} \textit{Id. at }\textsuperscript{—}, 112 N.E.2d at 106-07.
  \item \textsuperscript{194} 234 Neb. 603, 452 N.W.2d 59 (1990).
\end{itemize}
ending March 14, 1987. The supreme court concluded that there was no production at the Dakota City plant while the lockout was in progress and, therefore, a disqualifying stoppage of work had occurred during the period of the lockout. The supreme court also correctly held that the work stoppage had continued for some time after the lockout was converted into a strike. Finding that operations had remained substantially curtailed for some time after the lockout was converted into a strike, the Nebraska Supreme Court accordingly denied the lockout claimants' unemployment compensation benefits for the period from March 16, 1987, through May 3, 1987. The Nebraska Supreme Court, however, was incorrect in holding that the striking claimants were entitled to unemployment compensation benefits for the period beginning May 3, 1987, until the end of the strike on July 26, 1987.

In *IBP*, the labor dispute was the initial cause of the stoppage of work. Iowa Beef Packers, Inc. was willing, ready, and able to take the employees back to work after the lockout period. The employees, however, refused to return to work and elected to strike. Plant operations remained substantially curtailed throughout the period of the strike. The court found that although the main processing facility had only resumed sixty-one percent of its ordinary production level, the plant could have resumed substantially normal operations by May 9, 1987 if IBP had opened the extension facility. The Nebraska Supreme Court concluded that the primary reason for the stoppage of work during the strike period was management's decision to leave the extension facility idle. The Nebraska Supreme Court bolstered its conclusion that the labor dispute did not cause the work stoppage by reasoning that other courts, including the Iowa Supreme Court, had held that a stoppage of work and its resultant disqualification for unemployment benefits continues only until the employer has had a reasonable time to resume normal operations. Therefore, the Nebraska Supreme Court held that although the plant had not resumed substantially normal operations, the disqualifying

195. *Id.* at 612-13, 452 N.W.2d at 66.
196. *Id.* at 611, 452 N.W.2d at 65.
197. *Id.* at 616, 452 N.W.2d at 67.
198. *Id.* at 616-20, 452 N.W.2d at 67-70.
199. *Id.* at 620, 452 N.W.2d at 70.
200. *Id.* at 612, 452 N.W.2d at 66.
201. *Id.* at 608, 452 N.W.2d at 63.
202. *Id.*
203. *Id.* at 618, 452 N.W.2d at 68.
204. *Id.* at 618, 452 N.W.2d at 68-69.
205. *Id.* at 619, 452 N.W.2d at 69.
206. *Id.* at 618, 452 N.W.2d at 69.
stoppage of work had ended when the employer had a reasonable
time to resume normal operations.207

Although the Iowa Supreme Court in *Crescent Chevrolet v. Depart-
ment of Job Service* stated that a stoppage of work may con-
tinue until the employer has had a reasonable time to resume normal
operations, the court nevertheless held that a disqualifying stoppage
of work continues until the employer's operations are in fact re-
turned to a substantially normal basis.209 Thus, the Iowa Supreme
Court upheld the firmly established rule that the work stoppage con-
tinues until the employer has actually resumed substantially normal
operations.210 Moreover, with the exception of *Crescent Chevrolet,*
the rule “that a stoppage of work and its resultant disqualification for
unemployment benefits continues only until the employer has had a
reasonable time to resume normal operations” has been exclusively
applied to cases where the strike has ended.211 Although some courts
have recognized that a stoppage of work may end before the underly-
ing labor dispute is settled, those courts have also held that a work
stoppage which disqualifies claimants from receiving unemployment
benefits continues until the employer has replaced the strikers or has
in fact resumed substantially normal operations.212

In *IBP,* the Nebraska Supreme Court abandoned the state policy
of maintaining a neutral position in the labor dispute by abrogating
the established rule which held that a disqualifying stoppage of work
continues until the employer has substantially resumed normal oper-
ations.213 This rule has been defended on the ground that while compen-
sation ought to be generally awarded, where a strike substantially
reduces the employer's business activities, compensation is unnec-
sary because the employer will probably be forced to promptly sub-
mit to the striker's demands.214 Thus, in *IBP,* the Nebraska Supreme
Court abandoned the neutrality of the state by holding that although
IBP had not resumed substantially normal operations and the labor
dispute had not ended, strikers who were unwilling to return to work

