

**LETTER OPINION  
2013-L-07**

December 24, 2013

The Honorable Kenton Onstad  
State Representative  
3515 66th Avenue NW  
Parshall, ND 58770-9468

Dear Representative Onstad:

Thank you for your letter requesting my opinion regarding a definition of “locked-out worker” and the eligibility for unemployment insurance benefits of a locked-out contract worker under N.D.C.C. § 52-06-02(4).

**ANALYSIS**

This statute, which identifies what categories of individuals do not qualify for unemployment benefits provides, in part:

An individual is disqualified for benefits:

4. For any week with respect to which it is found that the individual’s unemployment is due to any kind of labor dispute, including a strike, sympathy strike, or lockout; provided, that this subsection does not apply if it is shown that:
  - a. The individual is not participating in or directly interested in the labor dispute; and
  - b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the labor 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 must, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.<sup>1</sup>

Because the North Dakota Century Code provides no definition of a locked-out worker, you ask, “Is a locked out worker anyone that comes to work one day and find they are no longer allowed to enter the building?” Not only is no definition of “locked-out worker” found in state statute, but the term “lockout” from which a locked-out worker must arise is similarly not found. To answer your question, I look to the plain meaning of the terms to provide a definition for the terms “locked-out worker” and “lockout.”

The primary purpose of statutory construction is to ascertain the intent of the Legislature and the intent must first be sought from the language of the statutory provision itself.<sup>2</sup> Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined in the code or unless the drafters clearly intended otherwise.<sup>3</sup> As mentioned, neither the term “locked-out worker” nor “lockout” are defined in N.D.C.C. ch. 52-06 or in any other applicable or analogous part of the North Dakota Century Code.

Consequently, as used in N.D.C.C. § 52-06-02(4), the term “lockout” is to be understood in its ordinary sense.<sup>4</sup> Black’s Law Dictionary defines lockout as, “An employer’s withholding of work and closing of a business because of a labor dispute.”<sup>5</sup> Similar definitions of lockout used in sister states focus on an employer’s actions.<sup>6</sup> “Lockouts are an employer initiated action.”<sup>7</sup>

---

<sup>1</sup> N.D.C.C. § 52-06-02(4) (emphasis added).

<sup>2</sup> Prod. Credit Ass’n of Minot v. Lund, 389 N.W.2d 585, 586 (N.D. 1986).

<sup>3</sup> N.D.C.C. § 1-02-02.

<sup>4</sup> Id.

<sup>5</sup> Black’s Law Dictionary 1024 (9th ed. 2009).

<sup>6</sup> See Alexander v. Emp’t Appeal Bd., 420 N.W.2d 812, 814 (Iowa 1988) (“[I]n general, a lockout has been defined as ‘a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get for the employer more desirable terms.’”) (quoting Zanesville Rapid Transit, Inc. v. Bailey, 168 Ohio St. 351, 354, 155 N.E.2d 202, 205 (1958)); and Mead Prod. v. Indus. Comm’n of Missouri, 656 S.W.2d 805, 810 (Mo.Ct.App. 1983) (“The dictionary definition of ‘lockout’ is the withholding of employment by an employer and the whole or partial closing of his business establishment in order to gain concessions from his employees.”) (quoting 48 Am. Jur. 2d Labor and Labor Relations § 1108 at 895). Olson v. Job Serv. N.D., 827 N.W.2d 36, 48, reh’g denied (Apr. 4, 2013).

<sup>7</sup> Olson at 41.

Based on the foregoing, and the context in which this term is used, it is my opinion that the term "lockout" is intended to refer to an employer-initiated action to withhold employment in order to gain concessions from its employees during a labor dispute. It is further my opinion, then, and to answer your question, a "locked-out worker," for purposes of eligibility for unemployment insurance benefits, means an employee from whom employment is withheld by an employer's exercise of its right to initiate a lockout.

You also state in your letter, "HB 1112 implies only a contract worker with a re-employment clause [is] subject to not receive unemployment benefits if they are locked out," and ask, "Is that correct?"

Section 2 of HB 1112 reads:

**AMENDMENT.** Subsection 4 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

4. For any week with respect to which it is found that the individual's unemployment is due to any kind of labor dispute, including a strike, sympathy strike, or a claimant's work stoppage dispute of any kind which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed~~lockout~~; provided, that this subsection does not apply if it is shown that:
  - a. The individual is not participating in or directly interested in the labor dispute ~~which caused the strike, sympathy strike, or a claimant's work stoppage dispute of any kind~~; and
  - b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the ~~stoppage~~labor dispute, there were members employed at the premises at which the ~~strike, sympathy strike, or a claimant's work stoppage~~labor dispute of any kind occurs, any of whom are participating in or directly interested in the labor 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 must, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.<sup>8</sup>

---

<sup>8</sup> Section 2 H.B. 1112, 2013 N.D. Leg.

To answer your question, it is not correct that HB 1112 implies only a contract worker with a re-employment clause is not subject to receive unemployment benefits. An individual cannot receive unemployment benefits if unemployment is due to “any kind of labor dispute, including a . . . lockout” unless the individual would meet both of the exceptions found in N.D.C.C. § 52-06-02(4)(a) and (b).<sup>9</sup> There is no reference to a “contract worker” or a “re-employment clause” in the statutory language of N.D.C.C. § 52-06-02.

When a claimant files a claim for unemployment insurance benefits, many factors are considered in determining the claimant’s eligibility.<sup>10</sup> Whether an individual claimant is eligible for unemployment insurance benefits involves a finding of fact, and it is the policy of this office not to make factual determinations in legal opinions.<sup>11</sup>

Sincerely,

Wayne Stenehjem  
Attorney General

lab/nrm/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>12</sup>

---

<sup>9</sup> N.D.C.C. § 52-06-02(4).

<sup>10</sup> See generally N.D.C.C. ch. 52-06.

<sup>11</sup> N.D.A.G. 2002-L-42.

<sup>12</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).