STATE OF WISCONSIN	CIRCUIT COURT	DANE COUNTY

ALEXANDER P. STETZ,

Plaintiff,

vs.

WISCONSIN DEPARTMENT OF INDUSTRY, LABOR & HUMAN RELATIONS and DON KERR, INC.,

Defendants.

Case NO. 136-215

MEMORANDUM DECISION

BEFORE: Hon. George R. Currie, Reserve Circuit Judge, Presiding

This is an action to review a decision of the defendant dated April 13, 1972, entered in an unemployment compensation proceeding which determined that the appeal tribunal's findings of fact were supported by the applicable records and evidence, and affirmed the decision of the appeal tribunal. The appeal tribunal's decision is dated February 18, 1972, and found that the plaintiff Stetz had voluntarily terminated his employment with his employer in week 44 of 1970 and that such termination was not within any of the exceptions of sec. 108.04(7)(a), Stats. Stetz was found ineligible for unemployment compensation benefits based upon his employment with the employer and was ordered to repay to the Unemployment Reserve Fund $504 of benefits he had received before the department's deputy had made the initial determination that Stetz was ineligible for benefits.

Statement of Facts

Effective January 1, 1962, Stetz and William J. Rohrbach purchased 380 shares of the capital stock of Buechler Distributing Co., Inc. (hereafter the employer) from their father-in-law, Harry Buechler, giving a note or notes in the sum of $60,000 in payment. Stetz, Rohrback, and their wives prior to this purchase each owned 30 shares of the stock. After the purchase Stetz and Rohrbach each owned 220 shares and later Rohrbach acquired Mrs. Rohrbach's 30 shares upon her death. Rohrbach was president and treasurer and Stetz was vice-president and secretary. The directors were Stetz, Rohrbach, Mrs. Stetz, and Buechler.

The business of the employer was that of a wholesale distributor of beer. Of its sales approximately 90 percent represented the sale of Blatz beer. The Pabst Brewing Company acquired the Blatz Brewing Company and later as a result of litigation instituted by the federal government this acquisition was upset. Thereafter, the G. Heileman Brewing Company acquired the assets of the Pabst Brewing Company but continued to manufacture and distribute beer under the Blatz label. It was testified that there was a decline in the quality of Blatz beer which was reflected in the employer's decreased sales and earnings.

The employer's sales for the last five years it was in business were as follows:

1966	$811,865
1967	783,323
1968	727,741
1969	680,820
1970	515,895

No dividends were paid by the employer. Stetz and Rohrbach received equal salaries and the amount of salary drawn by each for these five years was:

1966	$ 23,341
1967	29,561
1968	25,455
1969	16,600
1970	10,800

Their authorized salary for 1968 was $25,000 each and for 1969 and 1970 was $22,000, but because of decreased earnings they waived the difference between what they drew and such authorized salaries.

An attempt was made for two years to sell the assets of employer's business and finally on October 3, 1970, these assets were sold to Don Kerr, Inc. The amount received from this sale was sufficient to discharge all of the employer's debts and to pay the $50,000 still owing Buechler by Stetz and Rohrbach and leave a balance of $14,300. The sale to Don Kerr, Inc. was authorized by the unanimous vote of the directors, including Stetz. There was undisputed testimony that the employer would have been faced with bankruptcy if it had continued in business. At the time of the sale and discontinuance of business the employer was employing six employees in addition to Stetz and Rohrbach.

The Issue

Counsel for Stetz concede that Stetz voluntarily terminated his employment and raise as the sole issue whether the department erred in its conclusion that such termination was not "with good cause attributable to the employing unit" within the meaning of sec. 108.04(7)(b), Stats.

Pars. (a) and (b) of sec. 108.04(7) provide as follows:

> "(a) If an employe terminates his employment with an employing unit, he shall be ineligible for any benefits based on such employment . . . except as hereinafter provided.
>
> "(b) Paragraph (a) shall not apply if the department determines that the employe terminated his employment with good cause attributable to the employing unit."

The Court's Decision

The gist of the contention of counsel for Stetz is that where the force of circumstances compels the employer to discontinue business, this constitutes "good cause attributable to the employing unit" within the meaning of the statute. Here the undisputed evidence was that the employer's business was irretrievably failing and the only way it could meet its obligations and Stetz discharge his indebtedness to Buechler was the sale of the employer's assets.

While the department's brief does not state its position this bluntly, the Court interprets such position to be that, where the employee has a voice in employer policy such as being a member of the employer's board of directors, and exercises such voice in favor of the cessation of the employer's business, the employee's termination of employment can never qualify as due to "good cause attributable to the employment" within the meaning of sec. 108.04(7)(b), Stats. Under this interpretation of the statute it is wholly immaterial whether the corporate decision to cease business is compelled by financial necessity.

