

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
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Columbus, Ohio 43218-2830
Telephone: (614) 752-8418
Web Page: www.state.oh.us/odjfs/labordisputes

In The Matter Of A Labor Dispute
Between:

	:	Docket No. LD-002-007
United Steelworkers of	:	
America Local 13983	:	
(Local 13983)	:	
	:	
Union / Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
LESCO, Inc.	:	Date of Hearing:
(LESCO)	:	November 8, 2002
	:	
	:	
Employer	:	Date of Issuance:
	:	November 18, 2002

Appearances

Timothy F. Cogan, Attorney at Law, represented Local 13983. James Leonard Brookins, President of Local 13983 and a Claimant, was a witness for Local 13983.

Robert C. Petrulis, Attorney at Law, represented LESCO. Christopher Allen Musser, Human Resources Manager, was a witness for LESCO.

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 the 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 125 claims for unemployment benefits that relate to a labor dispute between Local 13983 and LESCO.

All interested parties were notified of the hearing pursuant to Ohio law. This hearing was held on November 8, 2002, in St. Clairsville, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 13983 and are employed by LESCO (Transcript Pages 12-13,48).

LESCO produces sulfur-coated urea and packages fertilizer at two plants located in Martins Ferry, Ohio. (Transcript Page 11).

LESCO employs approximately 150 individuals at its facilities in Martins Ferry, Ohio and about 124 to 126 of them are also members of Local 13983 (Transcript Pages 12-13,48).

Local 13983 had a collective bargaining labor agreement with LESCO that was effective from October 1, 1997, through September 30, 2002 (Transcript Pages 14,50,54/Employer Exhibit 2).

At least fifteen face-to-face negotiation sessions were held between Local 13983 and LESCO in an effort to reach a new agreement. The negotiation sessions began August 14, 2002, and continued through October 10, 2002. In addition, one telephone conference call was held sometime between one and two weeks after October 10, 2002. A federal mediator became involved in the negotiation process beginning sometime between the last week of September and October 8, 2002 (Transcript Pages 17-19,42,44,50-52).

LESCO held the view that both parties were taking a "no new agreement then no work" bargaining stance (Transcript Pages 20-22/Employer Exhibit 1).

Local 13983 held the view that neither party was taking a "no new contract then no work" bargaining stance (Transcript Pages 54,58)

An initial extension of the exact terms and conditions of the expired agreement, along with an offer of some additional terms and conditions from a September 30, 2002, letter by Local 13983, occurred after September 30, 2002, through October 3, 2002 (Transcript Pages 14,16-17,29-32,36-37,55-58,62-63/Employer Exhibit 1).

A second extension of the exact terms and conditions of the expired agreement occurred after October 3, 2002, through October 10, 2002. It is unclear if the September 30, 2002, letter by Local 13983 was part of this second extension or not (Transcript Pages 14,16-17,29-30,55-57,60,62-63).

The primary issue between the parties concerned health care coverage (Transcript Pages 22,53).

The members of Local 13983 voted to reject one proposal for a new contract and, in another vote, voted not to take a vote to accept or reject a second proposal for a new contract. Both votes were taken during the first ten days of October of 2002 (Transcript Pages 24,34,55,61-62).

The members of Local 13983 did authorize a work stoppage in a vote taken prior to September 30, 2002, but Local 13983 never advised LESCO that they would actually conduct a work stoppage (Transcript Pages 25-26,37,56).

On October 11, 2002, LESCO informed Local 13983 that they would no longer be allowed to work, that they were being locked out, and a work stoppage began that day (Transcript Pages 17,20,38-39,40,58-59).

LESCO has continued operating since October 11, 2002, using non union employees, employees from other locations, and possibly temporary workers. However, no permanent replacement workers were hired and Local 13983 members have not been replaced (Transcript pages 26-27,53-54).

Local 13983 made various offers to continue working under the terms and conditions of the expired agreement that were rejected by LESCO prior to the work stoppage. The various offers were to extend the expired agreement for certain time periods and included an offer to have LESCO define what the extension time period would be (Transcript pages 37-38,42-43,45,57-59).

