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Recent Developments: Giant Food, Inc. v. Department of Labor, Licensing and Regulation: Disqualification of Unemployment Eligibility under Section 8-1004 of the Labor and Employment Article Is Lawful When There Is Substantial Curtailment at the Individual Facility or Premises

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Giant Food, Inc. v. Department of Labor, Licensing and Regulation **Disqualification of Unemployment Eligibility under Section 8-1004 of the Labor and Employment Article Is Lawful when There Is Substantial Curtailment at the Individual Facility or Premises**

By Traci Gladstone Corcoran

The Court of Appeals of Maryland held that disqualification of unemployment benefits under section 8-1004 of the Labor and Employment Article of the Annotated Code of Maryland ("section 8-1004"), applies when there is a substantial curtailment of work caused at the employee's individual location of employment. *Giant Food, Inc. v. Department of Labor, Licensing, and Regulation*, 356 Md. 180, 738 A.2d 856 (1999). In so holding, the court ended an ongoing judicial debate over whether "substantial curtailment" means an individual place of employment or an entire business entity.

Giant Food, Inc. ("Giant"), is a retail grocer that owns and operates several distribution centers, warehouses, stores, and plants in Maryland and other Mid-Atlantic states. Teamsters Local 639 ("Teamsters"), represented by the Department of Labor, Licensing, and Regulation ("DLLR"), is a union of truck drivers who delivered to all of Giant's Mid-Atlantic locations. The Teamsters went on strike after a collective bargaining agreement between Giant and the Teamsters expired. The strike caused Giant's warehouse, distribution centers, and manufacturing plants to cease operation, resulting in an estimated four million dollars of lost profit.

Subsequently, over one thousand employees who participated or assisted in the strike, applied for unemployment benefits.

The Board of Appeals of the DLLR, the Circuit Court for Montgomery County, and the Court of Special Appeals of Maryland all found that the employees were entitled to unemployment benefits. The Court of Appeals of Maryland granted Giant's writ of certiorari to decide if the Teamsters were disqualified, due to a substantial curtailment of Giant's operations, from receiving unemployment benefits.

The court of appeals began its analysis by acknowledging its role to review and determine if the administrative agency's decision was based on proper legal standards. *Giant*, 356 Md. at 184-85, 738 A.2d at 858. The legal issue before the court was whether, under section 8-1004, which replaced Article 95(A) section 6(e), the Teamsters were "disqualified" from receiving the unemployment benefits. *Id.* at 186, 738 A.2d at 859.

The court of appeals cited section 8-1004, specifically the language:

- (a) grounds for disqualification . . . (1) an individual who otherwise is eligible to receive benefits is disqualified from receiving benefits for each

week for which the Secretary finds that unemployment results from a stoppage of work, other than a lockout, that exists because of a labor dispute at the premises where the individual was last employed.

Id. (citing Md. Code Ann., Lab. & Empl. § 8-1004 (1991)). The court first applied the fundamentals of statutory construction, opining that the plain meaning of the rule is "not absolute," and that a court must review a statute in light of the "purpose, aim, or policy of the enacting body." *Id.* at 189, 738 A.2d at 861. The court further stated that any unrealistic interpretation should be avoided. *Id.*

The court next analyzed whether "premises" is defined as one particular unit of a business operation, or the entire business entity. *Id.* at 190, 738 A.2d at 861-62. The court noted that when section 8-1004 was enacted, "factory, establishment, or other premises," was replaced with merely "premises." *Id.* at 191, 738 A.2d at 862. Based upon its comprehensive review of the statute's history, the court of appeals held that the difference in word choice had no effect on the statute's substantive meaning. *Id.* In further support of its holding, the court relied on a legislative report which expressly

stated that the purpose of the changed semantics in the revised section was to modernize and clarify, and not to create a new policy. *Id.* According to the court, the report also indicated that there was a valid attempt made “to ensure that a proposed revision conforms as nearly as possible to the intent of the General Assembly” *Id.* The court then turned to subsection (a)(2) of section 8-1004 which states, “if separate branches of work that usually are conducted as separate businesses in separate premises are conducted in separate departments on the same premises, each department shall be considered a separate premises” *Id.* at 193-94, 738 A.2d at 863.

