JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

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LEASEWAY MOTORCAR TRANSPORT CO., INC. 17000 FEDERAL DR ALLEN PARK, MI 48101 1071635005	Date Issued 07/16/2008 Determination Identification Number 215758184-1 ODJFS Office Bureau of UC Program Services
Employer's Name LEASEWAY MOTORCAR TRANSPORT CO., INC.	UC Account Number 1071635005

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:	**Teamsters Local Union 377**	Employer:	**LEASEWAY MOTORCAR TRANSPORT CO., INC.**
Docket No:	**000000000800006**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**07/07/2008**	Date of Issuance:	**07/16/2008**

Appearances

Robert McConnell, Business Agent, represented and also testified as a witness for Local 377. Danny Meadows, Keith Logan, and Anne Majecic, Claimants, were witnesses for Local 377.

Leaseway, although duly notified pursuant to Ohio Unemployment Compensation Law, did not make an appearance 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, to date, approximately 138 claims for unemployment benefits that relate to a labor dispute between Local 377 and Leaseway.

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on July 7, 2008, in Akron, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 377 and were employed by Leaseway in a facility located in Lordstown, Ohio (Transcript Page 11).

Leaseway transported new automobiles for various automobile manufacturers. Performance Transportation Services aka PTS was the parent company of Leaseway. The Lordstown, Ohio facility is the only location involved in this matter (Transcript Pages 10-11,14-15).

Leaseway employed approximately 137 individuals that are also members of Local 377 (Transcript Pages 11-12).

Local 377 had a collective bargaining labor agreement with Leaseway from June 1, 2003, through May 31, 2008 (Transcript Pages 13-14).

Negotiations for a new collective bargaining labor agreement were conducted between the parties from January 2008 through June 2008 (Transcript Pages 22,24).

There was no formal extension of the collective bargaining labor agreement made between the parties but the members of Local 377 continued to work under the terms and conditions of the expired agreement after May 31, 2008, through June 9, 2008 (Transcript Pages 14-15).

On June 4, 2008, after receiving approval from the U.S. Bankruptcy Court, Leaseway implemented a 15% wage reduction for members of Local 377. Local 377 asserts the 15% wage reduction precipitated a work stoppage by Local 377 members starting at 9:00 a.m. on June 9, 2008 (Transcript Pages 15-18,21-22/Exhibits 1-2).

On June 13, 2008, Leaseway officially announced the ceasing of all operations although Local 377 asserts Leaseway effectively ceased operating at approximately 10:30 a.m. on June 9, 2008, when General Motors security personnel escorted everyone, Leaseway management employees as well as Local 377 members, off the premises of the Lordstown, Ohio facility. Local 377 asserts General Motors was the major customer for Leaseway and that Leaseway merely leased the Lordstown, Ohio facility from General Motors (Transcript Pages 18-19,26-Exhibit 1).

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 Leaseway?

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:

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(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 may be paid 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 were found to be a lockout.

The key issue to be resolved is whether the reason for the claimants' unemployment from Leaseway was due to a lockout or a labor dispute other than a lockout.

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 ten percent (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 ten percent (10%) wage reduction was reasonable under the circumstances and did not show a purpose on the part of the company to coerce the employees into accepting it and, therefore, was not 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.

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 testimony and exhibit evidence indicate the members of Local 377 became unemployed when they were locked out beginning on June 9, 2008.

There was no evidence, documentation, or testimony to indicate that Leaseway was allowing the members of Local 377 to continue working under the terms and conditions of the expired agreement on June 4, 2008, and thereafter, while negotiations continued. In fact, Leaseway had changed the status quo by implementing a U.S. Bankruptcy Court approved 15% wage reduction starting on June 4, 2008.

Therefore, by applying the holding from the Zanesville decision and the status quo test from the Bays decision, this Hearing Officer finds, based upon the documentation, testimony and evidence, that Leaseway locked out the members of Local 377 and altered the status quo, while negotiations were ongoing, beginning on June 9, 2008, and that the lockout continued until June 13, 2008, when Leaseway officially ceased operations.

Consequently, it is the conclusion of this Hearing Officer that the claimants in this matter are unemployed due to a lockout which began June 9, 2008, and that the lockout ended on June 13, 2008.

DECISION:

It is the decision of this Hearing Officer that all the claimants herein are unemployed due to a lockout which began on June 9, 2008, and ended on June 13, 2008, when Leaseway ceased operations. The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

This decision applies to:
CLAIMANTS WHO ARE NOT DISQUALIFIED

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 **07/16/2008**.

The twenty-one day appeal period ends on **08/06/2008**.

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