

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
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In The Matter Of A Labor Dispute
Between:

United Steelworkers of	:	Docket No. LD-002-002
America Local Union 3210	:	
(Local 3210)	:	
Union / Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
The Minster Machine Company	:	Date of Hearing:
(Minster)	:	April 26, 2002
	:	
	:	
Employer	:	Date of Issuance:
	:	May 03, 2002

Appearances

Tom J. Kircher, Attorney at Law, represented Local 3210. James E. Klawitter and Robert J. Delzeith, Claimants, and Daniel U. Dwenger, President of Local 3210, were witnesses for Local 3210.

Gregory Parker Rogers, Attorney at Law, represented Minster. Brian P. Styer, Employee Relations Manager, and Stephen C. Kill, Vice President of Human Resources, were witnesses for Minster.

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 119 claims for unemployment benefits that relate to a labor dispute between Local 3210 and Minster.

All interested parties were notified of the hearing pursuant to Ohio law. This hearing was held on April 26, 2002, in Minster, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 3210 and are employed by Minster (Transcript Page 13).

Minster is a manufacturer of mechanical power presses and related machine tools (Transcript Pages 13,34-35).

Minster employs approximately 400 individuals and about 120 to 132 of them are also members of Local 3210 (Transcript Pages 13,36,71-72,79,134-135).

Local 3210 had a collective bargaining labor agreement with Minster that was effective from April 2, 1998, through March 25, 2002. Local 3210 proposed an extension of all the terms and conditions of the expired agreement until April 7, 2002, and Minster accepted the proposal (Transcript Pages 17-19,35-36,40-41,46,69-70,74,123-124,154/Employer Exhibits 1,3).

The primary issue between the parties deals with seniority rights and, specifically, the conduct of layoffs and recalls (Transcript Pages 26,81,95,97-98,107,131,137-142,157-158).

A total of forty-one (41) negotiation sessions have been held between Local 3210 and Minster in an effort to reach a new collective bargaining labor agreement. There were thirty (30) negotiation sessions held prior to the expiration of the then existing collective bargaining

labor agreement. The negotiation sessions began during the last week of February and lasted through March 25, 2002. Another ten (10) negotiation sessions were held during the extension of the expired agreement from March 25, 2002, through April 7, 2002. An additional negotiation session was held on April 10, 2002, after the extension had expired. Minster is seeking concessions from Local 3210 regarding wages, benefits, and contract language (Transcript Pages 21-23,31-33,36-37,42,64,122,132-133,137-144,152-153/Employer Exhibit 6).

Minster's business has declined, along with profit levels, from 1999 to the present (Transcript Pages 36,38,133-135,144-145).

Local 3210 offered to continue the extension of the agreement beyond April 7, 2002, and to continue to work under all the terms and conditions of the expired collective bargaining labor agreement. Minster countered with an offer to continue the extension of the agreement beyond April 7, 2002, under all but one (1) of the terms and conditions of the expired collective bargaining labor agreement. The single term and condition that Minster would not agree to continue to extend was for a union dues check off provision (Transcript Pages 27-29,33-34,42-43,60-63,82-88,92,125-128,135,137,159-160/Employer Exhibits 4,5,6,7).

Local 3210 began a work stoppage the night of April 7, 2002, because Minster would not agree to continue a union dues check off provision after April 7, 2002, when the extension of the expired agreement had ended. Local 3210 has had picket lines at Minster's work location since the start of the work stoppage (Transcript Pages 19-20,33,54-56,59,70-71,75-76,82,88,92,106-107,117,125-130,153-154/Employer Exhibits 4,5,6,7).

Minster would not agree to continue to include an extension for a union dues check off provision after April 7, 2002, because it wanted to

apply "economic pressure" on Local 3210 and to provide Local 3210 with an incentive to get a new agreement done to replace the expired one (Transcript Pages 93-94).

No members of Local 3210 have returned to work at Minster since April 7, 2002. Minster has continued operating since April 7, 2002, using its remaining employees, rehiring office staff retirees, and by subcontracting out the work that Local 3210 members performed. No replacement workers have been hired, to date, and all the positions held by the members of Local 3210 prior to the work stoppage are still available (Transcript Pages 21,28,57,76-79,101,106-107,152,161).

