

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
P.O. Box 182830
Columbus, Ohio 43218-2830
(614)752-8418

In The Matter Of A Labor Dispute
Between:

	:	Docket No. LD-001-005
	:	
Service Employees International	:	
Union District 1199	:	
(SEIU 1199)	:	
	:	
Union / Claimants	:	Hearing Officer:
and	:	Jim Bubutiev
	:	
Scenic Hills Nursing	:	
Center, Inc.	:	Date of Hearing:
(Scenic Hills)	:	October 9, 2001
	:	
Employer	:	
	:	Date of Issuance:
	:	October 17, 2001

Appearances

Jeffrey D. Winchester, Attorney at Law, represented Scenic Hills. Pamela P. Cooke, Vice President of Health Care Industries Corporation, was a witness for Scenic Hills.

SEIU 1199, although duly notified, was not represented and did not appear 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 4141.281 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 4141.281 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.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on October 9, 2001, at the Rio Grande Local Office in Thurman, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of SEIU 1199 and are employed by Scenic Hills.

Scenic Hills is a one hundred bed facility for long-term care patients and currently has approximately 82 residents. Scenic Hills' parent corporation is Health Care Industries Corporation. (Transcript Pages 9-11).

Scenic Hills employs some 130 individuals, and about 75 of them are members of SEIU 1199 (Transcript Pages 11-12).

SEIU 1199 had a collective bargaining labor agreement with Scenic Hills that was effective from on or about August 30, 1999, through on or about August 30, 2001. There was no extension made to the agreement by the parties (Transcript Pages 14,16).

There were five bargaining sessions held prior to the expiration of the then existing collective bargaining labor agreement, in July and August of 2001, but the parties failed to arrive at a new agreement.

The main issue between the parties concerned an attendance incentive bonus (Transcript Pages 14-15).

The members of SEIU 1199 voted for a work stoppage to start after the then existing collective bargaining labor agreement expired. The vote was taken on or about August 9 or 10, 2001 (Transcript Pages 21-22).

SEIU 1199 sent a written ten (10) day notice to Scenic Hills that a work stoppage would commence once the then existing collective bargaining labor agreement expired on August 30, 2001 (Transcript Pages 16-17).

Scenic Hills mailed each member of SEIU 1199 a letter in response to the ten (10) day notice. The letter, among other things, informed the SEIU 1199 members that work would be available to them if a work stoppage commenced (Transcript Pages 26-27 / Employer Exhibit A).

On August 31, 2001, the members of SEIU 1199 began a work stoppage and set up a picket line at Scenic Hills (Transcript Pages 16,23-25).

Scenic Hills did not take a bargaining stance of "no new contract then no work" regarding SEIU 1199 members (Transcript Page 22).

Scenic Hills was willing to allow SEIU 1199 members to continue working under the terms and conditions of the then existing collective bargaining labor agreement after it expired, and while a new one was being negotiated. The members of SEIU 1199 could have returned to work at anytime during the work stoppage (Transcript Pages 22-23,27-28 / Employer Exhibit B).

Some members of SEIU 1199 never participated in the work stoppage or returned to work during the work stoppage (Transcript Pages 28-30).

Scenic Hills brought in replacement workers from other facilities and also used the remaining nonunion staff to stay open during the work stoppage. Scenic Hills did also hire three new employees during the work stoppage (Transcript Pages 17-18).

There were three bargaining sessions held after the then existing collective bargaining labor agreement had expired. The bargaining

sessions were held on September 6, 17, and 20, 2001. A tentative agreement was reached on September 20, 2001 (Transcript Page 16).

SEIU 1199 voted to accept the tentative agreement on September 21, 2001 (Transcript Page 20).

The first week that Scenic Hills was able to schedule work for members of SEIU 1199, after the new agreement was reached, began on September 28, 2001. The members of SEIU 1199 returned to work beginning on September 28, 2001. (Transcript Pages 18-19).

The new collective bargaining labor agreement between the parties is effective from on or about August 31, 2001, through on or about August 30, 2003 (Transcript Page 26).

ISSUES:

Pursuant to section 4141.281 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 Scenic Hills?
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 claimants' unemployment from Scenic Hills 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.

The evidence and testimony indicate the members of SEIU 1199 became unemployed when, after voting for a work stoppage, and after sending written notification to Scenic Hills that a work stoppage would begin once the then existing collective bargaining labor agreement expired on August 30, 2001, they chose not to continue working. Instead, the claimants, set up a picket line at the work site beginning August 31, 2001, and, thereby, started a labor dispute other than a lockout.

Using the *Bays* standard, this Hearing Officer finds, based upon the testimony and evidence, that it was SEIU 1199 that first changed the status quo, while negotiations were ongoing, when members of SEIU 1199 decided to form a picket line at Scenic Hills instead of reporting to work beginning on August 31, 2001. Scenic Hills' conduct did not indicate an unwillingness to maintain the status quo while negotiations continued.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a labor dispute other than a lockout which began August 31, 2001, and ended when the members of SEIU 1199 returned to work on September 28, 2001, after a new collective bargaining labor agreement was reached between the parties.

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 at Scenic Hills. The claimants are disqualified from receiving unemployment

compensation benefits beginning the week of August 31, 2001, 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 between SEIU 1199 and Scenic Hills ended the week of September 28, 2001.

* * * * * This decision applies to 27 named claimants * * * * *

If you disagree with this decision then 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, 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 17, 2001.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS NOVEMBER 7, 2001.

Jim Bubutiev
Hearing Officer