JFS-83000 06/26/2008

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

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PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY 2000 SUMMIT RD KENT, OH 44240 1169178001	Date Issued 10/02/2008 Determination Identification Number 216129021-1 ODJFS Office Bureau of UC Program Services
Employer's Name PORTAGE AREA REGIONAL TRANSPORTATION AUTHORIT	UC Account Number 1169178001

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
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In The Matter Of A Labor Dispute Between

Union:	**OAPSE District 4 Local 37**	Employer:	**PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY**
Docket No:	**000000000800013**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**09/22/2008**	Date of Issuance:	**10/02/2008**

APPEARANCES

Kristen McKinley, Attorney at Law, represented the Ohio Association of Public School Employees (OAPSE) Local 37. Trina Molnar, Field Representative for OAPSE, was a witness for OAPSE Local 37.

Thomas Green, Attorney at Law, represented the Portage Area Regional Transit Authority (PARTA). Claudia Amrhein, Director of Human Resources for PARTA, was a witness for PARTA.

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 31 unemployment compensation benefits claims that relate to a labor dispute between OAPSE Local 37 and PARTA.

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All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on September 22, 2008, in Akron, Ohio.

FINDINGS OF FACT

PARTA provides fixed route services throughout Portage County and also operates the campus bus system to Kent State University. The labor dispute between OAPSE Local 37 and PARTA is at a location in Kent, Ohio. PARTA employs 182 individuals and 67 of them are also members of OAPSE Local 37. The 67 individuals that are also members of OAPSE Local 37 work for PARTA as bus drivers, with 24 of them being full-time employees, and the remaining 43 are regular part-time employees (Transcript Pages 13-14,60,109).

OAPSE Local 37 was certified as the union representing the claimants in 2005. There is no previous collective bargaining labor agreement between OAPSE Local 37 and PARTA. Negotiation sessions for an initial collective bargaining labor agreement began on July 12, 2006, through August 24, 2008, and a federal mediator has been involved during the last year or so of negotiations. As of the date of hearing no further negotiation sessions have been scheduled between the parties. However, both parties have expressed a willingness to meet again to the federal mediator (Transcript Pages 15-16,30-31,45-47,53-54,56,61,68-69,74).

PARTA asserts the issue between the parties deals with a fair share provision that OAPSE Local 37 wants to have included in the initial collective bargaining agreement while PARTA does not want a fair share provision included in it. OAPSE asserts several issues remain unresolved between the parties including not only the fair share provision but also prior service, sick leave, wages, benefits, and language pertaining to part-time employment (Transcript Pages 20-23,32,37-38,54-56/EmployerExhibit 2).

The individuals represented by OAPSE Local 37 have been working under the same terms and conditions of employment since the union certification in 2005 and throughout the negotiation sessions into 2008. The full-time employees have a wage scale and benefits while the regular part-time employees progress differently on the wage scale and do not have benefits. The progression on the wage scale is based upon the hours driven by an individual. Additionally, the full-time employees all have commercial driver licenses. The regular part-time employees do not all have commercial driver licenses and are not required to obtain them although there are wage incentives to do so (Transcript Pages 16-20,61,76).

On August 15, 2008, PARTA received a Notice Of Intent To Strike Or Picket from OAPSE Local 37 indicating that a strike and picketing would commence at 4:00 a.m. on August 25, 2008. OAPSE asserts this was done because PARTA had indicated in negotiations on August 14, 2008, that PARTA was going to implement an offer and also because PARTA s offers during negotiations included timeframe deadlines, and when the timeframe deadlines were not met by OAPSE Local 37, subsequent offers would be diminished as compared to previous offers. OAPSE Local 37 did commence with a work stoppage on August 25, 2008, with some individuals represented by OAPSE Local 37 picketing at PARTA s Kent, Ohio location while some individuals represented by OAPSE Local 37 chose to continue working (Transcript Pages 23-25,34-35,47,59-60,67,71-72,79/EmployerExhibits 1,2).

