

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
UI SPECIAL PROGRAMS UNIT  
145 South Front Street  
P.O. Box 182830  
Columbus, Ohio 43218-2830  
(614)752-8418

In The Matter Of A Labor Dispute  
Between:

International Association	:	Docket No. LD-001-002
of Machinists and Aerospace	:	
Workers Local Lodge 1312	:	
(Local 1312)	:	
	:	
Union / Claimants	:	
	:	
and	:	Hearing Officer:
	:	Jim Bubutiev
	:	
	:	
Magnode Corporation	:	Date of Hearing:
(Magnode)	:	April 23, 2001
	:	
	:	
Employer	:	Date of Issuance:
	:	May 03, 2001

**Appearances**

David Brandenburg, Business Representative, represented Local 1312. Charles Long, Local 1312 President, and Eddie Simmons, Shop Chairman and Local 1312 Vice-President, were witnesses for Local 1312.

Thomas Swope, Attorney at Law, represented Magnode. Kathleen Gramke, Corporate Director of Human Resources, was a witness for Magnode.

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 unemployment of certain

individuals who have filed claims for unemployment compensation benefits. Section 4141.281 (A) 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 law. This hearing was held on April 23, 2001, in Hamilton, Ohio.

**FINDINGS OF FACT:**

The claimants in this matter are members of Local 1312 and were employed by Magnode in Trenton, Ohio.

Magnode is an aluminum extruder (Transcript Pages 10,90,119). The work site is a production facility located in Trenton, Ohio. Magnode also has two fabrication locations in Monroe, Ohio and Indianapolis, Indiana that receive the Trenton facility's product (Transcript Pages 44,45).

Magnode employs an estimated 350 individuals at all three locations, and approximately 156 at the Trenton location including about 86 members of Local 1312 (Transcript Pages 10-11,44,90,119).

Local 1312 had a collective bargaining labor agreement with Magnode that was effective from February 25, 1996 to February 25, 2001 (Transcript Pages 12-13,92-93,122-123 / Employer Exhibit A).

Magnode verbally suggested a possible one year extension of the then existing collective bargaining labor agreement on or about February 15, 2001, or in the alternative to continue working under that agreement once it did expire without any set extension time period. However, Local 1312 did not consider the verbal suggestions to be offers to extend the agreement and ,therefore, rejected the one year extension offer, and did not respond to the offer to extend

without any set extension time period (Transcript Pages 14,21-23,76-77,99-101).

A review of all the evidence and testimony of all the witnesses reveals it is possible, even likely, that Magnode made actual verbal offers to extend the then existing collective bargaining labor agreement. It is also reasonable for Local 1312 to have not considered the verbal suggestions by Magnode to be offers to extend the agreement.

There were a total of approximately ten (10) bargaining sessions to negotiate a new collective bargaining labor agreement, involving representatives of Local 1312 and Magnode, before the then existing collective bargaining labor agreement expired. The bargaining sessions began on or about December 18, 2000 and ended on or about February 22, 2001 (Transcript Pages 17-19,98-99). In addition, there were two (2) bargaining sessions between the parties, on March 21 and 28, 2001, that took place after the then existing collective bargaining labor agreement expired (Transcript Page 35).

The bargaining sessions did not lead to agreement on a new collective bargaining labor agreement.

The main issues between the parties in the twelve (12) negotiation sessions for a new collective bargaining labor agreement deal with health care coverage, pension contributions, sickness and accident benefits, wages, and various contract language (Transcript Pages 19-20,45-46,65-73,82-88,99,108-109,114-116,125-127).

Magnode's last offer prior to the expiration of the then existing collective bargaining labor agreement was rejected by the members of Local 1312 in a ratification vote taken on February 24, 2001. The

members of Local 1312 then also voted separately for a work stoppage to begin after the existing agreement expired. (Transcript Pages 24-26, 78-79,96-97,108,112,124). Previously, in December of 2000, the members of Local 1312 had voted for a work stoppage and sent it to the International Association of Machinists and Aerospace Workers for sanctioning (Transcript Page 113).

The members of Local 1312 set up a picket line and started continuously picketing in front of Magnode's Trenton facility beginning on or about February 26, 2001, after the then existing collective bargaining labor agreement expired. The picketing is continuing (Transcript Pages 15-16,39-43,93,97-98,106-107,124-125,149).

