

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
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:

	:	Docket No. LD-002-001
United Steelworkers of	:	
America Local Union 2116	:	
(Local 2116)	:	
	:	
Union / Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
New Boston Coke Corporation	:	Date of Hearing:
(New Boston Coke)	:	April 16, 2002
	:	
	:	
Employer	:	Date of Issuance:
	:	April 25, 2002

Appearances

Peter M. Fox, Attorney at Law, represented Local 2116. Randy Basham, Staff Representative of Local 2116, and David Payton, President of Local 2116, and Steven Anthony Shepard, Shop Steward of Local 2116, were all witnesses for Local 2116.

New Boston Coke, although properly notified, was not represented and did not appear at the hearing.

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 162 claims for unemployment benefits that relate to a labor dispute between Local 2116 and New Boston Coke.

All interested parties were notified of the hearing pursuant to Ohio law. This hearing was held on April 16, 2002, in New Boston, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 2116 and were employed by New Boston Coke (Transcript Page 11).

New Boston Coke processed coke in a work location where coal was converted into coke (Transcript Page 11).

New Boston Coke employed approximately 235 individuals and about 200 of them are also members of Local 2116 (Transcript Page 11).

Local 2116 had a four (4) year collective bargaining labor agreement with New Boston Coke that was effective from April 1, 1998, through March 31, 2002. The parties did not agree to any extensions of the agreement (Transcript Pages 13-14,31 / Union Exhibit A).

The issues between the parties dealt with wages and also concerned numerous kinds of benefit coverages, including but not limited to, health care coverage and the pension plan. (Transcript Pages 19-20,39-43,49-52 / Union Exhibits B through G).

There were five (5) negotiation sessions held prior to the expiration of the then existing collective bargaining labor agreement, between March 8, 2002, and March 28, 2002 (Transcript Pages 18-19,22-23,32,35-39,49-52 / Union Exhibits B through G).

Local 2116 offered to continue working under the exact terms and conditions of the then existing collective bargaining labor agreement

once it expired. The offer was made verbally on March 21, 2002, and in writing on March 28, 2002, and March 31, 2002 (Transcript Pages 13-16,53-55,57-58,71 / Union Exhibits H,J).

New Boston Coke offered to allow the members of Local 2116 to continue to work, after the then existing collective bargaining labor agreement expired, but only under new terms and conditions of employment. The changed terms and conditions of employment were provided to Local 2116 in a written notice from Fred Dery, New Boston Coke's President and Chief Executive Officer, on or about March 29, 2002 (Transcript Pages 15-16,56-59 / Union Exhibit I).

The members of Local 2116 never took a vote to conduct a work stoppage (Transcript Page 24).

On the night of March 31, 2002, Local 2116 members attempted to go to work at New Boston Coke's work location. New Boston Coke's management staff would not allow the Local 2116 members to begin working that night unless they agreed to work under the new and changed terms and conditions of employment once the then existing collective bargaining labor agreement expired. The Local 2116 members would only begin working if it was going to be under the exact terms and conditions of the then existing collective bargaining labor agreement once it expired. Thus, a work stoppage began on April 1, 2002 (Transcript Pages 14-16, 23-26,70-73).

New Boston Coke unsuccessfully attempted to continue operating during the work stoppage using management personnel and some 15 to 20 replacement workers. New Boston Coke closed its work location on April 2, 2002. The work location remains closed. (Transcript Pages 16-18,25-28,61-63,65-66 / Union Exhibit K).

Negotiation sessions between the parties, scheduled for April 2, 2002, and April 3, 2002, were cancelled.

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 issues can be stated thus:

1. What is the reason for the claimants' unemployment from New Boston Coke?
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 New Boston Coke 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 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.

The evidence and testimony indicate the members of Local 2116 became unemployed when, after offering to continue working under the exact terms

and conditions of the then existing collective bargaining labor agreement once it expired, they were not allowed to go to work when they attempted to do so. New Boston Coke would only allow work to continue under terms and conditions of employment which were different from the terms and conditions of employment under the then existing collective bargaining labor agreement once it expired. Consequently, it was New Boston Coke that started a lockout beginning April 1, 2002.

Using the test from the *Bays* decision, this Hearing Officer finds, based upon the testimony and evidence, that it was New Boston Coke that first changed the status quo, while negotiations were ongoing, when the decision was made to not allow the members of Local 2116 to work beginning April 1, 2002, under the terms and conditions of the just expired collective bargaining labor agreement.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a lockout which began April 1, 2002. New Boston Coke ended the employer-employee relationship when it closed the work location and, thereby, eliminated the lockout as the cause for the claimants' unemployment. Accordingly, the lockout ended when New Boston Coke closed its work location on April 2, 2002.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout at New Boston Coke which began April 1, 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 includes April 1, 2002.

It is also the decision of this Hearing Officer that the lockout which resulted in the unemployment of the claimants ended when New Boston Coke closed its work location on April 2, 2002.

* * * * *

THIS DECISION APPLIES TO 162 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 APRIL 25, 2002.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS MAY 16, 2002.

Jim Bubutiev
Hearing Officer