



JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION  
DECISION ON LABOR DISPUTE ISSUE



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DAIDO METAL BELLEFONTAINE LLC 1215 GREENWOOD ST BELLEFONTAINE, OH 43311  1400571006	Date Issued 08/17/2007
	Determination Identification Number 214629507-1
	ODJFS Office  Bureau of UC Program Services
Employer's Name DAIDO METAL BELLEFONTAINE LLC	UC Account Number 1400571006

**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:	<b>United Auto Workers Local 1224</b>	Employer:	<b>DAIDO METAL BELLEFONTAINE LLC</b>
Docket No:	<b>000000000700021</b>	Hearing Officer:	<b>Jim Bubutiev</b>
Date of Hearing:	<b>08/07/2007</b>	Date of Issuance:	<b>08/17/2007</b>

**Appearances**

Frederick G. Cloppert, Jr., and Kristin Seifert Watson, Attorneys At Law, represented Local 1224. Kenneth M. Clem, Bargaining Committee Chairperson, Konrad Young, International Representative, and Josh Titus, Bargaining Committee Person, were witnesses for Local 1224.

Ronald L. Mason, and David S. Timms, Attorneys At Law, represented Daido Metal. JoAnn Daum, Human Resources Manager, was a witness for Daido Metal.

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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 Ohio Department of Job and Family Services has received, to date, approximately 123 claims for unemployment benefits that relate to a labor dispute between Local 1224 and Daido Metal.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on August 7, 2007, in Springfield, Ohio.

**FINDINGS OF FACT:**

The claimants in this matter are members of Local 1224 and were employed by Daido Metal in Bellefontaine, Ohio.

Daido Metal is a manufacturer and supplier of bearings to the automobile industry. The Daido Metal location in Bellefontaine, Ohio is the only location involved in this matter (Transcript Pages 34-35,114,211).

Daido Metal employed about 220 individuals. Approximately 173 to 180 of them are also members of Local 1224 (Transcript Pages 35-36,77-78,114-115).

Local 1224 had a collective bargaining labor agreement with Daido Metal that was effective from November 5, 2005, through June 29, 2007 (Transcript Pages 13,24-25,81,116,139-140/UnionExhibit B).

On or about April 19, 2007, prior to the onset of negotiations with Daido Metal, the members of Local 1224 voted to authorize a work stoppage. Daido Metal was notified of the authorization. (Transcript Pages 100-102,119,142-143).

During the course of negotiations Local 1224 offered an extension of the expiring collective bargaining labor agreement on a day to day basis which was rejected by Daido Metal. Daido Metal offered to allow the members of Local 1224 to continue working with the same pay and benefits as if the collective bargaining labor agreement were still in effect, and all other terms and conditions of employment under the expired collective bargaining labor agreement allowable under federal labor law, which was rejected by Local 1224. Local 1224 asserts the Daido Metal offer was rejected because they did not know what the terms and conditions of employment would be after the collective bargaining labor agreement expired (Transcript Pages 13-15,38-39,48-52,63-67,69-73,76,81,102-103,124-129,144-148,151,153-154,156-160,166-167,169-170,173-177,188-189,203-208/EmployerExhibits 1,5/Union Exhibits A,C,D).

Approximately eleven (11) negotiation sessions have been held between Local 1224 and Daido Metal beginning in May of 2007, through August 6, 2007. Seven (7) of the negotiation sessions were held prior to the expiration of the collective bargaining labor agreement and four (4) more have been held since the expiration of the collective bargaining labor agreement (Transcript Pages 25,28-29,31-34,68-69,85-86,88-91,95-97,116-117,121-122,143-144,151-152/EmployerExhibit 1/Union Exhibit D).

Daido Metal is seeking concessions in a new collective bargaining labor agreement with Local 1224 in such areas as wages, health care coverage insurance, the pension plan, work rules, and contract language.

Daido Metal is seeking concessions because of losses of approximately nineteen (19) million dollars in 2006, projected losses of approximately fifteen (15) million dollars in 2007, and projected losses of approximately forty five (45) million dollars over the three (3) year period from 2007 through 2009. Local 1224 does not dispute that Daido Metal lost money in 2006 or the projected losses in 2007 through 2009 although Local 1224 is unsure about the accuracy of the actual loss figures (Transcript Pages 33-34,148-150,162-165,168,177-179,184-188,210-211/UnionExhibit C).

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The main issues between the parties include contract language, seniority rights, job bidding, layoff and shift preference, paid holidays, vacation time, attendance bonuses, wages, health insurance, productivity, elimination of breaks, the pension plan, sickness and accident, and overtime (Transcript Pages 29,118,123).

On June 30, 2007, the members of Local 1224 worked for a day after the collective bargaining labor agreement expired. They received the same pay and benefits as they had received under the collective bargaining labor agreement. On July 1, 2007, the members of Local 1224 voted to begin a work stoppage the following day and so notified Daido Metal. On July 2, 2007, Local 1224 began a work stoppage and started picketing at the Daido Metal location in Bellefontaine, Ohio (Transcript Pages 24,29-31,44-45,83,100-102,121,127-128).