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207. *Id.* at 618-20, 452 N.W.2d at 68-70.
208. 429 N.W.2d 148 (Iowa 1988).
209. *Id.* at 152-53.
210. *Id.*
211. *See supra* notes 103-27 and accompanying text.
212. *Crescent Chevrolet,* 429 N.W.2d at 152-53. *See supra* notes 117-27 and accompa-
nying text.
Indus. Relations, 53 Haw. 185, 188-89, 489 P.2d 1397, 1400 (1971) (stating that the sub-
stantial curtailment requirement was a result of the British courts' unwillingness to
deny unemployment compensation in all cases in which a labor dispute has caused a
work stoppage).
were entitled to receive unemployment benefits. The Nebraska Supreme Court held that a disqualifying work stoppage had ceased to exist because IBP, the employer, was the cause of the work stoppage. By considering which party was responsible for the work stoppage in order to determine whether a work stoppage continued to exist, the court concerned itself with the merits of the labor dispute and abandoned the policy of state neutrality in the labor dispute.

The Nebraska Supreme Court acknowledged that the decision to award unemployment benefits to striking claimants is determined by legislative intent. The decision of the Nebraska Supreme Court in IBP, however, was completely devoid of any discussion of the general purposes and intent of the employment security law and failed to consider the core doctrine that voluntary unemployment shall not be compensable. The court completely disregarded the strikers' refusal to work and the ability and willingness of IBP to employ the strikers. Instead, the court focused on the decision of IBP to keep the extension facility closed as the cause of the work stoppage.

**Consideration of the Purposes of the Unemployment Security Laws**

In IBP, the Nebraska Supreme Court relied on Inter-Island Resorts v. Akahane for the proposition that policy concerns cannot determine whether to award benefits to strikers. Nevertheless, in Inter-Island Resorts, the Hawaii Supreme Court extensively considered one of the fundamental tenets of the unemployment compensation law — that the state should maintain a neutral position in the labor dispute. The court reasoned that unemployment compensation should not be withheld to enable the employer to break a strike any more than it should be used to finance a labor dispute. The Hawaii Supreme Court concluded that to disqualify the strikers from

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215. See supra notes 178-88 and accompanying text.
216. IBP, 234 Neb. at 615-19, 452 N.W.2d at 66-69.
217. See supra notes 189-93 and accompanying text.
218. IBP, 234 Neb. at 617, 452 N.W.2d at 68 (citing Inter-Island Resorts v. Akahane, 46 Haw. 140, 151-52, 377 P.2d 715, 722 (1962)).
220. IBP, 234 Neb. at 617-19, 452 N.W.2d at 68-69.
221. Id. at 617-18, 452 N.W.2d at 68-69.
223. IBP, 234 Neb. at 617, 452 N.W.2d at 68 (citing Inter-Island Resorts, 46 Haw. at 151-52, 377 P.2d at 722).
224. Inter-Island Resorts, 46 Haw. at 156-57, 377 P.2d at 724.
225. Id. at 157, 377 P.2d at 724-25.
unemployment benefits would weaken the strike as an economic weapon and would violate the principle of neutrality. However, in Inter-Island Resorts, operations were substantially back to normal by the first week of the strike.

Courts have usually considered the general purposes of employment security law in determining whether striking claimants are entitled to unemployment compensation benefits. In Deshler Broom Factory v. Kinney, the Nebraska Supreme Court discussed the purposes of the unemployment compensation act in holding that a labor dispute caused the stoppage of work and the strikers' resultant unemployment. Stating that employees who strike are voluntarily out of work, the court asserted that the unemployment compensation act was intended neither to benefit strikers who voluntarily leave their work, nor to finance the strike. The Nebraska Supreme Court reasoned that the purpose of the unemployment act was to assist workers who were unemployed through no fault of their own. Therefore, the court concluded that the strikers' unemployment was not compensable because it resulted from a stoppage of work caused by a labor dispute.

