

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
Fifth Floor
P.O. Box 182830
Columbus, Ohio 43218-2830
Telephone: (614) 752-8418
Web Page: www.state.oh.us/odjfs/labordisputes

In The Matter Of A Labor Dispute
Between:

The Bakery, Confectionery,	:	
Tobacco Workers & Grain	:	Docket No. LD-002-008
Millers International	:	
Union Local 58G	:	
(Local 58G)	:	
	:	
Union/Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
The Mennel Milling Company	:	Date of Hearing:
Inc., & MMC Transport, Inc.	:	December 9, 2002
(Mennel)	:	
	:	Date of Issuance:
Employer	:	December 19, 2002

Appearances

Joe Goodell, Local 58G President and Business Agent, represented Local 58G. Brad Stump, Union Steward and Claimant, Ralph McClung, Jr., Union Steward and Claimant, and John Roller, Claimant, were witnesses for Local 58G.

Robert Reid, Mennel Vice President of Operations, represented and was a witness for Mennel. Susan Kirby, Mennel Human Resources, was also a witness for Mennel.

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 39 claims for unemployment benefits that relate to a labor dispute between Mennel and Local 58G.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on December 9, 2002, in Findlay, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 58G and are employed by Mennel.

Mennel processes wheat into flour and is a wholesale seller of wheat. MMC Transport, Inc., is a wholly-owned subsidiary of Mennel and is in the trucking transport and delivery business with Mennel as the main customer (Transcript Page 14).

Mennel employs an estimated 150 individuals in Ohio. Approximately 55 of those individuals are members of Local 58G with 34 of them working for the Mennel Milling division and the remaining 21 for the MMC Transport division (Transcript Pages 14-18,54,89-90).

Local 58G had a five (5) year collective bargaining labor agreement with Mennel which ran from November 1, 1997, to October 31, 2002 (Transcript Pages 18,56,90,120).

There was a two (2) week extension of the collective bargaining labor agreement through November 14, 2002. Local 58G initially offered a thirty (30) day extension but Mennel counter offered with a two (2) week extension which Local 58G accepted. The two (2) week extension was

an oral agreement between the parties (Transcript Pages 18-20,56-57,83-84,91,113,120,125).

Twelve (12) Negotiation sessions were held between Mennel and Local 58G from September through November 13, 2002, in an attempt to reach a new agreement (Transcript Pages 20,54,63,96-97).

On October 31, 2002, Local 58G voted to authorize a work stoppage. Local 58G never voted to actually conduct a work stoppage and never advised Mennel that a work stoppage would, in fact, take place (Transcript Pages 21,60-61,105-106,114).

On November 13, 2002, Local 58G voted to reject Mennel's offer for a new collective bargaining labor agreement (Transcript Pages 23-24,122-123).

Local 58G never took a "no new agreement then no continued work" position during the negotiation process for a new agreement (Transcript Pages 59-60,74-76,107).

On November 14, 2002, the members of Local 58G, who are also claimants, were instructed to turn in keys, phones, pagers, and other items needed to continue working, and were told by Mennel not to return until an agreement was reached. In fact, those members of Local 58G, who are also claimants, that were scheduled to work from 11:00 p.m. on November 14, 2002, until 7:00 a.m. on November 15, 2002, were instructed to clock in and wait in the break room until midnight and clock out at that time (Transcript Pages 57-59,76-83,92-95,98,107-109,117-121).

A work stoppage began on November 15, 2002 (Transcript Pages 18-19,57-58)

Further negotiation sessions have been held since the work stoppage began. The parties met on November 19, 2002, and Mennel made an offer for a new agreement which was not voted on by the members of Local 58G (Transcript Pages 24-27,109-110).

The main issues between Mennel and Local 58G deal with health insurance and, for the members of Local 58G working for the MMC Transport division, wages/trucking rates (Transcript Pages 29-31,61-62,64-65,99,123-124).

Mennel has continued operating using management personnel, outside contractors, and eight (8) of the twenty-one (21) members of Local 58G that work for the MMC Transport division. Those eight (8) individuals include one new probationary employee and seven individuals who resigned from Local 58G. All eight (8) individuals are working under the terms and conditions of Mennel's offer of November 19, 2002, and that offer differs from the terms and conditions of the expired agreement. Mennel has not hired permanent replacement workers although members of Local 58G that work for the MMC Transport division, and are involved in the work stoppage, would be called back based upon seniority once work became available (Transcript Pages 27-29,32-37,66-74,95-96).

Local 58G began picketing at the Mennel Milling division once the work stoppage began (Transcript Pages 37-40,76-78).

This Hearing Officer has taken official notice that, subsequent to this hearing, the members of Local 58G voted to accept a new agreement with Mennel on December 17, 2002, and began returning to work on December 18, 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 Mennel?
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 Mennel was due to a lockout or a labor dispute other than a lockout.

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.

In this matter, the evidence and testimony indicate the members of Local 58G became unemployed when Mennel locked them out on November 15, 2002. Mennel would not allow them to continue working under the terms and conditions of the expired agreement, while negotiations continued, beyond the two (2) week extension period which was effective through November 14, 2002.

Thus, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon all the testimony, that Mennel first changed the status quo, while negotiations were ongoing, when the decision

was made to not allow the members of Local 58G to continue working under the terms and conditions of the expired agreement after November 14, 2002, while negotiations continued.

Therefore, it is the conclusion of this Hearing Officer that all the claimants in the instant case were unemployed due to a lockout which began November 15, 2002, and ended on December 18, 2002, when they began returning to work under the terms of a new agreement that was agreed upon between the parties on December 17, 2002.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout which began November 15, 2002. The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout beginning with the week which includes November 15, 2002.

It is also the decision of this Hearing Officer that the lockout between Mennel and Local 58G which began on November 15, 2002, ended on December 18, 2002, when the members of Local 58G began returning to work under a new agreement with Mennel.

* * * *

THIS DECISION APPLIES TO 39 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 DECEMBER 19, 2002.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS JANUARY 9, 2003.

Jim Bubutiev
Hearing Officer