Magnode has continued operating since the prior collective bargaining labor agreement expired, first using mainly the remaining non-Local 1312 employees at the Trenton facility with a few temporary replacement workers, but then it began hiring permanent replacement workers on April 2, 2001. Magnode has hired some 30 to 40 permanent replacement workers as of April 23, 2001, along with an additional 8 to 10 temporary replacement workers and 4 workers who abandoned Local 1312's work stoppage. There are 8 to 10 employment positions still available as of April 23, 2001, from the approximately 86 formerly held by members of Local 1312 (Transcript Pages 23-24,28-30,32-38,43-44,58,80-82,98-99,102-104,107/ Exhibits B and C).

Magnode did not take a bargaining stance of **A**no new contract then no work@ regarding Local 1312 members (Transcript Pages 20,101).

Some members of Local 1312 have contacted Magnode to advise that they are either going to resign, retire, or take paid vacation time

for times prior to and after the work stoppage began (Transcript Pages 47-50,54-57 / Exhibits D,E, and F).

**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 Magnode?
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 Magnode was due to a lockout or a labor dispute other than a lockout.

The evidence indicates the claimants became unemployed when, following votes to not ratify Magnode's last offer and to begin a work stoppage on February 24, 2001, they chose not to continue working under the expired collective bargaining labor agreement with Magnode at the Trenton facility beginning on February 26, 2001. The claimants, in fact, set up a picket line at locations by the work site beginning February 26, 2001 and, thereby, started 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 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 10% wage reduction was reasonable under the circumstances and did not manifest a purpose on the part of the company to coerce the employees into accepting it and, therefore, was not a lockout.

In *Leach v. Republic Steel Corp.*, (1964), 176 Ohio St. 221, the Ohio Supreme Court stated that a work stoppage is an effort by employees to

obtain more desirable terms with respect to wages, working conditions, etc., while a "labor dispute" is broader in scope and also includes an employer-employee controversy concerning wages, working conditions or terms of employment.

The court found there was a labor dispute that led to a work stoppage. The work stoppage forced the employer to close its plants for a time period and the work stoppage caused the plant closings for that time period. The court ruled that in such a situation employees were not entitled to unemployment compensation benefits during any week that unemployment was due to the labor dispute.

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 *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 the instant case the evidence and testimony, when looked at in total, lead to only one reasonable conclusion. The members of Local 1312 rejected Magnode's last offer by a vote taken on February 24, 2001, then also voted to begin a work stoppage after the existing agreement expired on February 25, 2001.

In fact, they did begin picketing Magnode on February 26, 2001, and have continued to do so.

The testimony demonstrated that the main issues in controversy between the parties deal with health care coverage, pension contributions, sickness and accident benefits, wages, and various contract language. These kinds of issues clearly fall within the *Leach* definition of a "labor dispute".

The testimony also demonstrated that Local 1312 began picketing because it desired better terms from Magnode. Again, this clearly falls within the *Leach* definition of a work stoppage.

Local 1312 and Magnode were embroiled in a labor dispute that ultimately led to Local 1312 conducting a work stoppage in an effort to obtain the terms it desired from Magnode.

Using the *Bays* standard, this Hearing Officer finds, based upon the testimony and evidence, that Local 1312 first changed the status quo when members of Local 1312 decided, after voting on February 24, 2001, to form picket lines at Magnode instead of reporting to work beginning on February 26, 2001. Magnode's conduct did not indicate it was unwilling to maintain the status quo while negotiations continued.

While the facts in different cases are never exactly identical, the facts in this case are more consistent with *Baugh* than they are with the facts in *Hi-State* and in *Moriarity*.

The testimony and evidence indicate Magnode ended the employer-employee relationship with the members of Local 1312 by replacing them beginning April 2, 2001, and thereby severed the labor dispute as the proximate cause of unemployment.

Magnode notified Local 1312 that permanent replacements would be hired verbally on March 22, 2001, and in writing on March 28, 2001. Magnode did advertise for and then began hiring permanent replacements on April 2, 2001. Magnode has, in fact, already hired 30 to 40 individuals as permanent replacements and has in place 8 to 10 others as temporary replacements as of April 23, 2001. Magnode has been hiring replacement workers since at least February 26, 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 ended when Magnode made the decision to hire permanent replacement workers on April 2, 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 Magnode. The claimants are disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which February 26, 2001 occurs 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 1312 and Magnode began on February 26, 2001 and ended on April 2, 2001, when Magnode began hiring permanent replacements.

**\* \* \* This decision applies to 58 named claimants \* \* \***

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 S. FRONT STREET, P.O. BOX 182299, COLUMBUS, OHIO 43218-2299 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 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 ON MAY 3, 2001.**

---

Jim Bubutiev  
Hearing Officer