Prior to the work stoppage Local 3210 voted to reject two (2) proposals for a new agreement to replace the one that had expired. The first proposal was rejected by a vote of 256 to 3 on or about March 24, 2002. The second proposal was rejected by a vote of 147 to 75 on or about April 7, 2002. Both votes included Local 3210 members presently on layoff. Local 3210 received authorization from its Union, in early March of 2002, to conduct a work stoppage if a new agreement was not reached to replace the expired one (Transcript Pages 25-27,29-31,40,42,66-69,82,104-106,110,118-119,123-125,147).

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 Minster?

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 Minster 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.

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. The Supreme Court in *Bays, supra*, said a lockout "is not confined to an actual physical closing of the place of employment." *Id.* at 134.

In *United Food & Commercial Workers Union Local 911, AFL-CIO, CLC v. Farmland Foods, Inc.* 1999 WL 797039 (Ohio App. 3 Dist. Sept. 30, 1999) the Ohio Third District Court of Appeals stated that the employer did not breach the status quo when the employer notified the union in a letter dated April 24, 1998, that the employer would no longer recognize the arbitration, the no strike/no lockout, and the dues check off provisions of a collective bargaining agreement that had expired six days earlier, on April 18, 1998.

However, the Court pointed out that the employer also provided a second letter dated April 29, 1998, in which the employer said it was willing to "maintain the status quo with respect to the terms and conditions of employment during the period there is no contract in effect."

Therefore, the employer, in fact, provided two conflicting letters regarding what the terms and conditions of employment would actually be after the expiration of the collective bargaining agreement.

What is meaningful, in light of the status quo test from the *Bays* decision, is to review the actions of the parties in *Farmland*.

The union employees in *Farmland* voted to reject the employer's new contract proposal, which provided for economic increases, on April 17, 1998.

Thereafter, through April and into May of 1998, the union employees, by agreement with the employer and on a day-to-day basis, continued to work under the terms and conditions of the expired collective bargaining agreement.

On May 15, 1998, the union employees began a work stoppage, and thereby deviated from the status quo, in an effort to get the employer to make a new proposal. Thus, they were disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout.

Therefore, the *Farmland* decision is, in fact, entirely consistent with the analysis and status quo test derived from the *Bays* decision.

In this matter, the evidence and testimony indicate the members of Local 3210 became unemployed when, after offering to continue working after April 7, 2002, under a second extension of the exact terms and conditions of the expired collective bargaining labor agreement, they were not allowed to do so.

Minster would only allow work to continue under terms and conditions of employment which differed from the terms and conditions of employment under the expired collective bargaining labor agreement. Specifically, Minster would not agree to continue to include an extension of the union dues check off provision after April 7, 2002.

Consequently, it was Minster that initiated a change in the terms and conditions of employment beginning on April 7, 2002.

Therefore, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon the testimony and evidence, that it was Minster that first changed the status quo, while negotiations were ongoing, when the decision was made to not allow the members of Local 3210 to work, beginning April 7, 2002, under the exact terms and conditions of the expired collective bargaining labor agreement.

Minster had agreed to one extension of the exact terms and conditions of the expired collective bargaining labor agreement from March 25, 2002, until April 7, 2002.

Subsequently, because Minster wanted to provide an incentive to Local 3210, and was trying to "force the parties to get together to come to an agreement", Minster would not agree to a further extension for a reasonable time while negotiations continued. Thus, Minster was making an effort to get more desirable terms from Local 3210 by changing the status quo because the testimony and evidence clearly indicated that any new agreement between the parties would necessarily include concessions by Local 3210.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a lockout which began the night of April 7, 2002.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout at Minster which began April 7, 2002. The claimants are not disqualified from eligibility for unemployment compensation benefits due to a labor dispute other than a lockout for the week which begins with April 7, 2002.

It is also the decision of this Hearing Officer that the lockout which resulted in the unemployment of the claimants is continuing as of the date of this decision.

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THIS DECISION APPLIES TO 119 NAMED CLAIMANTS

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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 MAY 03, 2002.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS MAY 24, 2002.

Jim Bubutiev
Hearing Officer