In LaClede Gas Co. v. Labor & Industrial Relations Commission, the Missouri Court of Appeals focused on the purposes of the Missouri Employment Security Act to conclude that striking employees were not entitled to unemployment benefits. The court asserted that the Employment Security Act was intended to assist workers who are unemployed through no fault of their own and that the state should not provide economic assistance to strikers at the expense of the employer.

The court reasoned that the state would abandon its neutrality if the employer were required to continue paying wages to striking employees through the use of unemployment benefits. Stating that courts must consider public policy in any decision that relates to unemployment benefits, the court focused on the intent of the Employment Security Act to determine whether the striking employees

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226. Id. at 161-62, 377 P.2d at 727.
227. Id. at 142, 377 P.2d at 717.
228. See infra notes 229-49 and accompanying text.
229. 140 Neb. 889, 2 N.W.2d at 332 (1942).
230. Id. at 896, 2 N.W.2d at 336.
231. Id.
232. Id. at 895-96, 2 N.W.2d at 335-36.
233. Id.
234. 657 S.W.2d 644 (Mo. Ct. App. 1983).
235. Id. at 652-56.
236. Id. at 655.
237. Id.
were unemployed due to a stoppage of work.238

In Kennecott Copper Corporation Employees v. Department of Employment Security,239 the Utah Supreme Court considered the purposes of the Employment Security Act to hold that the claimants' unemployment was due to a stoppage of work which existed because of a strike.240 Stating that the issue was whether the conduct of the employee or of the employer was the fundamental cause of the work stoppage, the court held that the party who initially resorts to the use of economic pressure to settle a labor dispute bears the responsibility for the work stoppage.241 The court also explained that the primary purpose of the Employment Security Act was to assist workers who are out of work without fault on their part and that the act was not intended to be used as a weapon in labor strife.242

In Blakely v. Review Board of Indiana Employment Security Division,243 the Indiana Appellate Court also reviewed the purposes of the Employment Security Act to determine whether claimants who were unemployed because of a work stoppage due to a labor dispute were entitled to unemployment compensation benefits.244 Similar to the claimants' assertion in IBP, the employees in Blakely also contended that the Employment Security Act should be liberally construed to accomplish its beneficent purpose.245

Agreeing that the Act should be liberally construed, the court declared, however, that this liberality does not permit the use of unemployment compensation funds to finance a strike.246 Finding that the employer was willing and able to take the striking employees back during the work stoppage, the court denied benefits to the claimants because the unemployment compensation law was not intended to provide benefits to employees who willingly refused to work because of a labor dispute.247 The court concluded that where

238. Id.
240. Id. at —, 372 P.2d at 990.
241. Id. at —, 372 P.2d at 989 & n.2.
242. Id. at —, 372 P.2d at 990.
243. 120 Ind. App. 257, 90 N.E.2d 353 (1950).
244. Id. at —, 90 N.E.2d at 357.
245. Id. at —, 90 N.E.2d 356-57. In IBP, the court also bolstered its conclusion by asserting that "the Employment Security Law is to be liberally construed in order to accomplish its beneficent purposes." IBP, 234 Neb. at 619, 452 N.W.2d at 69. But see, Carnegie-Illinois Steel Corp. v. Review Board of Indiana Employment Sec., 117 Ind. App. 379, —, 72 N.E.2d 662, 666 (1947) (recognizing that the liberal rule of construction only requires that the statute be enforced to effect its expressed terms); Hunter v. Miller, 148 Neb. 402, 404, 27 N.W.2d 638, 639 (1947) (holding that the liberal rule of construction does not dispense with the necessity that the claimant establish a right to the benefits).
246. Blakely, 120 Ind. App. at —, 90 N.E.2d at 337.
247. Id. at —, 90 N.E.2d at 337-61.
the labor dispute interferes with the employer's normal plan of operation, the labor dispute disqualification is applicable.\textsuperscript{248} The court found that an inquiry into the legislative intent of the employment security law was necessary and held that the unemployed strikers were not entitled to unemployment benefits.\textsuperscript{249}

