OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

JFS-83000 09/08/2011

AMERICAN RED CROSS BLOOD SERVICES 600 A FOREST POINT CIR CHARLOTTE, NC 28273-5736	Date Issued 03/29/2012 Determination Identification Number ODJFS Office Bureau of UC Program Services
Employer's Name AMERICAN RED CROSS BLOOD SERVICES	UC Account Number

THIS DECISION IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4141.283, OHIO REVISED CODE

Bureau of UC Program Services
Ohio Dept. of Job & Family Services
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In The Matter Of A Labor Dispute Between

Union:	**Teamsters Local 507**	Employer:	**AMERICAN RED CROSS BLOOD SERVICES**
Docket No:	**000000001200006**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**03/19/2012**	Date of Issuance:	**03/29/2012**

APPEARANCES

D. James Petroff, Attorney at Law, represented Local 507. Safeyyah Edwards, and David Menser were witnesses for Local 507.

Michael J. Westcott, Attorney at Law, represented the American Red Cross. Joy Ferst was a witness for the American Red Cross.

This matter was heard by Jim Bubutiev, Hearing Officer for the Director of the Ohio Department of Job and Family Services, pursuant to Section 4141.283 of the Ohio Revised Code. The purpose of this hearing is to determine the reason for the unemployment of certain individuals who have filed claims for unemployment compensation benefits. Division (A) of Section 4141.283 of the Ohio Revised Code provides that the Director is to schedule a hearing when there is reason to believe that the unemployment of twenty-five or more individuals relates to a labor dispute. The Department of Job and Family Services has currently received approximately 181 unemployment compensation benefits claims that relate to a labor dispute between Local 507 and the American Red Cross.

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on March 19, 2012, in Akron, Ohio.

FINDINGS OF FACT

The American Red Cross is involved in collecting blood products at various community locations and fixed site locations. The products are manufactured in their facilities into distributable and transfuseable products and then delivered and distributed to hospital customers in the Northern Ohio area (Transcript Page 16).

The claimants in this matter are members of Local 507. The American Red Cross employs about 540 individuals, and approximately 240 to 250 of them are members of Local 507, at mobile and fixed site locations throughout a 19 county region in Northern Ohio. These locations include headquarters in Cleveland, and other fixed site locations in Cleveland, Austintown, Avon, Parma, and Akron (Transcript Pages 15-17,41-42,51,54-55,109,125).

Local 507 had a collective bargaining labor agreement with the American Red Cross that was effective from January 21, 2007 through May 1, 2011. There were three extensions of the collective bargaining labor agreement after May 1, 2011, that continued it through January 27, 2012. A fourth extension was rejected by Local 507. The members of Local 507 continued working under the terms and conditions of the expired agreement through February 13, 2012 (Transcript Pages 18-21,29-35,37-38,126-127/Union Exhibit A/Employer Exhibits 1-4).

Approximately 28 negotiation sessions for a new agreement were held between the parties beginning on April 5, 2011 through February 9, 2012 (Transcript Pages 21-22,110-111).

The main issues between the parties include health insurance coverage, staffing of blood drives, wages, time off work scheduling, and sick time (Transcript Pages 23,47-51,137-138,145-146,224).

The American Red Cross has never indicated that if a new agreement isn t agreed to then no work would be available to Local 507 (Transcript Pages 24-25,49,117).

The members of Local 507 sent the American Red Cross a strike notice on February 1, 2012 indicating a work stoppage would begin on February 14, 2012. A work stoppage did begin on February 14, 2012 and it is continuing. Picketing is occurring at the various American Red Cross locations. The strike notice and the work stoppage are a response to the economic wall to wall proposal made by the American Red Cross on January 27, 2012 (Transcript Pages 23-25,27,39-41,44-48,60-61,83-85,112-114,150-153,175-176/EmployeExhibits 5-6).

The largest annual blood drive event by the American Red Cross was scheduled to occur on February 14, 2012. The event was cancelled on February 10, 2012 because of the anticipation of the impending work stoppage after the February 9, 2012 negotiation session (Transcript Pages 59-63,97-98).

The American Red Cross has continued operating using nonunion employees, and about twenty members of Local 207 that crossed the picket lines and have continued working under the terms and conditions of the expired agreement. There have been no temporary or permanent replacement workers hired. No one that wants to work has been refused employment by the American Red Cross (Transcript Pages 25-27,42-44,117/EmployerExhibit 7).

A matter of contention between the parties is a requirement of BioArch R1 training for the members of Local 507. Local 507 asserts that their members would not be allowed to work without the training. The American Red Cross asserts there would be no layoffs and work would be allowed to continue if the members of Local 507 have not attended the training (Transcript Pages 63-67,71,76-81/Union Exhibits B-C,E).

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The members of Local 507 assert they were laid off on February 13, 2012. The American Red Cross asserts Local 507 was notified in writing of the possibility of layoffs in the future as a result of the work stoppage (Transcript Pages 72-76,79-80,121-122,128-135,139,157-159,162,218/UniorExhibits C-F).

ISSUES

Pursuant to Section 4141.283 of the Ohio Revised Code, this Hearing Officer is required to make a determination as to whether the claimants are disqualified from receiving benefits under the unemployment compensation laws of the State of Ohio. The issues are:

1. What is the reason for the claimants' unemployment from the American Red Cross?

2. Are the claimants disqualified from receiving unemployment compensation benefits?

3. What is the duration of the labor dispute?

The applicable law is Section 4141.29(D)(1)(a) of the Ohio Revised Code which provides as follows:

(D)Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(1)For any week with respect to which the director finds that:

(a) The individual's unemployment was due to a labor dispute other than a lockout at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer by which the individual is or was last employed; and for so long as the individual's unemployment is due to such labor dispute. . .

