

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UI SPECIAL PROGRAMS UNIT
145 South Front Street
P.O. Box 182830
Columbus, Ohio 43218-2830
(614)752-8418

In The Matter Of A Labor Dispute
Between:

Air Line Pilots Association	:	Docket No. LD-001-003
(ALPA); International	:	
Association Of Machinists	:	
And Aerospace Workers (IAMAW);	:	
International Brotherhood Of	:	
Teamsters Local 100 (IBT)	:	Hearing Officer:
	:	Jim Bubutiev
Union / Claimants	:	:
	:	Date of Hearing:
and	:	June 20, 2001
	:	
Comair, Inc.	:	Date Hearing Concluded:
Operating Comair Airlines	:	June 26, 2001
(Comair)	:	
	:	Date of Issuance:
Employer	:	June 28, 2001

Appearances

Paul Dorger, Attorney, represented Comair. Barri Donaghy, Human Resources Manager, was a witness for Comair.

The ALPA, IAMAW, and IBT, although duly notified, were not represented and did not offer good cause for failing to appear.

This matter was heard by Jim Bubutiev, Hearing Officer for the Director of the Ohio Department of Job and Family Services, pursuant to section 4141.281 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. Section 4141.281(A) 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.

All interested parties were notified of this hearing pursuant to

law. This hearing was held on June 20, 2001, in Cincinnati, Ohio.

FINDINGS OF FACT:

The claimants in this matter are either members of the ALPA, IAMAW, IBT, or are not affiliated with a union.

The claimants are employed by Comair at various locations throughout Ohio, including but not limited to the Akron-Canton area, Cleveland, Columbus, Dayton, Toledo, and at the Cincinnati/Northern Kentucky International Airport.

Comair is a regional airline providing passenger service mainly on the Eastern Seaboard of the United States. It has a hub at the Cincinnati/Northern Kentucky International Airport, and a secondary hub in Orlando, Florida (Transcript Page 13).

Comair employs an estimated 5,000 individuals, and approximately 2,500 of them are union members and some 1,300 are members of the ALPA (Transcript Page 14).

The ALPA had a collective bargaining labor agreement with Comair effective from June 1, 1994, to May 31, 1998 (Employer Exhibit A).

The ALPA and Comair participated in a mediation before the National Mediation Board as they attempted to negotiate a new collective bargaining labor agreement after the then existing collective bargaining labor agreement had expired. In addition, there was a thirty (30) day cooling off period between the ALPA and Comair prior to March 26, 2001 (Transcript Page 28).

The mediation between the ALPA and Comair did not result in a new collective bargaining labor agreement leading up to March 26, 2001.

On March 26, 2001, the members of the ALPA began a work stoppage and set up a picket line at Comair's hub in the Cincinnati/Northern Kentucky International Airport. The picketing lasted several hours each day and continued through the date of this hearing (Transcript Pages 16, 20-21).

Comair ceased revenue operations and stopped flying aircraft as a result of the work stoppage. Comair did not attempt to hire replacements into the positions held by the members of the ALPA (Transcript Pages 18-20).

Comair would have allowed the members of the ALPA to continue working under the terms and conditions of the expired contract on March 26, 2001, and thereafter (Transcript Page 29).

Twelve (12) claimants, all of whom have positions as customer service agents, worked at locations in Ohio other than at the Cincinnati/Northern Kentucky International Airport, and no members of the ALPA picketed at any of those locations. Further, the twelve (12) claimants did not finance, participate in, or have a direct interest in the work stoppage being conducted by the members of the ALPA (Employer Exhibit B).

The remaining claimants, other than the twelve (12) claimants mentioned above, were either members of the ALPA involved in the work stoppage or worked at the Cincinnati/Northern Kentucky International Airport where picketing did occur (Employer Exhibit B).

A tentative contract agreement was reached between the ALPA and Comair on or about June 14, 2001, pending a ratification vote by the members of the ALPA. The members of the ALPA ratified the tentative contract agreement on June 22, 2001, thereby ending their labor dispute with Comair (Stipulation of the ALPA and Comair - Exhibit C).

ISSUES:

Pursuant to section 4141.281 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 can be stated thus:

1. What is the reason for the claimants' unemployment from Comair?
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 in pertinent part:

- (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. No individual shall be disqualified under this provision if. . .the following applies:
 - (i) The individual's unemployment was with such employer at any factory, establishment, or premises located in this state, owned or operated by such employer, other than the factory, establishment, or premises at which the labor dispute exists, if it is shown that the individual is not financing, participating in, or directly interested in 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 at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer. Thus, in order to come to a conclusion regarding the reason for the unemployment of the claimants, who are either ALPA members or who are not ALPA members but who work at the Cincinnati/Northern Kentucky International Airport where the labor dispute and work stoppage occurred, 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 Comair was due to a lockout or a labor dispute other than a lockout.

The evidence and testimony indicate that the claimants, who are either ALPA members or who are not ALPA members but who work at the Cincinnati/Northern Kentucky International Airport where the labor dispute and work stoppage occurred, became unemployed when the ALPA members began a work stoppage on March 26, 2001. The ALPA members chose not to continue working under the expired collective bargaining labor agreement with Comair and, in fact, began to picket at the Cincinnati/Northern Kentucky International Airport on March 26, 2001.

In *Cornell v. Bailey*, (1955), 163 Ohio St. 50, the claimants were not members of the union involved in the work stoppage and were not concerned in the dispute between the employer and its drivers and helpers.

Additionally, the claimants did not participate in the labor dispute or the resulting work stoppage and continued working after the work stoppage began. However, the employer operated a wholesale grocery business and the lack of normal delivery service caused a substantial decrease in business. Eventually, the employer had no more work for the claimants and they were laid off due to a lack of work.

