



JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE



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

Bureau of UC Program Services
Ohio Dept. of Job & Family Services
PO Box 182830
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In The Matter Of A Labor Dispute Between

Union: Baker's Local 57
Union: Law office of Leonard S Sigall
Employer: KBO INC.
Employer: KBO INC.
Docket No: 00000000700012
Hearing Officer: Jim Bubutiev
Date of Hearing: 03/26/2007
Date of Issuance: 04/05/2007

APPEARANCES

Leonard Sigall, Attorney At Law, represented Local Union # 57. Vester Newsome, Financial Secretary-Treasurer, Roy Walker, Claimant, and Andre Bibbs, Claimant, were witnesses for Local Union # 57.

Steven McCready, Attorney At Law, represented KBO. John Kronenberger, Chief Financial Officer, was a witness for KBO.

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

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 103 unemployment compensation benefits claims that relate to a labor dispute between Local Union # 57 and KBO.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on March 26, 2007, in Springfield, Ohio.

FINDINGS OF FACT

KBO is a wholly owned subsidiary of Klosterman Baking Company, Inc. KBO makes breads and rolls for restaurants and grocery store chains throughout the Midwestern United States from a facility located in Springfield, Ohio (Transcript Pages 13,31-32).

The claimants in this matter are members of Local Union # 57 and KBO employs approximately 125 of them at the Springfield facility. KBO employs a total workforce of approximately 175 individuals at the Springfield facility (Transcript Pages 13-14,65-66).

Local Union # 57 had a four (4) year collective bargaining labor agreement with KBO that expired February 25, 2007 (Transcript Pages 16,32,66/Employer Exhibit A).

Several negotiation sessions were held between the parties beginning in late January of 2007, and continuing through February 27, 2007. Three additional negotiation sessions have been held between the parties since February 27, 2007, through March 22, 2007. (Transcript Pages 17,24,32-33,37,43,67).

On October 2, 2006, prior to the commencement of negotiations between the parties, Local Union # 57 requested that KBO provide health care cost information. KBO began to provide the health care cost information to Local Union # 57 in late January of 2007 and at other times since then. Local Union # 57 asserts that KBO has at all times failed to provide adequate health care cost information so that the health care cost issue can be properly negotiated (Transcript Pages 43-48,58-60,76-80,87/Union Exhibits 1 and 2).

Sometime between February 22, 2007, and February 27, 2007, the members of Local Union # 57 unanimously voted to reject a new agreement offered by KBO. In a separate vote, the members of Local Union # 57 then voted to authorize a work stoppage. On March 22, 2007, the members of Local Union # 57 voted by a substantial majority to reject a second new agreement offered by KBO (Transcript Pages 71-73,84-85).

The parties did not formally agree to extend the terms and conditions of the expiring collective bargaining labor agreement beyond February 25, 2007. However, the members of Local Union # 57 continued to work under the terms and conditions of the expired agreement, while negotiations continued, until 1:00 p.m. on February 27, 2007. Local Union # 57 commenced with a work stoppage and began picketing at 1:00 p.m. on February 27, 2007. Local Union # 57 asserts the main reason for the work stoppage is because KBO failed to provide cost information for health care coverage during the course of negotiations and that Local Union # 57 has been requesting the cost information since October 2, 2006 (Transcript Pages 16-17,20-21,26-27,68-69,85-86/Union Exhibit 2).

During the entire course of negotiations KBO has not taken a stance that unless a new agreement is reached that work would not be available to the members of Local Union # 57 (Transcript Pages 25-26,32-35,86-88).



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KBO asserts that the members of Local Union # 57 would be allowed to return to work under the terms and conditions of the expired agreement, while negotiations continue, without having to resign their union membership. Local Union # 57 asserts that members are being required to resign their union membership by KBO in order to return to work (Transcript Pages 26,32-35,54-56,70,74-75,82-84,90-91,95-99/Union Exhibit 3).

Local Union # 57 has not offered to return to work, and continue working under the terms and conditions of the expired agreement, while negotiations continue (Transcript Pages 34-35).

The main issues between the parties deal with the cost of health care coverage, the pension plan, and wages (Transcript Pages 17-19,27-30,39-43,58,66-67,87-88).

KBO has continued operating using management employees, between 125 and 150 temporary replacement workers hired through a third party employment agency, and five (5) individuals that have resigned from Local Union # 57 and returned to work under the terms and conditions of the expired agreement (Transcript Pages 21-24,70-71).

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 KBO?

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.

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The issue to be resolved is whether the reason for the claimants' unemployment from KBO 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.

In addition, 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.

A review of all the exhibits and witness testimony in this matter indicates the claimants became unemployed when they began a work stoppage and started picketing after 1:00 p.m. on February 27, 2007.

The exhibits and testimony in the record establish that KBO did not withhold work from the members of Local Union # 57 in an effort to obtain more desirable terms in a new collective bargaining labor agreement.

In fact, the exhibits and testimony in the record show that KBO allowed the members of Local Union # 57 to continue working under the terms and conditions of the expired agreement, while negotiations were continuing between the parties, until Local Union # 57 decided to begin a work stoppage at 1:00 p.m. on February 27, 2007. KBO would allow the members of Local Union # 57 to continue working under the terms and conditions of the expired collective bargaining labor agreement while negotiations continue. At no time has KBO ever indicated an unwillingness to maintain the status quo.

Local Union # 57 and KBO are involved in a labor dispute that ultimately led the members of Local Union # 57 to conduct a work stoppage in an effort to obtain terms that are more desirable in a new collective bargaining labor agreement with KBO. Specifically, it is not reasonable for Local Union # 57 to conduct a work stoppage two days after the collective bargaining labor agreement has expired, while negotiations are continuing and the members of Local Union # 57 are still working under the status quo, because of an assertion that KBO has not provided adequate health care cost information.

Therefore, by applying the holding of the *Zanesville* case, it is clear that KBO did not lockout the members of Local Union # 57 on February 27, 2007.

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Using the Bays case standard, this Hearing Officer finds, based upon the totality of the testimony and exhibit evidence in the record, that the members of Local Union # 57 first changed the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage and to picket starting on February 27, 2007. KBO's conduct did not indicate it would not maintain the status quo while negotiations continued.

Although Union Exhibit 3 is a matter of concern, since it does appear to suggest that a condition of returning to work is to resign from Local Union # 57, there is no evidence or testimony in the record to indicate that Local Union # 57 has ever offered to return to work under the terms and conditions of the expired agreement irrespective of the union resignation issue. Local Union # 57 had already changed the status quo by taking the action of conducting a work stoppage on February 27, 2007, before Union Exhibit 3 ever was provided to the members of Local # 57 by KBO.

Therefore, the members of Local Union # 57 are unemployed due to a labor dispute other than a lockout that began February 27, 2007, and the labor dispute other than a lockout is continuing.

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 beginning February 27, 2007, and it is continuing. The claimants are disqualified from receiving unemployment compensation benefits starting with the week which includes February 27, 2007, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

The labor dispute other than a lockout that has resulted in the unemployment of the claimants is also continuing.

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, PO Box 182299, Ohio Dept. Of Job And Family Services, 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.

This decision was mailed on **04/05/2007**.

The twenty-one day appeal period ends on **04/26/2007**.

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