Unemployment Insurance: The Washington Supreme Court and the Labor Dispute Disqualification

Reacting to the mass unemployment of the 1930's, all states established unemployment insurance programs to assist eligible workers through periods of temporary unemployment.[1] Although providing relief for a broad spectrum of industrial unemployment, state unemployment insurance statutes typically contain various disqualifications rendering otherwise insured workers ineligible for benefits.[2] This comment discusses a disqualification common to all state statutes[3] disqualifying from benefits workers unemployed because of a labor dispute, and focuses upon the Washington Supreme Court's interpretation of the labor dispute disqualification in the Washington Unemployment Compensation Act.[4] After discussing the court's approach to the disqualifi-

1. The states enacted unemployment insurance statutes in response to the Social Security Act of 1935. 42 U.S.C. §§ 301-1396(g) (1970). The Federal Act imposed an unemployment tax upon employers nationwide, but provided for an offset of up to ninety percent of the federal tax if the employer paid a tax into an approved state fund. The Act also provided federal grants for the administration of approved state programs. The Act, however, credited only payments made to state funds before January 1, 1937, against the federal tax for the previous year. All the states responded quickly to these incentives and enacted local unemployment insurance statutes within two years of the passage of the Federal Act. *See generally* Larson & Murray, *The Development of Unemployment Insurance in the United States*, 8 VAND. L. REV. 181 (1955); Witte, *Development of Unemployment Compensation*, 55 YALE L.J. 21 (1945).

2. *See, e.g.*, WASH. REV. CODE §§ 50.20.050 (disqualification for voluntary quit); .060 (disqualification for misconduct or felony) (1977 Supp.); WASH. REV. CODE §§ 50.20.070 (disqualification for misrepresentation); .080 (disqualification for refusal of suitable work) (1976).

3. ALA. CODE § 25-4-78 (1975); ALASKA STAT. § 23.20.380(9) (1972); ARIZ. REV. STAT. § 23-777 (1971); ARK. STAT. ANN. § 81-1105(f) (1976); CAL. UNEMP. INS. CODE § 1262 (West 1972); COLO. REV. STAT. § 8-73-109 (1973); CONN. GEN. STAT. § 31-236 (1977); DEL. CODE tit. 19, § 3315(4) (1974); FLA. STAT. ANN. § 443.06(4) (West 1966); GA. CODE ANN. § 54.610(d) (Supp. 1977); HAW. REV. STAT. § 383.30(4) (1976); IDAHO CODE § 72-1366(h) (Supp. 1977); ILL. ANN. STAT. ch. 48, § 434 (Smith-Hurd Supp. 1977); IND. CODE ANN. § 22-4-15-3(a) (Burns Supp. 1977); IOWA CODE ANN. § 96.5(4) (West Supp. 1977); KAN. STAT. ANN. § 44-706(d) (Supp. 1977); KY. REV. STAT. § 341.360(1) (1977); LA. REV. STAT. ANN. § 23:1601(4) (West 1964); ME. REV. STAT. ANN. tit. 26, § 1193(4) (West Supp. 1977); MD. ANN. CODE art. 95A, § 6(e) (1969); MASS. GEN. LAWS ANN. ch. 151A, § 25(b) (West 1971); MICH. COMP. LAWS ANN. § 421.29(8) (West Supp. 1977); MINN. STAT. § 268.09(3) (Supp. 1977); MISS. CODE ANN. § 71-5-513(5) (Supp. 1977); MO. ANN. STAT. § 288.040(5) (Vernon 1978); MONT. REV. CODES ANN. § 87-106(d) (Supp. 1977); NEB. REV. STAT. § 48-628(d) (Supp. 1976); NEV. REV. STAT. § 612.395 (1977); N.H. REV. STAT. ANN. § 282.4(f) (1975); N.J. STAT. ANN. § 43:21-5(d) (West Supp. 1977); N.M. STAT. ANN. § 59-9-5(d) (Supp. 1975); N.Y. LAB. LAW § 592(1) (McKinney 1977); N.C. GEN. STAT. § 96.14 (1975); N.D. CENT. CODE § 52-06-02(4) (1974); OHIO REV. STAT. ANN. § 4141.29(D)(1)(a) (Page 1973); OKLA. STAT. ANN. tit. 40, § 215(e) (West Supp. 1977); OR. REV. STAT. § 657.200 (1977);

cation in the context of Washington case law, the comment examines various policy considerations underlying the labor dispute disqualification and contrasts the Washington court's interpretation with the interpretation other state courts have accorded similar labor dispute disqualification statutes. Finally, the comment concludes that the Washington court's singularly narrow interpretation of the labor dispute disqualification results from a basic misunderstanding of the disqualification's function in unemployment insurance legislation.

The labor dispute disqualification in the Washington Act typifies most state statutes:

> Labor dispute disqualification. An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: *Provided,* That this section shall not apply if it is shown to the satisfaction of the commissioner that
> (1) he is not participating in or financing or directly interested in the dispute which caused the stoppage of work; and
> (2) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided,* That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other premises.[5]

Thus, the provision initially establishes a blanket disqualification for labor dispute unemployment, but subsequently recognizes a number of exceptions to disqualification. On a practical level, the exceptions define the scope of the disqualification, because claim-

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PA. STAT. ANN. tit. 43, § 802(d) (Purdon 1964); R.I. GEN. LAWS § 28-44-16 (1968); S.C. CODE § 41-35-120(4) (1976); S.D. COMPILED LAWS ANN. § 61-6-19 (Supp. 1977); TENN. CODE ANN. § 50-1324(d) (1977); TEX. REV. CIVIL STAT. ANN. art. 5221(b)-3(d) (Vernon Supp. 1978); UTAH CODE ANN. § 35-4-5(d) (1953); VT. STAT. ANN. tit. 21, § 1344(4) (Supp. 1977); VA. CODE § 60.1-52(b) (Supp. 1977); WASH. REV. CODE § 50.20.090 (1976); W.VA. CODE § 21A-6-3(4) (Supp. 1977); WIS. STAT. ANN. § 108.04(10) (West 1974); WYO. STAT. § 27-26(D) (Supp. 1977). For a detailed analysis of the provisions of the various state statutes see MANPOWER ADMINISTRATION, UNITED STATES DEPT. OF LABOR, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS 4-41, 42 (rev. 1974).

