

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

JFS-83000 03/13/2015



LIBBEY GLASS, INC. 300 MADISON AVE TOLEDO, OH 43604-1561	Date Issued 11/18/2016
	Determination Identification Number
	ODJFS Office Bureau of UC Program Services
Employer's Name LIBBEY GLASS, INC.	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
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Web Page: <http://jfs.ohio.gov/labordisputes>**

In The Matter Of A Labor Dispute Between

Union: International Assoc of Machinist &	Employer: LIBBEY GLASS, INC.
Union: Glass Molders Plastics	Employer: LIBBEY GLASS, INC.
Union: United Steelworkers Local 700T	Employer: LIBBEY GLASS, INC.
Union: United Steelworkers Local 65T	Employer: LIBBEY GLASS, INC.
Docket No: 000000001600010	Hearing Officer: Jim Bubutiev
Date of Hearing: 11/08/2016	Date of Issuance: 11/18/2016

APPEARANCES

Frank Rodriguez, Senior Human Resources Manager for Libbey, was a witness for Libbey. Rebecca Shope, Attorney At Law, represented Libbey. Christopher Martinez, USW Local 700T Staff Representative, represented and was a witness for Local 700T. Maria Rivera, Claimant, was a witness on her own behalf.

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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 265 unemployment compensation benefits claims that relate to a labor dispute between USW Local 700T, GMP Local 59, USW Local 65T, IAM Local Lodge 105 and Libbey. All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on November 8, 2016, in Bowling Green, Ohio.

FINDINGS OF FACT

Libbey is a manufacturer of various types of glass products (Transcript Pages 17-18). The labor dispute between USW Local 700T, GMP Local 59, USW Local 65T, IAM Local Lodge 105 and Libbey involved only the plant located on Ash Street in Toledo, Ohio and a Distribution Center located in Perrysburg, Ohio (Transcript Pages 14-17). Libbey employs approximately 880 individuals and about 750 of them are also members of either USW Local 700T, GMP Local 59, USW Local 65T, or IAM Local Lodge 105 (Transcript Pages 17-18).

There were collective bargaining labor agreements between USW Local 700T, GMP Local 59, USW Local 65T, IAM Local Lodge 105 and Libbey which were due to expire on September 30, 2016 (Transcript Pages 20-21). Approximately 111 negotiation sessions for new collective bargaining labor agreements began on September 7, 2016 until tentative agreements were reached on or about October 5, 2016 (Transcript Pages 25-28,56-58). The tentative agreements were rejected by a vote of the members of USW Local 700T, GMP Local 59, USW Local 65T, and IAM Local Lodge 105 during separate ratification votes taken at various times between October 5, 2016 and October 12, 2016 (Transcript Pages 32-34,35,37). The parties agreed to formal written extensions of the expiring agreements through October 11, 2016 for GMP Local 59 and IAM Local Lodge 105, and through October 14, 2016 for USW Local 700T and Local 65T (Transcript Pages 21-23,50-55,94-96/UnionExhibits 1-4).

At about midnight on October 12, 2016, soon after the members of USW Local 700T had voted to reject a tentative agreement, members of IAM Local Lodge 105 followed by members of GMP Local 59, walked out of negotiations with Libbey and began picketing at Libbeycs Toledo plant on Ash Street (Transcript Pages 24-25,39-41,53-54,58-59,63,71-72).

The main issues between the parties dealt with overtime language, attendance policy, and wages (Transcript Pages 28-30,33-34).

Libbey was at all times willing to have the members of USW Local 700T, GMP Local 59, USW Local 65T, and IAM Local Lodge 105 continue to work while negotiations continued and, in fact, always wanted to sign further formal extensions of the expired agreement. Libbey was informed by negotiators for USW Local 700T and USW Local 65T that the picket line would be honored and it would be the choice of any individual member to cross it or not to cross it (Transcript Pages 32-33,40-41,45-46,55,60,62,65,72-75,76-77,87,92-93,104,109-114).

Libbey deactivated employee swipe badges, taped up entrance turnstiles, and ceased paying for health and life insurance for all Union members after the labor dispute and picketing began (Transcript Pages 80-82,95-96,97-103,113-119,126-135/UnionExhibits C,D,E/Rivera Exhibits). Some Union members tried to call Libbey by telephone or swiped deactivated employee swipe badges but no members of any of the Unions crossed the picket line and made reasonable physical attempts to go to work while the labor dispute and picketing was going on (Transcript Pages 61,79,83,133,136,145-153).

Negotiation sessions continued between the parties during the time period of the labor dispute and picketing by members of IAM Local Lodge 105 and GMP Local 59. New tentative agreements were reached and the members of USW Local 700T, GMP Local 59, USW Local 65T, and IAM Local Lodge 105 voted, in separate ratification votes taken on different dates, to ratify these new tentative agreements. The labor dispute and picketing ended and there was a return to work beginning at 7 AM on October 26, 2016 (Transcript Pages 30-31,41-44).

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Libbey continued to operate during the labor dispute and picketing and used temporary workers brought in through a third party temporary employment agency. Libbey did not hire any permanent replacement employees during the labor dispute and picketing (Transcript Pages 46-49,63-64).

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 Libbey?
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 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 claimants' unemployment from Libbey 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.

In addition, 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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The testimony and documentation in this case, when viewed in totality and evaluated for credibility, indicate the members of USW Local 700T, GMP Local 59, USW Local 65T, and IAM Local Lodge 105 became unemployed when IAM Local Lodge 105 and GMP Local 59 began a labor dispute work stoppage and started picketing on October 12, 2016.

Libbey did not withhold work from the members USW Local 700T, GMP Local 59, USW Local 65T, and IAM Local Lodge 105 in an effort to obtain more desirable terms in new collective bargaining labor agreements.

Using the Bays case standard, this Hearing Officer finds, based upon a review of all the testimony, all Employer exhibits, all Union exhibits, the Rivera exhibits, the Lucas County Common Pleas Court issued Temporary Restraining Order, and the Lucas County Common Pleas Court issued Amended Temporary Restraining Order, that the members of USW Local 700T, GMP Local 59, USW Local 65T, and IAM Local Lodge 105 were the first to change the status quo, while negotiations were ongoing, when IAM Local Lodge 105 and GMP Local 59 decided to conduct a work stoppage and to picket starting on October 12, 2016, and USW Local 700T and USW Local 65T decided to honor the picket line. The conduct and actions of Libbey at all times indicated a willingness to maintain the status quo while negotiations continued.

Therefore, the members of USW Local 700T, GMP Local 59, USW Local 65T, and IAM Local Lodge 105 were unemployed due to a labor dispute other than a lockout that began October 12, 2016, and which ended on October 26, 2016, after new agreements were finally reached and ratified.

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 beginning October 12, 2016. The claimants are disqualified from receiving unemployment compensation benefits for the week which includes October 12, 2016, through the week which includes October 26, 2016, when the labor dispute ended, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

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 weekly claims for benefits while under appeal.

This decision was mailed on **11/18/2016**.

The twenty-one day appeal period ends on **12/09/2016**.

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