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**UNEMPLOYMENT COMPENSATION — COMPULSORY
RETIREMENT — RIGHT TO BENEFITS**

Leach v. Columbus Coated Fabrics Co., 1 Ohio Misc. 41
205 N.E.2d 608 (C.P. 1964).

The claimant, an employee of the Columbus Coated Fabrics Company, was retired under the terms of a collective bargaining agreement negotiated by his union and employer. Although the contract contained no specific retirement provisions, there was a general section in the agreement to the effect that the employer had the right to force retirement at age 65.¹ The claimant filed for unemployment compensation benefits upon retirement.² The Administrator of the Bureau of Unemployment Compensation allowed the claim after a finding that the claimant had been "involuntarily separated" from his job due to age, thereby bringing him within the Ohio Unemployment Compensation Act.³

A subsequent appeal by the employer to the Board of Review of the Bureau of Unemployment Compensation resulted in a finding that the claimant had "voluntarily quit" his employment without just cause, and therefore he was denied any benefits.⁴ A further appeal by the claimant was refused by the Board of Review. From that refusal, an appeal was brought by the claimant and the Administrator to the Court of Common Pleas of Franklin County. The issue presented to the court was whether the claimant was ineligible for unemployment compensation benefits under section 4141.29 (D) (2) (a) of the Ohio Revised Code after being retired under the terms of a union contract providing for a pension.⁵ The court held that claimant had been discharged for cause⁶ and thus was in-

1. In *Leach*, the right of the employer to force retirement within the terms of the union agreement was subject to yearly continuances granted upon certain conditions established by the employer. Claimant was retired December 31, 1961, at the age of 69. *Leach v. Columbus Coated Fabrics Co.*, 1 Ohio Misc. 41, 44 (C.P. 1964), 205 N.E.2d 608, 610 (1964).

2. The claimant's action was in compliance with the requirements set forth in the Ohio Unemployment Compensation Act. OHIO REV. CODE §§ 4141.01-99.

3. The Administrator, upon reconsideration, had refused an argument by the employer that claimant had quit voluntarily without just cause. *Leach v. Columbus Coated Fabrics Co.*, 1 Ohio Misc. 41, 42 (C.P. 1964), 205, N.E.2d 608, 609 (1964).

4. *Ibid.* The appeal procedure is specifically set out within the statute. OHIO REV. CODE § 4141.28.

5. *Leach v. Columbus Coated Fabrics Co.*, 1 Ohio Misc. 41-43 (C.P. 1964), 205 N.E.2d 608, 609 (1964).

6. *Id.* at 48. Specifically, the court held claimant to have been "discharged for cause in connection with his work. . . ." within the purview of section 4141.29(D) (2) (a) of the OHIO REV. CODE.

eligible for such benefits. By accepting the "fruits" of the union contract, which were greater than the benefits provided by the unemployment compensation statute, the court held that the case did not fall within the prohibitions of section 4141.32, forbidding a waiver of benefits, and that the claimant had thereby given his employer just cause for dismissal.⁷ The court reasoned that the claimant had "substituted" the pension benefits gained under the union contract for the benefits granted by the unemployment compensation statute.

A major problem in all jurisdictions that have ruled on a factual situation similar to that in *Leach* is the provision in each state code prohibiting a waiver of benefits by an employee.⁸ Typically, such a non-waiver section is a statement of public policy set forth by the legislature to insure that the benefits conferred by the unemployment compensation statute are neither directly nor indirectly infringed. In Ohio,⁹ as in other jurisdictions,¹⁰ this prohibition has been held to include provisions in collective bargaining agreements relating to unemployment compensation benefits.

The jurisdictions denying unemployment benefits to an employee retired under a union contract providing pension benefits have consistently followed *Bergseth v. Zinsmaster Baking Co.*¹¹ There, a Minnesota court relied heavily on the "agency-contract" principle in considering the effect of a union contract. It determined that the employees' separations were voluntary because they resulted from the acts of their duly selected bargaining agents. As to the issue of waiver of benefits, the court reasoned that the union agreement provided for *voluntary* termination of employment and thus was not in conflict with the statute.¹² On the other hand, *Campbell Soup Co. v. Board of Review*¹³ held that such a separation was in-

7. *Id.* at 48. This holding emphasized that through the acceptance of these pension benefits, claimant had not "waived" his statutory benefits under section 4141.32 which reads in part: "No agreement by an employee to waive his rights to benefits is valid, nor shall benefits be assigned, released, or commuted." OHIO REV. CODE § 4141.32.