4. WASH. REV. CODE §§ 50.01.005-.98.080 (1976 & Supp. 1977).

5. *Id.* § 50.20.090.

ants remain eligible for benefits upon proof that neither they, nor a grade or class of workers to which they belong, are financing, participating, or directly interested in the dispute.

State courts generally have had little difficulty defining and applying the concepts of "financing"[6] and "participation"[7] in the labor dispute disqualification. The courts are not unanimous, however, regarding the application of "direct interest" and "grade or class" to labor dispute unemployment. Nevertheless, the majority of courts do agree that participation, direct interest, and grade or class membership constitute distinct disqualifications under the statutes.[8] Only the Washington Supreme Court rejects this consensus, consistently refusing to recognize a distinction between the disqualifications for participation and direct interest.[9] Moreover, in a recent decision, the court has equated the requisites for grade or class membership with actual participation in the creation of the dispute.[10]

Employees of Pacific Maritime Association v. Hutt[11] provides the most recent and striking example of the Washington court's interpretation of "direct interest" and "grade or class" in the context of the labor dispute disqualification. The unemployment insurance benefit claimants were longshoremen and foremen employed by the Pacific Maritime Association (PMA). Although both longshoremen and foremen bargained with the PMA under the auspices of the International Longshoremen's and Ware-

6. Contrary to the experience in Great Britain, the mere payment of union dues does not constitute financing for purposes of disqualification in America. Outboard Marine & Mfg. Co. v. Gordon, 403 Ill. 523, 87 N.E.2d 610 (1949). Disqualification for financing has occurred rarely in the United States, prompting one commentator to refer to financing as "virtually a dead letter issue in the United States." Shadur, *Unemployment Benefits and the "Labor Dispute" Disqualification,* 17 U. CHI. L. REV. 294, 328 (1949). Twenty states have eliminated "financing" from the disqualification entirely. *See* MANPOWER ADMINISTRATION, UNITED STATES DEPT. OF LABOR, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS 4-41, 42 (rev. 1974).

7. Generally the controversy in the area of "participation" involves a claimant's failure to cross a striking union's picket lines. The courts almost universally hold that a voluntary refusal to cross picket lines constitutes participation for purposes of disqualification. *See, e.g., In re* St. Paul & Tacoma Lumber Co., 7 Wash. 2d 580, 110 P.2d 887 (1941). It has been held, however, that if a legitimate fear of violence or personal harm inspires the claimant's refusal, he remains eligible for benefits. Blankenship v. Board of Review, Okla. Emp. Sec. Comm'n, 486 P.2d 718 (Okla. 1971).

8. *See, e.g.,* Local 658, Boot & Shoe Worker's Union v. Brown Shoe Co., 403 Ill. 484, 87 N.E.2d 625 (1949); Auker v. Review Bd., Ind. Emp. Sec. Div., 117 Ind. App. 489, 71 N.E.2d 629 (1947).

9. *See* Employees of Pac. Maritime Ass'n v. Hutt, 88 Wash. 2d 426, 562 P.2d 1264 (1977); Ancheta v. Daly, 77 Wash. 2d 255, 461 P.2d 531 (1969); Wicklund v. Commissioner of Unemp. Comp., 18 Wash. 2d 206, 138 P.2d 876 (1943).

10. Employees of Pac. Maritime Ass'n v. Hutt, 88 Wash. 2d 426, 562 P.2d 1264 (1977).

11. *Id.*

housemen's Union (ILWU), each negotiated a separate contract with the PMA. The ILWU-PMA agreement recognized three classes of longshoremen: class A workers, who were fully registered ILWU members and had first priority for available work; class B workers, who were "limited-registered" under the ILWU-PMA agreement, non-ILWU members, and had a secondary preference for available work; and casual workers, who were also non-ILWU members and had no work priority. When their contract with the PMA expired, a majority of the class A workers authorized a strike. Class B workers did not have a voice in the actual strike vote, but could vote equally with class A workers on whether to accept the company's final settlement offer.[12] In this respect, the class B workers directly controlled the duration and final settlement of the dispute, a fact of which the court took little cognizance.[13] The foremen also took no part in the strike vote. They traditionally negotiated their contract only after a final settlement of the longshoremen's agreement, incorporating by reference various pension and welfare benefits contained in the former agreement. They too would benefit directly from any management concessions on these aspects of the longshoremen's contract. Accordingly, the primary issue before the court was the eligibility of the foremen and class B workers for unemployment benefits: whether class B workers were directly interested in the dispute, or belonged to a grade or class of workers any of whom were participating or directly interested in the dispute.

Although acknowledging that the claimants had a "lucrative interest"[14] in the outcome of the dispute, the court held that foremen and class B workers were not directly interested in the dispute for purposes of disqualification. The court reached this conclusion by equating direct interest with actual participation in the creation of the dispute: "[C]laimants to be ineligible . . . must first have some direct input into the creation or mainte-

12. Class B workers did, in fact, participate in a NLRB sponsored vote to determine whether the employees wished to accept the PMA's final offer. A majority of the employees rejected the company offer, and the strike continued after the vote. Brief of Appellant PMA at 5-6, Employees of Pac. Maritime Ass'n v. Hutt, 88 Wash. 2d 426, 562 P.2d 1264 (1977).

13. The court anomalously disposed of this consideration, stating merely that "[t]he determination of who will be allowed to vote on a final offer is an administrative decision made by the National Labor Relations Board pursuant to an act of Congress." 88 Wash. 2d at 435, 562 P.2d at 1269. This arbitrary disposition of the issue ignores the fact that the claimants did participate in the maintenance of the dispute and thus fell within the statutory prohibition.

14. *Id.*

nance of the dispute."[15] Solely because the claimants could not participate in the strike vote they were not "directly interested" in the dispute. At the very least, the court's interpretation of direct interest in terms of participation is analytically questionable, because such an interpretation strips direct interest of any independent significance for purposes of disqualification and renders it mere surplusage. The interpretation also contravenes elementary canons of statutory construction dictating that courts accord each word in a statute a different meaning, if possible, so as to render none superfluous.[16] Thus, the court's interpretation is untenable in view of the express statutory language mandating disqualification for participation *or* direct interest,[17] which further indicates the independent efficacy of each provision.

