

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
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Web Page: www.state.oh.us/odjfs/labordisputes

In The Matter Of A Labor Dispute
Between:

The Maple Heights	:	Docket No. LD-002-005
Teachers Association	:	
(MHTA)	:	
Union/Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
The Maple Heights	:	Date of Hearing:
Board of Education	:	October 04, 2002
(Board)	:	
Employer	:	Date of Issuance:
	:	October 11, 2002

Appearances

Victor Anselmo, Attorney at Law, represented the Board. Leonard Chaplinski, Assistant Superintendent of the Maple Heights City School District, and Louis Damiani, Attorney at Law, were witnesses for the Board.

The MHTA, although duly notified, did not appear and was 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 163 claims for unemployment benefits that relate to a labor dispute between the MHTA and the Board.

All interested parties were duly notified of the hearing pursuant to Ohio law. This hearing was held on October 4, 2002, at the Cuyahoga City Public Library, Maple Heights Branch, in Maple Heights, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of the MHTA and are employed by the Board.

The Board administers the Maple Heights City School District which is a public school system with four elementary schools, one middle school, and one high school, and is located in Maple Heights, Ohio.

The Board employs an estimated 475 to 500 individuals. Approximately 230 to 245 of those individuals are members of the MHTA (Transcript Pages 9-11,58-59).

The MHTA had a four (4) year collective bargaining labor agreement with the Board that was effective from September 1, 1998, through August 31, 2002 (Transcript Pages 12-13/Employer Exhibit A).

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 Pages 13-14).

The main issue between the parties deals with wages and, specifically, what the salary amount will be for the members of the MHTA (Transcript Pages 16-17,39-40).

Nineteen negotiation sessions were held between the MHTA and the Board in an attempt to reach a new agreement. The sessions were held between April 11, 2002, and September 15, 2002. The final eight of the nineteen sessions included a federal mediator (Transcript Pages 36-38/Employer Exhibit F).

The MHTA sent the Board a "Notice Of Intent To Strike Or Picket" which was received by the Board on August 22, 2002. The notice indicated that a strike and picketing were intended to commence on September 4, 2002 (Transcript Pages 18-19,49-50/Exhibit B).

The members of the MHTA commenced with a work stoppage on September 4, 2002, and pickets were set up and have continued through the date of this hearing (Transcript Pages 14,24-25,30-31,50-51).

The Board has at no time during the negotiation process taken a "no new agreement then no work" stance (Transcript Pages 26-27,49).

The Board has kept the school system open and available for the members of the MHTA to return to work under the terms and conditions of the now expired collective bargaining labor agreement. The Board notified the members of the MHTA of this verbally and in writing on August 26, 2002. The members of the MHTA worked one day, September 3, 2002, under the terms and conditions of the now expired agreement. Two members of the MHTA have continued working under the terms and conditions of the now expired agreement without ever having participated in the work stoppage. In addition, another three members of the MHTA are on medical leave and are receiving wages and benefits according to the terms and conditions of the now expired agreement. The Board has not hired

permanent replacements for the positions held by the members of the MHTA (Transcript Pages 19-23,27-31,44-46,55-57/Employer Exhibits C & D).

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 Board?
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 key issue to be resolved is whether the reason for the claimants' unemployment from the Board 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 indicates that the members of the MHTA became unemployed when they began a work stoppage on September 4, 2002,

and set up picket lines.

Thus, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon the testimony, that the members of the MHTA first changed the status quo, while negotiations were ongoing, when the decision was made to conduct a work stoppage and begin picketing on September 4, 2002. Consequently, the members of the MHTA became unemployed when they started a labor dispute other than a lockout on September 4, 2002.

Therefore, it is the conclusion of this Hearing Officer that all the claimants in the instant case were unemployed due to a labor dispute other than a lockout which began September 4, 2002, and is continuing as of the date of this decision.

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 which began September 4, 2002. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the week which includes September 4, 2002, 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 MHTA and the Board which began on September 4, 2002, is continuing as of the date of this decision.

* * * **THIS DECISION APPLIES TO 164 NAMED CLAIMANTS** * * *

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 OCTOBER 11, 2002.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS NOVEMBER 01, 2002.

Jim Bubutiev
Hearing Officer