

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
Fifth Floor
Columbus, Ohio 43218-2830
Telephone: (614) 752-8418
Web Page: www.jfs.ohio.gov/labordisputes

In The Matter Of A Labor Dispute
Between:

	:	Docket No. LD-005-004
Glass, Molders, Pottery,	:	
Plastics & Allied Workers	:	
International Union	:	
Local Union 45B	:	
(Local 45B)	:	
	:	
Union / Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
Harrison Ironworks, LLC	:	Date of Hearing:
(Harrison)	:	June 20, 2005
	:	
	:	
Employer	:	Date of Issuance:
	:	June 30, 2005

Appearances

Donald Seal, Executive Officer of the Glass, Molders, Pottery, Plastics & Allied Workers International Union, represented and was a witness for Local 45B. Thomas Tenhundfeld, Local 45B Committee Member, and Billy North, Local 45B Chief Steward, were also witnesses for Local 45B.

Shawn Burton, Attorney At Law, and Michael Glassman, Attorney At Law, represented Harrison. Keith Adams, Human Resource Manager, was a witness for Harrison.

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, 117 claims for unemployment benefits that relate to a labor dispute between Local 45B and Harrison.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on June 20, 2005, in Springdale, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 45B and are employed by Harrison.

Harrison is a foundry, located in Harrison, Ohio, where molten steel is poured to create castings (Transcript Page 18).

Harrison employs about 180 individuals and approximately 157 of them are also members of Local 45B. (Transcript Pages 18-19,117,152).

Local 45B had a four (4) year collective bargaining labor agreement with Harrison that was effective through May 21, 2005. The parties did not agree to an extension of all the terms and conditions of the expiring collective bargaining labor agreement (Transcript Pages 20-21).

Eleven (11) formal negotiation sessions were held between Local 45B and Harrison, from May 9, 2005, through May 22, 2005, in an effort to reach a new collective bargaining labor agreement. Meetings were also held between the parties on June 6, 2005, which included a federal mediator, and on June 16, 2005. Local 45B asserts the meetings were

negotiation sessions. Harrison asserts the meetings were not negotiation sessions (Transcript Pages 21-23,35,118).

The issues between the parties centered mainly upon wages and benefits (Transcript Pages 21-22).

Harrison asserts that the business has been losing money on an annual basis during the last four years and that Local 45B was made aware of it at the onset of negotiations, and was provided written financial information on June 6, 2005, when the information was requested. Harrison asserts concessions would be needed from Local 45B in order to keep the business open and operating. Local 45B asserts that additional financial information is needed to determine Harrison's financial status. Local 45B asserts the financial information provided did not indicate that Harrison was in a severe financial situation (Transcript Pages 42-47,54-55,127-130,170-171/Employer's Exhibit 2).

Harrison asserts there were exploratory discussions regarding an extension of the terms and conditions of the expired collective bargaining labor agreement early in negotiations if a new agreement was close to being reached but, since the parties were so far apart in their negotiations, that an extension was never further discussed. Harrison asserts that Local 45B never made a formal extension offer during negotiations. Local 45B asserts that on May 20, 2005, after Harrison made a "last best offer", that Local 45B orally offered to extend the expiring collective bargaining labor agreement and Harrison responded by saying that was "unlikely" (Transcript Pages 64-65,92-96,102-103,118-121,142-150,159-161,176,182,185-187).

Harrison, while negotiating with Local 45B, calculated there would be \$400,000.00 in estimated contingency planning costs because Harrison believed Local 45B would conduct a work stoppage and damage property (Transcript Pages 66-71/Union Exhibit B).

On May 20, 2005, at noon, Harrison sent home workers that were members of Local 45B because Harrison was concerned that property would be damaged prior to the end of the work shift. Harrison did not allow any members of Local 45B to work that were scheduled for later shifts that day or on May 21, 2005. In fact, Harrison locked up the work facility for the remainder of the weekend, through May 22, 2005. Harrison took this action to avoid potential property damage. Harrison did not pay any members of Local 45B for scheduled work after they were sent home for the remainder of the weekend. Harrison did not contact law enforcement officials to express concern that property would be damaged and Harrison found no property damage at the work location. Local 45B asserts that Harrison's actions on May 20, 2005, constituted a lockout (Transcript Pages 69-70,72-75,79-82,84-85,100-101,124-127,158,177-179).

On May 21, 2005, Local 45B informed Harrison that the members of Local 45B had voted to reject Harrison's "last best offer" (Transcript Pages 28-30,36,122-124,152).

On May 22, 2005, Local 45B began picketing. One individual, a probationary employee that would have become a member of Local 45B after working a ninety-day probationary period, returned to work on May 23, 2005, and worked under the terms and conditions of the expired collective bargaining labor agreement that day. However, beginning May 24, 2005, and since then, that individual has been working under the terms and conditions of Harrison's "last best offer." On various dates between June 1, 2005, and June 20, 2005, another nine (9) individuals have returned to work under the terms and conditions of Harrison's "last best offer"(Transcript Pages 24,26-28,32-33,86-87/Employer's Exhibit 1,3/Union Exhibit D).

Harrison reopened for business on May 23, 2005, using management employees, temporary replacement workers from a third-party employment

agency, and individuals that crossed Local 45B's picket line and are working under Harrison's implemented "last best offer" (Transcript Pages 30-32,38-40,42,124-125,151-152,156-157/Employer's Exhibit 1/Union Exhibit A).

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 Harrison?
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:

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 is found to be a lockout.

The key issue to be resolved is whether the reason for the claimants' unemployment from Harrison 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 cessation of the furnishing of work to employees...."

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 this matter, the evidence and testimony indicate the members of Local 45B became unemployed when they were locked out by Harrison on May 20, 2005. Harrison physically closed the place of employment directly causing the claimant's unemployment.

Therefore, by applying the definition of a "lockout" from the *Zanesville* decision, this Hearing Officer finds that Harrison locked out the members of Local 45B beginning May 20, 2005.

Thus, it is the conclusion of this Hearing Officer that the claimants in this case are unemployed due to a lockout which began May 20, 2005.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout at Harrison which began May 20, 2005. The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout starting with the week which includes May 22, 2005.

* * * * *
THIS DECISION APPLIES TO THE INDIVIDUAL WHOSE NAME AND ADDRESS
APPEARS ON THE ENVELOPE CONTAINING THIS DECISION.
* * * * *

If you disagree with this decision then you may appeal it. The following paragraph provides a detailed explanation of your appeal rights:

APPLICATION FOR APPEAL MAY BE FILED BY ANY INTERESTED PARTY WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF MAILING OF THIS DECISION 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; 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 JUNE 30, 2005.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS JULY 21, 2005.

Jim Bubutiev

Hearing Officer