



EMPLOYMENT DEVELOPMENT DEPARTMENT PROCEDURES FOR INVESTIGATING TRADE DISPUTES

- STEP 1: Department is informed of initial trade dispute activity by union(s) or employer(s) involved in dispute, unemployment insurance claimants, or other sources such as newspapers, radio, and television.
- STEP 2: Unemployment Insurance Division Central Office Trade Dispute Specialist (hereinafter, Specialist), contacts the employer(s) and union(s) involved in the dispute to ascertain overall facts, including the date the dispute began, the nature of actions taken, i.e., if members of union involved took strike action, or if they were prevented from working (locked out). Normally, this contact is made by telephone. Forms requesting basic information in writing about the dispute are also mailed to employer(s) and union(s) involved.
- STEP 3: Specialist reviews all information obtained, including reports; consults with EDD Legal Office, if appropriate; and conducts any research necessary to resolve complex, novel, or unusual issues or conflicts. Specialist prepares Trade Dispute Notice that provides the overall decision as to the existence of the trade dispute, its beginning date, general eligibility of various categories of employees, whether the Department can refer workers to the employer, and whether strike benefits, if any, are wages. The Trade Dispute Notice is posted to the Department's Intranet site for use by EDD staff, and is available upon request to the employer(s) and union(s) involved in the dispute.
- STEP 4: Field operations staff interview claimants, obtain facts about each individual case, and determine the claimant's eligibility for unemployment insurance benefits in accordance with the overall guidelines in the Trade Dispute Notice. Staff issues a written notice of determination, including an explanation of appeal rights, to interested parties.
- STEP 5: If after the beginning of the dispute the Department becomes aware of additional facts that may affect the eligibility of individuals involved in the dispute, the Department's ability to refer workers, or the Department learns the trade dispute may have ended, the Specialist conducts additional fact-finding following the above procedures and may issue supplemental Trade Dispute Notices as appropriate.

Union and employer representatives can greatly facilitate the issuance of trade dispute decisions by responding promptly to telephone and written inquiries from Specialists and field operations staff, and by contacting the Specialist when a dispute begins or new facts develop.

The Department's interest in each trade dispute is limited to its effect on the eligibility for unemployment insurance benefits for claimants involved in the dispute and its effect on the referral of workers to employers involved in the dispute. The Department is required by law to maintain a neutral position with respect to the merits of the dispute, and may not be influenced by the merits of the dispute in making its decisions.

Employers and unions involved in a trade dispute may find it useful to access EDD's Home Page at: www.edd.ca.gov and review the Trade Dispute volume of the Benefit Determination Guide located in the Forms and Publications Section.

Contact EDD at (916) 654-7401 to report a trade dispute.

SUMMARY OF PRINCIPLE LEGAL AUTHORITIES TO DETERMINE:

- 1) WHETHER A TRADE DISPUTE EXISTS.
- 2) THE ELIGIBILITY FOR UNEMPLOYMENT BENEFITS OF EMPLOYEES INVOLVED.
- 3) WHETHER THE DEPARTMENT CAN REFER WORKERS TO EMPLOYERS INVOLVED IN THE DISPUTE.

There is no definition of a trade dispute in the California Unemployment Insurance Code; however, the Department has adopted as its own the definition from the Norris-LaGuardia Act (1932):

“...any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in proximate relation of employer or employee...”

Section 1262, California Unemployment Insurance Code provides:

An individual is not eligible for unemployment compensation benefits, and no such benefit shall be payable to him, if he left his work because of a trade dispute. Such individual shall remain ineligible for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed.

Section 1262.5, California Unemployment Insurance Code provides:

Whenever the department learns that a trade dispute is in progress, the department shall promptly conduct an investigation and make investigation findings as to the nature, location, labor organizations and employers involved, and other relevant facts concerning the trade dispute as it deems necessary. The department shall provide its findings to its field offices in locations affected by the trade dispute, and shall, upon request, make its findings available to any employer, employers' association or labor organization involved in the trade dispute. The department's investigation findings shall be based upon the information then available to it and shall not be a determination as to the eligibility of any claimant for benefits under Section 1262.