Hutt accorded little weight to the economic aspects of the claimants' interest in the dispute. It acknowledged that the claimants' "wages, fringe benefits, and working conditions were determined by the results of the negotiations between the striking class A workers and the PMA,"[18] that class B workers received substantially the same contract benefits as class A workers, and that the terms of the foremen's contract derived in part from the longshoremen's agreement. The court observed, however, that these contingencies would have occurred "even if there were no strike."[19] Such an observation ignores the crucial facts before the court: that a strike *did* occur and that this strike precipitated the claimants' unemployment. A logical approach to the determination of "direct interest" must begin with an analysis of the dispute itself and only then proceed to a consideration of the claimants' interest in the dispute. The court's analytical approach, which begins by hypothesizing the nonexistence of the very subject in question, actually precludes any valid consideration of the claimants' relationship to the dispute.

After determining that foremen and class B workers were not directly interested in the dispute, the court considered and rejected the contention that the claimants were members of a grade or class of workers participating or directly interested in the dispute. To reach this conclusion the court delineated grade or class membership in terms identical to those employed in resolving the question of direct interest: participation in the initial strike vote.

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15. *Id.* at 434-35, 562 P.2d at 1269.
16. C.D. Sands, 2A Statutes and Statutory Construction § 46.06 (4th ed. 1973).
17. Wash. Rev. Code § 50.20.090 (1976).
18. 88 Wash. 2d at 434, 562 P.2d at 1269.
19. *Id.* at 435, 562 P.2d at 1269-70.

Foremen and class B workers were contractually ineligible to participate in the strike vote, and for this reason alone constituted an independent grade or class of workers. This rationale effectively reduces the grade or class disqualification to a determination of the actual labor dispute participants and relieves it of any significance beyond the independent disqualification for participation in the dispute. In this respect, the same criticisms directed at the court's interpretation of direct interest apply to its interpretation of the grade or class disqualification.[20] Ultimately then, under *Hutt,* participation *per se* becomes the only ground for disqualification for unemployment insurance benefits with respect to labor dispute unemployment in Washington.

Hutt's narrow interpretation of the labor dispute disqualification did not represent judicial innovation in Washington case law, but merely extended prior doctrine. In *Wicklund v. Commissioner of Unemployment Compensation*[21] the court similarly had limited the application of direct interest to actual participation in the labor dispute. In *Wicklund* the claimants stood to benefit from the outcome of a rival union's strike, but because they had not participated in the dispute, and in fact had opposed it, the court held the claimants were not directly interested in the dispute for purposes of disqualification. *Wicklund* also raised the issue of union jurisdictional disputes. Earlier, in *In re Persons Employed at Deep River Timber Co.,*[22] the court had held claimants, members of one union, "directly interested" in a rival union's strike, the sole purpose of which was to force a certain employee to resign his membership in the claimants' union and join the striking union. The claimants' interest, the court held, derived from their desire to maintain the status quo with regards to union membership. In *Wicklund,* however, which involved a

20. *Hutt* did not commit itself to a future interpretation of grade or class membership solely in terms of participation. The court purported to be searching for a flexible interpretation of the provision applicable to any labor dispute. To this end, the court ostensibly approved Milton Shadur's approach to the issue, that a determination of grade or class membership depends upon the particular facts of each case. Thus the court stated that relevant factors might include "similarity in type of work, occupation, conditions of work, methods or rates of pay, union membership or eligibility therefore, or the employees age—but only when the dispute itself makes that factor significant." *Id.* at 435, 562 P.2d at 1270 (quoting Shadur, *supra* note 6, at 334). Significantly, any of the enumerated criteria would have placed the *Hutt* claimants within the scope of the disqualification. Thus, in view of the court's traditionally narrow interpretation of "direct interest," *Hutt*'s rigid determination of grade or class membership solely on the basis of participation in the creation of the dispute takes on an added significance notwithstanding the court's enumeration of other possibly relevant criteria.

21. 18 Wash. 2d 206, 138 P.2d 876 (1943).

22. 8 Wash. 2d 179, 111 P.2d 575 (1941).

similar jurisdictional dispute, the court repudiated this conclusion and declared that direct interest required some element of actual participation in the labor dispute.

In *Ancheta v. Daly*[23] the court again addressed the question of direct interest. As in *Wicklund,* the claimants in *Ancheta* received a wage increase as a result of a strike by another union, but the court held this fact did not control the determination of direct interest.[24] Relying on *Wicklund,* the court concluded that "direct interest" required actual participation in the dispute, but significantly, acknowledged both the shortcomings and widespread criticism of such an interpretation.[25] Attempting to reinforce this interpretation, the court formulated an "economic benefit"[26] test which purported to measure the extent of the claimants' economic interest in the dispute. Unfortunately, however, the court proposed no guidelines for the application of such a test, but summarily held the wage increase the claimants realized from the strike's outcome did not constitute an economic benefit when compared with the length of time they were out of work.

Although *Ancheta* expressly recognized the anomaly of formulating direct interest solely in terms of participation, the court's proposed solution did little to resolve the problem. The court ostensibly recognized that direct interest connoted more than actual participation but refused to disassociate the two concepts entirely. The economic analysis of the claimants' situation applied only to the extent that it supplemented a determination of actual participation in the dispute. More significantly, however, *Hutt* made no attempt to apply such an economic benefit

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23. 77 Wash. 2d 255, 461 P.2d 531 (1969).

24. Throughout *Wicklund, Ancheta,* and *Hutt,* the court relied heavily upon a New Jersey case, Kieckhefer Container Co. v. Unemployment Comp. Comm'n, 125 N.J.L. 52, 12 A.2d 646 (1940), which similarly held direct interest required actual participation in the dispute. Various courts and commentators have criticized *Kieckhefer*'s interpretation of direct interest. Brobston v. Employment Sec. Comm'n, 94 Ariz. 371, 376, 385 P.2d 239, 242-43 (1963) ([B]y equating 'directly interested' with 'participating' the phrase 'directly interested' is rendered meaningless."); Huiet v. Boyd, 64 Ga. App. 564, 570, 13 S.E.2d 863, 866 (1941) ([The] decision gives no meaning whatsoever to the expression 'directly interested in the labor dispute' . . . ."); Poggomoeller v. Industrial Comm'n, Div. of Emp. Sec., 371 S.W.2d 488, 508 (Mo. App. 1963); Bullitt, *Unemployment Compensation in Labor Disputes,* 25 WASH. L. REV. 50, 64-66 (1950); Haggart, *Unemployment Compensation During Labor Disputes,* 37 NEB. L. REV. 668, 684 (1958); Shadur, *supra* note 6, at 331-32. Furthermore, *Kieckhefer* constitutes questionable precedent, because a subsequent New Jersey case, Gerber v. Board of Review, Div. of Unemp. Sec., 20 N.J. 561, 120 A.2d 436 (1956), limited *Kieckhefer* to its facts. *Gerber* held that because the claimants would benefit from the outcome of the dispute, they were directly interested in the dispute, notwithstanding their lack of participation.

