

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Shallet A. Buchanan, et al.

Court of Appeals No. L-13-1077

Appellees

Trial Court No. CI0201204157

v.

Director, Ohio Department of Job
and Family Services, et al.

Defendant

DECISION AND JUDGMENT

[American Red Cross, Western Lake
Erie Blood Services Region—Appellant]

Decided: March 7, 2014

* * * * *

Dawn T. Christen, for appellees.

David K. Montgomery and Michael J. Wescott, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which reversed a ruling of the Unemployment Compensation Review Commission

(“UCRC”) that determined claimants to be ineligible for unemployment benefits in connection to a 2012 work stoppage of approximately 115 American Red Cross workers represented by the United Food and Commercial Workers Union (“UFCW”) and employed by the Western Lake Erie branch of the American Red Cross (“Red Cross”). For the reasons set forth more fully below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Red Cross, sets forth the following three assignments of error:

(1) The court of common pleas erred in reversing the Unemployment Compensation Review Commission’s finding that Appellees were not entitled to unemployment compensation benefits, as there is competent, credible evidence in the record that appellees were unemployed due to a labor dispute other than a lockout, utilizing the test set forth in *Bays v. Shenango Company*, 53 Ohio St.3d 132, 559 N.E.2d 740 (1990).

(2) The court of common pleas erred in reversing the Unemployment Compensation Review Commission’s finding that Appellees were not entitled to unemployment compensation benefits, as it was not unlawful for the hearing officer to apply the test set forth in *Zanesville Rapid Transit, Inc. v. Bailey*, 168 Ohio St. 351, 155 N.E.2d 202 (1958), and there is competent, credible evidence in the record that under *Zanesville*, Appellees were unemployed due to a labor dispute other than a lockout.

(3) Alternatively, the court of common pleas erred in failing to remand this case back to the Commission with instructions that the hearing officer more fully elucidate the findings of fact which support his decision under *Bays*.

{¶ 3} The following undisputed facts are relevant to this appeal. Red Cross and approximately 165 of its area employees (“members”) represented by the UFCW were governed by a collective bargaining agreement (“agreement”) covering the terms and conditions of employment.

{¶ 4} The agreement executed between the parties and applicable to this case was in effect from May 1, 2006 through April 30, 2009. As the expiration date of the agreement approached, the parties commenced negotiations and initiated the process of working towards a successor agreement.

{¶ 5} On April 30, 2009, when the agreement expired, no successor agreement had been reached between the parties or approved by the members. Accordingly, the parties entered into written extensions of the existing agreement, continued negotiating, and continued to adhere to the terms and conditions of the expired agreement so as to maintain the status quo while negotiations were ongoing.

{¶ 6} The last extension of the existing agreement expired on or about January 14, 2010. Despite engaging in ongoing negotiations, no successor agreement had been reached between the parties or approved by the members at the time the last of the extensions expired. Accordingly, the parties again continued negotiating and continued

to adhere to the terms and conditions of the expired agreement so as to maintain the status quo.

{¶ 7} During this transitory period of détente, in which the agreement was expired, work by the members continued, negotiations were ongoing, and continued between the parties for several years. Ultimately, in early 2012, as negotiations and votes persisted in failing to reach and approve a successor agreement, the status quo ultimately came to an end.

{¶ 8} The parties concur and the record reflects that the key issue which persisted throughout all times relevant herein as the primary sticking point upon which the parties were unable to reach a mutually acceptable compromise pertained to the terms of health insurance coverage options available to the members. The parties likewise concur and the record reflects that despite the ongoing negotiations over several years failing to culminate in a new agreement, the parties were not at an impasse and were open to further negotiations when the events triggering this case occurred.

{¶ 9} Significantly, on several occasions during the negotiation sessions which transpired following the expiration of the agreement, Red Cross proposed new health insurance coverage terms to the union representatives of the members for consideration. The proposed health insurance coverage changes were subsequently submitted to the members for votes on several occasions. The proposed successor agreements modifying the health care coverage provisions applicable to the members were rejected by the members.