In \textit{Adomaitis v. Director of Division of Employment Security},\textsuperscript{250} the Massachusetts Supreme Judicial Court considered the purpose of unemployment compensation in determining whether to award benefits to employees who threatened to strike.\textsuperscript{251} The court expressed the opinion that when a substantial amount of work which the unemployed claimants would otherwise be doing is barred by a labor dispute, there is a stoppage of work which exists because of a labor dispute.\textsuperscript{252} The court reasoned that "if the stoppage is because of the underlying labor dispute at the place of employment . . . the statutory requirements are met regardless of whose act immediately precipitates the stoppage and when it occurs in relation to a strike or other economic sanction."\textsuperscript{253} Thus, the court held that regardless of who caused the work stoppage, the strikers were not entitled to unemployment benefits because the disqualification provision only required that a work stoppage occur.\textsuperscript{254}

These cases illustrate that the courts have usually considered the purposes and intent of the employment security law in determining whether a stoppage of work, which disqualifies striking claimants from receiving unemployment benefits, exists.\textsuperscript{255} These cases firmly establish that the fundamental tenet that persists in unemployment security is that only workers who have become unemployed through no fault of their own should receive unemployment compensation benefits.\textsuperscript{256} Courts must necessarily consider public policy in any de-

\textsuperscript{248} \textit{Id.} at —, 90 N.E.2d at 362.

\textsuperscript{249} \textit{Id.} at 357-62.

\textsuperscript{250} 334 Mass. 520, 136 N.E.2d 259 (1956).

\textsuperscript{251} \textit{Id.} at —, 136 N.E.2d at 280-81.

\textsuperscript{252} \textit{Id.} at —, 136 N.E.2d at 261.

\textsuperscript{253} \textit{Id.} at —, 136 N.E.2d at 262 (citations omitted). See also, Robert S. Abbott Publishing Co. v. Annunzio, 414 Ill. 559, —, 112 N.E.2d 101, 106 (1953) (stating that the unemployment compensation act does not consider whether the employer or employee is responsible for the work stoppage, instead, the essential element is whether the labor dispute has caused a stoppage); General Electric Co. v. Director of Div. of Employment Sec., 349 Mass. 358, —, 208 N.E.2d 234, 238-39 (1965) (holding that even though operations were not curtailed, where normal operations would have been substantially curtailed by the labor dispute if the employer had not intervened, a work stoppage has occurred).

\textsuperscript{254} \textit{Adomaitis}, 334 Mass. at —, 136 N.E.2d at 261-62.

\textsuperscript{255} \textit{See supra} notes 229-54 and accompanying text.

\textsuperscript{256} \textit{See supra} notes 229-54 and accompanying text.
cision that relates to unemployment benefits. In *IBP v. Aanenson*, the Nebraska Supreme Court abandoned the neutrality of the state by awarding unemployment compensation benefits to unemployed strikers who were involved in a labor dispute that initially caused the work stoppage, although the labor dispute had not ended and IBP had not in fact resumed substantially normal production.

The court's decision in *IBP* places the employer in a disadvantaged position in the bargaining process. Striking claimants are eligible for unemployment benefits when the employer resumes normal operations or permanently replaces the strikers. On the other hand, if the employer does not resume normal operations or does not replace the strikers in a reasonable amount of time during the labor dispute, the employer is held responsible for the work stoppage and the strikers are eligible for unemployment benefits. In addition, the employer now also has the burden of proving that the labor dispute caused the work stoppage.

In *IBP*, the court held that a disqualifying work stoppage ceased to exist by concluding that IBP was responsible for the work stoppage. The courts have not readily considered whether the employee or the employer is responsible for the work stoppage. The neutrality of the state regarding the merits of the labor dispute can be maintained only if the court does not consider which party is responsible for the stoppage. To determine whether section 48-628(d) disqualified the strikers from receiving unemployment benefits, the court should only consider whether the essential element of the unemployment compensation act is satisfied — whether there is a stoppage of work caused by a labor dispute.