The court also discussed the fact that the Maryland statute originated from an English statute. *Id.* at 192, 738 A.2d at 862-63. In *Saunders v. Maryland Unemployment Compensation Board*, 188 Md. 677, 53 A.2d 579 (1947), the court noted that the English statute is virtually identical to the Maryland statute, and that “the English disqualification statute, since its inception, has maintained a definition of place of employment or work limited to each individual site of employment, not the employer’s entire operations.” *Id.* (citing *Saunders*, 188 Md. at 687-88, 53 A.2d at 583-84).

The court went on to analyze the meaning of the “stoppage of work” language of section 8-1004. *Id.* at 196, 738 A.2d at 864. The court referred to *Employment Security Admin. v. Browning-Ferris, Inc.*, 292 Md. 515, 438 A.2d 1356 (1982), where it held that a majority

of jurisdictions held the “stoppage of work” to a “substantial curtailment” standard. *Id.* at 197, 738 A.2d at 865 (citing *Browning-Ferris*, 292 Md. at 528-30, 438 A.2d at 1364-65). Aware that substantial curtailment varies and that it is dependent upon “the type of business” at issue, the court applied this standard to the facts of the instant case. *Id.* at 198-99, 738 A.2d at 866. In so doing, the court held that Giant’s activities had completely ceased, and that the Teamsters’ strike had constituted a “stoppage of work” under section 8-1004. *Id.*

In support of its decision, the court of appeals utilized persuasive authority from other states with “similarly-worded” statutes. *Id.* at 199-200, 738 A.2d at 866-67. The most poignant aspect of this analysis came from the Supreme Court of Nebraska. *Id.* at 200-01, 738 A.2d at 867. The Court of Appeals of Maryland cited *Magner v. Kinney*, 141 Neb.122, 130, 2 N.W.2d 689, 693 (1942), which held “that a ‘stoppage or curtailment of work’ may occur in one of three forms: (1) total cessation of work in the premises; (2) cessation of work by part of the employees, which prevents others in the premises from working; or (3) diminished patronage by customers, which produces unemployment.” *Id.* (quoting *Magner*, 141 Neb. at 130, 2 N.W.2d at 693). The court of appeals also cited a case from Illinois, which held that a “stoppage of work” occurs or affects the individual plant, or place of employment, but “not the employer’s business as a whole.” *Id.* at 201, 738 A.2d at 867 (quoting

Central Foundry Div. v. Holland, 36 Ill.App.3d 998, 1002, 345 N.E.2d.143, 147 (1976)).

The Court of Appeals of Maryland concluded that the distribution centers, the warehouse centers, and the manufacturing plants ceased operation as a result of the strikes, consistent with the intent of section 8-1004. *Id.* at 203-04, 738 A.2d at 869. Accordingly, the employees were disqualified from receiving unemployment benefits because “there was a substantial curtailment of operations at each of these premises to cause a stoppage of work.” *Id.* at 205, 738 A.2d at 870.

In *Giant Food, Inc.*, the court of appeals sets the standard for review in cases arising out of labor disputes, which result in work stoppage, where the employees are subsequently disqualified from receiving unemployment benefits. This decision will have a profound effect on workers in Maryland because the courts have, in previous cases, been unwilling to disqualify them from receiving unemployment if the employer’s company still operated as a whole despite the strike. Yet courts will now be less apt to allow benefits to workers even where only the individual’s place of employment ceased operations. Likewise, the holding in this case gives Maryland labor attorneys a bright line standard with which to assess their active and potential cases relating to labor disputes.