{¶ 10} Under the proposed successor health insurance coverage provisions, an existing exclusive provider organization (“EPO”) health plan with no deductible and utilized by the majority of members was to be eliminated. In addition, an existing preferred provider organization (“PPO”) plan which entailed a \$500 deductible for individuals and a \$1,000 deductible for families would be modified notably increasing the respective deductibles. Lastly, the proposal introduced a high deductible health plan (“HDHP”) which entailed a \$1,500 deductible for individuals and a \$3,000 deductible for families, reflecting a three-fold increase over the deductibles available under some of the existing options.

{¶ 11} In December 2011, another formal vote was conducted in which the members again rejected a proposed successor agreement incorporating these new health insurance coverage provisions and eliminating the widely utilized EPO coverage option.

{¶ 12} The record reflects that Red Cross maintained the status quo pertaining to health insurance coverage from 2009-2012 despite the expiration of the agreement and the continued failure of ongoing negotiations to culminate in a successor agreement. However, the record further reflects that in January 2012, Red Cross ultimately implemented the proposed health insurance coverage provisions that had been rejected in votes by the members. It is that course of action taken by Red Cross which the members claim constitutes a deviation from the requisite adherence to the status quo until a successor agreement was reached and approved and thereby supports the claimed

eligibility of the members to unemployment compensation benefits following a work stoppage some months later in 2012 by some members.

{¶ 13} Despite the foregoing, the affected members initially continued to work into the early months of 2012. In conjunction with this, the negotiations towards a successor agreement likewise continued into the early months of 2012.

{¶ 14} On February 23, 2012, during additional negotiations, Red Cross submitted the same health insurance coverage proposal that had been rejected in the December 2011 vote. Red Cross conveyed that it was not a last and final offer. In conjunction with this indicia that the parties were not at an impasse, the union offered additional negotiation dates.

{¶ 15} On March 16, 2012, the union issued a 10-day strike notice, with a strike to commence on March 27, 2012. The record reflects that a portion of the affected members did not participate and continued to work, while the balance of the affected members ceased working and sought unemployment benefits due to the work stoppage.

{¶ 16} On April 23, 2012, a hearing was conducted by the Ohio Department of Job and Family Services (“ODJFS”) to determine the unemployment benefit eligibility of the member claimants. The hearing officer determined that the claimants were ineligible for unemployment benefits pursuant to R.C. 4141.29(D)(1)(a) based upon finding that the circumstances of the work stoppage did not constitute a lockout. Therefore, the work stoppage was deemed to be due to a labor dispute other than a lockout, rendering the member claimants ineligible for unemployment benefits.

{¶ 17} Following this adverse determination, the member claimants next filed an administrative appeal before the UCRC. On June 15, 2012, it was denied. The member claimants subsequently filed a statutory appeal of the UCRC decision to the Lucas County Court of Common Pleas. That trial court ruling is the subject of this appeal.

{¶ 18} Pursuant to express statutory authority delineated in R.C. 4141.28(O)(1), the common pleas court is authorized to modify or reverse an unemployment compensation benefits eligibility decision by the UCRC that it finds to be unlawful, unreasonable, or against the manifest weight of the evidence.

{¶ 19} On March 28, 2013, the trial court reversed the UCRC decision underlying this case which had found the member claimants to be ineligible for unemployment benefits. The trial court held in relevant part, “[T]he hearing officer’s contrary findings are against the manifest weight of the evidence.” In conjunction with this, the trial court determined that, “Therefore, under the *Bays* test, implementation of the proposal [new health insurance coverage provision] constituted a lockout and the exception to entitlement to unemployment compensation benefits under RC 4141.29(D)(1)(a) is not applicable.” This appeal ensued.

{¶ 20} Appellant’s first two assignments of error both stem from the premise that the trial court erred in reversing the UCRC determination that the member claimants were ineligible for unemployment compensation benefits. Accordingly, they will be addressed simultaneously.

{¶ 21} At the outset, we note that this court's decision in *Baker v. Ohio Unempl. Comp. Rev. Comm.*, 6th Dist. Lucas L-01-1503, 2002-Ohio-3154, is highly relevant in our consideration of the instant case. *Baker* provides significant guidance in our consideration of the claimed legitimacy of Red Cross's disputed action in modifying the health care coverage terms applicable to the member claimants.