California Code of Regulations, title 22, section 1262-1, reads:

With respect to acts or periods of ineligibility under Section 1262 of the code “week of ineligibility” shall be any week or weeks applicable

to the individual under these regulations, during any portion of which his or her unemployment is due to his or her having left his or her work because of a trade dispute and for the period during which he or she continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he or she was employed.

California Code of Regulations, title 22, section 1262-2 reads:

(a) Whenever individuals leave their work because of a trade dispute under conditions which may disqualify such individuals from benefits pursuant to the provisions of Section 1262 of the code, the employing unit, within ten days of the date individuals left such work, shall notify the department at its office in Sacramento or such other office of the department as may be designated by an authorized representative of the department. Such notification shall include separately for each union involved:

- (1) The name and address of the employing unit
- (2) A statement that a trade dispute exists
- (3) The name and address of the union (or unions) claiming to represent the individuals who left work because of a trade dispute
- (4) Such other information as may be prescribed by the department

(b) The employing unit may be granted additional time by the department in which to comply with the requirements of subdivision (a) of this section, provided that any notice submitted after expiration of the time limits set forth in this section should include a statement of the reasons why such delay should be considered with "good cause."

20 Code of Federal Regulations, part 652.9 reads:

(a) State agencies shall make no job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(b) Written notification shall be provided to all applicants referred to jobs not at issue in the labor dispute that a labor dispute exists in the employing establishment and that the job to which the applicant is being referred is not an issue in the dispute.

SIGNIFICANT CALIFORNIA COURT CASES INVOLVING SECTION 1262 OF THE UNEMPLOYMENT INSURANCE CODE

- A. Cases involving the question of whether the employee voluntarily left his or her employment because of the trade dispute:

Artigues et. al. v. CUIAB (1968) 66 Cal.Rptr. 390

Bodinson Manufacturing Co. v. California Employment Commission (1941) 109 P.2d 935

Bunny's Waffle Shop v. California Employment Commission (1944) 151 P.2d 224

Campos, et. al. v. California Employment Development Department (1982)
183 Cal.Rptr. 637

Chrysler Corporation v. CUIAB (1953) 253 P.2d 68

Chrysler Corporation v. CUIAB (1962) 18 Cal.Rptr. 843

Coast Packing Co. v. CUIAB (1966) 48 Cal.Rptr. 854

Gardner v. State of California Director of Employment (1959) 53 Cal.2d 23; 346 P.2d 193

Martinez, et. al. v. CUIAB and Julius Goldman Egg City (1988) 254 Cal.Rptr. 461

McKinley v. California Employment Stabilization Commission (1949)
34 Cal.2d 239; 209 P.2d 602

R.S. Acuff, et. al. v. CUIAB and Greyhound Lines, Inc. (1989) 256 Cal.Rptr. 513

- B. Cases involving the question of whether the trade dispute remains the cause of the individual's unemployment:

Isobe v. CUIAB (1974) 116 Cal.Rptr. 376

Mark Hopkins, Inc. v. California Employment Commission (1944) 151 P.2d 229

National Broadcasting Company, Inc. v. CUIAB (1979) 157 Cal.Rptr. 207

Ruberoid v. CUIAB (1963) 27 Cal.Rptr. 878

West Food, Inc v. CUIAB (1979) 158 Cal.Rptr. 406

Windigo Mills v. CUIAB (1979) 155 Cal.Rptr. 63

- C. Department Neutrality in Trade Disputes:

W.R. Grace and Co. v. California Employment Commission (1944) 151 P.2nd 215

- D. Cases concerning the "establishment" in which employee was employed:

General Motors v. CUIAB (1967) 61 Cal.Rptr. 483

Matson Terminals, Inc. v. California Employment Commission (1944) 151 P.2d 202