

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
P.O. Box 182830
Columbus, Ohio 43218-2830
(614)752-8418

In The Matter Of A Labor Dispute
Between:

	:	Docket No. LD-001-006
	:	
Teamsters Local	:	
Union No. 661	:	
(Local 661)	:	
	:	
Union / Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
Degussa Corporation	:	Date of Hearing:
Creanova, Inc., Division	:	November 7, 2001
(Degussa)	:	
	:	
Employer	:	Date of Issuance:
	:	November 16, 2001

Appearances

Michael G. Land, Secretary-Treasurer and Business Agent, represented and was a witness for Local 661.

Degussa, although properly notified, was not represented and did not appear at this hearing.

This matter was heard by Jim Bubutiev, Hearing Officer for the Director of the Ohio Department of Job and Family Services, pursuant to Section 4141.281 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 4141.281 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.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on November 7, 2001, at the Government Services Building in Hamilton, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 661 and are employed by Degussa.

Degussa has a work facility located in Lockland, Ohio. (Transcript Page 11).

Degussa employs approximately 45 to 47 individuals who are also members of Local 661 (Transcript Pages 11,13).

Local 661 had a collective bargaining labor agreement with Degussa that was effective from October 15, 1998, through October 10, 2001. There was no extension made to the agreement by the parties (Transcript Pages 15,17 / Union Exhibit A).

There were nine (9) bargaining sessions held prior to the expiration of the then existing collective bargaining labor agreement, from August 24, 2001, through October 9, 2001 (Transcript Page 16).

An initial tentative agreement was reached between Degussa and Local 661's negotiating committee on September 27, 2001, but the members of Local 661 rejected it by a vote of 25 to twelve. The vote was taken on September 28, 2001 (Transcript Pages 18-20 / Union Exhibit B).

A second tentative agreement was reached on October 9, 2001, but it also was rejected by the members of Local 661 by a vote of 33 to three. The vote was taken on October 9, 2001, and it also represented a vote to begin a work stoppage after the then existing collective bargaining labor agreement expired (Transcript Pages 19-21 / Union Exhibit C).

The main issues between the parties concerned a twelve (12) hour workday schedule and "premium pay" for Sunday work (Transcript Pages 29-31).

Local 661 interpreted the verbal comments made by Degussa's Human Resources Director and Plant Manager, at the October 9, 2001, bargaining session, to mean that Degussa was taking a bargaining stance of "no new contract then no work" regarding Local 661 members (Transcript Pages 17-18,21-22,25-27).

On October 11, 2001, the members of Local 661 began a work stoppage and set up a picket line at Degussa (Transcript Pages 15-16,22).

Degussa continued operating after the work stoppage began using non-union management employees. Degussa did not hire any replacement workers (Transcript Page 22).

On October 14, 2001, Local 661 offered, in writing, to unconditionally return to work beginning October 15, 2001. The parties had, at that point, agreed to an October 18, 2001, bargaining session with a federal mediator (Transcript Pages 23-25 / Union Exhibits D & E).

On October 15, 2001, Degussa explained, in writing, that a final decision concerning Local 661's unconditional offer to return to work would be made "when business conditions permit" and pending the results of the October 18, 2001, bargaining session (Union Exhibit F).

There was one bargaining session held, with the involvement of a federal mediator, after the then existing collective bargaining labor agreement had expired. The bargaining session was held on October 18, 2001, and a tentative agreement was reached. The members of Local 661 voted 34 to five to accept it. The vote to accept was taken on October 19, 2001 (Transcript Pages 28-29 / Union Exhibit G).

The members of Local 661 stopped picketing at Degussa's work facility on October 19, 2001, after the vote to accept had taken place (Transcript pages 31-32).

The members of Local 661 returned to work beginning on October 22, 2001 (Transcript Page 31).

The new collective bargaining labor agreement between the parties is effective to 12:01 a.m., October 10, 2006 (Union Exhibit G).

ISSUES:

Pursuant to Section 4141.281 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 can be stated thus:

1. What is the reason for the claimants' unemployment from Degussa?
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 first issue to be resolved is whether the reason for the claimants' unemployment from Degussa 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.

The evidence and testimony indicate the members of Local 661 became unemployed when, after voting for a work stoppage on October 9, 2001, they chose not to continue working once the then existing collective bargaining labor agreement expired. Instead, the claimants, set up a picket line at the work site beginning October 11, 2001, and, thereby, started a labor dispute other than a lockout.

Using the *Bays* standard, this Hearing Officer finds, based upon the testimony and evidence, that it was Local 661 that first changed the status quo, while negotiations were ongoing, when members of Local 661 decided to take the action of picketing at Degussa instead of reporting to work beginning on October 11, 2001.

However, once Local 661 offered, on October 14, 2001, to unconditionally return to work beginning October 15, 2001, they ended the labor dispute other than a lockout. Degussa's decision not to accept Local 661's offer to return to work converted the labor dispute into a lockout until a new agreement was reached and the members of Local 661 returned to work beginning October 22, 2001.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a labor dispute other than a lockout which began October 11, 2001, and ended when the members of Local 661 offered to return to work on October 14, 2001. A lockout then began on October 14, 2001, until a new agreement was ultimately agreed upon between the parties on October 19, 2001, and the members of Local 661 returned to work starting October 22, 2001.

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 at

Degussa from October 11, 2001, through October 13, 2001. The claimants are disqualified from receiving unemployment compensation benefits for the week of October 7, 2001, 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 between Local 661 and Degussa turned into a lockout beginning the week of October 14, 2001, when Degussa did not accept Local 661's unconditional offer to return to work. Therefore, all of the claimants herein became unemployed due to a lockout at Degussa and are not disqualified from eligibility for unemployment compensation benefits due to a labor dispute for the week of October 14, 2001.

The lockout which resulted in the unemployment of the claimants ended when the claimants returned to work on October 22, 2001.

* * * * *

This decision applies to 29 named claimants

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If you disagree with this decision then 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, 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 16, 2001.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS DECEMBER 7, 2001.

Jim Bubutiev
Hearing Officer