

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:

	:	Docket No. LD-002-003
General Truck Drivers	:	
& Helpers Union Local 92	:	
(Local 92)	:	
	:	
Union / Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
The M. Conley Company	:	Date of Hearing:
(M. Conley)	:	August 27, 2002
	:	
	:	
Employer	:	Date of Issuance:
	:	September 6, 2002

Appearances

Joseph C. Hoffman, Jr., Attorney at Law, represented Local 92. Michael Scott Samples, Claimant, and Gregory Van Dress, Business Agent and Secretary Treasurer of Local 92, were witnesses for Local 92.

Craig T. Conley, Attorney at Law, represented M. Conley. Robert Arthur Geisinger, Vice President of Operations, was a witness for M. Conley.

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 the 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 35 claims for unemployment benefits that relate to a labor dispute between Local 92 and M. Conley.

All interested parties were notified of the hearing pursuant to Ohio law. This hearing was held on August 27, 2002, in Canton, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 92 and were employed by M. Conley (Transcript Pages 11-12,41-45,74-75,83,86-87).

M. Conley is a wholesale distributor of paper products and janitorial supplies (Transcript Pages 10,73).

M. Conley employs about 100 individuals and, in addition, employed approximately 37 to 44 members of Local 92. (Transcript Pages 11-12,74-75,81,86-87).

Local 92 had a collective bargaining labor agreement with M. Conley that was effective from July 1, 1998, through June 30, 2002. Neither party proposed an extension of the exact terms and conditions of the expiring agreement while negotiations continued for a new agreement, and neither party ever took a "no new agreement then no work" bargaining stance (Transcript Pages 14-15,20,25-26,59,78-79/Employer Exhibit A).

The primary issues between the parties deal with the outsourcing and elimination of the approximately 17 driving unit positions, the "health & welfare" plan, and the pension plan (Transcript Pages 17,24,39-

41,77,97/Employer Exhibits F,G).

A total of four or five negotiation sessions were held between Local 92 and M. Conley prior to the expiration of the then existing collective bargaining labor agreement in an effort to reach a new agreement. The negotiation sessions began in early June of 2002. Another three to five negotiation sessions were held after the then existing collective bargaining labor agreement expired (Transcript Pages 16,23,77,96-97).

M. Conley made two proposals that Local 92 could choose from in a vote on June 30, 2002. Proposal #1 included the termination of the driving division while Proposal #2 did not. There were also wage differences between the two proposals. Local 92, by a substantial majority, voted not to accept either proposal. The vote against the proposals was also a vote to conduct a work stoppage (Transcript Pages 20-23,27-28,37/Employer Exhibits B,C).

The work stoppage began and has continued since July 1, 2002, and the members of Local 92 have set up picket lines and have been picketing continuously since that time (Transcript Pages 15,26,29-30,76-77,83).

M. Conley initially continued operating, beginning July 1, 2002, using its remaining non union employees and workers hired from a temporary service. Permanent replacement workers started being hired during the third week of the work stoppage and the hiring was completed by July 19, 2002. There are no positions available for the members of Local 92 to return to except for a few positions that become available through attrition (Transcript Pages 28-29,34-36,41-45,80-86,107-108/Employer Exhibits D,H,I).

Individuals working in the positions formerly held by members of Local 92, which includes four or five people who left Local 92 and crossed the picket lines to return to work, are not working under the same terms and conditions of the expired collective bargaining labor agreement (Transcript Pages 26,100-101,104-105).

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 M. Conley?
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 M. Conley was due to a lockout or a labor dispute other than a lockout.

In *Baugh v. United Telephone Co.*, (1978), 54 Ohio St. 2d 419, the employer notified the striking employees, in writing, that they had been permanently replaced. The Ohio Supreme Court held that when the employer terminates the employer-employee relationship by replacing a striking employee, the employer has thereby removed the labor dispute as the proximate cause of unemployment. The Court stated that the employer's action of permanent replacement prevented any volition on the part of the workers to return to work and since it severed the labor dispute as the cause of the unemployment, the statutory disqualification provision of section 4141.29 of the Ohio Revised Code did not apply and was not a bar to the appellants' right to receive unemployment compensation benefits.

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.

The Supreme Court in *Bays, supra*, also provided the definition of a "lockout" as "a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get for the employer more desirable terms." *Id.* at 133. The Supreme Court in *Bays, supra*, said a lockout "is not confined to an actual physical closing of the place of employment." *Id.* at 134.

In this matter, the evidence and testimony indicate the members of Local 92 became unemployed when, after voting to reject either of M. Conley's proposals, they began a work stoppage on July 1, 2002, and set up picket lines.

Neither party discussed what the terms and conditions of employment would be if the members of Local 92 continued to work after the agreement

expired after June 30, 2002, and neither party made an offer to allow continued work under the exact terms of the agreement after it expired.

Therefore, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon the testimony and evidence, that it was Local 92 that first changed the status quo, while negotiations were ongoing, when the decision was made via a vote on June 30, 2002, to conduct a work stoppage and begin picketing on July 1, 2002.

Also, under the *Baugh* decision, the testimony and evidence indicate that M. Conley ended the employer-employee relationship with the members of Local 92 by permanently replacing them beginning July 19, 2002, and thereby severed the labor dispute as the proximate cause of employment.

M. Conley notified Local 92 on July 19, 2002, in writing, that permanent replacements had been hired. M. Conley reiterated that fact, in writing, on August 6, 2002. In addition, the witnesses' testimony was consistent with the written documentation that M. Conley had permanently replaced the members of Local 92 on July 19, 2002.

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 July 1, 2002, and ended July 19, 2002, when M. Conley hired permanent replacement workers.

**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 M.

Conley which began July 1, 2002. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the week which includes July 1, 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 Local 92 and M. Conley began on July 1, 2002, and ended on July 19, 2002, when M. Conley hired permanent replacements.

\* \* \* \* \*

THIS DECISION APPLIES TO 35 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 SEPTEMBER 6, 2002.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS SEPTEMBER 27, 2002.

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Jim Bubutiev  
Hearing Officer