

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
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In The Matter Of A Labor Dispute
Between:

Eastern Local Classroom	:	
Teachers Association	:	Docket No. LD-002-006
(Teachers)	:	
Eastern Local School	:	
Support Personnel Association	:	
(Support Personnel)	:	
	:	Hearing Officer:
Union/Claimants	:	Jim Bubutiev
	:	
and	:	
	:	Date of Hearing:
Eastern Local School District	:	November 12, 2002
Board of Education	:	
(Board)	:	
	:	Date of Issuance:
Employer	:	November 22, 2002

Appearances

Parry L. Norris, Labor Relations Consultant with the Ohio Education Association, represented the Teachers and Support Personnel. Ray G. McFarland, President of the Eastern Local Classroom Teachers Association and a Claimant, was a witness for the Teachers. Edsel R. Atkins, President of the Eastern Local School Support Personnel Association and a Claimant, was a witness for the Support Personnel.

James K. Stucko, Jr., Attorney at Law, represented the Board. Treva Harmon, Eastern Local School District Superintendent, was a witness for the Board.

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 the 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 Ohio Department of Job and Family Services has received 49 claims for unemployment benefits that relate to a labor dispute between the Teachers/the Support Personnel and the Board.

All interested parties were notified of the hearing pursuant to Ohio law. This hearing was held on November 12, 2002, in Waverly, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of either the Eastern Local Classroom Teachers Association or the Eastern Local School Support Personnel Association and are employed by the Board

The Board administers the Eastern Local School District. The Eastern Local School District is a public school system with a one building facility that serves approximately 930 students in kindergarten through twelfth grade. The one building facility also houses all administrative offices. The

Eastern Local School District is located in Beaver, Ohio (Transcript Pages 12,21).

The Board employs an estimated 128 individuals including the administrative staff. Approximately 67 of those individuals are members of the Teachers Association and 45 are members of the Support Personnel Association (Transcript Page 12/Employer Exhibit 1 & 2).

The Teachers had a three (3) year collective bargaining labor agreement with the Board through June 30,2002 (Transcript Pages 14-15,35-36).

The Support Personnel had a two (2) year collective bargaining labor agreement with the Board through December 31, 2001 (Transcript Page 14-15,50-51).

There was no formal extension of either of the collective bargaining labor agreements but the claimants continued to work under the terms and conditions of the expired agreements through September 25, 2002 (Transcript Pages 14-16,36-37,51-52).

Negotiation sessions were held separately between the Board and each Union Association, through September 25, 2002, in an attempt to reach new agreements. The sessions began sometime in January-March of 2002 (Transcript Pages 18-19,20-21,26-27,36).

Both the Teachers and the Support Personnel voted to reject new proposed agreements in August of 2002 (Transcript Pages 23-24).

On September 12, 2002, each Union Association provided the Board with a "Notice Of Intent To Strike Or Picket" with information showing an "Intent To Strike And Picket" beginning at 6:00 a.m. on September 26, 2002 (Transcript Pages 17,27-28,39,52/Employer Exhibit 1 & 2).

The Board, in response to the notices provided by the Union

Associations, gave instructions to all the members of the Union Associations on how to depart the facility and/or turn in equipment, including school busses, at the end of the day on September 25, 2002. These instructions were provided on September 23, 2002, either verbally or in writing (Transcript Pages 30-33,39-40,43,47,56-57/Union Exhibit A & B).

A work stoppage and picketing began on September 26, 2002, and are continuing as of the date of issuance of this decision (Transcript Pages 16-17,21,36,40,55,60-61)

Further negotiation sessions have been held since the work stoppage began through November 13, 2002 (Transcript Pages 36,61).

The main issues between the Board and the Union Associations deal with salary and health insurance. Other issues involve fair share payments, retroactive pay, no reprisals after going back to work, seniority, sick leave usage, and working conditions (Transcript Pages 19-21,37,42,52-53).

The Board has at no time during the entire negotiation process taken a "no new agreement then no work" stance with either Union Association (Transcript Pages 18,40).

The Board has kept the school system open and available for the members of either Union Association to return to work under the terms and conditions of their respective expired collective bargaining labor agreements. Some members of both Union Associations have continued working under the terms and conditions of the now expired agreements without ever having participated in the work stoppage. The Board has not hired permanent replacements for the positions held by the members of either Union Association (Transcript Pages 22-23,25,29,38,40,54-55,57-58).

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 the Board?
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 key issue to be resolved is whether the reason for the claimants' unemployment from the Board 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 pre-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 134-135.

In this matter, the testimony indicates that the members of both Union Associations became unemployed when they began a work stoppage on September 26, 2002, and began picketing.

Thus, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon the testimony, that the members of the Union Association first changed the status quo, while negotiations were ongoing, when the decision was made to conduct a work stoppage and begin picketing on September 26, 2002. Consequently, the members of the Union Associations became unemployed when they started a labor dispute other than a lockout on September 26, 2002.

Therefore, it is the conclusion of this Hearing Officer that all the claimants in the instant case were unemployed due to a labor dispute other than a lockout which began September 26, 2002, and is continuing as of the date of this decision.

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 which began September 26, 2002. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the week which includes September 26, 2002, 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 other than a lockout between the Board and the Union Associations which began on September 26, 2002, is continuing as of the date of issuance of this decision.

* * * *

THIS DECISION APPLIES TO 49 NAMED CLAIMANTS

* * * *

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

APPLICATION FOR APPEAL BEFORE THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION, 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 NOVEMBER 22, 2002.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS DECEMBER 13, 2002.

Jim Bubutiev
Hearing Officer