



PAUL TITTL

STATE REPRESENTATIVE - 25TH ASSEMBLY DISTRICT

May 10, 2013

Janell Knutson
Chair, Unemployment Insurance Advisory Council
Unemployment Insurance Division
201 East Washington Avenue
P.O. Box 8942
Madison, WI 53708

Subject: LRB-1830 relating to eligibility of certain employees who are affected by labor disputes for unemployment insurance benefits

Dear Chair Knutson,

Senator Leibham and I have been working on this proposed legislation and would appreciate receiving any feedback the Unemployment Insurance Advisory Council might wish to provide.

Under the current law, an employee who loses his or her work on account of a strike or other bona fide labor dispute, other than a lockout, is not eligible to receive unemployment insurance benefits based on the wages paid to the employee prior to the beginning of the dispute for any week in which the dispute is in active progress in the establishment in which the employee is or was employed.

The proposed bill permits an employee to receive UI benefits while a labor dispute is in active progress if the employee is otherwise eligible to receive benefits and the employee is not participating in the dispute.

The bill is currently being circulated for cosponsors through May 15th, and I look forward to receiving any input the council wishes to provide.

Kind Regards,



Rep. Paul Tittel

Copy: Senator Joseph Leibham



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1830/1
MED:jld:jf

2013 BILL

1 AN ACT to amend 108.04 (10) (a) of the statutes; relating to: eligibility of certain
2 employees who are affected by labor disputes for unemployment insurance
3 benefits.

Analysis by the Legislative Reference Bureau

Currently, an employee who leaves or partially or totally loses his or her work with an employer because of a strike or other bona fide labor dispute, other than a lockout, is not eligible to receive unemployment insurance (UI) benefits based on the wages paid to the employee prior to the beginning of the dispute for any week in which the dispute is in active progress in the establishment in which the employee is or was employed.

This bill permits such an employee to receive UI benefits while a labor dispute is in active progress if the employee is otherwise eligible to receive benefits and the employee is not participating in the dispute and is not a member of the grade or class of workers (usually a collective bargaining unit) of which, immediately before the dispute, there were members employed with the employee's employer, any of whom are participating in the dispute.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

1 **SECTION 1.** 108.04 (10) (a) of the statutes is amended to read:

2 108.04 (10) (a) ~~An~~ Except as provided in par. (b), an employee who has left or
3 partially or totally lost his or her work with an employing unit because of a strike or
4 other bona fide labor dispute, other than a lockout, is not eligible to receive benefits
5 based on wages paid for employment prior to commencement of the dispute for any
6 week in which the dispute is in active progress in the establishment in which the
7 employee is or was employed, ~~except as provided in par. (b)~~ unless the employee is
8 not participating in the dispute and the employee is not a member of a grade or class
9 of workers of which, immediately before the commencement of the dispute, there
10 were members employed with the employing unit, any of whom are participating in
11 the dispute.

12 **SECTION 2. Initial applicability.**

13 (1) This act first applies with respect to weeks of unemployment commencing
14 on the effective date of this subsection.

15 (END)

Labor Dispute Information Statute 108.04(10)

Summary: An employee who left or has partially or totally lost employment with an employer due to a labor dispute/strike in the establishment in which they are employed is not eligible for unemployment benefits based upon the wages paid for employment during any week prior to the start of such labor dispute.

The intent of the law is that an employer should not finance a strike against itself by the payment of unemployment insurance. The law does not distinguish between an employee who is directly involved with the strike and an employee who loses employment because of the strike. If it is established that 'but for the strike' an employee would still be working the employee would be denied benefits for the duration of the strike.

Wages for work performed prior to the beginning of the strike cannot be used to meet the qualifying requirements for unemployment insurance or to determine monetary entitlement while the strike is in active progress.

Manitowoc Crane strike: There were 166 claimants who filed for unemployment insurance during the Manitowoc Crane labor dispute. Per a scan of the Labor Dispute decisions all of the claimants were initially denied. The information does not provide a breakdown of those directly involved in the strike versus those not directly involved.

The strike was called by the International Association of Machinists (IAM) Local 516 (Milwaukee). Per information from the employer they checked the list of those who had filed and indicated that no IAM members were on the list. The employer representative indicates that those who filed for UI were in the Boilermakers Union (Local 443), Office and Professional Employees International Union (Local 9) and the International Brotherhood of Electrical Workers (Local 158). The initial decision for the key case was a denial. The decision was appealed and affirmed by the Administrative Law Judge. It was petitioned to the Labor and Industry Review Commission (LIRC) and at that level the decision was overturned to allow payment of benefits as the Commission Decision indicates that it could not be supported that the employees did not leave or partially or totally lose their employment because of the strike. The LIRC's task was to determine whether or not the employees had actually lost their employment due to a labor dispute that was in active progress in the employer's establishment. The reason that the LIRC determined that the employees were not out of work due to the strike is that throughout the period of the strike the machinists work was done by office workers, replacement and temporary workers. The boilermakers (and other unions) did not honor the machinists strike, had been laid off periodically throughout 2011 and were recalled to work throughout the strike period. In making this decision the commissioners cited a case (*De Leeuw v IHLR*) which, in a nutshell, indicates that an employee is disqualified for UI only when s/he would be working 'but for' the labor dispute. That 'test' did not apply in this case so it was determined that UI benefits were payable to the employees.