8. See, *e.g.*, note 7 *supra*; see generally ALA. CODE tit. 26, § 244 (1958); ARIZ. REV. STAT. ANN. §§ 23-734, 735 (1956); IND. ANN. STAT. § 52-1558 (1964); KY. REV. STAT. ANN. § 341.470(1), (3) (1963); MASS. ANN. GEN. LAWS ch. 151A, § 35 (1957); MINN. STAT. § 268.17 (1959); N.J. STAT. ANN. § 43:21-15 (Supp. 1962); PA. STAT. ANN. tit. 43, § 861 (1964).

9. *Dahman v. Commercial Shearing & Stamping Co.*, 170 N.E.2d 302 (Ohio C.P. 1960); 54 OHIO JUR. 2d *Unemployment Compensation* § 33 (1962).

10. *E.g.*, *Philadelphia Transp. Co. v. Board of Review*, 191 Pa. Super. 91, 155 A.2d 377 (1959).

11. 252 Minn. 63, 89 N.W.2d 172 (1958).

12. *Id.* at 72, 89 N.W.2d at 177-78; MINN. STAT. ANN. § 268.17 (1959).

13. 13 N.J. 431, 100 A.2d 287 (1953).

voluntary in the statutory sense. In reaching this decision, the court considered the employee's will and intention at the time of termination, concluding therefrom that the separation could not be voluntary since the employee did not choose to relinquish his job. Considering the non-waiver of benefits section of the statute,¹⁴ the court decided that although the union contract could not be brought within the literal wording of the section, the agreement in effect amounted to an advance surrender of benefits.¹⁵

The opposing policies of the above two views are irreconcilable. Those jurisdictions denying benefits emphasize the importance of the union contract and ignore the non-waiver provision, while those granting benefits stress the employee's actual intent at the time of separation as well as the non-waiver provision. In Ohio, an employee's rights to unemployment compensation benefits are determined by the provisions of the act rather than by an agreement between the employer and employee or union.¹⁶ Specifically, it has been held in Ohio that unemployment compensation benefits are not to be made the subject of collective bargaining agreements.¹⁷ The decision in the *Leach* case therefore raises a conflict in Ohio decisional law regarding this question. In *Ferrelli v. Leach*,¹⁸ another recent common pleas court decision, the court held, in a factual situation identical to *Leach*, that termination of employment

14. N.J. STAT. ANN. § 43:21-15 (Supp. 1962).

15. The split in jurisdictions deciding whether to grant or deny benefits to an employee retired under the terms of a union contract has been increased by subsequent decisions. *Denying benefits*: Ball Bros. Co. v. Review Bd., 189 N.E.2d 429 (Ind. App. 1963); Kentucky Unemployment Ins. Comm'n v. Kroehler Mfg. Co., 352 S.W.2d 212 (Ky. 1961). In Kentucky, as opposed to the other states, the employees were merely permitted to take part in the pension plan. *Granting benefits*: Employment Security Comm'n v. Magma Copper Co., 90 Ariz. 104, 366 P.2d 84 (1961); Warner Co. v. Unemployment Compensation Bd. of Review, 396 Pa. 545, 153 A.2d 906 (1959); Reynolds Metals Co. v. Thorne, 41 Ala. App. 331, 133 So. 2d 709, cert. denied, 272 Ala. 709, 133 So. 2d 713 (1961). In 1958, a decision by the Massachusetts Supreme Judicial Court in *Lamont v. Director of the Div. of Employment Security*, 337 Mass. 328, 149 N.E.2d 372 (1958), denying benefits, was swiftly rendered null and void by amendment to the Massachusetts statute: "An individual shall not be disqualified under the provisions of this subsection from receiving benefits by reason of leaving his work under the terms of a pension program requiring retirement from employment, notwithstanding his prior assent, direct or indirect, to the establishment of such pension program." MASS. ANN. GEN. LAWS ch. 151A, § 25(e) (Supp. 1964).

16. *Knowles v. Roberts*, 117 N.E.2d 173 (Ohio Ct. App. 1952); 54 OHIO JUR. 2d *Unemployment Compensation* § 33 (1962).

17. *Dahman v. Commercial Shearing & Stamping Co.*, 170 N.E.2d 302 (Ohio C.P. 1960).

18. 186 N.E.2d 868 (Ohio C.P. 1962). In *Ferrelli*, however, the court relied upon a different clause to interpret section 4141-29(D) (2) (a) ("quit his work without just cause. . .") than that relied on in *Leach* ("dismissed for just cause in connection with his work. . .") *Id.* at 868.