

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
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In The Matter Of A Labor Dispute
Between:

Ohio Nurses Association,	:	Docket No. LD-003-002
East Liverpool Nurses	:	
Association, et al.	:	
Union/Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
City Hospital Association	:	Date of Hearing:
Inc., Operating East Liverpool	:	June 17, 2003
City Hospital & East Liverpool	:	
City Hospital Auxiliary Inc.	:	
(Hospital):	:	
Employer	:	Date of Issuance:
	:	June 27, 2003

APPEARANCES

Darwin K. Smith, Director of Human Resources, and John A. McCreary, Jr., Attorney at Law, represented the Hospital. Darwin K. Smith was also a witness for the Hospital.

Sondra Powell, Executive Officer, represented the Glass, Molders, Pottery, Plastics & Allied Workers International Union Local 333 (GMP). Diane L. Thorn, President of GMP, was a witness for GMP.

The Ohio Nurses Association/East Liverpool Nurses Association (ONA), the Service Employees International Union Local 257/District 1199 (SEIU), and the Textile Processors, Service Trades, Health Care, Professional & Technical Employees International Union Local 1 (TP), although duly notified, did not appear and were not represented at this hearing.

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 Ohio Department of Job and Family Services has received 278 claims for unemployment benefits that relate to a labor dispute between the ONA and the Hospital.

All interested parties were duly notified of the hearing pursuant to Ohio law. This hearing was held on June 17, 2003, at the Carnegie Public Library in East Liverpool, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of the ONA, SEIU, TP, GMP, or are not affiliated with a union, and are employed by the Hospital (Transcript Pages 14-16).

The Hospital provides primary care including medical services, emergency room services, surgical services, and has an intensive care unit, and a skilled nursing facility (Transcript Page 14).

The Hospital employs an estimated 680 individuals. Approximately 178 of those individuals are members of the ONA (Transcript Page 14).

The ONA had a three (3) year collective bargaining labor agreement with the Hospital that was effective from June 1, 2000, through May 31, 2003 (Transcript Page 16).

Neither party discussed nor proposed an extension of the exact terms and conditions of the expired agreement while negotiations continued for a new agreement (Transcript Page 16).

The main issues between the ONA and the Hospital involved economic/general wage increases, mandatory overtime, and health insurance (Transcript Page 21).

Negotiation sessions were held between the ONA and the Hospital, prior to the expiration of the then existing collective bargaining labor agreement, in an attempt to reach a new agreement. The sessions were held between April 16, 2003, and May 20, 2003 (Transcript Pages 18-19).

The ONA sent the Hospital a "10-day Strike Notice" on May 20, 2003. The notice indicated that a strike and picketing were intended to commence on June 1, 2003, at 7:00 a.m. (Transcript Page 19/Exhibit 1).

A Federal Mediator became involved with negotiation sessions between the ONA and the Hospital beginning on May 28, 2003 (Transcript Page 19).

The Hospital presented a "best and final" offer on May 29, 2003. The ONA counter offered on May 30, 2003, and the counter offer was declined by the Hospital. The parties differed on the general wage increases over the life of a new three (3) year agreement as well as on the other relevant issues (Transcript Pages 19-20).

The members of the ONA commenced with a work stoppage at 7:00 a.m. on June 1, 2003, and a picket line was set up in accordance with their "10-day Strike Notice" (Transcript Pages 17-18,20,29/Exhibit 1).

The Hospital began actively reducing their patient census on May 28, 2003. The Hospital stopped accepting new patients and either discharged or transferred their already admitted patients. The Hospital took this step when, in their view, it became clear, after receiving the ONA's "10-day Strike Notice," that the ONA was not going to make any changes regarding negotiations and a work stoppage was imminent (Transcript Pages 22-23/Exhibit 2).

The Hospital kept their emergency room services and skilled nursing facility open but with the reduction in their patient census there was no need for the same level of overall hospital services. Therefore, there wasn't a need to maintain the same level of staffing of employees that were not ONA members. Consequently, the Hospital sent certified letters out on May 28, 2003, to all the claimants that were not ONA members, notifying them that they were going to be laid off as of May 31, 2003, in anticipation of the work stoppage by the members of the ONA (Transcript Pages 24-26,34,36-37/Exhibit 3).

The Hospital did make preparations to use replacement workers in the positions held by the members of the ONA but no replacement workers were ever actually hired during the work stoppage (Transcript Pages 26-27,38).

The ONA and the Hospital met on June 6, 2003, for a negotiation session that lasted approximately four and a half hours. The discussion during the session centered on the health insurance proposal (Transcript Page 27).

