OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

OFFICE OF UNEMPLOYMENT COMPENSATION

DECISION ON LABOR DISPUTE ISSUE

JFS-83000 09/08/2011

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AMERICAN RED CROSS BLOOD SERVICES 600 A FOREST POINT CIR CHARLOTTE, NC 28273-5736 0832839005	Date Issued 05/03/2012 Determination Identification Number 224561923-1 ODJFS Office Bureau of UC Program Services
Employer's Name AMERICAN RED CROSS BLOOD SERVICES	UC Account Number 0832839005

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

Bureau of UC Program Services
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In The Matter Of A Labor Dispute Between

Union:	**UFCW Local 75**	Employer:	**AMERICAN RED CROSS BLOOD SERVICES**
Docket No:	**000000001200009**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**04/23/2012**	Date of Issuance:	**05/03/2012**

APPEARANCES

Dawn T. Christen, Attorney at Law, represented Local 75. Bryon O Neal, and Terri Shinn were witnesses for Local 75.

Michael J. Westcott, Attorney at Law, represented the American Red Cross. Judith H. Leech was a witness for the American Red Cross.

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 currently received approximately 110 unemployment compensation benefits claims that relate to a labor dispute between Local 75 and the American Red Cross.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on April 23, 2012, in Bowling Green, Ohio.

FINDINGS OF FACT

The American Red Cross is involved in the collection and distribution of transfuseable blood products (Transcript Pages 14-15).

The claimants in this matter are members of Local 75. The American Red Cross employs about 245 individuals, and approximately 165 of them are members of Local 75, in Toledo and at locations throughout a 10 county region in roughly the Northwestern portion of Ohio, and 1 county located in Michigan (Transcript Pages 15-16,84).

Local 75 had a collective bargaining labor agreement with the American Red Cross that was effective from May 1, 2006 through April 30, 2009. There were extensions of the collective bargaining labor agreement that continued it through January 14, 2010. The members of Local 75 continued working under substantially all of the terms and conditions of the expired agreement, with the exception of a few days of a Local 75 work stoppage in June or July of 2011 , through to March 27, 2012. The changes to the terms and conditions of employment that did occur included the employer ceasing to collect a union dues payroll deduction in 2010, the employer ceasing of the arbitration process, and changes in the health insurance coverage from one year to the next effective January 1st of each given year (Transcript Pages 17-19,23-24,31,36,86,89,102-104/EmployerExhibits 1-2).

The expired agreement explicitly explains the health insurance coverage provision on page 16 of Employer Exhibit 1 under Article 15 A. The first line of that provision states that the employer shall maintain the existing or substantially similar coverage for all full-time and regular part-time employees. The parties agree that the health insurance coverage in 2010 and 2011 was substantially similar to that which was offered under the expired agreement. Local 75 asserts that the health insurance coverage offered in 2012 is not substantially similar to that which was previously offered under the expired contract while the employer asserts that the coverage is substantially similar. Local 75 became aware of the changes to the 2012 health insurance coverage on or about October 7,2011. The health insurance coverage changes for 2012 were effective as of January 1, 2012 (Transcript Pages 59-60,72,75,96,110-112/EmployerExhibit 1/Union Exhibits A,C,D).

Approximately 20 negotiation sessions for a new agreement have been held between the parties beginning in April of 2009 through February 23, 2012. There is no impasse to negotiations between the parties (Transcript Pages 24-27,101-102).

The major issue between the parties deals with health insurance coverage (Transcript Pages 22-24,45,88-89).

The American Red Cross has never indicated that if a new agreement is not agreed to then no work would be available to Local 75 (Transcript Pages 24,31-32,49/Employer Exhibits 3,5,6).

The members of Local 75 sent the American Red Cross a strike notice on March 16, 2012 indicating a work stoppage would begin on March 27, 2012. A work stoppage did begin on March 27, 2012 and it is continuing. Picketing is occurring at the various American Red Cross locations. (Transcript Pages 20-22/Employer Exhibit 4,7).

