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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UC EXPRESS PO BOX 182366 COLUMBUS, OH 43218-2366 1235950009	Date Issued 05/24/2012 Determination Identification Number 224640498-1 ODJFS Office Bureau of UC Program Services
Employer's Name MOYNO INC	UC Account Number 1235950009

THIS DECISION IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4141.283, OHIO REVISED CODE

Bureau of UC Program Services
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In The Matter Of A Labor Dispute Between

Union:	**UAW REGION 2-B**	Employer:	**MOYNO INC**
Docket No:	**000000001200010**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**05/14/2012**	Date of Issuance:	**05/24/2012**

APPEARANCES

Kristin Seifert Watson, Attorney at Law, represented Local 902. Wayne M. Reynolds, was a witness for Local 902.

Jennifer R. Asbrock, Attorney at Law, represented Moyno, Inc. Robert J. Brown, was a witness for Moyno, Inc.

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 currently received approximately 91 unemployment compensation benefits claims that relate to a labor dispute between Local 902 and Moyno, Inc.

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All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on May 14, 2012, in Springfield, Ohio.

FINDINGS OF FACT

Moyno, Inc. designs, develops and manufactures progressive cavity pumps from a facility located in Springfield, Ohio (Transcript Pages 10-11).

The claimants in this matter are members of Local 902. Moyno, Inc. employs approximately 210 individuals and approximately 122 of them are members of Local 902 at the Springfield facility (Transcript Pages 11-12,54-55).

Local 902 had a collective bargaining labor agreement with Moyno, Inc. that was effective from February 1, 2008 through February 1, 2012. Moyno proposed a formal extension of the collective bargaining labor agreement for the time period after February 1, 2012. The members of Local 902 did not accept the formal extension proposal. Instead Local 902 agreed to a more informal day-to-day extension (Transcript Pages 13,23,25-26,31-32,63/JointExhibit).

The members of Local 902 worked under all the terms and conditions of the collective bargaining agreement after February 1, 2012, until March 8, 2012 with the exception that Paid Personal Time would not be provided. Local 902 became aware that Paid Personal Time would not be provided on or about February 23, 2012 (Union Exhibit 2/Joint Exhibit see page 68 of the Joint Exhibit).

Twenty-three negotiation sessions for a new agreement were held between the parties beginning on December 19, 2011 through March 8, 2012 (Transcript Pages 14,19,56).

Moyno, Inc. has been a profitable business over the course of the last several years. However, Moyno, Inc. asserts there is a need to increase the profit margin in order to invest in new technology, grow the business, and remain competitive in the industry (Transcript Pages 25,36-37,50-51).

The members of Local 902 voted to authorize a strike January 15, 2012 and Moyno, Inc. was informed of the vote (Transcript Pages 22-23,58-59).

Moyno, Inc. presented what it terms a last, best, and final offer on February 3, 2012. Thereafter, on February 5, 2012, Local 902 voted to reject this final offer. Moyno has not implemented the terms and conditions of this final offer (Transcript Pages 19,21-22,24,56,61).

The members of Local 902 began a work stoppage on March 8, 2012, and it is continuing. During negotiations on March 8, 2012, Local 902 asked Moyno, Inc. if there was any willingness to change the final offer. Moyno responded by explaining there was a willingness to shift costs around in the final offer but the overall bottom line would not change. There was a brief break then, when negotiations resumed late that morning, Local 902 informed Moyno, Inc. that a work stoppage would commence. Picketing is occurring at the Springfield facility (Transcript Pages 13,19-21,28-30,34-35,57-58).

Moyno, Inc., asserts that an impasse to further negotiations has occurred. Local 902 has indicated that neither party has attempted to schedule any further negotiations since March 8, 2012 (Transcript Pages 33-35,65).

There are several issues between the parties, including but not limited to, wages, health insurance contributions, pension/retirement plans, and the Supplemental Unemployment Benefit Plan (Transcript Pages 14,17,55).

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Moyno, Inc. has continued operating using nonunion salaried employees, and individuals supplied by a third party temporary employment agency. There have been no permanent replacement workers hired by Moyno, Inc (Transcript Pages 27-28).

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 are:

1. What is the reason for the claimants' unemployment from Moyno, Inc.?

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 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 issue to be resolved is whether the reason for the claimants' unemployment from Moyno, Inc. 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.

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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 this matter, the evidence and testimony indicate that the members of Local 902 became unemployed when they began a work stoppage on March 8, 2012.

This Hearing Officer finds an impasse has occurred between the parties and it became apparent at the end of the last negotiation session between the parties on March 8, 2012. The witness for Moyno, Inc. conceded during testimony that an impasse has been reached. See pages 33 through 35 of the transcript. Furthermore, the witness for Local 902 conceded during testimony that neither side has attempted to schedule or restart negotiations since March 8, 2012. See page 65 of the transcript.

Since an impasse has occurred, and the parties truly believe they have nothing further to negotiate, the Zanesville decision applies and the Bays decision does not since negotiations for a new agreement are not continuing. Therefore, an analysis will be done using only the Zanesville decision and the reasonableness test.

An application of the Zanesville decision indicates that it is not reasonable for the members of Local 902 to have commenced with a work stoppage simply because they were no longer being allocated the 32 hours of Personal Paid Time pursuant to the expired agreement.

The most basic calculation using 2,080 hours of work a year, and the testimony indicated the members of Local 902 typically worked a 40 hour week, yields a reduction in pay of 1.54% with the loss of the 32 hours of Personal Paid Time. The true reduction is probably less if overtime hours were factored in. There was testimony to indicate overtime hours are worked. This wage reduction is not nearly as much as the 10% wage reduction which the Ohio Supreme Court found to be reasonable in Zanesville.

Simply put, the most logical reason that the work stoppage was put in place by Local 902 was to force Moyno, Inc. to make a better offer and not because the terms and conditions of continued work were unreasonable.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein are unemployed due to a labor dispute other than a lockout which began on March 8, 2012. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout beginning with the week which includes March 8, 2012.

It is also the decision of this Hearing Officer that the labor dispute other than a lockout between Moyno, Inc. and Local 902, which began on March 8, 2012, is continuing.

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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 **05/24/2012**.

The twenty-one day appeal period ends on **06/14/2012**.

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