{¶ 22} Ultimately, it must be determined whether the subject work stoppage constituted a lockout or a labor dispute other than a lockout. Pursuant to R.C. 4141.29(D)(1)(a), no individual may be paid unemployment compensation benefits when the work stoppage was due to a labor dispute other than a lockout.

{¶ 23} The *Baker* decision methodically illustrates the decisive criteria and the respective eligibility tests to be applied to properly determine if the member claimants who participated in the work stoppage are entitled to unemployment compensation benefits.

{¶ 24} In *Baker*, we affirmed that the status-quo test governs those cases in which negotiations had not reached an impasse. Pursuant to the status-quo test, it must be determined which party first deviated from the status quo of the terms and conditions of employment after the existing agreement had expired and while negotiations for a successor agreement were ongoing. If the employer was the first to deviate from the status quo, then the subsequent work stoppage constituted a lockout so as to preserve unemployment eligibility. If the members were the first to deviate, then the subsequent

work stoppage occurred from a labor dispute other than a lockout so as to negate unemployment eligibility.

{¶ 25} We stated in *Baker* in relevant part,

To ascertain whether a work stoppage has resulted from a strike or lockout, it is necessary to determine 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. *Baker*, 6th Dist. Lucas No. L-01-1503, 2002-Ohio-3154, at ¶ 12, quoting *Bays v. Shenango Co.*, 53 Ohio St.3d 132, 135, 559 N.E.2d 740 (1990).

{¶ 26} In conjunction with this, in *Baker* we likewise affirmed the corollary test that the determination of whether a work stoppage resulted from a lockout or a labor dispute other than a lockout in cases in which negotiations had ceased and where an impasse existed between the parties at the time that the work stoppage commenced is conducted pursuant to the reasonableness test.

{¶ 27} We stated in relevant part,

The Commission, however, did not apply the *Bays* status-quo test to the facts in this case. Because it found that “contract negotiations were not continuing at the time the work stoppage began,” the Commission applied the analysis set forth in *Zanesville Rapid Transit, Inc. v. Bailey*, 168 Ohio St. 351, 155 N.E.2d 202 (1958) to determine whether the employees were unemployed as a result of a lockout. In so doing, the Commission

considered whether the changes in the terms of employment were such that “the employees would be expected in reason to accept them rather than quit work or whether the conditions of further employment were such that the employees could not reasonably be expected to accept them.” *Id.* at ¶ 15.

{¶ 28} In applying these controlling principles to scenarios in which an agreement has expired, a work stoppage has occurred, and unemployment benefits are sought, to the instant case, the record reflects that at the time of the work stoppage the contract and all extensions had expired and negotiations were ongoing.

{¶ 29} Accordingly, pursuant to *Baker*, we must employ the *Bays* status-quo analysis in order to ascertain the propriety of the underlying UCRC decision which found that the member claimants were involved in a work stoppage due to a labor dispute other than a lockout and, therefore, disqualified from unemployment compensation benefits.

{¶ 30} There is uncontroverted evidence in the record reflecting that in January 2012, the contract and all extensions had expired and that negotiations between the parties towards a successor agreement were ongoing. The record does not reflect an impasse. The record likewise reflects that in January 2012, the Red Cross implemented the previously proposed and rejected modified provisions of health insurance coverage applicable to claimants. The record reflects that under the terms of the expired agreement, and therefore the applicable status quo prior to a successor agreement, the member claimants had available health insurance coverage with an EPO plan that encompassed no deductible. The majority of member claimants selected that coverage

option. The record shows that a PPO plan was also available to member claimants with a \$500 deductible for individuals and a \$1,000 deductible for families.

{¶ 31} Conversely, the record reflects that in 2012, following a two-year period in which the contract had expired but in which these existing status quo health coverage options were maintained, Red Cross implemented modified terms of health insurance coverage applicable to the member claimants in which the prevailing EPO option was eliminated, the deductibles for remaining PPO options were increased, and new HDHP high deductible plan options were introduced.

{¶ 32} While it may be suggested that because the agreement had expired it arguably operated in some way so as to enable the Red Cross to implement modified terms of health insurance coverage outside of ongoing negotiations for a successor agreement, such arguments are unpersuasive and fail to properly consider the impact of the *Bays* status-quo test upon such actions.