The American Red Cross has continued operating using nonunion and management employees, and up to fifteen members of Local 75 that have crossed the picket lines and have continued working under substantially all of the terms and conditions of the expired agreement. There have been no temporary or permanent replacement workers hired. No one that wants to work has been refused employment by the American Red Cross (Transcript Pages 32-34).

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 the American Red Cross?

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 issue to be resolved is whether the reason for the unemployment of the claimants from the American Red Cross 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 employer implemented a 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 Ohio Supreme Court defined 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 351,354. The Ohio Supreme Court held that the 10% wage reduction was reasonable under the circumstances and did not manifest a purpose on the part of the company to coerce the employees into accepting it.

Therefore, since the conduct of the employer did not inevitably lead to unemployment in the sense that the employees could not reasonably be expected to accept it, it did not constitute a lockout . . . Id. at 356.

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 this matter, the evidence and testimony indicate that the members of Local 75 became unemployed when they began a work stoppage on March 27, 2012.

The parties agree that no impasse to further negotiations has occurred.

This Hearing Officer makes no finding of fact and draws to no conclusions regarding whether the 2012 health insurance changes are, in fact, such that the coverage is not substantially similar to the coverage in prior years. Such a finding is not necessary in order to arrive at a decision in this matter.

Applying the Zanesville decision, it is not reasonable for the members of Local 75 to have begun a work stoppage starting on March 27, 2012 because of an alleged substantial change to the health insurance coverage in 2012. Local 75 was made aware of the health insurance coverage changes at an informational meeting with the employer, nearly 3 months in advance of the New Year, in early October of 2011. Furthermore, the changes were actually made effective January 1, 2012. Local 75 did not decide to conduct a work stoppage until March 27, 2012. If the health insurance coverage changes were onerous and unreasonable then a work stoppage should have occurred much earlier and soon after the changes were implemented on January 1, 2012. Additionally, the strike notice itself is silent as to any reason for it commencing and a review of all the exhibits from both parties does not indicate anywhere that Local 75 was asserting a work stoppage was commencing because the 2012 health insurance changes were unreasonable or not substantially similar to what had been offered in previous years.

Similarly, if the lack of an arbitration process with the employer was so unreasonable then Local 75 should have commenced with a work stoppage for that reason. The testimony at hearing indicates that Local 75 did not find the lack of an arbitration process so unreasonable as to not be able to continue working.

Applying the Bays decision, the American Red Cross would have allowed Local 75 members to continue working under the terms and conditions of the expired contract while negotiations for a new contract continued. There was no indication ever made to Local 75 that any proposals made by the American Red Cross would be implemented. The American Red Cross was maintaining the status quo while negotiations continued.

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However, Local 75 broke the status quo by taking the action of commencing with a work stoppage on March 27, 2012 just as indicated on their strike notice dated March 16, 2012.

Any argument that because the employer was no longer deducting union dues is a change in the status quo has been decided in the case of Minster Machine Company v. Albers, et. al., 2003 Ohio App. LEXIS 3861. That Ohio Appellate Court clearly ruled that an employer can stop deducting union dues if there is no longer a collective bargaining agreement in place.

Finally, there was testimony provided by a Local 75 witness that she, and up to eight others in jobs like hers, were essentially innocent bystanders and unwilling participants in this labor dispute. There is no innocent bystander kind of exception to Ohio Unemployment Compensation Law. All members of Local 75 that are claimants in this matter must be treated the same.

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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 which began on March 27, 2012. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout beginning with the week which includes March 27, 2012.

It is also the decision of this Hearing Officer that the labor dispute other than a lockout between the American Red Cross and Local 75 which began on March 27, 2012, is 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, Ohio Dept. Of Job And Family Services, PO Box 182299, 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. **If unemployed,** claimants should continue to file weeky claims for benefits while under appeal.

This decision was mailed on **05/03/2012**.

The twenty-one day appeal period ends on **05/24/2012**.