OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

OFFICE OF UNEMPLOYMENT COMPENSATION

DECISION ON LABOR DISPUTE ISSUE

JFS-83000 03/13/2009

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A. SCHULMAN INC. 3550 W MARKET ST FAIRLAWN, OH 44333 0013674003	Date Issued 01/14/2010 Determination Identification Number 219723213-1 ODJFS Office Bureau of UC Program Services
Employer's Name A. SCHULMAN INC.	UC Account Number 0013674003

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:	**IAM District Lodge 54**	Employer:	**A. SCHULMAN INC.**
Docket No:	**000000000900007**	Hearing Officer:	**Laura Miller**
Date of Hearing:	**01/05/2010**	Date of Issuance:	**01/14/2010**

APPEARANCES

Andrew Campbell, Assistant Directing Business Representative, was a witness for and represented the International Association of Machinists and Aerospace Workers (IAMAW) Local Lodge 2159.

Timothy Wood, Attorney At Law, represented A. Schulman, Inc. (A. SCHULMAN). Gary Woodruff, Director of Operations North America, was a witness for A. SCHULMAN.

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 56 unemployment compensation benefits claims that relate to a labor dispute between IAMAW Local Lodge 2159 and A. SCHULMAN.

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All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on January 5, 2010, in Mansfield, Ohio.

FINDINGS OF FACT

A. SCHULMAN is a supplier of plastic compounds and primarily serves the automotive industry. The labor dispute between IAMAW Local Lodge 2159 and A. SCHULMAN involved only the Huron county location in Bellevue, Ohio. A. SCHULMAN employs approximately 92 individuals and about 68 of them are also members of IAMAW Local Lodge 2159. The normal weekly work schedule for the members of IAMAW Local Lodge 2159 is 40 hours per week Monday through Friday, working three shifts, and operating 24 hours a day (Transcript Pages 15-17).

There was a three (3) year collective bargaining labor agreement between IAMAW Local Lodge 2159 and A. SCHULMAN effective through December 6, 2009. Negotiation sessions for a new collective bargaining labor agreement began in October of 2009 concerning non-economic matters, and beginning in late November of 2009 concerning economic matters. The parties did not agree to any extensions of the collective bargaining labor agreement after the December 6, 2009 expiration date (Transcript Pages 17-20,53-58,61-72/EmployerExhibits A-D/Union Exhibits 1-4).

On December 4, 2008, after A. SCHULMAN presented a final offer, IAMAW Local Lodge 2159 requested that the employer consider allowing IAMAW members to continue working under the terms and conditions of the soon to expire collective bargaining labor agreement. A. SCHULMAN denied the request and indicated a desire to wait until after the IAMAW members voted on the final offer on December 6, 2009 (Transcript Pages 21-23,53-56,86-88/EmployerExhibits A-B).

On December 6, 2009, IAMAW Local Lodge 2159 voted to reject the final offer and, in a separate vote, authorized a strike to commence on December 7, 2009. A. SCHULMAN was notified about the results of both votes. A. SCHULMAN then offered a one week extension of all the terms and conditions of the soon to expire collective bargaining labor agreement and to continue to negotiate on a new agreement. IAMAW Local Lodge 2159 indicated the one week extension offer would only be accepted if the employer removed a seven day work week proposal from the negotiations of a new agreement. A. SCHULMAN refused to agree to remove the proposal from negotiations of a new agreement. Further negotiations were held on December 17, 2009, and December 23, 2009, and a new agreement was reached after the members of IAMAW Local Lodge 2159 voted to ratify it (Transcript Pages 24-27,41-43,58-63,73-76,79-80,86-97/EmployerExhibits E,H-I).

Although a new collective bargaining labor agreement was reached on December 23, 2009, the members of IAMAW Local Lodge 2159 did not return to work until January 4, 2010, because, historically, the employer shuts down for the Christmas and New Year s day holiday season (Transcript Pages 44,60-63,95-96/EmployerExhibits H-I).

The main issues between the parties included a proposed seven day work week, the verbiage of the new healthcare benefits package, the administration of the pension plan, and language concerning work cell concepts. However, the proposed seven day work week was the major item of contention Transcript Pages 28-30,47,89-90).

A work stoppage began on December 7, 2009, and ended on December 23, 2009 when a new collective bargaining labor agreement was agreed to. Picket lines were set up on December 7, 2009, and continued until December 23, 2009. No members of IAMAW crossed the picket line during the work stoppage (Transcript Pages 32-33,39-40,59-61/EmployerExhibits F-H).

A. SCHULMAN continued to operate during the work stoppage with the remaining 24 nonunion salaried employees and up to another 12 nonunion salaried employees were brought in from other locations. A. SCHULMAN did not hire any replacement workers during the work stoppage (Transcript Pages 37-39).

ISSUES

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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 A. SCHULMAN?

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.

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 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 A. SCHULMAN 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 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.

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The testimony and evidence in this case indicate the claimants became unemployed when they began a work stoppage and started picketing on December 7, 2009.

The testimony and evidence clearly establish that A. SCHULMAN did not withhold work from the members of IAMAW Local Lodge 2159 in an effort to obtain more desirable terms in a new collective bargaining labor agreement.

In fact, A. SCHULMAN was willing to allow the members of IAMAW Local Lodge 2159 to continue working for another week, under the terms and conditions of employment of the collective bargaining agreement that expired on December 6, 2009, while negotiations continued on a new agreement. However, IAMAW Local Lodge 2159 would not accept the employer s offer to maintain the status quo unless the seven day work week proposal was removed from the further negotiations of a new agreement. The placing of such a condition by IAMAW Local Lodge 2159 was not an attempt to maintain the status quo.

While IAMAW Local Lodge 2159 did make an offer to maintain the status quo on December 4, 2009, which the employer rejected at that time, the key to the status quo test is to look at the actions of the parties in the final moments before a work stoppage actually begins.

Using the Bays case standard, this Hearing Officer finds, based upon a review of all the testimony and evidence, that the members of IAMAW Local Lodge 2159 were the first to change the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage and to picket starting on December 7, 2009. The conduct and actions of A. SCHULMAN on December 6, 2009, indicated a willingness to maintain the status quo for a reasonable time while negotiations continued.

Therefore, the members of IAMAW Local Lodge 2159 were unemployed due to a labor dispute other than a lockout that began December 7, 2009, and which ended on December 23, 2009, when a new agreement was finally reached.

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 December 7, 2009. The claimants are disqualified from receiving unemployment compensation benefits for the week which includes December 7, 2009, and through the week which includes December 23, 2009, when the labor dispute ended pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

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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. **If unemployed,** claimants should continue to file weeky claims for benefits while under appeal.

This decision was mailed on **01/14/2010**.

The twenty-one day appeal period ends on **02/04/2010**.

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.