

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES  
145 South Front Street  
Fifth Floor  
Columbus, Ohio 43218-2830  
Telephone: (614) 752-8418  
Web Page: www.jfs.ohio.gov/labordisputes

In The Matter Of A Labor Dispute

Between:  
Bricklayers' Union Local 5 : Docket No. LD-005-003  
(Local 5) :  
 :  
Building Laborers' :  
Union Local 310 :  
(Local 310) : Hearing Officer:  
 : Jim Bubutiev  
Union / Claimants :  
 :  
and : Date of Hearing:  
 : June 06, 2005  
 :  
Construction Employers : Hearing Continued To:  
Association : June 27, 2005  
(CEA) :  
 : Date of Issuance:  
Employer : July 07, 2005

Appearances

John T. Kilbane, Business Manager of Laborer's International Union of North America Local 310 was a witness for Local 310. Susan L. Gragel, Attorney At Law, represented Local 310. Local 5 was not represented at hearing.

John D. Porada, Executive Vice President, represented and was a witness for the CEA.

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.

All interested parties were notified of this hearing pursuant to Ohio unemployment compensation law. This hearing was held on June 06, 2005, in Akron, Ohio.

FINDINGS OF FACT:

The claimants in this matter are 54 individuals that are either members of Local 5 or Local 310 and are employed by 20 specific employers represented by the CEA. The CEA represents 13 Contractors' Associations as well as their affiliated associations. The CEA also represents 117 Union Contractor Members and services 600 contractors through a construction industry service program (Transcript Pages 11,15-16).

The CEA has bargaining authority on behalf of 26 employers that employ members of Local 5 (Transcript Pages 17-18,32/Employer's Exhibit A-1, A-2).

The CEA has bargaining authority for 67 employers that employ members of Local 310 (Transcript Pages 16-17,33/Employer's Exhibit B-1, B-2).

Local 310 has approximately 1,500 to 2,200 active members doing construction work in the Northeast Ohio region (Transcript Pages 14-15,51-52).

Local 5 has approximately 2,000 active members (Transcript Pages 14-15).

Local 5 had a collective bargaining labor agreement with the CEA that was effective from May 1, 2001, through April 30, 2005 (Transcript Page 12).

Local 5 and the CEA did not agree to an extension of the terms and conditions of the collective bargaining labor agreement once it expired on April 30, 2005. Local 5 prepared an "Interim Working Agreement" for employers not represented by the CEA, but it was not offered to any of the 26 employers represented by the CEA. The "Interim Working Agreement" included retroactive benefit increases as compared to the expired

collective bargaining labor agreement (Transcript Pages 21-22,27,35/Employer's Exhibit C).

Local 310 had a collective bargaining labor agreement with the CEA that was effective from May 1, 2001, through April 30, 2005 (Transcript Page 12).

Local 310 and the CEA did not agree to an extension of the terms and conditions of the collective bargaining labor agreement once it expired on April 30, 2005. Local 310 offered an "Interim Collective Bargaining Agreement" to the 67 employers represented by the CEA which included hourly rate increases as compared to the expired collective bargaining labor agreement. Some of the 67 employers represented by the CEA agreed to accept the "Interim Collective Bargaining Agreement" while others did not (Transcript Pages 22-23, 26-27,36-37/Employer's Exhibit D).

Four (4) negotiation sessions were held between Local 310 and the CEA in April of 2005 in an effort to reach a new collective bargaining labor agreement (Transcript Pages 12-13,52).

Six (6) negotiation sessions were held between Local 5 and the CEA between March 08, 2005, and April 30, 2005, in an effort to reach a new collective bargaining labor agreement (Transcript Page 13).

The issue between both Locals and the CEA dealt with disagreements on the amount of the monetary increase in the total wage package under any new collective bargaining labor agreements made after April 30, 2005 (Transcript Pages 18-19).

The first day of the work stoppage was May 1, 2005, after a new agreement could not be reached between the CEA and both Locals to replace the respective expired collective bargaining labor agreements (Transcript Page 20).

Settlement on a new agreement was reached between the CEA and Local 5 on May 5, 2005, and the members returned to work on May 6, 2005. Settlement on a new agreement was reached between the CEA and Local 310 on May 10, 2005, and the members returned to work on May 11, 2005 (Transcript Pages 20-21,24-26).

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 CEA?
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 may be paid 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 the CEA 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. A review of all the testimony and evidence in this matter, and an application of the *Bays* decision, indicates that the claimants became unemployed after they began a work stoppage on May 1, 2005.

The record shows that the CEA did not withhold work from the members of either local in an effort to obtain more favorable terms.

Local 5's "Interim Working Agreement" was not an offer to maintain the status quo while negotiations continued because it included retroactive benefit increases. In fact, the "Interim Working Agreement" was not offered to the CEA represented employers anyway.

Local 310's "Interim Collective Bargaining Agreement" was not an offer to maintain the status quo while negotiations continued because it included hourly rate increases. The CEA represented employers did not have to accept the "Interim Collective Bargaining Agreement" because it included terms and conditions of employment that differed from the expired collective bargaining labor agreement.

Thus, both Locals and the CEA were involved in a labor dispute that ultimately led the members of both Locals to conduct a work stoppage in an effort to obtain more desirable terms in any new collective bargaining labor agreements with the CEA.

Accordingly, by applying the holding of the *Bays* decision, this Hearing Officer finds, based upon the testimony and evidence, that the members of both Locals first changed the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage beginning on

May 1, 2005. The members of Local 5 conducted a work stoppage through May 5, 2005, and returned to work on May 6, 2005, after a new agreement was reached with the CEA. The members of Local 310 conducted a work stoppage through May 10, 2005, and returned to work on May 11, 2005, after a new agreement was reached with the CEA.

The status quo test in *Bays* requires a party to agree to continue employment under the exact terms and conditions of the expired collective bargaining labor agreement while negotiations continue.

Therefore, the members of Local 5 were unemployed due to a labor dispute other than a lockout from May 1, 2005, through May 5, 2005. The members of Local 310 were unemployed due to a labor dispute other than a lockout from May 1, 2005, through May 10, 2005.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein that are members of Local 5, and listed in this decision, were unemployed due to a labor dispute other than a lockout beginning May 1, 2005, through May 5, 2005. The claimants are disqualified from receiving unemployment compensation benefits for the week which includes May 1, 2005, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

It is the decision of this Hearing Officer that all of the claimants herein that are members of Local 310, and listed in this decision, were unemployed due to a labor dispute other than a lockout beginning May 1, 2005, through May 10, 2005. The claimants are disqualified from receiving unemployment compensation benefits for the week which includes May 1, 2005, through the week which includes May 10, 2005, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

THIS DECISION APPLIES TO THE 54 NAMED CLAIMANTS

If you disagree with this decision then you have the right appeal. The following paragraph provides a detailed explanation of your appeal rights:

APPLICATION FOR APPEAL BEFORE THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION MAY BE FILED BY ANY INTERESTED PARTY WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF MAILING OF THIS DECISION, BY MAIL TO 145 SOUTH FRONT STREET, P.O. BOX 182299, COLUMBUS, OHIO 43218-2299, OR BY FAX TO (614) 752-8862. 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 FAXED AND MAILED ON JULY 7, 2005.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS JULY 28, 2005.