

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:

Madison Local	:	Docket No. LD-006-001
Board of Education	:	
(Madison Local)	:	
Employer	:	
and	:	Hearing Officer:
	:	Jim Bubutiev
Ohio Association of Public	:	Date of Hearing:
School Employees Local #292	:	February 27, 2006
(Local 292)	:	
Union/Claimants	:	Date of Issuance:
	:	March 09, 2006

APPEARANCES

Kristen E. McKinley, Attorney At Law, represented Local 292. Chad Caldwell, Field Representative for the Ohio Association of Public School Employees, was a witness for Local 292. Milton Tenney, President of Local 292, was also a witness for Local 292.

John D. Studenmund, Attorney At Law, represented Madison Local. Robin Klenk, Treasurer of Madison Local, was a witness for Madison Local. Dr. David Williamson, Superintendent of Madison Local, was also a witness for Madison Local.

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 292 and Madison Local.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on February 27, 2006, in Mansfield, Ohio.

FINDINGS OF FACT

Madison Local is a public school system which includes four elementary schools, a junior high school, a high school, a transportation center/bus garage, a day care facility, and the office of the Madison Local Board of Education. Madison Local has approximately 3,200 students (Transcript Pages 27,32,61).

Local voters have voted down five school levies since January of 2003. Madison Local projects having a positive balance of \$389,000.00 for Fiscal Year 2007, and a two million dollar deficit for Fiscal Year 2008, unless a levy is passed (Transcript Pages 37-39,43).

The claimants in this matter are members of Local 292 and Madison Local employs approximately 154 of them (Transcript Pages 14-15, 61, 96, 105-107/Employer Exhibit A).

Local 292 had a three-year collective bargaining labor agreement with Madison Local that was effective from January 01, 2003, through December 31, 2005 (Transcript Pages 16-17,34,45-46,62/Union Exhibit 1).

Proposals for a new collective bargaining labor agreement were exchanged between the parties on October 27, 2005. Negotiation sessions were held between the parties beginning on November 9, 2005, prior to the expiration of the then existing collective bargaining labor agreement, and have continued through February 15, 2006. Another negotiation session was held on February 28, 2006 (Transcript Pages 13,17-18,32,58-60,95-96,98-99).

The parties verbally agreed to extend the terms and conditions of the expired collective bargaining labor agreement beyond December 31,

2005, as long as negotiations continued. The members of Local 292 continued to work under the terms and conditions of the expired agreement until January 31, 2006 (Transcript Pages 22-24,62,66,99-100,104,143,152-153).

The main issues between the parties dealt with salary, health insurance, a "no layoff" clause, a "me too" clause that gives the members of Local 292 pay increases to match pay increases given to Madison Local's teacher employees, and the duration of any new collective bargaining labor agreement (Transcript Pages 18-19,64-65,96).

Madison Local gave the members of Local 292 a final offer on January 5, 2006. The members of Local 292 rejected the final offer in a vote to authorize a strike that was taken on January 18, 2006. Local 292 made a counterproposal on January 26, 2006, which was rejected by Madison Local.

Madison Local made another offer on February 15, 2006, which was rejected by the members of Local 292 on February 16, 2006 (Transcript Pages 25,46-48,54-55,73,81-82,91,97-98,100,109-110,115-119,135-136,141-142,144-145,147,159-160/Union Exhibits 2 & 3/Employer Exhibit E).

Local 292 issued a "Notice of Intent to Strike or Picket" to Madison Local on January 20, 2006. The date of the intended strike and intended picketing was set for January 31, 2006 (Transcript Pages 19-20,70-71,145/Employer Exhibit A).

Madison Local gave the members of Local 292 a written memo on January 30, 2006, instructing that building keys and pagers were to be turned in prior to January 31, 2006. Certain members of Local 292, scheduled to work until 6:30 a.m. on January 31, 2006, were sent home on or about midnight on January 31, 2006. However, Madison Local paid those members of Local 292 for the entire scheduled time even though they were sent home early. Local 292 asserts the combination of the written memo

and sending members of Local 292 home early amounts to a lockout (Transcript Pages 82-83,86-87,89-90,93-94,136-139,159-160/Union Exhibit 4).

The members of Local 292 began a work stoppage and began to picket on January 31, 2006 (Transcript Pages 19,27,31-32,61,71,75,105,122).

Madison Local did not take a "no new agreement then no work" position during the entire negotiation process. In fact, Madison Local was willing to let the members of Local 292 continue working under the exact terms and conditions of the expired collective bargaining labor agreement while negotiations continued (Transcript Pages 22-23,66,72,149-150).

Madison Local continued operating after the work stoppage began using temporary replacement workers. Additionally, Madison Local asserts four members of Local 292 have worked under the terms and conditions of the expired collective bargaining labor agreement during the course of the work stoppage. Local 292 asserts two members have worked during the course of the work stoppage and the terms and conditions of their employment is unknown (Transcript Pages 28-30,40-41,43,61-62,67-68,72-73,86,102-103,105,107-108).

Madison Local asserts that none of the members of Local 292 that returned to work during the course of the work stoppage were refused work and that anyone else that would have attempted to return to work would have been allowed to do so under the terms and conditions of the expired collective bargaining labor agreement (Transcript Pages 29,82-83,91-92).

The Hearing Officer takes administrative notice that the labor dispute between the parties has been resolved and a new collective bargaining labor agreement has been agreed upon between the parties.

Accordingly, members of Local 292 started returning to work on March 4, 2006.

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 Madison Local?
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 Madison Local 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.

The testimony and evidence in this case indicate the claimants became unemployed when they began a work stoppage and started picketing on January 31, 2006.

The testimony and evidence establish that Madison Local did not withhold work from the members of Local 292 in an effort to obtain more desirable terms in a new collective bargaining labor agreement. In fact, Madison Local was willing to allow the members of Local 292 to continue working under the terms and conditions of the collective bargaining labor agreement that had expired December 31, 2005. This was demonstrated when Madison Local verbally agreed to extend the expired agreement through January 31, 2006, as negotiations continued. Furthermore, there is credible testimony indicating that Madison Local allowed as many as four members of Local 292 to work under the terms and conditions of the expired collective bargaining labor agreement while the work stoppage was taking place.

Actually, Local 292 and Madison Local were involved in a labor dispute that ultimately led the members of Local 292 to conduct a work stoppage in an effort to obtain more desirable terms in a new collective bargaining labor agreement with Madison Local.

Therefore, by applying the holding of the *Zanesville* case, it is clear that Madison Local did not lockout the members of Local 292 on January 31, 2006.

Using the *Bays* case standard, this Hearing Officer finds, based upon the testimony and evidence, that the members of Local 292 first changed the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage and to picket starting on January 31, 2006.

Madison Local's conduct did not indicate it was unwilling to maintain the status quo while negotiations continued.

Therefore, the members of Local 292 were unemployed due to a labor dispute other than a lockout that lasted from January 31, 2006, until March 04, 2006, when the labor dispute was settled, and the members of Local 292 began returning to work under a new collective bargaining labor agreement.

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 January 31, 2006, through March 04, 2006. The claimants are disqualified from receiving unemployment compensation benefits for the week which included January 31, 2006, through the week which included March 04, 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 March 04, 2006, when they began returning to work.

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 MARCH 09, 2006.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS MARCH 30, 2006.

Jim Bubutiev
Hearing Officer