

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES

145 South Front Street

P.O. Box 182830

Columbus, Ohio 43218-2830

Telephone: (614) 752-8418

Web Page: www.state.oh.us/odjfs/labordisputes

In The Matter Of A Labor Dispute
Between:

The Communications Workers	:	Docket No. LD-003-005
Of America Local No. 4546	:	
(Local 4546)	:	
Union/Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
Summit County	:	Date of Hearing:
Children Services	:	August 4, 2003
(SCCS)	:	
Employer	:	Date of Issuance:
	:	August 14, 2003

Appearances

Dean E. Westman and James A. Budzik, Attorneys at Law, represented SCCS. Chester C. Dawson, Director of Labor Relations, and John C. Thompson, Director of Human Resources, were witnesses for SCCS.

Lawrence W. Vuillemin, Attorney at Law, represented Local 4546. Robin Schenault, President of Local 4546 and a Record Specialist, William Bain, a Staff Representative for the Communications Workers of America District Four Office, Roy A. Humphrey, a Child Care Worker II, Barbara Johnson, an Account Specialist I, and Todd Kutzera, Second Vice President of Local 4546 and a Social Worker, were witnesses for Local 4546.

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 approximately 230 claims for unemployment benefits that relate to a labor dispute between Local 4546 and SCCS.

All interested parties were duly notified of the hearing pursuant to Ohio law. This hearing was held on August 4, 2003, in Akron, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 4546 and are employed by SCCS.

SCCS is a county agency charged with the mission of protecting and taking care of abused, neglected, dependent, abandoned, and unruly children within Summit County. SCCS works with the local judicial court system, under federal and state law, to resolve issues dealing with children and their parents (Transcript Page 47).

SCCS employs approximately 500 individuals. Between 290-370 of those individuals are members of Local 4546 including fair share fee paying individuals (Transcript Page 13,162).

Local 4546 had a collective bargaining labor agreement with SCCS that was effective from April 1, 2000, through March 31, 2003 (Transcript Pages 29-31,162/Employer Exhibit 1).

An automatic ninety (90) day extension of the agreement, through June 29, 2003, was made under the terms of the agreement because the

parties were negotiating for a new agreement. (Transcript Pages 14-15,30-31,129,162-163/Employer Exhibit 1, see "Article 603 Contract Duration" on pages 65-66 of Employer Exhibit 1).

A second extension of the agreement, from June 29, 2003, through midnight July 13, 2003, was agreed to by the parties (Transcript Pages 15-16,31,87-90,129,163,192-194/Employer Exhibit 2, Union Exhibit O, Union Exhibit K).

Fourteen negotiation sessions were held between Local 4546 and SCCS, in an attempt to reach a new agreement, beginning on January 30, 2003, through July 13, 2003. Two of those fourteen negotiation sessions involved a fact finder in April of 2003. The fact finder issued a report which SCCS approved but was rejected by the members of Local 4546 by a vote of 230 to 12. There was also an additional negotiation session scheduled to occur after the date of this hearing, on August 6, 2003 (Transcript Pages 16-18,25,26,32-33,137,163,166,178/Employer Exhibit 3, Employer Exhibit 4).

Local 4546 presented SCCS with two different "Notice Of Intent To Strike Or Picket" forms. The first notice form provided for an intended strike and picket to begin at 6:30 a.m. on June 30, 2003, but did not occur because of the extension of the agreement through July 13, 2003. The second notice form provided for an intended strike and picket to begin at 6:30 a.m. on July 14, 2003 (Transcript Pages 21-23,34-35,104-105,133,179-180/Employer Exhibit 2, Employer Exhibit 5, Employer Exhibit 6, Union Exhibit O, Union Exhibit P).

At the July 13, 2003, negotiation session, prior to the midnight expiration of the second extension of the agreement, SCCS verbally informed Local 4546, through a mediator and also directly, that SCCS

would remain open for business and the members of Local 4546 could continue to work under the same terms and conditions of the expired agreement. Local 4546 took the position that they would not work without a new agreement or an extension of the expired agreement and presented a written offer to SCCS "to continue to work under the current contract while negotiations continue." SCCS took the position, and verbally explained to Local 4546, that they would not continue the expired agreement but would remain open for business and the members of Local 4546 could continue to work under the terms and conditions of the expired agreement. SCCS contended that they would not agree to a further extension of the agreement because it had not been productive during the previous extensions through July 13, 2003. In addition, during the July 13, 2003, negotiation session, SCCS made an offer for a new agreement which was rejected by the negotiation team for Local 4546. Local 4546 made a counteroffer for a new agreement which was rejected by the negotiation team for SCCS (Transcript Pages 21,44-45,92-93,113,117,119-121,129-132,146-148,150-151,172,181-182,222,226-228,232-234,237-238,274/Employer Exhibit 7,Union Exhibit R, Union Exhibit S, Union Exhibit T).