{¶ 33} We find ample evidence in the record demonstrating that the work stoppage at issue occurred at a time when the contract was expired and negotiations were ongoing and that the Red Cross was the first party to deviate from the status quo. The Red Cross deviated from the status quo by implementing modified provisions of health insurance coverage in 2012 that eliminated existing options and introduced new, costlier options.

{¶ 34} In doing this outside of the parameters of the expired agreement and independent of ongoing negotiations for a successor agreement, Red Cross breached the status quo. As such, the manifest weight of the evidence establishes that the underlying

work stoppage did not result from a labor dispute other than a lockout so as to disqualify the member claimants from unemployment compensation benefits. Wherefore, we find appellant's first and second assignments of error, both asserting that the trial court erred in reversing the UCRC ruling finding claimants ineligible for unemployment compensation benefits, not well-taken.

{¶ 35} In appellant's third assignment of error, appellant summarily contends that the matter must be remanded to the UCRC to engage in "fuller elucidation of the facts" prefaced upon appellant's claim that, "the Court of Common Pleas appears to take issue with the fact that the hearing officer expressly declined to make factual findings," in connection to claimed similarities, or lack thereof, between the terms of the status quo health insurance coverage provisions of the expired agreement and the terms of the modified imposed health insurance coverage provisions introduced despite no successor agreement. We are not persuaded.

{¶ 36} On the contrary, it cannot be determined whether or not the status quo has been maintained without first determining whether or not a deviation from that status quo has occurred. We find that the trial court did not err in its determination that the UCRC ruling was against the manifest weight of the evidence as a result of its conclusion from ample facts that the manifest weight of the evidence demonstrated that the status quo was not maintained by Red Cross after expiration of the agreement and while negotiations towards a successor agreement continued prior to Red Cross's implementation of

modified provisions of health insurance coverage not part of a successor agreement.

Wherefore, we find appellant's third assignment of error not well-taken.

{¶ 37} On consideration whereof and based upon the foregoing, the judgment of the Lucas County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

Stephen A. Yarbrough, J.,
DISSENTS.

YARBROUGH, P.J., dissenting.

{¶ 38} I respectfully dissent.

{¶ 39} As it relates to health insurance coverage, the expired agreement between the parties provided:

The Employer shall maintain the existing or substantially similar coverage for all full-time and regular part-time employees. **Effective**

January 1, 2007 the Employer will provide the same health insurance for employees and their dependents, under the same conditions, for as long and with the same contributions as for non-bargaining unit employees. It is recognized and understood that the Region may change health insurance providers during the life of the Agreement, provided the major components are offered by the new carrier. The parties recognize that deductibles, co-pays, cost coverages, etc may change if a new carrier is selected, but this shall not be construed as a violation of this Agreement. (Emphasis sic.)

{¶ 40} In accordance with continued adherence to this bargained-for provision, thereby maintaining the status quo, Red Cross was permitted to make changes to the health insurance coverage options so long as the coverage is “substantially similar.” Whether the coverage options that were implemented on January 1, 2012, are substantially similar to the preexisting coverage options is a question of fact.

{¶ 41} Here, the hearing officer expressly declined to make this factual determination: “The 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.”

{¶ 42} In contrast, the trial court made such a finding on review, and based its decision on that finding: “This Court finds * * * that the employer’s new health care coverage was a substantial deviation from that under the expired agreement.

Consequently, the employer's unilateral implementation of the new coverage constituted a lockout so the employer was the first to break the status quo."

{¶ 43} However, the Ohio Supreme Court has held, "[A] reviewing court may not make *factual findings* or determine a witness's credibility and must affirm the commission's finding if some competent, credible evidence in the record supports it." (Emphasis added.) *Williams v. Ohio Dept. of Job and Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20. Because the trial court exceeded the scope of its review when it made the factual determination that the two sets of coverage were substantially different, I would find appellant's third assignment of error well-taken. Further, I would remand the matter to the hearing officer to make a determination whether the January 1, 2012 changes to the healthcare plans resulted in coverage that was substantially similar to the coverage offered in prior years.