

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:

	:	Docket No. LD-001-004
	:	
International Brotherhood of	:	
Teamsters Local Number 497	:	
(Local 497)	:	
	:	
Union / Claimants	:	
	:	Hearing Officer:
and	:	Jim Bubutiev
	:	
Waltco Truck Equipment	:	
Company Incorporated	:	Date of Hearing:
(Waltco)	:	September 14, 2001
	:	
Employer	:	
	:	Date of Issuance:
	:	September 24, 2001

Appearances

George B. Vasko, Attorney at Law, represented Local 497. Joann Hawkins, and George Kreidler, were witnesses for Local 497.

Timothy G. Warner, Attorney at Law, represented Waltco. Robert Warner Jr., Edmund J. Hoy, and Marty Beyner, were witnesses for Waltco.

This matter was heard by Jim Bubutiev, Hearing Officer for the Director of the Ohio Department of Job and Family Services, pursuant to section 4141.281 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 4141.281 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 law. This hearing was held on September 14, 2001, in Akron, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 497 and are employed by Waltco.

Waltco produces custom hydraulic cylinders, and hydraulic tailgate lifts. Waltco has two plants, a liftgate division and a cylinder division, and a third location, an engineering division, all located in Tallmadge, Ohio (Transcript Pages 26,155-157).

Waltco employs approximately 250 individuals, and an estimated 138 to 140 of them are members of Local 497 (Transcript Pages 94,157,173).

Local 497 had a collective bargaining labor agreement with Waltco that was effective from December 1, 1997, to November 30, 2001. The agreement included a section with an automatic renewal clause until such time as either party terminated the agreement upon providing thirty days written notice to the other party (Transcript Pages 68-69,96 / Union Exhibit 1).

There have been a total of 22 bargaining sessions to negotiate a new collective bargaining labor agreement, involving representatives of Local 497 and Waltco, beginning on or about November 7, 2000, through September 10, 2001 (Transcript Page 95).

The bargaining sessions through September 10, 2001, have not led to a new collective bargaining labor agreement.

The main issues between the parties in the 22 bargaining sessions for a new collective bargaining labor agreement deal with health care and life insurance benefits coverage, the grievance procedure, and whether there will be "union security" or if Waltco will become an "open shop" employer (Transcript Pages 37-40,59-60,71-73,97,219).

The members of Local 497, by a large majority, voted to authorize a work stoppage through the International Brotherhood of Teamsters. Sometime after the authorization vote Local 497 also voted to conduct a work stoppage (Transcript Pages 44-47,63-64,70,76,100-101,218,222).

On July 12, 2001, Local 497 sent a written thirty (30) day notice to Waltco that the collective bargaining labor agreement would be terminated at midnight August 12, 2001, as required under Article 26 Section 2 of the agreement. Local 497 verbally advised Waltco that the thirty (30) day notice meant that the members of Local 497 would begin a work stoppage on August 13, 2001 (Transcript Pages 69,74-75,98-99,102,136,158-159,161-162 / Union Exhibits 1 & 2).

On August 13, 2001, the members of Local 497 started a work stoppage and set up a picket line at Waltco's work location in Tallmadge, Ohio (Transcript Pages 30-31,47,58-59,118,163,182,218,222-224 / Employer Exhibit C).

On August 29, 2001, Local 497 sent written notice to Waltco that the roughly 100 members of Local 497 still participating in the work stoppage would unconditionally return to work the following day, August 30,2001 (Transcript Pages 55,64,107-108,163-164,175,181 / Employer Exhibit B which is dated July 29, 2001, in error. The correct date is August 29, 2001, based on the content of the letter and witness testimony).

Some members of Local 497 did not participate in the work stoppage at all or returned to work in the days prior to Local 497's August 30, 2001, offer to unconditionally return to work (Transcript Pages 51-54).

On August 30, 2001, and during the following few days, when the members of Local 497 who had been involved in the work stoppage returned to work at Waltco, they were informed there was a lack of work and that they would be brought back using a preferential recall hiring list. The

lack of work is due to slow business in the trucking industry, work relocated to Waltco's California plant, the hiring of replacement workers including new hires and about 35 members of Local 497 who returned to work prior to the end of the work stoppage, and work that Waltco has subcontracted. About 60 to 80 members of Local 497 have not been called back to work out of the approximately 100 members of Local 497 that participated in the work stoppage through August 29, 2001 (Transcript Pages 48-50,56-57,105-107,112,114-118,123-124,162-168,171,174,176-178,194-196,209-211,214-215,217,220).