The Ohio Supreme Court ruled that the claimants in *Cornell* were unemployed due to a labor dispute other than a lockout. The court held that the statute did not differentiate between those individuals who were actually involved in the work stoppage and those individuals innocently unemployed because of the work stoppage. The court explained the only question to answer was whether the claimants lost their employment by

reason of a labor dispute and that the only answer to the question was that they had lost their employment because of the labor dispute.

In *Zanesville Rapid Transit v. Bailey* (1958), 168 Ohio St. 351, the Ohio Supreme Court defined a "lockout" as a withholding of work from employees in an effort to get more favorable terms for the employer.

In *Zanesville*, the employer implemented a 10% wage reduction after the expiration of the labor agreement. The employer was a public utility that had experienced problems making a profit and had been unable to gain permission from the local city council to increase fares.

The court held that the 10% wage reduction was reasonable under the circumstances and did not manifest a purpose on the part of the company to coerce the employees into accepting it and, therefore, was not a lockout.

In *Ohio Bureau of Employment Services v. Hodory*, (1977), 97 S. Ct. 1898, the claimant was an employee who worked at one of the employer's plants and who was laid off when the plant was shut down because of a reduction in fuel supply as a result of a national strike by the employer's coal mine workers.

The United States Supreme Court held in *Hodory* that the Ohio statute disqualifying an "innocent bystander" from unemployment compensation benefits, because the individual's unemployment was due to a labor dispute other than a lockout, was constitutional because it had a rational relation to a legitimate state interest.

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 *Astatus-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 *A*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.

In the instant case the evidence and testimony show that the members of the ALPA began a work stoppage and set up a picket line at the Cincinnati/Northern Kentucky International Airport on March 26, 2001.

The testimony demonstrated that Comair did not withhold work from the members of the ALPA in an effort to obtain more favorable terms. Therefore, by applying the holding of *Zanesville*, it is clear that Comair did not lockout the members of the ALPA.

The ALPA and Comair were involved in a labor dispute that ultimately led to the members of the ALPA conducting a work stoppage in an effort to obtain more desirable terms in a new collective bargaining labor agreement with Comair.

Using the *Bays* standard, this Hearing Officer finds, based upon the testimony and evidence, that the ALPA first changed the status quo when members of the ALPA decided to stop working, and to form picket lines at Comair's hub in the Cincinnati/Northern Kentucky International Airport, instead of reporting to work beginning on March 26, 2001, until the labor dispute was resolved on June 22, 2001. Comair's conduct did not indicate it was unwilling to maintain the status quo while negotiations continued. Therefore, those claimants who are members of the ALPA were unemployed

due to a labor dispute other than a lockout which lasted from March 26, 2001, until June 22, 2001.

Applying the holdings of *Cornell* and *Hodory*, this Hearing Officer finds, based upon the evidence and testimony, that all the claimants who work at Comair's hub in the Cincinnati/Northern Kentucky International Airport, where the members of the ALPA did picket, were unemployed as a direct result of the work stoppage and labor dispute between the ALPA and Comair. Therefore, those claimants who are not members of the ALPA but who work at the Cincinnati/Northern Kentucky International Airport were unemployed due to a labor dispute other than a lockout between the ALPA and Comair which lasted from March 26, 2001, until June 22, 2001.

Section 4141.29(D)(1)(a)(i) of the Ohio Revised Code provides that no individual shall be disqualified from receiving benefits due to a labor dispute other than a lockout if the individual's unemployment is at a location other than the place where the labor dispute exists if it is shown that the individual is not financing, participating in, or directly interested in the labor dispute.

The evidence and testimony show the twelve (12) claimants who are customer service agents at Ohio locations other than at Comair's hub in the Cincinnati/Northern Kentucky International Airport did not finance, participate in, or have a direct interest in the labor dispute between the ALPA and Comair. Therefore, these twelve (12) claimants are not disqualified from receiving unemployment benefits because of the labor dispute other than a lockout involving the ALPA and Comair which lasted from March 26, 2001, to June 22, 2001.

DECISION:

It is the decision of this Hearing Officer that all of the claimants who are members of the ALPA or who work at Comair's hub in the Cincinnati/Northern Kentucky International Airport were unemployed due to a labor dispute other than a lockout. The claimants who are members of the ALPA or who work at the Cincinnati/Northern Kentucky International Airport are disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which March 26, 2001 occurred pursuant to section 4141.29(D)(1)(a) of the Ohio Revised Code.

The labor dispute other than a lockout between the ALPA and Comair ended on June 22, 2001, when the members of the ALPA ratified a new collective bargaining labor agreement with Comair. Therefore, the ending date of the labor dispute is the Saturday of the week in which June 22, 2001, occurred.

It is also the decision of this Hearing Officer that the twelve (12) claimants who are employed as customer service agents at the Ohio locations other than at the Cincinnati/Northern Kentucky International Airport are not disqualified from receiving benefits due to a labor dispute other than a lockout pursuant to section 4141.29(D)(1)(a)(i) of the Ohio Revised Code.

This decision applies to:

CLAIMANTS WHO ARE DISQUALIFIED

*** * * * * 21 NAMED CLAIMANTS * * * * ***

CLAIMANTS WHO ARE NOT DISQUALIFIED

*** * * * * 12 NAMED CLAIMANTS * * * * ***

If you disagree with this decision then 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, 145 S. FRONT STREET, P.O. BOX 182299, COLUMBUS, OHIO 43218-2299; OR BY FAX TO (614)752-8862; 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 IS 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 JUNE 28, 2001.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS ON JULY 19, 2001.

Jim Bubutiev
Hearing Officer