OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

OFFICE OF UNEMPLOYMENT COMPENSATION

DECISION ON LABOR DISPUTE ISSUE

JFS-83000 09/08/2011

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INTERSTATE BRANDS CORPORATION 12 E. ARMOUR BLVD. KANSAS CITY, MO 64111-1202	Date Issued 12/07/2012 Determination Identification Number ODJFS Office Bureau of UC Program Services
Employer's Name INTERSTATE BRANDS CORPORATION	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
PO Box 182830
Columbus, OH 43218-2830
Telephone: (614) 752-8419
Web Page: http://jfs.ohio.gov/labordisputes

In The Matter Of A Labor Dispute Between

Union:	**BCTGM Local 57**	Employer:	**INTERSTATE BRANDS CORPORATION**
Union:	**BCTGM Local 19**	Employer:	**INTERSTATE BRANDS CORPORATION**
Docket No:	**000000001200022**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**11/27/2012**	Date of Issuance:	**12/07/2012**

Appearances

Leonard Sigall and Steven Stone, Attorneys at Law, represented the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union Local No. 57, AFL-CIO-CLC (Local 57). Vester Newsome, Local 57 Financial Secretary/Treasurer, was a witness for Local 57. Interstate did not make an appearance and no other union local made an appearance.

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, and all parties were duly notified of this hearing.

The purpose of this hearing is to determine the reason for the unemployment of certain individuals who have filed claims for unemployment compensation benefits.

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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 has received approximately 634 claims for unemployment compensation benefits relating to this matter.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on November 27, 2012, in Columbus, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 57, Local 19, and other various union locals. They were employed by Interstate throughout Ohio at 3 bakeries and about 15 thrift stores and depots (Transcript Pages 9-10,18,28).

Interstate made food products including breads, buns, cookies, cakes, and other dessert items. Interstate had 3 Ohio bakeries located in the cities of Cincinnati, Defiance, and Northwood. Local 57 members worked at the Cincinnati bakery. Interstate also had some 15 thrift stores and depots spread across Ohio. Local 57 members worked at thrift stores and depots in the cities of Belpre, Chillicothe, Columbus, and Dayton. Interstate employed about 110 members of Local 57 in total (Transcript Pages 9-10,18,28).

Local 57 had a collective bargaining labor agreement with Interstate that was effective February 8, 2009 through and including May 5, 2012 (Transcript Page 12/Union Exhibit 1).

Interstate filed for bankruptcy sometime at the end of 2011 or at the beginning of 2012. Sometime around May of 2012 Interstate received U.S. Bankruptcy Court approval to no longer be bound by the then effective collective bargaining labor agreement. Interstate stopped paying contributions into the claimant s pension fund in August of 2011, prior to filing for bankruptcy. Local 57 estimates that Interstate owes the claimant s pension fund about 75 million dollars and asserts it has caused the pension fund to become insolvent (Transcript Pages 33-37/Union Exhibit 1).

In January 2012 negotiations began for a new agreement between Interstate and the BCTGM International Union. Negotiations ended at the end of August 2012 or beginning of September 2012 when Interstate provided a last, best, and final offer (Transcript Pages 13,30-31,37-39/Union Exhibit 2).

On September 9, 2012 the members of Local 57 unanimously rejected Interstate s last, best, and final offer. The three most important issues, according to Local 57, were the elimination of the pension and retirement insurance, an increase in the cost of health insurance coverage with a simultaneous reduction in health insurance coverage benefits, and an hourly wage reduction (Transcript Pages 20-21,38-39,42,48/Union Exhibit 2).

Local 57 asserts that Interstate implemented the terms and conditions of its final offer in early November 2012 and the changes were reflected in the paychecks received by the members of Local 57 on or about November 8, 2012. Local 57 estimates those changes reflected a total reduction of pay and benefits of about one hundred dollars per week as compared to the paychecks received prior to the changes (Transcript Pages 38-42,48/Union Exhibit 2).

The first day of the work stoppage was at 12:10 AM on November 12, 2012 when members of Local 19 began picketing at Interstate s Cincinnati bakery where members of Local 57 were working (Transcript Pages 15,28,42,50).

Interstate closed and locked up the Cincinnati bakery on November 13, 2012. All the picketing ceased and no replacement workers were hired (Transcript Pages 25-28,45-47/Union Exhibit 3).

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There was a last ditch mediation session on November 20, 2012 which proved to be unsuccessful. On November 21, 2012 a U.S. Bankruptcy Court Judge authorized the sale and liquidation of Interstate s assets (Transcript Pages 13-15).

The thrift stores and depots remained open. No picketing occurred at those locations. The thrift stores sold leftover food products that had a shelf life of up to 20 to 30 days while the depots prepared the trucks for a return to the leasing company (Transcript Pages 26-28).

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 can be stated thus:

1. What is the reason for the claimants' unemployment from Interstate?

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 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 first issue to be resolved is whether the reason for the unemployment of the claimants from Interstate was due to a lockout or a labor dispute other than a lockout.

The evidence indicates the claimants became unemployed when Interstate made the decision to change the terms and conditions of employment, as reflected in the paychecks issued on or about November 8, 2012, and then by closing the Cincinnati bakery beginning on November 13, 2012 as a response to picketing by members of Local 19 at that location.

In Zanesville Rapid Transit v. Bailey (1958), 168 Ohio St. 351, the Ohio Supreme Court defined a lockout as a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get for the employer more desirable terms. The Zanesville Court added that such a definition of a lockout does not include all the manifestations of an alleged lockout situation and, thus, does not confine a lockout to an actual physical closing of the place of employment.

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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 Ohio Supreme Court case of M. Conley Co. v. Anderson (2006) 108 Ohio St. 3d 252, favorably discussed Bays.

In this matter the uncontested evidence and testimony leads to the conclusion that the members of Local 57 were constructively locked out beginning November 9, 2012.

Using the Zanesville definition of a lockout, the facts indicate that there was a constructive lockout by Interstate to gain more favorable economic terms in a new agreement as evidenced by the changes reflected in the paychecks issued on or about November 8, 2012. It was reasonable for the members of Local 19 to conduct a work stoppage and begin picketing on November 9, 2012.

Using the Bays standard, this Hearing Officer finds, based upon a review of the testimony and evidence, that Interstate was the first to change the status quo when it decided to change the terms and conditions of employment beginning in early November 2012. The conduct of Local 57 indicated a continuing willingness to maintain the status quo while negotiations continued.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case are unemployed due to a constructive lockout which began on November 9, 2012, and the constructive lockout ended on November 13, 2012 when Interstate closed operations.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout. The claimants are not disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which November 9, 2012 occurred pursuant to Section 4141.29 (D)(1)(a) of the Ohio Revised Code.

It is also the decision of this Hearing Officer that the lockout ended on November 13, 2012.

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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, 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 **12/07/2012**.

The twenty-one day appeal period ends on **12/28/2012**.

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