Waltco has at no time taken a bargaining stance of ~~no~~ no new contract then no work@ regarding Local 497 members (Transcript Pages 41-42,63,100,119,160,179).

ISSUES:

Pursuant to section 4141.281 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 can be stated thus:

1. What is the reason for the claimants' unemployment from Waltco?
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 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 first issue to be resolved is whether the reason for the claimants' unemployment from Waltco 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 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 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 and, therefore, was not a lockout.

In *Leach v. Republic Steel Corp.*, (1964), 176 Ohio St. 221, the Ohio Supreme Court stated that a work stoppage is an effort by employees to obtain more desirable terms with respect to wages, working conditions, etc., while a "labor dispute" is broader in scope and also includes an employer-employee controversy concerning wages, working conditions or terms of employment.

The court found there was a labor dispute that led to a work stoppage. The work stoppage forced the employer to close its plants for a time period and the work stoppage caused the plant closings for that time period. The court ruled that in such a situation employees were not entitled to unemployment compensation benefits during any week that unemployment was due to the labor dispute.

In *Oriti v. Board of Review* (1983), 7 Ohio App. 3d 311, a collective bargaining contract between management and labor expired and the employees offered to continue working under the terms of the old contract while a new contract continued to be negotiated. The employer refused to allow the employees to continue working on this basis and a work stoppage began at the expiration of the old contract. The Court of Appeals held that where employees offer to continue working under the terms of a preexisting collective bargaining agreement, pending a final settlement of the labor dispute, then the failure of the employer to accept such an offer constitutes a lockout unless the employer demonstrates it had a compelling reason for failing to agree to such an extension of the contract. The compelling reason must be of a nature that to require the employer to agree to the extension would be unreasonable under the circumstances.

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 evidence and testimony indicate the members of Local 497 became unemployed when, following a vote to conduct a work stoppage, they notified Waltco that the then existing collective bargaining labor agreement would be terminated at midnight August 12, 2001, and chose not to continue working for Waltco at its Tallmadge, Ohio plants beginning on August 13, 2001. The claimants, in fact, set up a picket line at the work sites beginning August 13, 2001 and, thereby, started a labor dispute other than a lockout.

The testimony demonstrated that the major issues in controversy between Local 497 and Waltco deal with health care and life insurance benefits coverage, the grievance procedure, and whether there will be "union security" or if Waltco will become an "open shop" employer. These types of issues clearly fall within the *Leach* definition of a "labor dispute."

The testimony also demonstrated that Local 497 began picketing on August 13, 2001, because the members of Local 497 desired better terms from Waltco. Again, this clearly falls within the *Leach* definition of a work stoppage.

Local 497 and Waltco were involved in a labor dispute that ultimately led to Local 497 conducting a work stoppage in an effort to obtain the terms it desired from Waltco.

Using the *Bays* standard, this Hearing Officer finds, based upon the testimony and evidence, that Local 497 first changed the status quo when members of Local 497 decided to form picket lines at Waltco instead of reporting to work beginning on August 13, 2001. Waltco's conduct did not indicate it was unwilling to maintain the status quo while negotiations continued.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a labor dispute other than a lockout which ended when the members of Local 497 offered to unconditionally return to work beginning August 30, 2001.

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 at Waltco. The claimants are disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which August 13, 2001, occurs pursuant to section 4141.29(D)(1)(a) of the Ohio Revised Code.

It is also the decision of this Hearing Officer that the labor dispute between Local 497 and Waltco began on August 13, 2001, and ended on August 30, 2001, when the members of Local 497 tried to unconditionally return to work.

* * * * *

This decision applies to 64 named claimants.

* * * * *

If you disagree with this decision then 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, 145 S. FRONT STREET, P.O. BOX 182299, COLUMBUS, OHIO 43218-2299 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 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 ON SEPTEMBER 24, 2001.

Jim Bubutiev
Hearing Officer