

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE**

JFS-83000 03/13/2009

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| UC EXPRESS PO BOX 182366 COLUMBUS, OH 43218 | Date Issued 04/16/2010 |
| | Determination Identification Number |
| | ODJFS Office Bureau of UC Program Services |
| Employer's Name CHEMINEER INC. | UC Account Number |

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

Bureau of UC Program Services
Ohio Dept. of Job & Family Services
PO Box 182830
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In The Matter Of A Labor Dispute Between

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|------------------|------------------------|-------------------|-----------------------|
| Union: | IAMAW Local 225 | Employer: | CHEMINEER INC. |
| Docket No: | 000000001000003 | Hearing Officer: | Jim Bubutiev |
| Date of Hearing: | 04/05/2010 | Date of Issuance: | 04/16/2010 |

APPEARANCES

John R. Sheldon, Attorney at Law, represented Local 225. Donald L. Riffie, Jr., Directing Business Representative for IAMAW District Lodge 34, was a witness for Local 225.

Jennifer R. Fuller, Attorney at Law, represented Chemineer, Inc. Robert Joseph Brown, Attorney at Law and Chief Negotiating Spokesman retained by Chemineer, Inc., was a witness for Chemineer, Inc.

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 currently received approximately 66 unemployment compensation benefits claims that relate to a labor dispute between Local 225 and Chemineer, Inc.

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All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on April 6, 2010, in Springdale, Ohio.

FINDINGS OF FACT

Chemineer, Inc. manufactures and sells industrial mixers to customers throughout the world from a facility located on Poe Avenue in Dayton, Ohio (Transcript Pages 18-19,97).

The claimants in this matter are members of Local 225. Chemineer, Inc. employs approximately 85 to 90 individuals and approximately 60 to 70 of them are members of Local 225 at the Dayton facility Transcript Pages 19,98).

Local 225 had a three year collective bargaining labor agreement with Chemineer, Inc. that was effective from March 3, 2007 through March 6, 2010. There was no extension of the collective bargaining labor agreement after March 6, 2010, and the members of Local 225 did not continue to work after that date. In fact, the parties did not discuss or offer an extension to one another during the entire course of negotiations for a new collective bargaining labor agreement Transcript Pages 21,43,45,72-73,83-85,99,105-106,110-111,146-147/UnionExhibit 2).

Eight or nine negotiation sessions for a new agreement were held between the parties beginning on February 15, 2010 through March 5, 2010. The parties also met with a federal mediator on March 31, 2010, and Local 225 asserts that Chemineer, Inc. indicated any new offer would include additional proposals that Local 225 found objectionable during the earlier negotiations. As of the date of hearing no further negotiation sessions were scheduled although both parties indicated a willingness to meet again. Local 225 views the negotiations as concessionary and a downgrade of the expired collective bargaining labor agreement. Chemineer, Inc. views the negotiations as being made to increase workplace efficiency and productivity to increase profit margins. Chemineer, Inc. has never indicated that if a new agreement isn't in place that no work would be made available to Local 225. However, Chemineer, Inc. asserts that at the negotiations on March 5, 2010, Union Business Representative Tony Provost stated that unless there was a new agreement reached that the members of Local 225 would not continue to work after the contract expired (Transcript Pages 26,30-31,34-35,101,111-112,130).

Chemineer, Inc. has been marginally profitable over the last few years with a profit margin of 2.5% to 3.0% and the company goal is a 15% profit margin (Transcript Pages 39-40,74-77,124-126).

At the first negotiation session held on February 15, 2010, Donald L. Riffie, Jr. explained to Robert Joseph Brown that Local 225 might request a contract extension because of other employer/union contracts that he was simultaneously negotiating. Mr. Brown stated that Chemineer, Inc. would respond to the need for an extension if it becomes necessary and the parties could talk about it if the need later arises (Transcript Pages 28-29,45,48,102-105,131).

On March 6, 2010, Donald L. Riffie, Jr. made two telephone calls to Robert Joseph Brown. The first call was after the members of Local 225 rejected the full and final offer made by Chemineer, Inc., and the second call was after the members of Local 225 voted to strike. During both telephone calls Mr. Riffie asked Mr. Brown if the proposals that Local 225 was not agreeable with would be withdrawn and the response was that Chemineer, Inc. wasn't interested in withdrawing any of the proposals. There was no overt or clear communication made by either party about the possibility of a contract extension (Transcript Pages 28-29,106-109,132-133/UnionExhibit 1).

