JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

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HUNTER CONSULTING CO PO BOX 54865 CINCINNATI, OH 45254-0865 0746226000	Date Issued 12/13/2007 Determination Identification Number 214967198-1 ODJFS Office Bureau of UC Program Services
Employer's Name DOVER RESOURCES INC. FUELING COMPONENTS DIV.	UC Account Number 0746226000

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
PO Box 182830
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Web Page: http://jfs.ohio.gov/labordisputes

In The Matter Of A Labor Dispute Between

Union:	**G,M,P & P Allied Workers Local 45B**	Employer:	**DOVER RESOURCES INC. FUELING COMPONENTS DIV.**
Docket No:	**000000000700027**	Hearing Officer:	**Jim Bubutiev**
Date of Hearing:	**12/03/2007**	Date of Issuance:	**12/13/2007**

Appearances:

Raymond Mann represented Local 45B. Donald H. Seal, an Executive Officer of the Union, and James T. Miller, Shop Chairman for Local 45B, were witnesses for Local 45B.

Michael W. Hawkins and Charles S. Crase, Attorneys At Law, represented OPW. Thomas P. Ciepichal, Vice President of Operations, was a witness for OPW.

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 92 claims for unemployment benefits that relate to a labor dispute between Local 45B and OPW.

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

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on December 3, 2007, in Springdale, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 45B and were employed by OPW in a facility at 9393 Princeton Glendale Road in Butler County, Ohio (Transcript Pages 14-17).

OPW is a subsidiary of Dover Resources, Inc., and is a manufacturer of products for the commercial and retail petroleum equipment industry. The OPW facility at 9393 Princeton Glendale Road in Butler County, Ohio is the only location involved in this matter (Transcript Pages 14-17).

OPW employed about 280 individuals. Approximately 180 of them are also members of Local 45B (Transcript Pages 17-18).

Local 45B had a five (5) year collective bargaining labor agreement with OPW that expired at midnight September 15, 2007. The parties agreed to an extension of the expiring collective bargaining labor agreement, for one day through 6:00 p.m. September 16, 2007, to allow for the members of Local 45B to have an opportunity to vote on a new agreement proposal (Transcript Pages 19-20,59,100-101,111-112).

Negotiation sessions have taken place between Local 45B and OPW starting in August of 2007 through November 30, 2007, and negotiations are continuing and ongoing. Nine sessions took place through September 16, 2007, and eight more sessions took place after September 16, 2007, as of the date of this hearing (Transcript Pages 21-23,62-63,76-77,86,99-100,119).

During negotiations in early August of 2007 Local 45B verbally offered to have the soon to expire agreement simply be extended for one (1) year. This offer was rejected by OPW within a few days and no further discussion regarding a formalized extension of any sort was discussed between the parties again (Transcript Pages 20-21,30-33,67,112-113,136).

The main issues between the parties are monetary and economic in nature. Specifically, as it relates to overtime and a possible 3 days a week 12 hours a day work week (Transcript Pages 23-24,104-105,107-108,122-123/EmployerExhibit 5).

On or about September 16, 2007, the members of Local 45B, by a wide margin, voted to reject an OPW proposal for a new agreement and began a work stoppage effective at midnight. Local 45B began picketing into September 17, 2007, and has continued the work stoppage and picketing since then. OPW would have allowed the members of Local 45B to continue working under all the terms and conditions of the expired agreement while negotiations for a new agreement continue (Transcript Pages 24-30,33-34,46-47,59-61,73-74,110,133,147).

OPW has continued operating since the work stoppage began. Operations initially continued with salaried personnel, employees from locations outside of Ohio, and temporary replacement workers. OPW transitioned to the hiring of permanent replacement workers approximately two (2) to four (4) weeks after the work stoppage began. OPW asserts permanent replacement workers have been hired to maintain business operations and to meet customer needs. OPW notified Local 45B, in writing, that the hired replacement workers had become permanent as of October 11, 2007. OPW asserts 5 to 10 permanent replacement workers were initially hired while Local 45B asserts that as of October 11, 2007, a total of 95 permanent replacement workers had been hired. It is undisputed by the parties that as of the date of this hearing that 144 to 145 permanent replacement workers had been hired by OPW. In addition 4 to 5 members of Local 45B have crossed the picket line, and returned to work under the terms and conditions of the expired agreement, beginning about the third week of the work stoppage (Transcript Pages 33-41,43-44,48-49,51-53,71-72,91-92,114-117,120-121,125-127,140-141/Employer Exhibits 1,2/Union Exhibit A).

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 central issues to address can be stated thus:

1. What is the reason for the claimants' unemployment

from OPW?

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 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 OPW 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.

Hi-State Beverage Co., v. Ohio Bureau of Employment Services (1991), 77 Ohio App. 3d 633, and Moriarity v. Elyria United Methodist Home (1993) 86 Ohio App. 3d 502, both distinguish the Baugh case.

However, in Hi-State and in Moriarity the unemployed workers were never informed by their employer that they had been permanently replaced.

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, last year the Ohio Supreme Court case of M. Conley Co. v. Anderson (2006) 108 Ohio St. 3d 252, favorably discussed the Baugh and Bays cases.

In this matter, the evidence, documentation, and testimony indicate the members of Local 45B became unemployed when they began a work stoppage on or about September 16, 2007, after voting to reject the OPW proposal for a new agreement.

There was no evidence, documentation, or testimony to indicate that

OPW would not have allowed the members of Local 45B to continue working

under the terms and conditions of the expired agreement after September

16, 2007, while negotiations continued.

Therefore, by applying the holding from the Zanesville decision and the status quo test from the Bays decision, this Hearing Officer finds, based upon the documentation, testimony and evidence, that it was Local 45B that first changed the status quo, while negotiations were ongoing, when the decision was made via a vote on or about September 16, 2007, to conduct a work stoppage beginning at midnight, and into September 17, 2007, and thereafter.

Also, under the Baugh decision as reaffirmed in the M. Conley Co. decision, the totality of the testimony, evidence and documentation, indicate that OPW ended the employer-employee relationship with the members of Local 45B by notifying them that they had been permanently replaced beginning October 11, 2007, and thereby severed the labor dispute as the proximate cause of unemployment (see Union Exhibit A).

While the facts in different cases are never identical, the facts in this case are considerably more consistent with Baugh and M. Conley Co., both of which are also Ohio Supreme Court cases, than they are with the facts in Hi-State and in Moriarity, both of which are not Ohio Supreme Court cases.

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In addition, while OPW maintains that work remains available for any member of Local 45B that returns, the record clearly shows that some 144 to 145 permanent replacement workers have already been hired. There were only approximately 180 members of Local 45B working for OPW when the labor dispute began. Therefore, the vast majority of them have, with clear certainty, been permanently replaced. Furthermore, when the witness for OPW was asked if there would be jobs for the members of Local 45B to return to, if the labor dispute were resolved between the parties, his response was essentially that he did not know and that it was something that remains to be negotiated.

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 September 16, 2007, and ended October 11, 2007, when OPW began the hiring of permanent replacement workers.

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 OPW which began September 16, 2007. The claimants are

disqualified from receiving unemployment compensation benefits due

to a labor dispute other than a lockout for the week that includes

September 16, 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 45B and OPW began September 16, 2007, and ended on October 11, 2007, when OPW 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 **12/13/2007**.

The twenty-one day appeal period ends on **01/03/2008**.

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