



OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE



Table with 2 columns: Employer information (BENCHMARK HEALTHCARE OF TOLEDO INC. DEBTOR IN POSSESSION) and administrative details (Date Issued: 09/27/2006, Determination Identification Number: 213599222-1, UC Account Number: 1369175007)

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

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

Union: SEIU District 1199
Employer: BENCHMARK HEALTHCARE OF TOLEDO INC. DEBTOR IN POSSESSION
Docket No: 00000000600028
Hearing Officer: Jim Bubutiev
Date of Hearing: 09/18/2006
Date of Issuance: 09/27/2006

APPEARANCES

Amie Gohlike, Administrator, represented and was a witness for Benchmark. Cathrine Harshman, Attorney At Law, represented SEIU District 1199. Albert Jackson, Long Term Care Coordinator, and Paulette Smith, Nursing Assistant, were witnesses for SEIU District 1199.

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 received approximately 32 unemployment compensation benefits claims that relate to a labor dispute between SEIU District 1199 and Benchmark in Toledo, Ohio. All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on September 18, 2006, in Bowling Green, Ohio.

FINDINGS OF FACT

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The claimants in this matter are members of SEIU District 1199 and are employed by Benchmark in Toledo, Ohio.

Benchmark operates a nursing home facility located in Toledo, Ohio (Transcript Page 12).

Benchmark employs approximately 100 individuals and 40 to 48 of them are members of SEIU District 1199 (Transcript Pages 12-13,50).

SEIU District 1199 had a collective bargaining labor agreement with Benchmark that was effective from July 1, 2003, through June 30, 2006. There was no formalized extension of the agreement between the parties but the members of SEIU District 1199 continued working under the same terms and conditions of the then expired agreement through August 20, 2006 (Transcript Pages 15-17,34-35,50/Union Exhibit 1).

There were approximately eleven (11) negotiation sessions held between the parties in an effort to agree to a new collective bargaining labor agreement. The sessions began in May of 2006 and continued until a new agreement was reached in September of 2006 (17,22,44-45).

The main issues between the parties included the expiration date of a new agreement, health insurance coverage, and wages (Transcript Pages 18-19,45).

The members of SEIU District 1199 began a one (1) day work stoppage on August 21, 2006, and set up a picket line at the Benchmark facility (Transcript Pages 15-16,20-23,28-31,35-36,45-52,54/Employer Exhibit A/Union Exhibit 2).

Benchmark continued operating after the work stoppage began using non-union employees, three (3) individuals that resigned from the union and never participated in the work stoppage, and temporary replacement workers hired on June 27, 2006, and thereafter (Transcript Pages 13,23-27,30-33,51/Employer Exhibit B).

On August 22, 2006, SEIU District 1199 offered, in writing, to unconditionally return to work. However, on August 21, 2006, in response to the one (1) day work stoppage, Benchmark explained, in writing, that the members of SEIU District 1199 were locked out until a new agreement was reached (Transcript Pages 33-34,37-41,47-50,54-56/Union Exhibits 3,4).

On or about September 8, 2006, a tentative agreement was reached. The members of SEIU District 1199 ratified the tentative agreement on September 10, 2006, and returned to work beginning on September 12, 2006 (Transcript Pages 18-20,41-42,49/Union Exhibit 5).

## 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 unemployment of the claimants from Benchmark?
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

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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 their unemployment is due to a labor dispute other than a lockout.

Thus, in order to reach 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 is found to be a lockout.

The first issue to be resolved is whether the reason for the claimants' unemployment from Benchmark 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.

Furthermore, the recently decided 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.

The evidence and testimony indicate the members of SEIU District 1199 became unemployed when they conducted a one (1) day work stoppage on August 21, 2006, and chose not to continue working under the terms and conditions of the expired collective bargaining labor agreement. Instead, the claimants set up a picket line on that day and started a labor dispute other than a lockout.

Using the *Bays* standard, this Hearing Officer finds, based upon the testimony and evidence, that it was SEIU District 1199 that first changed the status quo, while negotiations were ongoing, when members of SEIU District 1199 decided to take the action of picketing at Benchmark instead of reporting to work on August 21, 2006.

However, once the members of SEIU District 1199 offered, on August 22, 2006, to unconditionally return to work they ended the labor dispute other than a lockout. The decision by Benchmark not to accept SEIU District 1199's unconditional offer to return to work converted the labor dispute into a lockout until a new agreement was reached and the members of SEIU District 1199 returned to work beginning September 12, 2006.

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Therefore, it is the conclusion of this Hearing Officer that the claimants in this matter were unemployed due to a labor dispute other than a lockout which began August 21, 2006, and ended when the members of SEIU District 1199 offered to unconditionally return to work on August 22, 2006. A lockout then began on August 22, 2006, until a new agreement was agreed upon on or about September 8, 2006, and the members of SEIU District 1199 returned to work beginning on September 12, 2006.

## DECISION

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a labor dispute other than a lockout at Benchmark on August 21, 2006. The claimants are disqualified from receiving unemployment compensation benefits for the week which includes August 21, 2006, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

It is also the decision of this Hearing Officer that the labor dispute between SEIU District 1199 and Benchmark became a lockout beginning August 22, 2006, when Benchmark did not accept the unconditional offer by SEIU District 1199 to return to work that day. Therefore, all of the claimants herein became unemployed due to a lockout at Benchmark and are not disqualified from eligibility for unemployment compensation benefits due to a labor dispute beginning with the week which includes August 27, 2006.

The lockout which resulted in the unemployment of the claimants ended when the claimants returned to work on September 12, 2006.

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**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, PO Box 182299, Ohio Dept. Of Job And Family Services, 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.

This decision was mailed on **09/27/2006**.

The twenty-one day appeal period ends on **10/18/2006**.