Daido Metal has continued operating since the work stoppage began using various types of employees. Ten (10) members of Local 1224 either did not participate in the work stoppage or have crossed the picket line to work for Daido Metal. Between twenty (20) and thirty (30) individuals hired as probationary employees before the labor dispute began between the parties work for Daido Metal. Fifteen (15) permanent replacement workers have been hired by Daido Metal. The members of Local 1224 were notified in writing on July 11, 2007, that Daido Metal had hired some permanent replacements. Additionally, Daido Metal plans to hire more permanent replacements workers. Daido Metal asserts that all these various types of aforementioned employees are receiving the same pay and benefits as under the expired collective bargaining labor agreement (Transcript Pages 15-16,36-44,52-54,129-134,136,166/Employer Exhibits 1,5/Union Exhibit A).

Some members of Local 1224 have voluntarily resigned from Daido Metal (Transcript Pages 17-24/Employer Exhibits 2,3,4).

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 Daido Metal ?
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. . .

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REASONING:

Section 4141.29(D)(1)(a) of the Ohio Revised Code provides that no individual may be paid 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 were found to be a lockout.

The key issue to be resolved is whether the reason for the claimants' unemployment from Daido Metal 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 *Baugh v. United Telephone Co.*, (1978), 54 Ohio St. 2d 419, the employer notified the striking employees, in writing, that they had been permanently replaced. The Ohio Supreme Court held that when the employer terminates the employer-employee relationship by replacing a striking employee, the employer has thereby removed the labor dispute as the proximate cause of unemployment. The Court stated that the employer's action of permanent replacement prevented any volition on the part of the workers to return to work and since it severed the labor dispute as the cause of the unemployment, the statutory disqualification provision of section 4141.29 of the Ohio Revised Code did not apply and was not a bar to the appellants' right to receive unemployment compensation benefits.

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.

Furthermore, the recently decided Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discusses the *Baugh* and *Bays* cases.

In this matter, the evidence and testimony indicate the members of Local 1224 became unemployed when they began a work stoppage on July 2, 2007.

A review of the totality of the evidence and testimony indicates

that Daido Metal would have allowed the members of Local 1224 to continue



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working under the essential terms and conditions of the expired agreement while negotiations continue with the exception of the union dues check-off provision (see pages 4-5/Article 4 Dues Collection of Union Exhibit B) and the no strike provision (see pages 6-7/Article 6 No Strike No Lockout of Union Exhibit B). Neither of these exceptions unreasonably harm the members of Local 1224. This Hearing Officer finds the forthright testimony of the employer's witness to be highly credible regarding what would occur if issues regarding the terms and conditions of employment arose that were unclear between the parties (see page 38 of the transcript). It was not reasonable for Local 1224 to conduct a work stoppage under these circumstances and especially in light of the fact that concessionary negotiations are being conducted with Daido Metal because of losses in 2006 and projected losses in 2007 through 2009.

Therefore, by applying the holding from the Zanesville decision as cited in the Bays decision, this Hearing Officer finds, based upon the testimony and evidence, that it was Local 1224 that directly caused the unemployment of the claimants, while negotiations were ongoing, when the decision was made via a vote on July 1, 2007, to conduct a work stoppage beginning on July 2, 2007.

Also, under the Baugh decision as reaffirmed in the M. Conley Co. decision, the totality of the testimony and evidence indicates that Daido Metal ended the employer-employee relationship with the members of Local 1224 by hiring fifteen (15) permanent replacements, and notifying the members of Local 1224 in writing on July 11, 2007, and thereby severed the labor dispute as the proximate cause of unemployment (see the final paragraph on page 2 of Employer Exhibit 1).

In addition, Daido Metal referenced the possibility of permanent replacements and the consequences of what would occur if permanent replacements were hired in two (2) letters sent to members of Local 1224 prior to the beginning of the work stoppage (See Employer Exhibit 5 and Union Exhibit A).

Furthermore, the employer's witness again provided forthright and highly credible testimony regarding the displacement of members of Local 1224 because of the fact that permanent replacements have been hired and of the prospective hiring of more permanent replacements (see pages 41-43 of the transcript).

The assertion that Daido Metal has not permanently replaced any specific member of Local 1224 is unpersuasive. Permanent replacement is a term that has clear and unambiguous meaning. The decision by Daido Metal to hire permanent replacements coupled with notice to the members of Local 1224 has definitive legal consequences under Ohio Unemployment Law as evidenced by the Ohio Supreme Court decisions in Baugh and M. Conley Co.

Consequently, it is the conclusion of this Hearing Officer that the claimants in this matter were unemployed due to a labor dispute other than a lockout which began July 2, 2007, and ended July 11, 2007, when Daido Metal notified the members of Local 1224 that the hiring of permanent replacements had begun.

**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

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lockout at Daido Metal which began July 2, 2007. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the week that includes July 2, 2007, 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 Local 1224 and Daido Metal began July 2, 2007, and ended on July 11, 2007, when Daido Metal began hiring permanent replacement workers.

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**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 **08/17/2007**.

The twenty-one day appeal period ends on **09/07/2007**.