The members of Local 225 began a work stoppage on March 7, 2010, and it is continuing. Picketing is occurring at the Dayton facility on a 24 hour a day basis. The work stoppage commenced as a result of the rejection of the full and final offer made by Chemineer, Inc. on March 5, 2010 (Transcript Pages 23,38-39,102,106-109,130-131/UnionExhibit 1).

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There are numerous issues and items of disagreement between the parties including but not limited to wages, overtime, absenteeism/tardiness, health insurance, the pension/retirement plan, bumping and recall procedures, and holiday pay/vacation pay (Transcript Pages 24-25,27,49,52-62,66-67,113-115,118-123,150-152/UnionExhibit 1).

Local 225 asserts that the members of Local 225 would have continued to negotiate and work under the terms and conditions of the expired contract on March 7, 2010, and thereafter, but that Local 225 believed that Chemineer, Inc. was going to implement the terms and conditions of the full and final offer. Chemineer, Inc. asserts that the members would be able to continue working under the terms and conditions of the expired contract, while negotiations continue, and that the full and final offer was not implemented and at no time had Local 225 been informed that it would be implemented (Transcript Pages 30,36-37,43-44,91,109-110,140-141,143,147-148,155).

Chemineer, Inc. has continued operating using nonunion employees, individuals supplied by a third party temporary employment agency, and subcontracting work out to outside independent contractors. There have been no permanent replacement workers hired (Transcript Pages 32-33,112-113).

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 Chemineer, 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 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 Chemineer, Inc. 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.

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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.

Additionally, 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.

In this matter, the evidence and testimony indicate that the members of Local 225 became unemployed when they began a work stoppage on March 7, 2010.

It is not clear if an impasse has occurred between the parties. If an impasse has occurred, and the parties truly have nothing further to negotiate, then the Zanesville decision applies. If an impasse has not occurred, and there are further negotiations between the parties, then the *Bays* decision applies. Therefore, an analysis will be done to consider both possibilities.

Applying the *Bays* decision, Chemineer, Inc. would have allowed Local 225 members to continue working under the terms and conditions of the expired contract while negotiations for a new contract continued. There was no indication ever made to Local 225 that the full and final offer would be implemented. However, Local 225 broke the status quo by taking the action of commencing with a work stoppage on March 7, 2010.

An application of the Zanesville decision yields the same result. It is not reasonable for the members of Local 225 to commence with a work stoppage simply because they do not find the full and final offer made by Chemineer, Inc. to be attractive. A review of the testimony of both witnesses clearly indicates that the reason and motivation to conduct the work stoppage was because the members did not like the full and final offer. The work stoppage was put in place to force Chemineer, Inc. to make a better offer.

The witness testimony offered by both parties shows that no one specifically, overtly, or clearly offered to extend the terms and conditions of the expired contract. Discussion that an extension might be requested is not the equivalent of an extension request.

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The question of why experienced negotiators did not directly offer an extension can only be answered by them. However, the belief by Local 225 that Chemineer, Inc. was going to implement the full and final offer beginning March 7, 2010, was not proven to be factually correct at hearing. Concurrently, the belief by Chemineer, Inc. that Local 225 knew the members would be able to continue working under the terms and conditions of the expired contract on March 7, 2010, was also not proven to be factually correct. There was no meeting of the minds regarding an offer and acceptance of an extension. An extension has to be offered by one party and either accepted or rejected by the other party for it to be known if an extension of the expired contract could have taken place. That was never done by the parties at any time during the negotiations.

Unfortunately, it is not what the parties believed or did not believe that is relevant. The only relevant fact in this matter is that Local 225 was the first party to take an action and that action was to begin a work stoppage.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein are unemployed due to a labor dispute other than a lockout which began on March 7, 2010. The claimants are disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout beginning with the week which includes March 7, 2010.

It is also the decision of this Hearing Officer that the labor dispute other than a lockout between Chemineer, Inc. and Local 225 which began on March 7, 2010, is continuing.

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. **If unemployed**, claimants should continue to file weekly claims for benefits while under appeal.

This decision was mailed on **04/16/2010**.

The twenty-one day appeal period ends on **05/07/2010**.

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