

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
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Columbus, Ohio 43218-2830
Telephone: (614) 752-8419
Web Page: www.jfs.ohio.gov/labordisputes

In The Matter Of A Labor Dispute
Between:

United Steelworkers of America	:	Docket No. LD-006-005
Local Union 905L-1	:	
(Local 905L-1)	:	
	:	
Union/Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
Advanced Technology	:	Date of Hearing:
Corporation	:	July 10, 2006
(ATC)	:	
	:	Date of Issuance:
Employer	:	July 20, 2006

Appearances

Ray Gruber, Jr., Staff Representative of the United Steelworkers of America, represented Local 905L-1. Peggy A. Wood, President of Local 905L-1, was a witness for Local 905L-1.

Frederick Englehart, Attorney At Law, represented ATC. James E. Wood, Corporate Human Resources Manager, was a witness for ATC.

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, to date, 28 claims for unemployment benefits that relate to a labor dispute between Local 905L-1 and ATC.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on July 10, 2006, in Akron, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 905L-1 and were employed by ATC in Geneva, Ohio.

ATC is a manufacturer of lighting used in the automobile and motorcycle industries. ATC's facility in Geneva, Ohio, is the only location involved in this matter (Transcript Pages 13-14).

ATC employed about 49 individuals and approximately 43 of them are also members of Local 905L-1. (Transcript Pages 14-15,114).

Local 905L-1 had a three (3) year collective bargaining labor agreement with ATC that was effective through March 31, 2005 (Transcript Pages 16-17,29-30/Employer's Exhibit 1).

The parties agreed to three (3) extensions of the expiring collective bargaining labor agreement. The first extension was through April 30, 2005, and included a provision that any changes would be retroactive to March 31, 2005. The second extension was through March 31, 2006, and included modifications to the original collective bargaining labor agreement. The third extension was through midnight April 23, 2006, and included a provision that any wage increase would be retroactive to April 1, 2006. Thus, none of the extensions actually extended the exact terms and conditions of the original collective

bargaining labor agreement. Neither party requested an extension after April 23, 2006 (Transcript Pages 16-18,30-34,62-63,66-69,105,124-125/Employer's Exhibits 2-4).

Negotiation sessions have been held between Local 905L-1 and ATC, beginning in late March of 2005, through the date of hearing. A federal mediator has been involved in the most recent negotiation sessions (Transcript Pages 105-106).

There are many issues between the parties including the cost of health care coverage, wages, vacation time, sick time, severance pay, and job classifications (Transcript Pages 19-20,106-107,122-124).

On April 20, 2006, ATC made a Last, Best and Final Offer to Local 905L-1. On April 21, 2006, the members of Local 905L-1 voted to reject ATC's Last, Best and Final Offer and, in a separate vote, voted to conduct a work stoppage beginning April 23, 2006. Local 905L-1 informed ATC of the voting results by telephone. The members of Local 905L-1 began a work stoppage and started picketing on April 23, 2006 (Transcript Pages 21-23,27,28,36-39,42-43,95-97,108-110,114-115,117-118,134-135/Employer Exhibit 5)

ATC has continued operating since the work stoppage with six salaried employees, three employees that resigned from Local 905L-1 and returned to work under new terms and conditions of employment, and by hiring approximately 27 permanent replacement workers. Due to attrition, 15 of the permanent replacement workers are currently employed by ATC as of the date of hearing (Transcript Pages 22-24,27-28,50-62,64,112-113,119-121,140-141/Employer Exhibits 6-8, Union Exhibit C).

ATC asserts that work is available for the members of Local 905L-1 (Transcript Pages 43,45-50,149-150/Employer Exhibits 6-7).

ATC asserts that Local 905L-1 has not offered to return to work

since the beginning of the work stoppage (Transcript Pages 63-64).

Local 905L-1 made a contract proposal to ATC on May 16, 2006, which was rejected. Local 905L-1 asserts that since April 20, 2006, ATC's negotiation position is unchanged from the Last, Best and Final Offer of the same date (Transcript Pages 125-128/Employer Exhibit 5/Union Exhibits A,D).

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 ATC?
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 may be paid 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 were found to be a lockout.

The key issue to be resolved is whether the reason for the claimants' unemployment from ATC 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 *Baugh v. United Telephone Co.*, (1978), 54 Ohio St. 2d 419, the employer notified the striking employees, in writing, that they had been permanently replaced. The Ohio Supreme Court held that when the employer terminates the employer-employee relationship by replacing a striking

employee, the employer has thereby removed the labor dispute as the proximate cause of unemployment. The Court stated that the employer's action of permanent replacement prevented any volition on the part of the workers to return to work and since it severed the labor dispute as the cause of the unemployment, the statutory disqualification provision of section 4141.29 of the Ohio Revised Code did not apply and was not a bar to the appellants' right to receive unemployment compensation benefits.

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.

Furthermore, the recently decided Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discusses the *Baugh* and *Bays* cases.

In this matter, the evidence and testimony indicate the members of Local 905L-1 became unemployed when they began a work stoppage on April 23, 2006, after voting to reject ATC's Last, Best, and Final Offer.

There was no evidence or testimony to indicate that ATC would not

have allowed the members of Local 905L-1 to continue working under the

exact terms and conditions of employment agreed upon in the extensions

which were in effect from April 1, 2005, through April 23, 2006.

Therefore, by applying the *Zanesville* decision and the status quo test from the *Bays* decision, this Hearing Officer finds, based upon the testimony and evidence, that it was Local 905L-1 that first changed the status quo, while negotiations were ongoing, when the decision was made via a vote on or about April 21, 2006, to conduct a work stoppage beginning on April 23, 2006.

Also, under the *Baugh* decision as reaffirmed in the *M. Conley Co.* decision, the totality of the testimony and evidence indicate that ATC ended the employer-employee relationship with the members of Local 905L-1 by permanently replacing them beginning May 23, 2006, and thereby severed the labor dispute as the proximate cause of unemployment.

ATC began advertising for permanent replacement workers on April 29, 2006, and began hiring them on May 23, 2006. In addition, while the testimony is unclear about whether ATC made Local 905L-1 aware that permanent replacement workers were actually being hired during negotiation sessions that occurred after the work stoppage began, the testimony is clear that ATC made Local 905L-1 aware that permanent replacement workers were being recruited and would be

hired. ATC has, in fact, hired 27 permanent replacement workers and 15 of them currently work for ATC as of July 7, 2006.

A review of Employer Exhibits 6, 7, and 8, along with Union Exhibit C, and of all the testimony in the record, indicates that ATC has been hiring permanent replacement workers since May 23, 2006.

Therefore, it is the conclusion of this Hearing Officer that the claimants in this matter were unemployed due to a labor dispute other than a lockout which began April 23, 2006, and ended May 23, 2006, when ATC began to hire permanent replacement workers.

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 at ATC which began April 23, 2006. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout for the week which includes April 23, 2006, pursuant to Section 4141.29 (D) (1) (a) of the Ohio Revised Code.

It is also the decision of this Hearing Officer that the labor dispute other than a lockout between Local 905L-1 and ATC began April 23, 2006, and ended on May 23, 2006, when ATC began to hire permanent replacement workers.

THIS DECISION APPLIES TO THE INDIVIDUAL WHOSE NAME AND ADDRESS APPEARS ON THE ENVELOPE CONTAINING THIS DECISION.

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, BY MAIL TO 145 SOUTH FRONT STREET, P.O. BOX 182299, COLUMBUS, OHIO 43218-2299, OR BY FAX TO (614) 387-3694, 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 20, 2006.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS August 10, 2006.

Jim Bubutiev
Hearing Officer