The Nebraska Supreme Court should have considered the core doctrine of the employment security law — that only involuntary unemployment shall be compensable. In *IBP*, the employees were voluntarily unemployed. Not only was IBP willing and ready to employ the striking employees, but the strikers willingly refused to

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258. 224 Neb. 603, 452 N.W.2d 59 (1990).
260. See supra notes 108-27 and accompanying text.
261. See supra notes 62-71 and 201-07.
262. See supra notes 64-67 and accompanying text.
263. *Id.* at 613-19, 452 N.W.2d at 66-69.
264. See supra notes 189-93 and accompanying text.
265. See supra notes 178-93 and accompanying text.
266. See supra notes 233-54 and accompanying text.
267. See supra notes 223-54 and accompanying text.
268. *IBP*, 234 Neb. at 608, 452 N.W.2d at 63.
work and elected to strike. Unemployment compensation funds were not intended to finance strikes. Other courts, including the Nebraska Supreme Court, have held that employees who strike are voluntarily unemployed and have denied strikers unemployment benefits on that basis. Similarly, unemployment compensation benefits should have been denied to the strikers in IBP — a case where work was available, which the unemployed workers would have been doing but for the labor dispute. Providing unemployment benefits to unemployed strikers who are involved in a labor dispute, where the employer has not substantially resumed normal operations or has not replaced the strikers, is inconsistent with the purposes of the employment security law.

CONCLUSION

In IBP v. Aanenson, the Nebraska Supreme Court erroneously held that unemployed strikers, who were engaged in a labor dispute and had refused to return to work, were entitled to unemployment benefits, although a stoppage of work continued to exist during the labor dispute. The court bolstered its holding by reasoning, in a conclusory fashion, that a stoppage of work and disqualification for unemployment benefits continues only until the employer has had a reasonable time to resume normal operation. The court concluded that the disqualification provision did not disqualify the unemployed striker from receiving benefits because the employer was responsible for the work stoppage. In order to maintain the neutrality of the state in the labor dispute, the court should not consider which party is responsible for the work stoppage. If fault and responsibility for the work stoppage are determinative factors, then the court should have emphasized that IBP was willing and able to allow the unemployed claimants to continue to work, but that the workers elected to strike. The court should have placed responsibility for the work stoppage on those who actually stopped work.

269. Id.
270. See supra notes 229-54 and accompanying text. See also, M. Shadur, Unemployment Benefits and the "Labor Dispute" Disqualification, 17 U. CHI. L. REV. 294, 298 (1950).
271. See supra notes 229-54 and accompanying text.
272. See supra notes 250-54 and accompanying text.
275. See supra notes 64-71, 200-10 and accompanying text.
276. IBP, 234 Neb. at 618-20, 452 N.W.2d at 69-70.
277. See supra notes 189-93 and accompanying text.
278. See supra notes 200-03 and accompanying text.
The statutory elements of the Nebraska disqualification provision, section 48-628(d), were met when the work stoppage was initially caused by the labor dispute, regardless of whether the employer's acts immediately precipitated the work stoppage. The labor dispute was the fundamental and real cause of the work stoppage, because the strike initially caused the work stoppage and continued to exist during the period of the stoppage. The work stoppage was a direct and natural consequence of the labor dispute. In determining whether the essential elements of the disqualification provision were satisfied, the Nebraska Supreme Court should have considered the basic purpose of the employment security laws — to relieve the economic consequences of involuntary unemployment. The disqualification provision was not intended to provide unemployment benefits to strikers who are engaged in a labor dispute with the employer when there is work available which the strikers voluntarily decline to accept. Therefore, the court's interpretation and application of the disqualification provision to the facts in JBP was erroneous and inconsistent with the fundamental purpose of unemployment security.

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279. See supra notes 239-54 and accompanying text.
280. See supra notes 200-04, 239-42 and accompanying text.
281. See supra notes 154-77 and accompanying text.
282. See supra notes 229-54 and accompanying text.