

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:

	:	Docket No. LD-001-008
Teamsters Local	:	
Union No. 661	:	
(Local 661)	:	
	:	
Union / Claimants	:	Hearing Officer:
	:	Jim Bubutiev
and	:	
	:	
Cincinnati Specialties, LLC	:	Date of Hearing:
dba PMC Specialties Group	:	December 28, 2001
(PMC)	:	
	:	
Employer	:	Date of Issuance:
	:	January 07, 2002

Appearances

Michael G. Land, Secretary Treasurer-Business Agent, represented and was a witness for Local 661. Jerry A. Blankenship, Chief Union Steward at PMC in Cincinnati, was also a witness for Local 661.

PMC, although properly notified, was not represented and did not appear at this hearing.

This matter was heard by Jim Bubutiev, Hearing Officer for the Director of the Ohio Department of Job and Family Services, pursuant to Section 4141.281 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 4141.281 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 77 claims for unemployment benefits that relate to a labor dispute between Local 661 and PMC.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on December 28, 2001, at the Government Services Building in Hamilton, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 661 and are employed at PMC's Cincinnati, Ohio work location (Transcript Page 15).

PMC is a chemical company which makes various products including saccharin. PMC's home office is located in California. In Ohio, PMC has work locations in Cincinnati and Cleveland. (Transcript Page 14).

PMC employs approximately 170 individuals in Cincinnati and about 90 of them are also members of Local 661 (Transcript Page 15).

Local 661 had a collective bargaining labor agreement with PMC that was effective from November 23, 1998, through November 18, 2001. There was a three (3) week extension made to the agreement by the parties on November 15, 2001, to extend the agreement through December 9, 2001. (Transcript Pages 16-21 / Union Exhibits 1 & 2).

At the time the three (3) week extension was agreed upon, the parties also agreed to a November 28, 2001, meeting which included third party representatives

of an insurance company to discuss health care coverage issues (Transcript Pages 20,23,25).

The main issues between the parties concerned health care coverage and wages (Transcript Pages 20,40-41,46-47).

On September 14, 2001, Local 661 sent written notification to PMC of an intent to terminate the then existing collective bargaining labor agreement, pursuant to Article XXV of the agreement, and to begin negotiations for a new agreement (Transcript Pages 21-22 / Union Exhibit 4)

There were seven (7) negotiation sessions held prior to the expiration of the then existing collective bargaining labor agreement, from October 29, 2001, through November 14, 2001 (Transcript Pages 21-24 / Union Exhibit 5).

On December 6, 2001, there was a negotiation session and Local 661 proposed a one (1) year agreement which was rejected by PMC (Transcript Page 25).

On December 7, 2001, there was a negotiation session which included, for the first time, a federal mediator. Local 661 proposed another one (1) year agreement which PMC also rejected. PMC then countered with a "final and best" offer. Local 661 took the position that if PMC's "final and best" offer was not ratified during a membership vote on December 8, 2001, then they would continue to work while negotiations continued. However, Local 661 believed that PMC would not allow work to continue until a new agreement was in place (Transcript Pages 26-27,37-38,41-42,47).

On December 8, 2001, Local 661 members voted 75 to 10 to reject PMC's "final and best" offer (Transcript Page 28 / Union Exhibit 7).

On the night of December 9, 2001, Local 661 members attempted to go to work at PMC's Cincinnati work location. PMC's security guards would not allow the Local 661 members to go to work that night and explained:

"The Company wants to inform you that it is not prepared at this time to have its employees in the union work without a contract. Unfortunately we have to request that you return home."

(Transcript Pages 28-29,44-46 / Union Exhibit 8).

After the members of Local 661 attempted to return to work, and were denied entrance to the Cincinnati work location by PMC's security guards, they set up picket lines and carried signs saying that PMC had locked them out (Transcript Pages 30-31, 44-46).

On December 11, 2001, there was a negotiation session and PMC proposed another one (1) year agreement. On December 12, 2001, the Local 661 members rejected the proposed agreement by a 62 to 18 vote (Transcript Pages 32-33 / Union Exhibit 10).

The members of Local 661 continued to attempt to go to work but PMC continued to deny them entrance to the Cincinnati work location. In fact, the members of Local 661 were willing to continue working under the exact terms and conditions of the expired collective bargaining

labor agreement throughout the entire negotiation process (Transcript Pages 33-34,40,47-48).

PMC continued operating during the work stoppage using management and non-union research and development employees. PMC did not hire any replacement workers during the work stoppage (Transcript Pages 47-48).

On December 13, 2001, the parties came to a tentative agreement on a new one (1) year agreement which, for the first time, was recommended by the Local 661 Negotiating Committee to the membership. On December 14, 2001, the members of Local 661 ratified the agreement by a 59 to 24 vote. The new agreement is effective from December 14, 2001, through November 24, 2002 (Transcript Pages 35-37 / Union Exhibit 11).

Local 661 members were able to begin returning to work the night of December 14, 2001. All the members of Local 661 involved in the work stoppage have now returned to work under the new one (1) year agreement (Transcript Pages 48-49).

The members of Local 661 did receive a signing bonus as part of the new one (1) year agreement. They did not receive compensation from PMC for the days they were not allowed to work during the week of December 9, 2001 (Transcript Pages 39-40 / Last Page of Union Exhibit 11).

ISSUES:

Pursuant to Section 4141.281 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 PMC?
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 first issue to be resolved is whether the reason for the claimants' unemployment from PMC 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 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.

The evidence and testimony indicate the members of Local 661 became unemployed when, after voting to reject PMC's "final and best" offer on December 8, 2001, they were not allowed to go to work when they attempted to do so the following day. Consequently, it was PMC that started a lockout beginning December 9, 2001.

Using the test from the *Bays* decision, this Hearing Officer finds, based upon the testimony and evidence, that it was PMC that first changed the status quo, while negotiations were ongoing, when the decision was made to not allow the members of Local 661 to report to work beginning December 9, 2001.

Therefore, it is the conclusion of this Hearing Officer that the claimants in the instant case were unemployed due to a lockout which began December 9, 2001, and ended when a new one (1) year agreement was ratified December 14, 2001.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout at PMC during the week of December 9, 2001. The claimants are not disqualified from eligibility for unemployment compensation benefits for the week of December 9, 2001.

It is also the decision of this Hearing Officer that the lockout which resulted in the unemployment of the claimants ended when a new one (1) year agreement was ratified December 14, 2001.

* * * * *

THIS DECISION APPLIES TO 77 NAMED CLAIMANTS

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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 JANUARY 07, 2002.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS JANUARY 28, 2002.

Jim Bubutiev
Hearing Officer