25. 77 Wash. 2d 255, 264-65, 461 P.2d 531, 537.

26. *Id.*

analysis although its application would have disqualified the claimants in view of their judicially recognized "lucrative interest" in the outcome of the dispute.[27]

Throughout *Wicklund, Ancheta,* and *Hutt,* the court has adopted a progressively narrower interpretation of the labor dispute disqualification. Although consistently speaking of direct interest in terms of participation, the court imparts a more restrictive meaning to this concept of participation in *Hutt* than it did in the earlier two cases: *Wicklund* and *Ancheta* required some element of participation during the course of the dispute, but *Hutt* required that the claimants participate in the actual creation of the dispute to be disqualified for benefits.[28] Under either approach, however, the court's interpretation negates the substantive disqualifications for direct interest and grade or class, because the analysis of the claimants' relationship to the labor dispute does not go beyond the consideration of their actual participation in the dispute. In the final analysis, the court's narrow interpretation of the labor dispute disqualification indicates a fundamental misunderstanding of the disqualification's function in unemployment insurance. A brief examination of the policy considerations underlying unemployment insurance legislation in America will reveal the magnitude of the court's divergence from the prevailing majority interpretation of the disqualification.

State unemployment insurance programs occupy a unique position in the framework of social legislation. Unemployment insurance differs from general public welfare programs because it does not allocate benefits on the basis of need, but automatically provides benefits to a specified, insured class of workers for a limited time.[29] The programs' principal objective is to assist the usually employed worker through the personal crisis of temporary unemployment.[30] The drafters of the Social Security Act recognized unemployment insurance would not extend complete protection against the vicissitudes of unemployment; rather, it was

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27. 88 Wash. 2d 426, 435, 562 P.2d 1264, 1269.

28. Although the court purported to interpret direct interest in terms of those persons having some "direct input into the creation or maintenance of the dispute," *id.*, it did not discuss the claimants' conduct during the course of the dispute, but premised the decision solely on the claimants' lack of participation in the strike vote. Class B workers could vote on the PMA's final offer, and therefore did have some "direct input into the . . . maintenance of the dispute," but the court ignored this factor. *See* note 12 *supra.*

29. *See* Riesenfeld, *The Place of Unemployment Insurance Within the Patterns and Policies of Protection Against Wage Loss*, 8 VAND. L. REV. 218 (1955).

30. For a more detailed analysis of the various objectives of unemployment insurance see W. HABER & M. MURRAY, UNEMPLOYMENT INSURANCE IN THE AMERICAN ECONOMY (1966).

to be "the first line of defense for the largest group in our population, the industrial worker ordinarily steadily employed."[31]

Unemployment insurance allocates benefits to individuals with strong economic ties to the labor market; to be eligible a worker must be "involuntarily unemployed,"[32] and willing to accept suitable employment.[33] Because the program emphasizes involuntary unemployment, state statutes generally disqualify claimants who quit their employment without good cause,[34] who are fired for job associated misconduct,[35] or who refuse an offer of suitable employment.[36] These disqualifications, premised on employee fault, encourage stable employment and promote economic stability.

Particularly relevant to the disqualifications in unemployment insurance programs is the fact that unemployment compensation is a type of insurance transfering certain defined risks from the insured to the insurer.[37] The system protects the insured worker against a specified risk: involuntary unemployment. Insurance enterprises cannot insure against losses designedly caused by the insured.[38] Thus, the disqualifications narrow the classification of the insured event and reduce the programs' scope to insurable limits.[39]

American unemployment insurance statutes derive from the British National Insurance Act,[40] which established the first national unemployment insurance program.[41] The original purpose of the British Act lay in protecting workers against "fluctuations in trade."[42] The insured unemployment was beyond the control

31. REPORT TO THE PRESIDENT OF THE COMMITTEE ON ECONOMIC SECURITY 13-14 (1935).

32. *See, e.g.*, WASH. REV. CODE § 50.01.010 (1976).

33. *Id.* § 50.20.010(3).

34. *See, e.g.*, WASH. REV. CODE § 50.20.050 (Supp. 1977).

35. *Id.* § 50.20.060.

36. *See, e.g.*, WASH. REV. CODE § 50.20.080 (1976).

37. *See* W. VANCE, INSURANCE 82 (3d ed. 1951).

38. *Id.* at 90.

39. *See* Sanders, *Disqualification for Unemployment Insurance*, 8 VAND. L. REV. 307, 317 (1955).

40. 1 & 2 Geo. V, ch. 55 (1911). *See* Outboard Marine & Mfg. Co. v. Gordon, 403 Ill. 523, 87 N.E.2d 610 (1949) (discussing the derivation of the American statutes from the British Act).

41. M. HUGHES, PRINCIPLES UNDERLYING LABOR DISPUTE DISQUALIFICATION (1946), presents an authoritative analysis of the labor dispute disqualification in both the original and amended British Acts. The author discusses at length the various concepts contained in the American versions of the labor dispute disqualification.

