

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:

Glass, Molders, Pottery	:	Docket No. LD-001-001
Plastics & Allied Workers	:	
International Union	:	
AFL - CIO, CLC	:	
Local 27B	:	
(Local 27B)	:	
	:	
Union / Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
Malta Windows & Doors	:	Date of Hearing:
A Division of Philips	:	February 27, 2001
Products, Inc.	:	
(Malta)	:	
	:	Date of Issuance:
Employer	:	March 09, 2001
	:	

Appearances

Michael E. Alcock, Local 27B President, represented Local 27B. Gary Allen Smith, Sarah Jane Spencer, and Dennis William Durst, Local 27B Committee Members, were witnesses for Local 27B.

John Thomas Neighbours, Attorney at Law, licensed in Indiana, was a witness for and represented Malta. Joseph McPhilamy, Director of Human Resources, and Dennis K. Ruben, Plant Manager, were witnesses for Malta.

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 and as agreed upon in a written waiver signed by the interested parties. This hearing was held on February 27, 2001, in Zanesville, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 27B and were employed by Malta.

Malta produces wood windows and doors primarily for the residential market (Transcript Page 24). The work site is at Malta's plant located in Malta, Ohio.

Malta employed an estimated 250 individuals, and approximately 206 of them are members of Local 27B (Transcript Page 24).

Local 27B had a collective bargaining labor agreement with Malta that was effective from February 1, 1998, to January 31, 2001 (Employer Exhibit A).

Local 27B and Malta had discussions regarding a possible extension of the then existing collective bargaining labor agreement on or about January 25, 2001. However, Local 27B did not make an offer to extend the agreement, and, therefore, Malta did not have an opportunity to reject an offer to extend the agreement (Transcript Pages 34-36, 92-93, 117, 119, 120-121, 129, 152-153, 178-182, 208, 210, 214-216, 223-224, 253, 272, 311-312, 326-329).

A review of all the evidence and witness testimony reveals it is unclear that Local 27B made an actual verbal offer to extend the then

existing collective bargaining labor agreement. It is also just as unclear that Malta rejected such an alleged offer or that Malta should have reasonably believed an alleged offer to extend the agreement was even actually made by Local 27B (Transcript Pages 34-36,92-93,116-117,119,120-121,129,152-153,178-182,208,210,214-216,223-224,253,272,311-312,326-329).

There were a total of approximately nine (9) bargaining sessions to negotiate a new collective bargaining labor agreement, involving representatives of Local 27B and Malta, before the then existing collective bargaining labor agreement expired. The bargaining sessions began on December 13, 2000, and ended on January 31, 2001 (Transcript Pages 28-29,116).

The nine (9) bargaining sessions did not lead to agreement on a new collective bargaining labor agreement.

Malta's last offer prior to the expiration of the then existing collective bargaining labor agreement was overwhelmingly rejected by the members of Local 27B in a ratification vote taken on January 27, 2001. The vote also authorized a work stoppage to begin after the existing agreement expired (Transcript Pages 37-38,59-60,107,119,123,185-186,266-268).

The members of Local 27B set up a picket line and started continuously picketing in front of Malta's plant, in Malta, Ohio, beginning February 1, 2001, when the then existing collective bargaining labor agreement expired, until February 21, 2001, when Local 27B offered to unconditionally return to work in response to Malta's decision to close the business. No current members of Local 27B reported to work at Malta during that time period and Malta has not agreed to allow any members to return to work since February 21, 2001 (Transcript Pages 43-

45, 73-74, 77-78, 86-88, 93-98, 101-106, 186-187, 190, 219, 230, 233-234, 239, 254, 268-269, 272, 326, 332-333, 344, 349-351 / Employer Exhibit D).

The parties met with a federal mediator, but not with each other, on February 13, 2001. No agreement was reached as a result of this meeting (Transcript Pages 62-63, 192-195, 275, 283).

Malta has continued operating since the prior collective bargaining labor agreement expired, using the remaining non-Local 27B employees, but it has not hired anyone to replace any members of Local 27B. Additionally, as part of Malta's decision to close and not to allow the members of Local 27B to return to work on February 21, 2001, and thereafter, Malta issued a written Worker Adjustment Retraining Notification (WARN) Notice (Transcript Pages 40-43, 73-74, 77-78, 101-106, 108-109, 153-154, 190-191, 233-234, 277, 349-351 / Employer Exhibit E accepted by the Hearing Officer under official notice).

Malta did not take a bargaining stance of ~~no~~ no new contract then no work[@] regarding Local 27B members (Transcript Pages 35-36, 150-151, 255, 330, 336-337).

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

The evidence indicates the claimants became unemployed when, following a vote to not ratify Malta's last offer on January 27, 2001, they chose not to continue working under the expiring collective bargaining labor agreement with Malta at its Malta, Ohio plant beginning on February 1, 2001. The claimants, in fact, set up a picket line at two (2) locations by the work site beginning February 1, 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 *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 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 the instant case the evidence and testimony, when looked at in total, lead to only one reasonable conclusion. The matter of an extension of the then existing agreement between the parties was discussed by Local 27B during the negotiations on or about January 25,

2001, but no clear offer was made to Malta. Malta could not have rejected an offer that was never made.

The members of Local 27B rejected Malta's last offer by a vote taken on January 27, 2001, which also was a vote to begin a work stoppage after the existing agreement expired on January 31, 2001. In fact, they did begin picketing Malta on February 1, 2001, and continued to do so until February 21, 2001, when Malta decided to close the business and issued a WARN Notice.

The testimony demonstrated that there were three major issues in controversy between Local 27B and Malta, a seniority rights issue, a vacation allotment issue, and a "Veteran's Day as a paid holiday versus having it the day after Christmas" issue. These kinds of issues clearly fall within the *Leach* definition of a "labor dispute".

The testimony also demonstrated that Local 27B began picketing because it desired better terms from Malta. Again, this clearly falls within the *Leach* definition of a work stoppage.

Local 27B and Malta were embroiled in a labor dispute that ultimately led to Local 27B conducting a work stoppage in an effort to obtain the terms it desired from Malta.

Using the *Bays* standard, this Hearing Officer finds, based upon the testimony and evidence, that Local 27B first changed the status quo when members of Local 27B decided, after voting on January 27, 2001, to form picket lines at Malta instead of reporting to work beginning on February 1, 2001. Malta's conduct did not indicate it was unwilling to maintain the status quo while negotiations continued.

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 Malta made the decision to close on February 21, 2001.

The evidence and testimony show that Malta had been profitable in the year of 2000, had turned down new business after February 1, 2001, and simply decided to exit the window-making business on February 21, 2001, and decided to close and wind-down remaining business using the non-Local 27B workforce it still had in place.

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 Malta. The claimants are disqualified from receiving unemployment compensation benefits beginning with the Sunday of the week in which February 1, 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 27B and Malta began on February 1, 2001, and ended on February 21, 2001, when Malta decided to close.

* * * * *

This decision applies to 194 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 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 MARCH 9, 2001.

Jim Bubutiev
Hearing Officer