

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:

United Association	:	Docket No. LD-003-003
Local Union # 219	:	
(Local 219)	:	
Union/Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
The Mechanical Contractors	:	Date of Hearing:
Association of Akron	:	June 30, 2003
(MCA)	:	
Employer	:	Date of Issuance:
	:	July 10, 2003

Appearances

Keith L. Pryatel, Attorney at Law, represented the MCA. Dennis Spohn, President of the Cahill Corporation and Chairman of the MCA's Contract Negotiations Committee, was a witness for the MCA.

Salvatore J. Falletta, Attorney at Law, represented Local 219. John Wagner, Executive Secretary Treasurer of the Tri-County Regional Labor Council, AFL-CIO, was a witness for Local 219.

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 approximately 112 claims for unemployment benefits that relate to a labor dispute between Local 219 and the MCA.

All interested parties were duly notified of the hearing pursuant to Ohio law. This hearing was held on June 30, 2003, in Akron, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 219 and are employed by the MCA.

The MCA is an association of 16 separate employers in the Akron area. All 16 employers are mechanical contractors that do plumbing, heating, and air conditioning service work. All 16 employers employ union tradesmen that are members of Local 219 (Transcript Pages 10-11,25-27,81,83).

The MCA employs about 130 individuals that are members of Local 219 (Transcript Page 64).

Local 219 had a four (4) year collective bargaining labor agreement with the MCA that was effective through May 31, 2003 (Transcript Pages 14,17,64,84).

Thirteen negotiation sessions were held between Local 219 and the MCA, in an attempt to reach a new agreement, prior to the expiration of the then existing agreement. There were two negotiation sessions held between the parties after the expiration of the then existing agreement (Transcript Pages 13-14,27-29,31-33,74,87/Employer Exhibit 1).

The main issues between the parties dealt with a helper clause and wages (Transcript Pages 14-15,18,64-65,80-81,85).

On May 24, 2003, the members of Local 219 unanimously voted to reject the MCA's offer of a new agreement (Transcript Pages 20-21,23-24,67-68,90-91).

On May 24, 2003, the members of Local 219 voted to offer an extension of the exact terms and conditions of the expired agreement, and for the extension to be retroactive to June 1, 2003, on whatever the terms and conditions of the new agreement ended up being, once a new agreement was reached between the parties (Transcript Pages 17-18,23,35,68,86-87,91/Employer Exhibit 1).

On May 28, 2003, the MCA rejected Local 219's extension offer and proposed an extension of the exact terms and conditions of the expired agreement (Transcript Pages 18,23,34-35,46-48,52-53,70-72,87,92/Employer Exhibit 1).

There is a prior history between the parties, dating back five years, in which extensions of expired agreements have included the terms and conditions of any new agreement retroactively. This prior history predates the four (4) year agreement that expired May 31, 2003 (Transcript Pages 74-76,89-90).

The members of Local 219 did not show up for work and began a work stoppage on June 1, 2003, because the MCA did not accept Local 219's offer of an extension with retroactivity (Transcript Pages 91-92,98-99/Employer Exhibit 2).

Work was available for the members of Local 219, under the exact terms and conditions of the expired agreement, during the work stoppage (Transcript Pages 22,35,39-40).

There were no pickets during the work stoppage (Transcript Pages 24,72).

The MCA did not hire any replacement workers during the work stoppage (Transcript Pages 22-24,72).

The parties reached agreement on a new two (2) year collective bargaining labor agreement on or about June 14, 2003. The agreement was dated to begin June 1, 2003, but the actual terms and conditions of the agreement were effective as of June 16, 2003, when the members of Local 219 actually returned to work (Transcript Pages 16-17,37,61-62,73,84).

The work stoppage ended when the members of Local 219 returned to work on June 16, 2003, under the terms and conditions of the new two (2) agreement (Transcript Pages 16,19,23,37,55,73).

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 the MCA?
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 the MCA 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 testimony indicates that the members of the Local 219 became unemployed when they began a work stoppage on June 1, 2003.

Thus, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon a review of the testimony and evidence, that the members of Local 219 first changed the status quo, while negotiations were ongoing, when the decision was made to conduct a work stoppage on June 1, 2003.

The MCA offered to maintain the status quo by offering work under the terms and conditions of the expired agreement while negotiations continued.

Local 219's extension offer included retroactivity and, thus, did not maintain the status quo since it included new terms and conditions that were not part of the then expiring agreement.

The status quo test used in the *Bays* decision is an objective test that analyzes offers of the exact terms and conditions of the expired

agreement. The status quo test does not apply to the prior history of the parties that predates the then expiring agreement.

Consequently, the members of Local 219 became unemployed when they started a labor dispute other than a lockout on June 1, 2003.

Therefore, it is the conclusion of this Hearing Officer that all the claimants in the instant case were unemployed due to a labor dispute other than a lockout which began June 1, 2003, and which ended June 15, 2003, since the claimants returned to work under a new agreement on June 16, 2003.

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 which began June 1, 2003. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the time period from June 1, 2003, through June 15, 2003, pursuant to Section 4141.29 (D)(1)(a) of the Ohio Revised Code.

* * * * *

THIS DECISION APPLIES TO 110 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 JULY 10, 2003.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS July 31, 2003.

Jim Bubutiev
Hearing Officer