LESCO's "busy season" begins in January and lasts through June. LESCO's "slower season" begins in July and lasts through the end of December. (Transcript pages 32-34,41-42).

LESCO had a "strong desire" to get negotiations finished and avoid the possibility of a work stoppage during the "busy season." LESCO viewed a work stoppage during the "busy season" as being something that would be "catastrophic" to business operations (Transcript pages 34-36,41).

The department is aware, and this Hearing Officer takes official notice, that subsequent to this hearing the parties came to terms on a new agreement on November 14, 2002, and that members of Local 13983 began returning to work on November 17, 2002.

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 LESCO?
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 key issue to be resolved is whether the reason for the claimants' unemployment from LESCO was due to a lockout or a labor dispute other than a lockout.

In *Oriti v. Board of Review* (1983), 7 Ohio App. 3d 311, a collective bargaining contract between management and labor expired and the employees offered to continue working under the terms of the old contract while a new contract continued to be negotiated. The employer refused to allow the employees to continue working on this basis and a work stoppage began at the expiration of the old contract. The Court of Appeals held that where employees offer to continue working under the terms of a preexisting collective bargaining agreement, pending a final settlement of the labor dispute, then the failure of the employer to accept such an offer constitutes a lockout unless the employer demonstrates it had a compelling reason for failing to agree to such an extension of the contract. The compelling reason must be of a nature that to require the employer to agree to the extension would be unreasonable under the circumstances.

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.

The Supreme Court in *Bays, supra*, also provided the definition of a "lockout" as "a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get for the employer more desirable terms." *Id.* at 133.

In this matter, the evidence and testimony indicate the members of Local 13983 became unemployed when LESCO locked them out on October 11, 2002.

It is unclear, based upon the testimony and evidence, what the terms and conditions of employment were for the members of Local 13983 after the agreement expired September 30, 2002, through October 10, 2002.

Employer Exhibit 1 was an offer that LESCO never formally accepted or rejected. The last sentence of Employer Exhibit 1 states:

"Please provide me with your response to this proposal as soon as possible."

However, it is clear from the testimony of all the witnesses that Local 13983 made numerous verbal offers to extend the expired agreement for many different time periods for up to one year or even for an indefinite period of time. In fact, Local 13983 offered to have LESCO define the time period of the extension.

LESCO's ultimate response was to lockout the members of Local 13983 beginning October 11, 2002.

Applying the holding from the *Oriti* decision, this Hearing Officer finds that LESCO did not demonstrate it had a compelling reason for failing to agree to an extension for some mutually agreed upon reasonable

time period pending a final settlement. It was not reasonable to lockout the members of Local 13983 beginning October 11, 2002, when LESCO's "busy season" does not start until January of 2003. Furthermore, Local 13983 offered to agree to an extension through the "busy season" but LESCO refused to accept that or any extension offer.

The facts of this case are unique and, therefore, do not neatly fit into the factual precedent set forth in the *Bays* decision. However, the testimony demonstrates that LESCO caused the work stoppage when it locked out the members of Local 13983 starting October 11, 2002, rather than consenting to extend the expired agreement while negotiations continued.

Therefore, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon the testimony and evidence, that it was LESCO that first changed the status quo, while negotiations were ongoing, when the decision was made to lockout the members of Local 13983 on October 11, 2002.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a lockout which began October 11, 2002, and ended November 17, 2002, when members of Local 13983 began returning to work under a new agreement that was accepted by Local 13983 on November 14, 2002.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout at LESCO which began October 11, 2002. The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the week which includes October 11, 2002. It is also the decision of this

Hearing Officer that the lockout which resulted in the unemployment of the claimants ended when a new agreement was reached and they began returning to work on November 17, 2002.

* * * * *
THIS DECISION APPLIES TO 125 NAMED CLAIMANTS.
* * * * *

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 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 18, 2002.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS DECEMBER 9, 2002.

Jim Bubutiev
Hearing Officer