REASONING

Section 4141.29(D)(1)(a) of the Ohio Revised Code provides that no individual is entitled to benefits for any week during which the individual s unemployment is due to a labor dispute other than a lockout. Thus, in order to come to a conclusion regarding the reason for the unemployment of the claimants, it is necessary to determine whether the labor dispute was a lockout within the meaning of the Ohio unemployment compensation law. The claimants would not be disqualified from eligibility for unemployment compensation benefits if the labor dispute were found to be a lockout.

The issue to be resolved is whether the reason for the unemployment of the claimants from the American Red Cross was due to a lockout or a labor dispute other than a lockout.

In Bays v. Shenango Co. (1990), 53 Ohio St. 3d 132, a collective bargaining agreement between the employer and the union expired and the union offered to continue working under the terms of the expired contract for one year while a new contract continued to be negotiated.

The Ohio Supreme Court held that if an employer refuses to allow work to continue for a reasonable time under the existing terms and conditions of employment, while negotiations continue, then the employer is deviating from the status quo.

Thus, the Supreme Court has set forth what is known as the status-quo test for deciding whether a work stoppage was the result of a lockout or due to a labor dispute other than a lockout.

In applying this test it must be determined which side, union or management, first refused to continue operations under the status quo after the contract had technically expired, but while negotiations were continuing. Id. at 134.

Additionally, the more recent Ohio Supreme Court case of M. Conley Co. v. Anderson (2006) 108 Ohio St. 3d 252, favorably discusses the Bays case and the status quo test.

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In this matter, the evidence and testimony indicate that the members of Local 507 became unemployed when they began a work stoppage on February 14, 2012.

It is clear that no impasse to further negotiations has occurred between the parties.

Applying the Bays decision, the American Red Cross would have allowed Local 507 members to continue working under the terms and conditions of the expired contract while negotiations for a new contract continued. There was no indication ever made to Local 507 that the economic wall to wall proposal made by the American Red Cross on January 27, 2012 would be implemented. It was merely a proposal. Arguments back and forth between the parties about the proposal being concessionary or an improvement to the expired agreement are irrelevant. The American Red Cross was maintaining the status quo while negotiations continued.

However, Local 507 broke the status quo by taking the action of commencing with a work stoppage on February 14, 2012 just as indicated on their strike notice dated February 1, 2012.

A review of the testimony indicates that the reason and motivation to conduct the work stoppage was because the members did not like the proposal. The work stoppage was put in place to force American Red Cross to make a better offer. That it was slated to commence on the date of the biggest annual blood drive shows Local 507 wanted to exert maximum leverage over the economic issues being negotiated. This is a classic example of a labor dispute other than a lockout.

A close look and analysis of Union Exhibits A,C-G, and Employer Exhibit 7, combined with the proffered testimony about all those exhibits indicates that there was no layoff before the work stoppage began.

All the exhibits that make mention of a layoff indicate it is a future possibility as a result of the work stoppage. It defies reason to consider the American Red Cross would conduct layoffs the day before a work stoppage was scheduled to commence.

The American Red Cross without question wanted work to continue under the status quo while negotiations continued.

Union Exhibit G is utterly irrelevant as it deals with a change of cap on premiums from 2008 and was decided in 2009 as a violation of the National Labor Relations Act. This hearing only deals with Ohio Unemployment Compensation Law. Furthermore, the expired agreement clearly allows for health insurance changes from one year to the next under Article 23. The changes made effective January 1, 2012 were consistent with that agreement.

Similarly, arguments about changes in the handbook in 2010, and in the pension plan in 2009 are without merit. The status quo test is a look at changes made during the negotiation process and it is not a blank check look back into changes in the years prior to negotiation on a new agreement.

Finally, there is no indication that the BioArch R1 training was being used by the American Red Cross to withhold work. In fact, the testimony indicated that work could and would continue even if the training had not yet been attended.

The only relevant fact in this matter is that Local 507 was the first party to take an action and that action was to begin a work stoppage.

DECISION:

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

It is the decision of this Hearing Officer that all of the claimants herein are unemployed due to a labor dispute other than a lockout which began on February 14, 2012. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout beginning with the week which includes February 14, 2012.

It is also the decision of this Hearing Officer that the labor dispute other than a lockout between the American Red Cross and Local 507 which began on February 14, 2012, is continuing.

APPEAL RIGHTS: If you disagree with this decision, you have the right to appeal. The following paragraph provides a detailed explanation of your appeal rights:

Application for appeal before the Unemployment Compensation Review Commission, Ohio Dept. Of Job And Family Services, PO Box 182299, Columbus, OH 43218-2299; or by fax to 1-614-387-3694; may be filed by any interested party within twenty-one (21) calendar days of the date of mailing of the decision. In order to be considered timely, the appeal must be filed in person, faxed, or postmarked no later than twenty-one (21) days after the date of mailing indicated on this decision. If the 21st calendar day falls on a Saturday, Sunday, or Legal Holiday, the period for filing is extended to include the next scheduled work day. Upon receipt of certified medical evidence stating that the interested party's physical condition or mental capacity prevented the filing of an appeal within the specified 21 calendar day period, the interested party's time for filing the appeal shall be extended and considered timely if filed within 21 calendar days after the ending of the physical or mental condition. **If unemployed,** claimants should continue to file weeky claims for benefits while under appeal.

This decision was mailed on **03/29/2012**.

The twenty-one day appeal period ends on **04/19/2012**.

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