

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:

Caraustar Custom	:	
Packaging Group	:	
(Caraustar)	:	
	:	
Employer	:	
	:	Hearing Officer:
and	:	Jim Bubutiev
	:	
Graphic Communications	:	Date of Hearing:
Union Local 546M	:	June 06, 2006
(Local 546M)	:	
	:	Date of Issuance:
Union/Claimants	:	June 13, 2006

APPEARANCES

Christopher Farrand, President of Local 546M, represented and was a witness for Local 546M.

Don Wilson of TALX UCeXpress represented Caraustar. Greg Tisone, Operations Manager of Caraustar's Mentor, Ohio Carton Plant, was a witness for Caraustar.

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 received approximately 77 unemployment compensation benefits claims that relate to a labor dispute between Local 546M and Caraustar.

All interested parties were notified of this hearing pursuant to

Ohio law. This hearing was held on June 06, 2006, in Akron, Ohio.

FINDINGS OF FACT

Caraustar is a manufacturer of folding cartons at a Mentor, Ohio facility (Transcript Page 12).

The claimants in this matter are members of Local 546M and Caraustar employed approximately 92 of them at the Mentor, Ohio facility. In addition, Caraustar employs another 14 salaried employees at that facility (Transcript Page 9/Employer Exhibit 1).

Local 546M had a three-year collective bargaining labor agreement with Caraustar that expired January 31, 2006 (Transcript Pages 13,32).

Negotiation sessions were held between the parties beginning in December of 2005 through May 16, 2006 (Transcript Pages 9-10,15,17,18,30-31).

During the course of negotiations, the members of Local 546M voted to reject offers made by Caraustar on four (4) different occasions and separately voted to authorize a strike after those rejections (Transcript Pages 22,34-37,42-43).

The terms and conditions of the expired collective bargaining labor agreement automatically extended beyond January 31, 2006, as long as negotiations continued and neither party provided notice otherwise. Local 546M provided a 10-day notice to Caraustar that a work stoppage would commence after 3:00 p.m. on April 25, 2006. The members of Local 546M continued to work under the terms and conditions of the expired agreement through 3:00 p.m. on April 25, 2006, and then they began a work stoppage. The members of Local 546M picketed at Caraustar from April 25, 2006, through May 31, 2006 (Transcript Pages 14-15,17,21,25-27,33-38,53).

On May 16, 2005, Caraustar provided written notice to Local 546M, pursuant to the Worker Adjustment and Retraining Notification Act of

1988, that the Mentor Carton Plant would be closing on or about July 16, 2006 (Transcript Pages 18-19,27/Employer Exhibit 1).

On May 19, 2006, Local 546M provided Caraustar a written offer to return to work under either the terms and conditions of Caraustar's last offer of April 17, 2006, or under the terms and conditions of the expired agreement, while negotiations continued to reach a new agreement.

Caraustar did not accept Local 546's offer and explained the Mentor facility would not continue operating (Transcript Pages 20-21,24,38-43/Union Exhibit A).

The main issues between the parties dealt with two pending grievances and the cost of health care coverage to the Local 546M members (Transcript Pages 16-17,31-32).

Caraustar has continued operating using only salaried employees. No temporary replacement workers have been hired (Transcript Pages 23-24).

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 Caraustar?
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 first issue to be resolved is whether the reason for the claimants' unemployment from Caraustar 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.

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.

Additionally, the recently decided Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discusses the *Bays* case and the "status quo" test.

The testimony and evidence in this case indicate the claimants became unemployed when they began a work stoppage and started picketing after 3:00 p.m. on April 25, 2006.

The testimony and evidence establish that Caraustar did not withhold work from the members of Local 546M in an effort to obtain more desirable terms in a new collective bargaining labor agreement. In fact, Caraustar allowed the members of Local 546M to continue working under the terms and conditions of the collective bargaining labor agreement that had expired January 31, 2006. Caraustar had not indicated an unwillingness to

maintain this arrangement while negotiations for a new agreement continued.

Essentially, Local 546M and Caraustar were involved in a labor dispute that ultimately led the members of Local 546M to conduct a work stoppage in an effort to obtain more desirable terms in a new collective bargaining labor agreement with Caraustar.

Therefore, by applying the holding of the *Zanesville* case, it is clear that Caraustar did not lockout the members of Local 546M on April 25, 2006.

Using the *Bays* case standard, this Hearing Officer finds, based upon the testimony and evidence, that the members of Local 546M first changed the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage and to picket starting on April 25, 2006. Caraustar's conduct did not indicate it was unwilling to maintain the status quo while negotiations continued.

Therefore, the members of Local 546M were unemployed due to a labor dispute other than a lockout that lasted from April 25, 2006, until May 19, 2006, when the members of Local 546M offered to return to work under the status quo. However, Caraustar rejected Local 546M's offer and instead decided that the Mentor facility would cease operations.

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 beginning April 25, 2006, through May 19, 2006. The claimants are disqualified from receiving unemployment compensation benefits for the week which included April 25, 2006, through the week which included May 19, 2006, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

The labor dispute other than a lockout that resulted in the unemployment of the claimants ended May 19, 2006, when Local 546M offered to return to work under the terms and conditions of the expired agreement.

THIS DECISION APPLIES TO THE INDIVIDUAL WHOSE NAME AND ADDRESS APPEARS ON THE ENVELOPE CONTAINING THIS DECISION.

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, BY MAIL TO 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 JUNE 13, 2006.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS JULY 05, 2006.

Jim Bubutiev
Hearing Officer