

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:

Teamsters Local 40	:	Docket No. LD-000-006
	:	
(Local 40)	:	
	:	
Union/Claimants	:	
	:	
	:	Hearing Officer:
and	:	Jim Bubutiev
	:	
	:	
Mansfield Plumbing	:	
Products, Inc.	:	
	:	
(Mansfield Plumbing)	:	
	:	Date of Issuance:
Employer	:	August 1, 2000

**Entry**

Teamsters Local 40 and Mansfield Plumbing Products, Inc., have stipulated to the facts in this case and have waived the hearing specified in section 4141.28(D)(1)(a) of the Ohio Revised Code as permitted by rule 4141-28-04(A) of the Ohio Administrative Code.

**FINDINGS OF FACT:**

**The stipulations are as follows:**

**Joint Stipulations of Mansfield Plumbing Products, Inc., and the Teamster's Local 40**  
**Docket No. LD-000-006**

- 1) Mansfield Plumbing Products, Inc., and the Teamster's Local 40 had a prior labor agreement effective through June 30, 2000, and were negotiating a new labor agreement before the prior one had expired.
- 2) During the negotiations of a new labor agreement Mansfield Plumbing Products, Inc., did not take a "no new contract then no work" bargaining stance.
- 3) Mansfield Plumbing Products, Inc., made a "last, best and final" offer to Teamster's Local 40 on June 28, 2000. Teamster's Local 40 requested five days to explain the offer to the membership before voting on it so the prior labor agreement was extended, by agreement of both parties, through July 14, 2000.
- 4) An 83% majority of the membership of Teamster's Local 40 voted to reject the offer on July 7, 2000, and the members of Teamster's Local 40 did not make an offer to continue working beyond the extended date of July 14, 2000.
- 5) The members of Teamster's Local 40 were set to go on strike after midnight July 14, 2000, unless a new labor agreement was reached and accepted by the membership. Mansfield Plumbing Products, Inc., was made aware of this intent to strike.
- 6) Mansfield Plumbing Products, Inc., began an orderly shutdown at their locations on July 11, 2000, in anticipation of the strike. The orderly shutdown was to conclude on July 14, 2000, at 6:00 p.m.
- 7) The parties reached a new tentative agreement at the bargaining table on July 12, 2000 and the shutdown was canceled.
- 8) As of noon on July 13, 2000, about 460 members of Teamster's Local 40 were unemployed because of the orderly shutdown with another 100 members still finishing work product at the Perrysville location.
- 9) A majority of the membership of Teamster's Local 40 voted to accept the new tentative agreement on July 13, 2000. The Union's acceptance of the agreement was communicated to Mansfield Plumbing Products, Inc., on July 13, 2000 at 8:10 p.m.
- 10) Normal operations started up at 5:00 a.m. on July 15, 2000, at the Mansfield Plumbing Products, Inc., locations.
- 11) Work product at the Perrysville location takes five days from start to finish to complete, and work is scheduled on a twenty-four hours a day / seven days a week basis.

**12)** At the time the orderly shutdown began, the individuals named in item 13 below were employees of Mansfield Plumbing Products, Inc., were members of Teamster's Local 40, and were unemployed because of the orderly shutdown that occurred in anticipation of a strike at the Perrysville location.

**13)** 38 named employee claimants as of 07/20/2000.

**14)** The parties hereby waive the hearing specified in section 4141.28(D)(1)(a) of the Ohio Revised Code as permitted by rule 4141-28-04(A) of the Ohio Administrative Code.

For Mansfield Plumbing Products, Inc.:

For Teamster's Local 40:

Kevin J. Oak, Director of Operations  
July 21, 2000

Michael J. Markham, Recording Secretary  
July 21, 2000

**ISSUES :**

Pursuant to section 4141.28(D)(1) 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 Mansfield Plumbing Products, Inc.?
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 administrator 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:**

The first issue to be resolved is whether the reason for claimants' unemployment from Mansfield Plumbing Products, Inc., was due to a lockout or a labor dispute other than a lockout.

The evidence discloses that the claimants became unemployed when Mansfield Plumbing began an orderly shutdown at its locations in anticipation of a strike. The orderly shutdown began on July 11, 2000, after an 83% majority of the membership of Local 40 voted to reject Mansfield Plumbing's "last, best and final" offer on July 7, 2000. In addition to the vote to reject, Local 40 made Mansfield Plumbing aware that they would go on strike after midnight on July 14, 2000, unless a new labor agreement was negotiated and accepted by the membership before then. The orderly shutdown was to conclude at 6:00 p.m. on July 14, 2000.

The parties reached a new tentative agreement at the bargaining table on July 12, 2000, and the shutdown was canceled.

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 claimants, it is necessary to determine whether the labor dispute was a lockout within the meaning of the Ohio unemployment compensation law. If the labor dispute is found to be a lockout, the claimants would not be disqualified from eligibility for unemployment compensation benefits.

In *Hopkins v. Giles*, (1982), 7 Ohio App. 3d 79, the claimant was laid off by the employer because the employer anticipated a strike would begin the next day.

The Court of Appeals in *Hopkins* held that when an employee is laid off at the end of a workday because the employer anticipates a strike to begin the following day, and the strike does actually occur, the employee is not entitled to unemployment compensation benefits because his unemployment was due to a labor dispute. The court ruled that the strike caused the layoff even though the layoff occurred first in sequence.

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 a lockout started when Mansfield Plumbing began an orderly shutdown on July 11, 2000, after the membership of Local 40 voted to reject Mansfield Plumbing's "last, best and final" offer on July 7, 2000, and made Mansfield Plumbing aware that they would go on strike after midnight on July 14, 2000, unless a new labor agreement was reached and accepted by them. The prior labor agreement between the parties was effective through June 30, 2000, and had been extended, by mutual agreement, through July 14, 2000, to allow the members of Local 40 sufficient time to review and vote on Mansfield Plumbing's "last, best and final" offer. Mansfield Plumbing had made its "last best and final" offer on June 28, 2000.

Although the parties reached a new tentative agreement on July 12, 2000, and the shutdown was canceled, approximately 460 members of Local 40 were unemployed as of noon on July 13, 2000, due to the orderly shutdown. The membership of Local 40 voted to accept the new tentative agreement and communicated their acceptance to Mansfield Plumbing at 8:10 p.m. on July 13, 2000. Normal operations started up at Mansfield Plumbing at 5:00 a.m. on July 15, 2000.

Applying the aforementioned *Bays* standard, this Hearing Officer finds, based upon the joint stipulations of the parties, that Mansfield Plumbing first changed the status quo when it began an orderly shutdown on July 11, 2000.

Although Local 40 communicated an intent to strike after midnight on July 14, 2000, no strike actually occurred since the parties reached a new tentative agreement on July 12, 2000, and the members of Local 40 accepted it on July 13, 2000. The holding of *Hopkins* does not apply in this situation since there was no work stoppage.

Therefore, based upon *Bays* and *Hopkins*, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a lockout.

**DECISION:**

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout at Mansfield Plumbing. The claimants are not disqualified from

eligibility for unemployment compensation benefits due to a labor dispute.

The lockout which resulted in the unemployment of the claimants began on July 11, 2000, and ended at 5:00 a.m. on July 15, 2000.

**This decision applies to:**

**\*\*\*42 Named Claimants\*\*\***

**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 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 ON AUGUST 1, 2000.**

**THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS ON AUGUST 22, 2000.**

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Jim Bubutiev  
Hearing Officer