42. The National Insurance Act was designed primarily to insure workmen against the loss of employment resulting from "fluctuations in trade" and it was intended by the trade dispute disqualification to eliminate entirely from coverage that unemployment which resulted from a trade dispute, as distinguished

of the individual worker and resulted from such impersonal sources as technological developments and natural fluctuations of the modern industrial economy.[43] The original British Act recognized the impersonal nature of the insured unemployment in its blanket disqualification of otherwise insured workers whose unemployment resulted from a labor dispute.[44] A subsequent amendment to the original act allowed a worker to requalify for benefits upon proof that he was not participating or directly intersted in the dispute, and further that he did not belong to a grade or class of workers participating or directly interested in the dispute.[45]

The labor dispute disqualification contained in the amended British Act, and subsequently adopted in the United States, accords with the underlying purposes of unemployment insurance. Labor dispute unemployment is not impersonal in the same sense as cyclical or technological unemployment. Although not all workers unemployed because of a labor dispute are "voluntarily unemployed" in the usual sense of the words, the underlying sources of the unemployment are qualitatively different from the sources underlying cyclical or technological unemployment. The disqualification recognizes the power of the modern industrial labor movement, which constantly demands improved wages and working conditions.[46] The disqualification represents the states' awareness of a fine balance of power between the forces of industrial management and labor, and indicates the states' desire to maintain a strict neutrality in labor conflicts.[47]

> from that unemployment which resulted from fluctuations in trade. In other words, under the British Act of 1911, if the unemployment resulted from a trade dispute, it just "was not included in the policy."

Hughes, *supra* note 41, at 1. Note the similarity between this policy statement of the disqualification's function in the British Act and the United States Department of Labor's evaluation of the disqualification's function in American legislation in text accompanying note 48 *infra*.

43. *See* Haggart, *supra* note 24, at 687.

44. National Insurance Act, 1911, 1 & 2 Geo. V, ch. 55.

45. National Insurance Act, 1924, 14 & 15 Geo. V, ch. 30.

> 46. It is conceded that unemployment due to a labor dispute may seem "impersonal" to the individual worker when he has no selfish interest in the outcome of the dispute; but so long as he realizes economic benefits as a member of a militant labor movement whose leaders espouse the causes of industrial strife and class conflict in their dealings with management, he must also accept the concomitant burdens inherent in the espousal of such causes.

Haggart, *supra* note 24, at 688.

47. *In re* Ferrara, 10 N.Y.2d 1, 8, 217 N.Y.S.2d 11, 15, 176 N.E.2d 43, 47 (1961). Several commentators have attacked this theory on the ground that the disqualification does not promote true government neutrality, but aligns the government on the side of

The broad scope of the labor dispute disqualification reflects the states' desire to maintain a neutral position in labor conflicts. The disqualification does not focus upon the individual employment relationship, but upon a class of individuals comprising the modern industrial labor movement. Thus, the scope of the disqualification is broader than the specific disqualifications for voluntarily quitting, termination for job associated misconduct, and refusal of suitable employment. These latter disqualifications focus upon individual employee fault; the labor dispute disqualification delineates a general species of unemployment which stands outside the scope and purposes of unemployment insurance.

> Unlike the disqualifications for voluntarily leaving, discharge for misconduct, and refusal of suitable work, the disqualifications for unemployment caused by a labor dispute do not involve a question of whether the unemployment is incurred through fault on the part of the individual worker. Instead they mark out an area that is excluded from coverage.[48]

The language of the labor dispute provision indicates the extent of the disqualification. The statute initially imposes a blanket disqualification upon claimants unemployed because of a labor dispute, but relieves the disqualification if the claimants can prove their detachment from the economic considerations bearing on the outcome of the dispute. The claimants may prove themselves detached from the dispute by showing they are neither financing nor participating in the dispute, but the disqualification recognizes that a mere showing of these factors does not remove the claimants from that complexity of factors involved in modern industrial labor negotiations. Had the legislatures intended to disqualify only those individuals actively participating in a dispute, they would have provided disqualification for participation and no more. Recognizing, however, that various other factors exist in the complex area of collective bargaining,[49] they

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the employer. *See* Lesser, *Labor Disputes and Unemployment Compensation,* 55 YALE L.J. 167, 175 (1945); Shadur, *supra* note 6, at 297-98. *But see* Haggart, *supra* note 24, at 688; Williams, *The Labor Dispute Disqualification—A Primer and Some Problems,* 8 VAND. L. REV. 338, 356-58 (1955). The attack on the neutrality theory appears to assume a great disparity of bargaining power between employers and workers. This assumption is questionable today, considering the power of modern industrial labor unions.

48. MANPOWER ADMINISTRATION, UNITED STATES DEPT. OF LABOR, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS 4-10 (rev. 1974).

49. For example, employers often pay supervisory personnel a wage based upon a fixed percentage above the wage paid union workers. Thus, a salary increase for the latter automatically entails a proportional increase for the former. The foremen's wages in *Hutt*

included disqualifications for persons, either personally or through membership in a grade or class of workers,[50] directly interested in the outcome of the dispute. Apart from the express language and structure of the labor dispute disqualification, there exist scant indicia of the legislative intent underlying the disqualification.[51] Thus, initially a court may feel somewhat handicapped in attempting to ascertain the legislative intent in the area of labor dispute unemployment. Several inherent characteristics of the disqualification, however, provide clues which aid in the interpretation.

Nine states categorically disqualify claimants unemployed because of a labor dispute.[52] In the vast majority of states, however, claimants may avoid disqualification by proving themselves under an exception; typical exceptions involve the issues of financing, participation, direct interest, and grade or class membership.[53] Nevertheless, the scope of the disqualification, in spite of the exceptions, is still quite broad. The disqualification represents a compromise between two conflicting considerations. The disqualification initially recognizes that labor dispute unemployment is beyond the scope of unemployment insurance. The exceptions, however, acknowledge that any labor dispute may result in the unemployment of individuals totally disinterested in and detached from both the outcome and causes of the dispute. As a practical matter, the exceptions actually define the scope of the disqualification, and certainly the legislatures could have reversed the burden of proof, disqualifying only those individuals proven to be financing, participating, or directly interested in the dispute which caused their unemployment. That the statutes ini-

were computed on such a basis. Brief of Appellant PMA at 8, Employees of Pac. Maritime Ass'n v. Hutt, 88 Wash. 2d 426, 562 P.2d 1264 (1977).

50. Several commentators have recommended abolishing the grade or class disqualification entirely on the ground that a worker who has no personal interest in the outcome of the dispute should qualify for unemployment insurance benefits. *See, e.g.*, Williams, *supra* note 47, at 358-60. So long as the provision remains within the disqualification, however, the courts must interpret it in accordance with the legislative intent.

51. Under pressure to enact legislation in time to qualify for credits against the federal unemployment tax, the state legislatures generally modeled their statutes on one of two draft bills which the Committee on Economic Security had prepared earlier. *See* Haggart, *supra* note 24, at 674. *See generally* Larson & Murray, *supra* note 1; Witte, *supra* note 1.

