COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

LABOR DISPUTE - 220.1
Grade or class of worker -
Membership in bargaining u

DECISION OF COMMISSION

In the Matter of	
Andrew J. Dorish, et. al. (See Appendix)	Date of Appeal To Commission: November 24, 1976
	Date of Hearing: April 4, 1977
Virginia Air National Guard Sandston, Virginia	Decision No.: 9162-C
	Date of Decision: April 13, 1977
Employer	Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimants from the decision of the Appeals Examiner (No. UI-76-6857), dated November 9, 1976.

ISSUE

Were the claimants unemployed due to a labor dispute in active progress and did they come within the exceptions as set forth in (1) and (2) as provided in § 60.1-52 (b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

On September 6, 1976, the claimants left their jobs with the Virginia Air National Guard to accept employment as driver trainees with United Parcel Service in Richmond, Virginia. They began working at United Parcel Service on September 13, 1976, being paid $5.00 an hour. As trainees, the claimants were not union-eligible for thirty days; therefore, they were not members of the bargaining unit. After the claimants had worked at the Richmond warehouse for three days, the Teamsters Union, which is the recognized bargaining agent for the drivers and warehousemen, called a strike. Although the claimants were not members of the union and did not wish to go out on strike, the employer told them that they could not continue working after September 15, 1976, until they were recalled.

The claimants filed their claims for unemployment compensation on September 16, 1976, and continued to claim benefits through December 16, 1976, when the strike ended and they were called back.

The claimants had received a wage increase to $6.03 an hour as a result of the strike, and the employer's representative had testif at the hearing before the Appeals Examiner that all warehousemen a. drivers would stand to gain as a result of the strike. He did not state whether or not the company was contractually obligated to award such benefits to trainees such as the claimants in the present case. The claimant, Andrew J. Dorish, testified before the Commission that he and the claimant, James E. Dillard, Jr., were the only trainee drivers at the Richmond facility prior to the labor dispute.

Section 60.1-52 (b) of the Virginia Unemployment Compensation Act provides in part that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that:

> (b) His total or partial unemployment is not due to a labor dispute in active progress or to shutdown or start-up operations caused by such dispute which exists (1) at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (2) at a factory, establishment or other premises (including a vessel) either within or without this State, which (a) is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed and (b) supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:
>
> (1) He is not participating in or financing or directly interested in the labor dispute; and
>
> (2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute."

The claimants' unemployment was the result of the labor dispute in active progress at the establishment where they were last employe Therefore, they would be ineligible for benefits unless they come within both exceptions set forth above. Since the claimants were not union members and had no part in the labor dispute, the Commissio finds that they were not participating in or financing the dispute. Although the employer's representative testified that all drivers and warehousemen "would stand to gain" as a result of the dispute the Commission has held that unless the employer is contractually

obligated to award such benefits to an employee, he is not "directly interested in" the dispute. (See Robert A. Branch v. Old Dominion Transit Management Company, Commission Decision No. 9069-C, March 23, 1977.) The Commission is of the opinion, therefore, that the claimants were not directly interested in the labor dispute even though benefits were awarded to them as a result of the dispute.

The final inquiry is whether or not the claimants were members of a grade or class of workers, any of whom were participating in or financing or directly interested in the dispute. In Blanch C. Bisese, et. al. v. National Airlines, Inc., Commission Decision No. 3184-C, January 28, 1958, the Commission distinguished between the terms "grade" and "class" of workers. Citing Webster's Dictionary, it defined a class in the following manner:

> "A group of individuals ranked together as possessing common characteristics or as having the same status . . ."

Quoting Black's Law Dictionary, the Commission defined the term class:

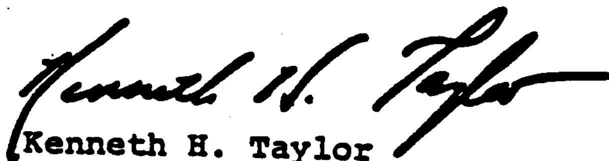
> " . . . a group of persons or things, taken collectively, having certain qualities in common, and constituting a unit for certain purposes . . ."

The Commission held that the word "grade" has a narrower connotation than the word "class" and that it is generally used to denote a level, rank, or relative portion of employees in a common service. Therefore it held that a class of workers could include several grades. (Underscoring supplied)

In the present case, the uncontradicted testimony of the claimant, Dorish, establishes that he and the other claimant were the only driver trainees at the employer's Richmond establishment prior to the labor dispute. They would come within exception (2) set forth above only if it can be shown that they neither belonged to a grade nor a class of workers, any of whom were participating in the dispute. It is the opinion of the Commission that a trainee would be a grade within the general classification of truck drivers. Although there were no other employees of this same grade participating in the dispute, there were other truck drivers involved in the dispute and these individuals did belong to the same class of workers as did the claimants. Therefore, the claimants would not come within the second exception set forth above. Since the two exceptions are in the conjunctive and the claimants have failed to demonstrate that they come within both, they would be ineligible for benefits during the weeks of the labor dispute's existence. (Underscoring supplied)

DECISION

The decision of the Appeals Examiner which held that the claimar were ineligible for benefits because their unemployment was the resul of a labor dispute in active progress is hereby affirmed.



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