A work stoppage began on July 14, 2003, when members of Local 4546 decided not to show up for work (Transcript Pages 20-21,26,128,167).

Some members of Local 4546 did continue to work on July 14, 2003, and more have returned to work since then and are continuing to work. As of the date of this hearing the number of individuals that have returned to work is 24, according to Local 4546, and between 100-120, according to SCCS. These returning individuals include those that have resigned from Local 4546 and fair share fee paying individuals. SCCS

maintains that the individuals that have continued to work are working under the exact terms and conditions of the expired agreement without a single change whatsoever. Local 4546 maintains that they do not know what terms and conditions the individuals that have continued to work are working under since there is no agreement to continue the expired agreement (Transcript Pages 23,36-39,41-46,65-66,69-70,132-133,138-146,149,151-152,154-156,167-171,182,216-217).

There are many issues of contention between the parties, including but not limited to, the duration or length of a new agreement, wages, health care coverage, caseload sizes, work schedules, and overtime (Transcript Pages 19,24-25,49-50,74-75,165-166,200-204,282-283/Union Exhibit V).

SCCS has not hired any replacement workers during the work stoppage. SCCS has continued operating using management employees and those individuals that are working during the work stoppage that are or were members of Local 4546 (Transcript Pages 27,134-136,177).

Picketing by members of Local 4546 that are involved in the work stoppage is occurring at SCCS work locations (Transcript Pages 28,35,133,173-174).

The work stoppage that began on July 14, 2003, is continuing as of the date of issuance of this decision.

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 SCCS?
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 SCCS 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, a review of all the exhibits and witness testimony indicates that the members of Local 4546 became unemployed when they began a work stoppage on July 14, 2003.

Thus, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon a complete review of the testimony and evidence, that the members of Local 4546 first changed the status quo, while negotiations were ongoing, when the decision was made to conduct

a work stoppage on July 14, 2003.

SCCS offered to maintain the status quo by offering work under all the exact terms and conditions of the expired agreement after July 13, 2003, while negotiations continued.

In fact, there are individuals that are or were members of Local 4546 that are working, and continue to work, under the status quo.

SCCS provided credible exhibits and witness testimony to show that the status quo has been maintained since the expiration of the extension occurred at midnight on July 13, 2003.

Local 4546 did not maintain the status quo when Local 4546 made the decision not to continue working on July 14, 2003, and thereafter.

All of Local 4546's witnesses acknowledged that there were individuals that had decided to continue to work after the work stoppage started but that they did not know what the terms and conditions of employment were for those individuals. Further, all of Local 4546's witnesses acknowledged that they, themselves, had not attempted to return to work on July 14, 2003, and thereafter, and that they would not return to work unless there was a new collective bargaining labor agreement or the expired agreement was either extended or continued between the parties.

The status quo test used in the *Bays* decision is a clear and objective test that evaluates the offers made by the parties involved in a labor dispute. If the offer is of the exact terms and conditions of the expired agreement , while negotiations continue, then the status quo

is being maintained. SCCS has offered to maintain the status quo and, in fact, is maintaining the status quo by the actions taken in allowing individuals to continue to work under the exact terms and conditions of the expired agreement since July 13, 2003. There is no requirement in the *Bays* decision that the status quo offer must be made or accepted in writing or that the offer must be a continuation or extension of the expired agreement.

Consequently, the members of Local 4546 became unemployed when they started a labor dispute other than a lockout on July 14, 2003.

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 July 14, 2003, and which is continuing as of the date of issuance 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 July 14, 2003. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the time period from July 14, 2003, and continuing as of the date of issuance of this decision, pursuant to Section 4141.29 (D)(1)(a) of the Ohio Revised Code.

THIS DECISION APPLIES TO 230 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 AUGUST 14, 2003.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS SEPTEMBER 4, 2003.

Jim Bubutiev
Hearing Officer