On August 14, 2008, PARTA did indicate an intent to implement an offer. However, as a result of receiving the Notice Of Intent To Strike Or Picket on August 15, 2008, PARTA notified OAPSE Local 37 on August 18, 2008, that the offer would not be implemented and that the terms and conditions of employment for the union members would be maintained without change. When the work stoppage began on August 25, 2008, PARTA had not implemented any offer (Transcript Pages 35-36,77,79,98/EmployerExhibits 1,2).

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PARTA has continued to operate since the work stoppage began using nonunion employees with commercial driver licenses and qualified to drive transit buses, 26 individuals represented by OAPSE Local 37 that have chosen to continue working including 23 individuals that never participated in the work stoppage and 3 individuals that have crossed the picket line after the work stoppage began, and a small compliment of bus drivers brought in by contract between PARTA and a third party company. PARTA has not hired any permanent replacement workers. OAPSE Local 37 asserts some represented individuals working for PARTA were required to resign from the union as a condition of returning to work or to continue to work during the work stoppage. PARTA asserts that any individuals represented by OAPSE Local 37 do not have to resign from the union in order to work for PARTA and that PARTA merely explained that individuals could resign from the union in order to avoid being fined monetarily by the union for working during the work stoppage (Transcript Pages 25-30,65-67,86-92,103-108,112/Union Exhibits B,C/Employer Exhibit 3).

The 26 individuals represented by OAPSE Local 37 that are working for PARTA since the work stoppage commenced are working under the same terms and conditions in effect during the entire course of negotiations dating back to at least July of 2006, and anyone that decides to return to work would be accepted back by PARTA under those same terms and conditions of employment. No one that has offered to return to work to PARTA has been denied employment (Transcript Pages 27-28,32-36,39-46,66,69/EmployerExhibits 2-5).

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 PARTA?

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.

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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 claimants' unemployment from PARTA 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 more recent 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.

The testimony and evidence in this case indicate the claimants became unemployed when they began a work stoppage and started picketing on August 25, 2008.

The testimony and evidence, when viewed in total, establish that PARTA did not withhold work from the members of OAPSE Local 37 in an effort to obtain more desirable terms in an initial collective bargaining labor agreement. In fact, PARTA was willing to allow the members of OAPSE Local 37 to continue working under the terms and conditions of employment that had existed for at least two (2) years prior to the commencement of the work stoppage and which as many as 26 represented individuals are now currently working under during the work stoppage.

In actuality, OAPSE Local 37 and PARTA are involved in a labor dispute that ultimately led the members of OAPSE Local 37 to conduct a work stoppage in an effort to obtain more desirable terms in an initial collective bargaining labor agreement with PARTA.

Therefore, by applying the holding of the Zanesville case, it is clear that PARTA did not lockout the members of OAPSE Local 37 on August 25, 2008.

Using the Bays case standard, this Hearing Officer finds, based upon the testimony and evidence, that the members of OAPSE Local 37 first changed the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage and to picket starting on August 25, 2008. While there is no previous collective bargaining agreement to look to for guidance it is clear that the status quo is represented by the terms and conditions of employment in place prior to the commencement of the work stoppage. The conduct of PARTA indicates a willingness to maintain the status quo while negotiations continue. PARTA has at no time implemented any offer and has instead kept the status quo in place.

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It is troublesome that there is testimony and documentation that appears to point to the possibility that resignation from the union is a condition of employment with PARTA during the work stoppage. However, there is equally compelling testimony and documentation that no such condition exists. Thus, a lockout can not be found to have occurred in this circumstance when the only undisputed action that was taken occurred with the commencement of a work stoppage by OAPSE Local 37 beginning on August 25, 2008.

Therefore, the members of OAPSE Local 37 were unemployed due to a labor dispute other than a lockout that began August 25, 2008, and which is continuing.

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 August 25, 2008. The claimants are disqualified from receiving unemployment compensation benefits for the week which includes August 25, 2008, and which is continuing, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

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 **10/02/2008**.

The twenty-one day appeal period ends on **10/23/2008**.

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