52. The states are Alabama, California, Delaware, Kentucky, Minnesota, New York, North Carolina, Ohio, and Wisconsin. *See* statutes cited *supra* note 3. Minnesota claimants who can prove lack of participation in the dispute are eligible for benefits after a one week disqualification period. After a blanket seven week disqualification, New York claimants unemployed because of a labor dispute are eligible for benefits.

53. *See, e.g.*, WASH. REV. CODE § 50.20.090 (1976).

tially impose a blanket disqualification upon the claimants and require the claimants prove themselves under an exception suggests that the legislatures intended a strict application of the disqualification to labor dispute unemployment.

Not only does the structure of the disqualification suggest the desirability of a strict interpretation, it further intimates the nature of the inquiry necessary to determine a claimant's eligibility when unemployment results from a labor dispute. Although the statutes generally refer to persons "involuntarily unemployed" and unemployed "through no fault of their own,"[54] these concepts of "voluntariness" and "fault" do not apply to the labor dispute disqualification in the same sense they apply to the individual disqualifications in unemployment insurance statutes. The labor dispute disqualification merely directs the courts to undertake an objective inquiry into the claimant's relationship to the labor dispute that precipitated his unemployment. Under this inquiry it is immaterial that the claimant disagrees with the strikers' demands or desires the cessation of the dispute; the only consideration is whether the claimant has a tangible, material interest in the outcome of the dispute because of his economic relationship with the disputants. Consistently with the policy of making an objective evaluation of the claimant's relationship to a labor dispute, the courts have refused to inquire into "fault" in the context of labor dispute unemployment. To do so would require that the courts arbitrate the underlying merits of the labor dispute, and they have repeatedly stated that, absent a statutory directive,[55] they will not inquire into the merits of a dispute in determining the applicability of the disqualification.[56]

The Washington Supreme Court never has fully grasped the nature of the impersonal inquiry into the status of a claimant's unemployment necessary to a proper application of the labor dispute disqualification. Unfortunately from an analytical standpoint, the court has never definitively analyzed the concepts of

54. *Id.* § 50.01.010.

55. Several states do provide for a limited look into the merits of a dispute. Disqualification does not result in the following states: Alaska and Arizona, if the dispute exists because the employer failed to honor an existing labor contract, or if his actions violated state or federal labor law; Montana, if the employer violated state or federal labor law; Utah, if the employer violated state or federal labor law, or if he conspired to bring about the strike; West Virginia, if the employer offered wages substantially less than those offered to other workers in the locality, denied employees the right of collective bargaining, or closed his plant to force a change in working conditions. *See* statutes cited *supra* note 3.

56. *See, e.g.*, Brown Shoe v. Gordon, 405 Ill. 384, 91 N.E.2d 381 (1950); Bailey v. Tennessee Dept. of Emp. Sec., 212 Tenn. 422, 370 S.W.2d 492 (1963).

"direct interest" and "grade or class" and their function within the labor dispute disqualification, but merely has concluded, with no underlying justification, that direct interest is limited to participation in a labor dispute. This anomalous interpretation may arise from the court's reliance upon unemployment insurance's emphasis on "involuntary unemployment."[57] This reliance, however, appears misplaced, because such subjective concepts as "voluntariness," and the related concept "fault," are inconsistent with the broad, impersonal nature of the labor dispute disqualification.

Although the court has expressly recognized that "fault" has no application to the labor dispute disqualification,[58] its decisions belie this assertion. The court's opinions reveal such statements as: "[The claimants] were not in sympathy with the strike . . . .";[59] "There is no evidence of any labor dispute between the employer and [claimants].";[60] "[Claimants] did not support the strike and, in fact, actively opposed it."[61] These statements illustrate the court's continuing reliance upon a fault-based analytical approach to labor dispute unemployment under which attention focuses primarily on the claimants' personal assessment of the dispute's underlying merits. The approach ignores the broader issue of the nature of the claimants' objective, economic interest in the outcome of the dispute. *Hutt,* for example, actually analyzed the claimants' situation as though no labor dispute had occurred,[62] which approach renders the labor dispute disqualification superfluous.

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57. WASH. REV. CODE § 50.01.010 (1976).

58. Ancheta v. Daly, 77 Wash. 2d 255, 261, 461 P.2d 531, 535 (1969). Subsequently, in Shell Oil Co. v. Brooks, 88 Wash. 2d 909, 567 P.2d 1132 (1977), the court stated, "[w]e have held the [labor dispute disqualification] applies regardless of the individual employee's personal involvement in or responsibility for the labor dispute in question. *Ancheta v. Daly,* 77 Wash. 2d 255, 461 P.2d 531 (1969)." *Id.* at 912, 567 P.2d at 1134. Significantly, the court did not mention *Hutt,* in which the employees' "personal . . . responsibility for the labor dispute," determined by their nonparticipation in the strike vote, *was* the controlling factor.

59. Wicklund v. Commissioner of Unemp. Comp., 18 Wash. 2d 206, 220, 138 P.2d 876, 883 (1943).

60. *Id.* at 215, 138 P.2d at 881.

61. Ancheta v. Daly, 77 Wash. 2d 255, 263, 461 P.2d 531, 536 (1969).

62. It is true that class B workers receive substantially the same contract benefits as class A workers, but apparently this would occur even if there were no strike. The foremen's contracts were renegotiated in light of the new longshoremen's and clerks' contract. This renegotiation would occur whether the longshoremen and clerks reached a new agreement with the PMA after a strike or otherwise.

88 Wash. 2d at 435, 562 P.2d at 1269-70.

The court's apparent discomfort with its own analysis and interpretation of the labor dispute disqualification has not materially influenced its decisions. Although *Ancheta* acknowledged the shortcomings of the "direct interest equals participation" equation,[63] and attempted to supplement this definition with a watered down "economic analysis" test,[64] *Hutt* marked a return to, and indeed went beyond, the rigid formalism of the earlier definition.[65] Fundamentally, such a formulation ignores express statutory language which disqualifies for participation, direct interest, and grade or class membership respectively.[66] Direct interest logically appears to delineate a broader area than actual participation, because workers may be economically interested in the outcome of a dispute in which they are not participating.[67] Similarly, the disqualification for grade or class membership connotes more than individual interest, as it goes beyond the issue of actual personal interest to that of potential interest derived solely from membership in an amorphous grade or class of workers. Thus, the court's interpretation poses an elementary puzzle in semantic analysis which the court presently ignores.

