



# High Court Puts Employers on Notice: Striking Unions Can Collect Unemployment Benefits

Client Advisories

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If your union employees decide to strike and walk off the job, would they be entitled to unemployment compensation benefits? Many employers may be inclined to answer “no” because of the logical understanding that individuals who voluntarily leave the workforce are not entitled to collect benefits. Unfortunately, if an employer, through its own struggles and contingencies, is able to maintain operations during the strike, the striking employee in New Jersey will most likely be entitled to unemployment benefits. The New Jersey Supreme Court has highlighted this not-so-well-known fact in its recent decision *Lourdes Medical Center of Burlington County v. Board of Review*. In *Lourdes*, the Court held that striking nurses could collect unemployment compensation for the time they spent on the picket lines because the hospital continued to operate, maintained its patient level and did not curtail any services.

The law in New Jersey has long held that an individual is disqualified from receiving unemployment benefits if his/her unemployment is “due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises.” N.J.S.A. 43:21-5(d). A “stoppage of work” is defined as a “substantial curtailment of work which is due to a labor dispute.” The regulations provide that an “employer is considered to have a substantial curtailment of work if not more than 80 percent of the normal production of goods or services is met.” N.J.A.C. 12:17-12.2(a)(2).

In the case that led to this Court decision, *Lourdes Medical Center*, a large regional hospital, experienced significant losses as a result of the strike. *Lourdes* was able to stay open, despite losses averaging \$1.4 million to \$1.7 million a month. Notwithstanding the significant expense incurred to stay open and continue providing critical health care services to the community, the Supreme Court upheld the Unemployment Compensation Board of Review’s finding that there was not a “stoppage of work” as defined by the statute and regulations.

*Lourdes* claimed that the laws and regulations should not apply to a hospital because applicable regulations often prevent a hospital from ceasing operations entirely. *Lourdes* explained that for a hospital to close, it must

first obtain, through a laborious process, a certificate of need from the Commissioner of Health and Senior Services. In response, the Court reasoned that the statute draws no distinctions between industries or professions. In reaching its decision, the Court reviewed the Legislature's purpose in originally enacting the unemployment benefits law. The law was passed in the midst of the Great Depression, when unions and management were "locked in battle over issues ranging from employee demands for sustainable wages to improved working conditions." The Court reasoned that the Legislature intended the unemployment benefits law to be a "lifeline" for "ordinary men and women, who otherwise could not afford to leave work to protest for increased wages or decent working conditions," and to permit "labor to compete on a more equal playing field with management." Therefore, the nurses were within their rights to seek and collect unemployment benefits from the Hospital, despite the fact that they went on strike.

This case is an example of the significant impact an employer faces from unionization and union strikes in particular. The case makes clear that if an employer is able to maintain operations at 80% or more while employees strike, they will face higher unemployment insurance contributions as well as dealing with the financial ramifications of the strike. The decision is also likely to encourage potential strikers to be more aggressive in bargaining negotiations, knowing that they can collect unemployment compensation benefits when they strike. Thus, it highlights the importance for employers to take preventative measures to avoid facing a strike, or, better yet, to take such measures to avoid a unionized work force in the first place.

If you have any questions about this New Jersey Supreme Court decision, the impact a union strike could have on your business, or how to prevent a strike, please contact a member of Archer's Labor and Employment Department at 856-795-2121.

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