



JFS-83000 06/01/2006

OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE



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ADP/UC EXPRESS PO BOX 66744 ST LOUIS, MO 63166-6744  0046375008	Date Issued 05/31/2007
	Determination Identification Number 214398225-1
	ODJFS Office Bureau of UC Program Services
Employer's Name REXAM BEVERAGE CAN COMPANY (INC)	UC Account Number 0046375008

THIS DECISION IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4141.283, OHIO REVISED CODE

**Bureau of UC Program Services
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In The Matter Of A Labor Dispute Between

Union: USWA Local 8316	Employer: REXAM BEVERAGE CAN COMPANY (INC)
Docket No: 000000000700018	Hearing Officer: Jim Bubutiev
Date of Hearing: 05/07/2007	Date of Issuance: 05/31/2007

APPEARANCES

John Rigling, USW District 1 Staff Representative, represented Local 8316. Robert Bruce Robertson, President of Local 8316, was a witness for Local 8316.

JoEllen Frederick, Human Resource Manager, represented and was a witness for REXAM.

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 Department of Job and Family Services has received approximately 46 allowed unemployment compensation benefits claims that relate to a labor dispute between Local 8316 and REXAM.

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All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on May 21, 2007, in Bowling Green, Ohio.

FINDINGS OF FACT

REXAM is an international corporation that manufactures 8 and 24 ounce cans for the beverage industry. The labor dispute between Local 8316 and REXAM deals with the Whitehouse, Ohio facility. REXAM employs approximately 125 individuals and between 100 and 105 of them are also members of Local 8316 (Transcript Pages 9-11,13,51).

Local 8316 had a collective bargaining labor agreement with REXAM that was effective through February 24, 2007 (Transcript Page 11).

Negotiation sessions were held between the parties from February 12, 2007, through February 24, 2007, in Albuquerque, New Mexico which led to a tentative agreement. The tentative agreement was rejected by a national vote of United Steelworkers members. Further negotiations were held between the parties in Pittsburgh, Pennsylvania in late March of 2007 which led to a second tentative agreement. The second tentative agreement was also rejected by a national vote of United Steelworkers members on or about April 4, 2007. Further negotiations were held in Phoenix, Arizona on or about April 9, 2007, but another tentative agreement could not be reached between the parties. The United Steelworkers began a work stoppage at midnight on April 9, 2007, and Local 8316 began picketing at the REXAM facility in Whitehouse, Ohio soon thereafter. A last round of negotiations were held between the parties in Phoenix on or about May 1, 2007, which led to a third and final tentative agreement. This last tentative agreement was ratified by a national vote of United Steelworkers members on May 5, 2007. As a result of the ratification vote the members of Local 8316 began returning to work on May 6, 2007 (Transcript Pages 12,14-16,19-24,27,31-33,45-46,53-54,60-62,68-70,76-77).

The parties mutually agreed to have the members of Local 8316 continue working under extensions of the terms and conditions of the expiring collective bargaining labor agreement through April 9, 2007 (Transcript Pages 12-13,67,70).

The main issues between the parties dealt with retiree medical coverage, active employee medical coverage, and contract language amendments dealing with justice and dignity involving discipline and suspension as part of grievance and arbitration procedures (Transcript Pages 16-19,40-41,60-61).

REXAM would have allowed the members of Local 8316 to continue working at the Whitehouse, Ohio facility after April 9, 2007, while negotiations continued, under another extension of the terms and conditions of the expired collective bargaining labor agreement. However, although Local 8316 was aware that members could continue to work, no one was willing to cross the picket line for the duration of the work stoppage (Transcript Pages 24-25,31,68,73).

REXAM continued operating after the work stoppage began using management employees from the Whitehouse facility, management employees from other facilities, retired management employees hired as contract employees through a third party, and temporary replacement workers hired through a different third party that was also providing security services. REXAM did not hire any permanent replacement workers during the work stoppage (Transcript Pages 25-26,28-29,75-78).

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 are:

1. What is the reason for the claimants' unemployment from REXAM?

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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 the individual's 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 were found to be a lockout.

The issue to be resolved is whether the reason for the claimants' unemployment from REXAM was due to a lockout or 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 ten percent (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 ten percent (10%) wage reduction was reasonable under the circumstances and did not show a purpose on the part of the company to coerce the employees into accepting it and, therefore, was not 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.

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In addition, the more recent Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discusses the *Bays* case and the status quo test.

The testimony and evidence in this case indicate the claimants became unemployed when they began a work stoppage and started picketing at midnight on April 9, 2007.

The testimony and evidence, when viewed in total, establish that REXAM did not withhold work from the members of Local 8316 in an effort to obtain more desirable terms in a new collective bargaining labor agreement. In fact, REXAM was willing to allow the members of Local 8316 to continue working under the terms and conditions of the collective bargaining labor agreement that had expired February 24, 2007.

In actuality, Local 8316 and REXAM were involved in a labor dispute that ultimately led the members of Local 8316 to conduct a work stoppage in an effort to obtain more desirable terms in a new collective bargaining labor agreement with REXAM.

Therefore, by applying the holding of the *Zanesville* case, it is clear that REXAM did not lockout the members of Local 8316 at midnight on April 9, 2007.

Using the *Bays* case standard, this Hearing Officer finds, based upon the testimony and evidence, that the members of Local 8316 first changed the status quo, while negotiations were ongoing, when they decided to conduct a work stoppage and to picket starting at midnight on April 9, 2007. REXAM's conduct did not indicate it was unwilling to maintain the status quo while negotiations continued.

Therefore, the members of Local 8316 were unemployed due to a labor dispute other than a lockout that lasted from April 9, 2007, until May 6, 2007, when the labor dispute was settled, and the members of Local 8316 began returning to work under a new collective bargaining labor agreement.

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 beginning April 9, 2007, through May 5, 2007. The claimants are disqualified from receiving unemployment compensation benefits for the week which included April 9, 2007, through the week which included May 5, 2007, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code. The labor dispute other than a lockout that resulted in the unemployment of the claimants ended May 6, 2007, when they began returning to work.

APPEAL RIGHTS: If you disagree with this decision, 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, PO Box 182299, Ohio Dept. Of Job And Family Services, Columbus, OH 43218-2299; or by fax to 1-614-387-3694; 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, faxed, or postmarked no later than twenty-one (21) days after the date of mailing indicated on this decision. If the 21st calendar day falls on 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 **05/31/2007**.

The twenty-one day appeal period ends on **06/21/2007**.