The court's narrow interpretation of grade or class in *Hutt* is disturbing, particularly in view of its traditionally narrow interpretation of direct interest. Although *Hutt* enumerated various criteria which may be relevant to a determination of grade or class membership,[68] the court ultimately applied none of them in resolving the issue, but delineated grade or class membership solely on the basis of participation in the creation of the dispute. This narrow interpretation ignores the realities of modern industrial labor relations. The general justification for the grade or class disqualification is that it discourages the "key man" type strike, in which a strike or slowdown by several key employees can paralyze an entire business enterprise.[69] Accordingly, any test considering only such rigid classifications as union membership and a voice in the creation of the dispute will not effectuate this function, because it ignores the broader economic and employ-

63. 77 Wash. 2d at 264-65, 461 P.2d at 537.

64. *Id.*

65. Whereas *Wicklund* and *Ancheta* spoke in terms of participation during the course of the dispute, *Hutt* required participation in the creation of the dispute for disqualification. *See* note 28 *supra*.

66. WASH. REV. CODE § 50.20.090 (1976).

67. *See, e.g.*, Brobston v. Employment Sec. Comm'n, 94 Ariz. 371, 385 P.2d 239 (1963); Huiet v. Boyd, 64 Ga. App. 564, 13 S.E.2d 863 (1941); Senegal v. Lake Charles Stevedores, Inc., 250 La. 623, 197 So. 2d 648 (1967).

68. *See* note 20 *supra*.

69. *See, e.g.*, Cameron v. DeBoard, 230 Or. 411, 370 P.2d 709 (1962).

ment relationships existing between a small class of strikers and a potentially greater number of nonunion co-workers. The great majority of state courts have rejected the Washington Supreme Court's narrow approach to grade or class membership because it ignores a number of other relevant factors.

The majority of courts accept the proposition that union membership is relevant to the determination of grade or class membership, but recognize the analysis must go beyond this single consideration. In *Bethlehem Steel Co. v. Board of Appeals,*[70] the Maryland Court of Appeals delineated grade or class membership on the basis of whether the claimants belonged to the same bargaining unit, worked under the same contract, and worked in the same continuous manufacturing process as the labor dispute participants. Similarly, in *Westinghouse Electric Corp. v. Unemployment Compensation Board of Review,*[71] the Pennsylvania Superior Court determined grade or class membership on the basis of eligibility for union membership and similarity of work. Admittedly, such interpretations do not provide a strict formula for determining grade or class membership, but they do impart a distinct meaning to the disqualification beyond actual participation in the dispute. For that matter, a court should not attempt to formulate a rigid set of criteria to govern the application of the grade or class disqualification, but merely should identify a number of factors distinguishing the provision as an independent disqualification.

Cameron v. DeBoard[72] represents perhaps the most reasoned and extensive discussion of the grade or class disqualification. After surveying the various tests courts have applied in attempting to define the disqualification, the Oregon Supreme Court concluded that no single test could govern all labor dispute situations. Although union membership is relevant, the analysis cannot stop there. The court concluded, however, that a careful analysis of two further concepts would insure a fair application of the disqualification: the degree to which both an integration of work and a community of interest existed between the claimants and the labor dispute participants. These concepts would allow the court to look beyond mere union membership and analyze the realities of the relationship between the claimants and the strikers. Through such a balanced and comprehensive approach

70. 216 Md. 146, 148 A.2d 403 (1959).
71. 165 Pa. Super. Ct. 385, 68 A.2d 393 (1949).
72. 230 Or. 411, 370 P.2d 709 (1962).

the grade or class disqualification fulfills its true function within the labor dispute disqualification.[73]

Compared to *Cameron*'s comprehensive approach, *Hutt*'s rigid resolution of grade or class membership solely on the basis of the right to participate in the strike vote appears singularly inadequate. Although *Hutt* indicated a willingness to adopt a more flexible approach to the determination of grade or class membership,[74] its result does not support this declaration. The court could insure an equitable interpretation of the provision by adopting the approach of *Cameron* which formulates only general outlines to the composition of grade or class membership, but which adapts itself to a wide variety of labor dispute situations. The court, however, could also reaffirm an interpretation of grade or class based upon the criteria which *Hutt* merely suggested. Either approach would effect an interpretation of grade or class consistent with its legislative purpose, and repudiate the present anomalous interpretation of grade or class in terms of participation in the dispute.

The majority of courts also reject *Hutt*'s interpretation of direct interest in terms of participation and a voice in the creation of the dispute on the ground that this interpretation renders the direct interest disqualification superfluous.[75] In *Auker v. Director of the Division of Employment Security*,[76] the claimants were not union members and did not vote for, finance, or participate in the dispute. The Indiana Court of Appeals, however, held that participation and direct interest were mutually independent disqualifications. Because the outcome of the dispute would affect the claimants' wages and working conditions, the court disqualified them for benefits on the ground they were directly interested in the dispute. A Florida Disrict Court of Appeals, in *Olusczak v. Florida Industrial Commission*,[77] also held that a determination

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73. Colorado expressly adopted *Cameron*'s approach to the determination of grade or class membership in F.R. Orr Constr. Co. v. Industrial Comm'n, 33 Colo. App. 326, 332, 522 P.2d 117, 120-21 (1974), *aff'd* 188 Colo. 173, 182, 534 P.2d 785, 790 (1975).

74. *See* note 20 -supra.

75. *See, e.g.*, Brobston v. Employment Sec. Comm'n, 94 Ariz. 371, 376, 385 P.2d 239, 242-43 (1963) ("[B]y equating 'directly interested' with 'participating' the phrase 'directly interested' is rendered meaningless."); Burak v. American Smelting & Refining Co., 134 Colo. 255, 302 P.2d 182 (1956); Huiet v. Boyd, 64 Ga. App. 564, 570, 13 S.E.2d 863, 866 (1941) ("[T]he distinction gives no meaning whatsoever to the expression 'directly interested in the labor dispute' . . . ."); Wheeler v. Director of the Div. of Emp. Sec., 347 Mass. 730, 200 N.E.2d 272 (1964); Nobes v. Michigan Unemp. Comp. Comm'n, 313 Mich. 472, 21 N.W.2d 820 (1946).

