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A.R. v. Middlesex County  
Cite as 5 *N.J.A.R.* 270

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**A.R,**  
Petitioner,  
v.  
**MIDDLESEX COUNTY**  
**WELFARE AGENCY,**  
Respondent.

Decided June 2, 1983

**Initial Decision**

**SYNOPSIS**

The local county welfare agency denied petitioner participation in the Food Stamp Program on the basis that it believed petitioner to be a striker with pre-strike income in excess of the program's maximum income standard. The agency based its action on *N.J.A.C.* 10:87-3.10(a)7 which provides that households with striking members shall be ineligible to participate in the Food Stamp Program unless the household was eligible prior to the strike.

The administrative law judge found that petitioner attempted unsuccessfully to report to work on the first day of a strike against his employer but was told that no work was available and that his employer would not accept responsibility if he were injured. In addition, the judge determined that no competent evidence had been introduced to show that petitioner's union was not working out of sympathy with the striking union and found that petitioner had been reviewing non-striker benefits from the Railroad Retirement Board.

Accordingly, the administrative law judge concluded that petitioner was a non-striker and was eligible for participation in the Food Stamp Program.

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**GOLDBERG, ALJ:**

The Middlesex County Welfare Agency denied petitioner participation in the Food Stamp Program because it believes petitioner to be a striker with pre-strike income in excess of the program's maximum income standard. A hearing was requested and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

For its adverse action, respondent relied upon *N.J.A.C.*

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10:87-3.19(a)7 and 7(i), which regulations provide that households with striking members shall be ineligible to participate in the program unless the household was eligible prior to the strike. A striker is defined as anyone involved in a strike or work stoppage. Any worker whose workplace is closed by an employer (lockout) in order to resist demands of employees shall not be deemed to be a striker. *N.J.A.C.* 10:87-3.19(a)7(i).

Petitioner applied for FSP participation on March 11, 1983, as a household of five. He admits that his household was not eligible for the program on the day before the strike, as he was fully employed.

Respondent contends that petitioner is a striker even though he is not a member of the striking union. The striking union is the United Transportation Union whose membership is striking New Jersey Transit. Petitioner is a member of the International Association of Machinists, a union that is not on strike, but whose members are honoring the UTU picket line. In response to a county welfare agency inquiry, the Division of Public Welfare ascertained that all members of unions "out in sympathy" with the striking union are to be considered strikers for Food Stamp Program purposes.

Petitioner denied that his union was "out in sympathy" with the striking union. He stated that he was not working because no work was available. On the first day of the strike, petitioner reported to work but was not permitted to cross the picket line by a railroad policeman. Petitioner then returned home and telephoned the general foreman, who told him that he could report for work but that New Jersey Transit would not accept responsibility if he were hurt.

Since the strike, petitioner has been receiving nonstriker benefits of \$25 per day (\$125 per week) from the Railroad Retirement Board. Petitioner also presented a letter, dated March 29, 1983, from the District Manager, Railroad Retirement Board, which states that petitioner is out of work due to a strike by the United Transportation Union.

Based upon the foregoing, I **FIND:**

1. Petitioner attempted unsuccessfully to report to work on the first day of the strike.
2. Petitioner was told that no work was available.
3. Petitioner was told by his general foreman that he could report to work but that the employer would not be responsible if he got hurt.
4. Petitioner receives non-striker benefits of \$25 per day (\$125 weekly) from the Railroad Retirement Board.

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5. Respondent presented no competent evidence that International Association of Machinists members are not working out of sympathy with the United Transportation Union.

Based upon the facts and pursuant to the cited regulations, I **CONCLUDE** that petitioner is a non-striker who has been prevented from working by the United Transportation Union.

Because petitioner has been a non-striker from the date the strike began, I further **CONCLUDE** that respondent must calculate the household's Food Stamp Program eligibility and entitlement from the date of application, using his non-striker income of \$125 per week.

Therefore, respondent's action denying petitioner Food Stamp Program participation because of his strike status is **REVERSED**.

**After reviewing this Initial Decision,  
the Division of Public Welfare, on July 8, 1983,  
issued the following Final Decision:**

Having reviewed the initial decision and any exceptions or replies submitted, I hereby adopt the decision of the administrative law judge in the above captioned case as the final decision.

The hearing evidence is found sufficient to support a conclusion that the petitioner at the time of application was not a striker pursuant to the definition set forth in *N.J.A.C.* 10:87-3.19(a)7. Accordingly, the action denying participation in the Food Stamp program is reversed.

The petitioner's application shall be reactivated and a further determination shall be made on program eligibility. If eligible, restoration shall be made for lost benefits.