While the Circuit Court of Dane County has in the past been faced with this identical issue, the Wisconsin Supreme Court has not. Nevertheless, its decision in Kessler v. Industrial Comm. (1965), 27 Wis. 2d 398, 134 N.W. 2d 412, does throw light on how the Supreme Court deems the statutory phrase "good cause attributable to the employing unit" is to be interpreted in such a factual situation. At pages 401-403, the decision declared:

> "Good cause attributable to the employer as a basis for unemployment compensation under sec. 108.04(7)(b), Stats., has been the subject of prior decisions of this court. In Western Printing & Litho. Co. v. Industrial Comm. (1951),

> 260 Wis. 124, 50 N.W. (2d) 410, we stated the resignation must be occasioned by 'some act or omission by the employer' constituting a cause which justifies the quitting. Good cause for quitting attributable to the employer as distinguished from discharge must involve some fault on his part and must be real and substantial. 81 C.J.S., Social Security and Public Welfare, sec. 167, pp. 253-256. A transfer or shift in jobs occasioned by decreased work in an assembly department due to the reduction in demand for defense production is not a good cause for quitting even though there would be a temporary reduction in salary, but the employee's seniority would be unaffected. Dentici v. Industrial Comm. (1953), 264 Wis. 181, 58 N.W. (2d) 717. Similarly a transfer in job status necessitated by lack of work in a welding department which shift would reduce the salary but not affect seniority was not a good cause for quitting in Roberts v. Industrial Comm. (1957), 2 Wis. (2d) 399, 86 N.W. (2d) 406. In that case we pointed out that one of the purposes of the unemployment compensation statute was to minimize the loss of income from unemployment due to the fault or the misfortune of the employer but the statute was not intended to provide relief when reasonable work was available which the employee can but will not do."

It seems clear from the above quoted analysis made by the Supreme Court that the proper approach to whether the employee's voluntary quitting of his employment was due to "good cause attributable" to the employer, is to determine if such quitting was a reasonable reaction to some act on the part of the employer. In other words, the "good cause" relates to the reaction of the employee, and not whether the employer had good cause for the action it did which precipitated the employee quitting. It is true that whether the employer's act involved some fault on its part may be material, but only because of it being a factor to be considered in determining whether the employee's reaction thereto in quitting was reasonable.

Under this analysis grounded on what was declared in Kessler v. Industrial Comm., supra, there is completely absent in the facts of the instant case any issue of whether Stetz acted reasonably in quitting his job because of some act of the employer. He participated in the decision of management which resulted in his loss of employment. It is wholly immaterial under this analysis as to what motivated him and the other directors in making such decision. That is not the "good cause" with which the statute is concerned.

There are two cases decided by the Dane County Circuit Court in which it was held that where claimants for unemployment compensation benefits had participated as directors of a financially unprofitable corporation

in the decision which resulted in the discontinuance of the employer's business, the claimants terminated their employment without good cause attributable to the employer. These cases are Hubert J. Robb v. H. J. Robb, Ltd. and Industrial Comm., Case No. 119-477, decided September 13, 1967, Judge Edwin M. Wilkie, presiding, and Zimmerman v. B-Z Distributors, Inc. and Industrial Comm., Case No. 123-247, decided February 27, 1968, Judge William C. Sachtjen, presiding. See also Steltz et al. v. Screen-O-Graph, Inc. and Industrial Comm., Case No. 112-440, decided February 14, 1964, Judge Richard W. Bardwell, presiding, where the three claimants had likewise participated as directors in the decision to remove themselves from the payroll. In that case it was also held that the three claimants voluntarily quit without good cause attributable to the employer corporation.

In all three of the foregoing circuit court actions the Judgments of the court affirmed the decisions of the Industrial Commission. Thus the decision of the department in the instant case is in accord with a long established interpretation of the "good cause attributable to the employing unit" clause of present sec. 108.04(7)(b), Stats. Great weight is to be accorded to the interpretation placed upon a statute by the administrative agency charged with the duty of applying such statute. Chevrolet Division, G. M. C., v. Industrial Comm. (1966), 31 Wis. 2d 481, 488, 143 N.W. 2d 532; Cook v. Industrial Comm. (1966), 31 Wis. 2d 232, 142 N.W. 2d 827; Mednis v. Industrial Comm. (1965), 27 Wis. 2d 439, 444, 134 N.W. 2d 416. The court deems reasonable the interpretation of the department of the phrase "good cause attributable to the employer" in sec. 108.04(7)(b) as not including a corporate decision in which the claimant employee participates that results in his loss of employment. This, therefore, provides an additional reason for confirming the decision in the instant case.

Let judgment be entered confirming the decision of the department dated April 13, 1972, here under review.

Dated this 13th day of February, 1973.

/s/ George R. Currie
Reserve Circuit Judge