76. 117 Ind. App. 486, 71 N.E.2d 629 (1947).

77. 230 So. 2d 31 (1970).

of direct interest derived from the relationship between the claimants' wages, hours, and working conditions and the outcome of the dispute. That the claimants were not union members, had no choice in the decision to accept the employer's offer of settlement, and, in fact, would have accepted the employer's offer did not govern the determination of direct interest. Courts have often cited the formulation of the criteria for determining direct interest set forth in *Martineau v. Director of the Division of Unemployment Security.*[78] In *Martineau* the claimant was not a member of the union conducting the strike. The Massachusetts Supreme Court nonetheless held him directly interested in the dispute for purposes of disqualification. The test for determining direct interest was whether the outcome of the dispute would affect the claimant's wages, hours, or conditions of employment. The majority of courts accept the *Martineau* formulation of direct interest, which ties the determination of direct interest to the claimant's economic interest in the outcome of the dispute.[79]

Senegal v. Lake Charles Stevedores, Inc.[80] presents a unique example of how courts in other jurisdictions have dealt with fact situations identical to *Hutt.* The claimant, Senegal, became unemployed because of a labor dispute between his employer, Lake Charles Stevedores, Inc., and the International Longshoremen's Union. Senegal typified the situation of the class B workers in *Hutt;* he was not a union member, but the agreement between the union and his employer completely governed his wages and working conditions. The Division of Employment Security rejected his application for benefits, but the Louisiana Court of Appeals reversed,[81] holding, identically to *Hutt,* that because Senegal had not participated in the strike vote, he was not "interested"[82] in the labor dispute. The Louisiana Supreme Court rejected this conclusion:

78. 329 Mass. 44, 106 N.E.2d 420 (1952).

79. *See, e.g.*, Brobston v. Employment Sec. Comm'n, 94 Ariz. 371, 385 P.2d 239 (1963); Burak v. American Smelting & Refining Co., 134 Colo. 255, 302 P.2d 182 (1956); Wheeler v. Director of the Div. of Emp. Sec., 347 Mass. 730, 200 N.E.2d 272 (1964); Nobes v. Michigan Unemp. Comp. Comm'n, 313 Mich. 472, 21 N.W.2d 820 (1946).

80. 250 La. 623, 197 So. 2d 648 (1967).

81. Senegal v. Lake Charles Stevedores, Inc., 188 So. 2d 510 (La. App. 1966), *rev'd*, 250 La. 623, 197 So. 2d 648 (1967).

82. The Louisiana statute disqualified claimants for "interest" in the dispute rather than "direct interest." LA. REV. STAT. ANN. § 23:1601(4) (West 1964). The distinction is immaterial, however, because this comment treats the Washington court's analytical approach to the determination of direct interest in terms of the distinction between "direct interest" and "participation."

> [T]he Court of Appeals erred when it held that Senegal was not "interested in" the labor dispute because he had no voice in the dispute and no voice in the calling of the strike which caused his unemployment. This narrow interpretation of the phrase "interested in" actually has the effect of merging "interest" into "participation." *We consider that the Legislature intended for "interested in" to have a meaning different from and broader than "participating in"* . . . .[83]

The court conceded that mere unemployment because of a labor dispute did not create an interest in the dispute. It held, however, that when the outcome of the dispute would affect their working conditions in equal measure to its effect upon union members, the claimants were "interested" in the dispute for purposes of disqualification.

Senegal, representing the majority interpretation of direct interest, stands in striking contrast to the Washington Supreme Court's interpretation of the disqualification. The majority approach, resolving the issue in terms of the claimants' economic interest in the outcome of the dispute, identifies more closely with the legislative intent underlying the disqualification. By applying relatively strict, impersonal standards for disqualification, the majority approach recognizes and supports the principle that labor dispute unemployment constitutes a general species of unemployment outside the scope and purposes of unemployment insurance. Because the very nature of the claimants' economic interest in the dispute lends itself to simple, objective evaluation, the court can conduct an uncomplicated, objective inquiry into the claimants' status with respect to the labor dispute. The approach relieves the court of the necessity of arbitrating the merits of each labor dispute in an effort to ascertain whether the unemployment is the claimants' "fault." Similarly, the test's very simplicity provides the local administrator of unemployment benefits with an uncomplicated method for applying the direct interest disqualification to future labor disputes.[84] Finally, the majority interpretation imparts an independent, efficacious meaning to direct interest; it does not merge direct interest into participation and thus render it mere surplusage.

In contrast, the Washington court's interpretation of direct interest possesses none of the internal logic of the majority ap-

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83. 250 La. 623, 631, 197 So. 2d 648, 650 (1967) (emphasis added).

84. Most decisions allocating benefits occur at the administrative level. Thus, the courts must interpret the disqualification clearly and consistently to facilitate the administrative decision making process.

proach. The court's entire approach to the labor dispute disqualification indicates a fundamental misunderstanding of the function of the disqualification, which acknowledges the realities of the modern industrial management-labor relationship. Rather than deal with claimants on the basis of their participation in a powerful labor movement, the court has elected to isolate individual claimants, regarding them merely as innocent victims of industrial strife. In short, the court has allowed its sympathy for the individual claimant to override its duty to interpret the disqualification consistent with the disqualification's legislatively intended function.

The practical inadequacy of the court's present interpretation leads to one conclusion: the court should broaden its interpretation of the labor dispute disqualification. The initial step in this direction requires judicial recognition of the disqualification's legitimate function in unemployment insurance legislation. The approach requires that the court treat labor dispute unemployment as constituting a general species of unemployment outside the scope and purposes of unemployment insurance and affirmatively repudiate its present "fault based" analytical approach to the disqualification. Once the court adopts such an objective approach to the consideration of the claimants' relationship to the labor dispute, it will realize the necessity of differentiating the concepts of participation, direct interest, and grade or class membership. To date, the court has only intimated its dissatisfaction with its present interpretation of the labor dispute disqualification. The court should now act upon this dissatisfaction and expressly disavow any interpretation of the disqualification formulated solely in terms of actual participation in the dispute. The change is long overdue.

Steven Soha