The ONA and the Hospital met on June 13, 2003, for a negotiation session in which the Hospital presented a new proposal which included the original health care proposal (Transcript Page 28).

The Hospital was notified at about 3:30 p.m. on June 14, 2003, that a substantial majority of the members of the ONA had voted to ratify a new agreement (Transcript page 27-28).

The ONA and the Hospital met for negotiation sessions on a total of 17 different days until the new agreement was reached. The negotiation sessions were on April 16, 2003, thru June 13, 2003 (Transcript Page 19).

The members of the ONA were called back to work by the Hospital beginning at 7:00 a.m. on June 15, 2003 (Transcript Page 29).

The claimants that are not members of the ONA are on a phased-in recall based upon the patient census and overall needs of the Hospital (Transcript Pages 29-30,38).

The Hospital's patient census was 53 as of June 16, 2003, which is roughly ½ of the Hospital's normal patient census (Transcript page 30).

The claimants that were not members of the ONA were willing to continue working during the work stoppage (Transcript Page 29,36).

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 central issues to address can be stated thus:

1. What is the reason for the claimants' unemployment from the Hospital?
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)(i) and (ii) 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. No individual shall be disqualified under this provision if either of the following applies:

(i) The individual's employment 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;

(ii) The individual's employment was with an employer not involved in the labor dispute but whose place of business was located within the same premises as the employer engaged in the dispute, unless the individual's employer is a wholly owned subsidiary of the employer engaged in the dispute, or unless the individual actively participates in or voluntarily stops work because of such dispute. If it is established that the claimant was laid off for an indefinite period and not recalled to work prior to the dispute, or was separated by the employer prior to the dispute for reasons other than the labor dispute, or that the individual obtained a bona fide job with another employer while the dispute was still in progress, such labor dispute shall not render the employee ineligible for benefits.

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 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 is found to be a lockout.

The key issue to be resolved is whether the reason for the claimants' unemployment from the Hospital 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 pre-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 134-135.

In this matter, the testimony and evidence indicates that the claimants that are members of the ONA became unemployed when they started a work stoppage on June 1, 2003, and set up a picket.

Thus, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon the evidence, that the claimants that are members of the ONA first changed the status quo, while negotiations were ongoing, when the decision was made to conduct a work stoppage and begin picketing on June 1, 2003. Consequently, the claimants that are members of the ONA became unemployed when they started a labor dispute other than a lockout on June 1, 2003.

Therefore, it is the conclusion of this Hearing Officer that all the claimants that are members of the ONA, in the instant case, were unemployed due to a labor dispute other than a lockout which began June 1, 2003, and which ended June 14, 2003, when a new agreement with the Hospital was ratified by a substantial majority of the ONA members.

However, Section 4141.29(D)(1)(a)(ii) applies to all the claimants that are not members of the ONA. Specifically, since they all received a letter from the Hospital, by certified mail, notifying them that they were being laid off prior to the actual work stoppage, this Hearing Officer finds that it is established that all the claimants that are not members of the ONA were laid off for an indefinite period and not recalled to work prior to the beginning of the dispute between the ONA and the Hospital which resulted in the work stoppage. Therefore, the labor

dispute between the ONA and the Hospital shall not render any of the claimants that are not members of the ONA ineligible for benefits.

DECISION:

It is the decision of this Hearing Officer that all of the claimants that are members of the ONA herein were unemployed due to a labor dispute other than a lockout which began June 1, 2003. The claimants that are members of the ONA are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the week which includes June 1, 2003, 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 other than a lockout between the ONA and the Hospital which began on June 1, 2003, ended on June 14, 2003, after a new agreement was ratified.

Furthermore, it is the decision of this Hearing Officer that all the claimants that are not members of the ONA are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the time period covering the week which includes June 1, 2003, thru the end of the week which includes June 14, 2003, pursuant to Section 4141.29 (D)(1)(a)(ii) of the Ohio Revised Code.

62 NAMED CLAIMANTS THAT ARE MEMBERS OF THE ONA ARE DISQUALIFIED

215 NAMED CLAIMANTS THAT ARE NOT MEMBERS OF THE ONA ARE NOT DISQUALIFIED

If you disagree with this decision then you may appeal it. The following paragraph provides a detailed explanation of your appeal rights:

APPLICATION FOR APPEAL BEFORE THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION, 145 SOUTH 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 THIS 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 JUNE 27, 2003.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS JULY 18, 2003.

Jim Bubutiev
Hearing Officer

