

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
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In The Matter Of A Labor Dispute
Between:

	:	Docket No. LD-002-009
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 17, 2002
(PMC)	:	
	:	
Employer	:	Date of Issuance:
	:	December 27, 2002

Appearances

Michael G. Land, Secretary Treasurer-Business Agent, represented and was a witness for Local 661. Brian Williams, Claimant, Andrew Lake, Chief Steward and Claimant, Jerry Trimble, Claimant, and Steven Kaye, Claimant, were also witnesses for Local 661.

Eric Bruestle, Attorney at Law, represented PMC. Esther Kirk, Director of Human Resources, and Alonco Ballard, Safety Director, were witnesses for PMC.

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 72 claims for unemployment benefits that relate to a labor dispute between PMC and Local 661.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on December 17, 2002, in Hamilton, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of Local 661 and are employed by PMC.

PMC manufactures specialty chemical products (Transcript Pages 12,53).

PMC employs an estimated 161 individuals. Approximately 83 or 84 of those individuals are members of Local 661 (Transcript Pages 12,83-84,89,126,150).

Local 661 had a one (1) year collective bargaining labor agreement with PMC which was effective from December 14, 2001, to 11:00 p.m. on November 24, 2002 (Transcript Pages 13,132,157-158/Union Exhibit C).

There was no extension of the collective bargaining labor agreement (Transcript Pages 14-15).

Ten (10) negotiation sessions were held between PMC and Local 661 from October 23, 2002, through December 11, 2002, in an attempt to reach a new agreement. At least one (1) negotiation session is scheduled subsequent to the date of this hearing (Transcript Pages 15-17,20-21,35,91-93,125,150/Employer Exhibit 1).

Local 661 voted to authorize a work stoppage either before negotiation sessions started or shortly after they began. Local 661 never voted to actually conduct a work stoppage and never advised PMC that a work stoppage would, in fact, take place (Transcript Pages 27-29,44,48,94-96,118).

Local 661 verbally offered an extension of the agreement in the later stages of the negotiation sessions but PMC indicated it was not interested in an extension and that there was enough time to reach a new agreement. PMC indicated it would "shutdown plant operations" which meant it would not operate the chemical processing units without a new

agreement in place due to safety and liability concerns. PMC took the position that clean up work would be available after the agreement expired and the chemical processing units were shutdown. Clean up work is not normally a major part of the general job duties of the members of Local 661. There is conflicting testimony regarding whether a written extension offer was made by Local 661 to PMC. (Transcript Pages 15,18-19,54,67,76-77,79-86,89-91,101-105,107-112,114-116,118-123,126-127,129-131,140-143,147,151-152,154-155,162-163,192,195-198,202-203/Union Exhibits A & B, Employer Exhibits 7 & 8).

On November 24, 2002, there is conflicting testimony regarding whether some members of Local 661 indicated they would not work after the agreement expired or were told by PMC they could not work after the agreement expired at 11:00 p.m. (Transcript Pages 170-171,178-179,183-184,193).

A work stoppage began after the agreement expired at 11:00 p.m. on November 24, 2002 (Transcript Pages 17,89).

No members of Local 661 have returned to work since the date of this hearing. Local 661 began picketing at PMC when the agreement expired on November 24, 2002 (Transcript Pages 26-27,94,106-107,153).

PMC initially shutdown after the work stoppage began but started operations back up the next day using front-line supervisory personnel, chemical engineers, and, after a time, subcontractors (Transcript Pages 19-20).

The main issues between PMC and Local 661 deal with health insurance coverage and wages (Transcript Pages 17-18,22-26,92,98-99).

On December 14, 2002, Local 661 voted to reject PMC's offer for a new collective bargaining labor agreement (Transcript Pages 23,96/Employer Exhibit 1).

PMC has not hired permanent replacements into the positions held by members of Local 661 (Transcript Pages 29,93,133-134,152-153).

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 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 key 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 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.

The Supreme Court in *Bays, supra*, also provided the definition of a "lockout" as "a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get for the employer more desirable terms." *Id.* at 133. The Supreme Court in *Bays, supra*, said a lockout "is not confined to an actual physical closing of the place of employment." *Id.* at 134.

In this matter, the totality of the evidence and testimony indicate the members of Local 661 became unemployed when PMC locked them out on November 24, 2002. PMC would not allow them to continue working under the terms and conditions of the expired agreement, while negotiations continued.

Witness testimony offered by both parties is consistent in indicating Local 661 did verbally make PMC aware that an extension of the agreement was being offered during the negotiation sessions.

PMC took the position that plant operations would be shutdown once the contract expired and that it was not interested in an extension. PMC was only interested in reaching a new agreement.

It is not reasonable for PMC to indicate that clean up work would be the available work for the members of Local 661, after the agreement expired, when clean up work is not a major part of their job duties. PMC's own witness provided testimony that clean up work constitutes "10 percent" of normal, regular job duties. PMC is in the business of manufacturing specialty chemical products and not in the business of doing clean up work.

Thus, using the status quo test from the *Bays* decision, this Hearing Officer finds, based upon a review of all the evidence and testimony, that PMC first changed the status quo, while negotiations were ongoing, when the decision was made to not allow the members of Local 661 to continue working under the terms and conditions of the expired agreement after November 24, 2002, while negotiations continued. PMC's shutdown of the chemical processing units and view that clean up work would be available after the agreement expired is not a maintenance of the status quo.

Therefore, it is the conclusion of this Hearing Officer that all the claimants in the instant case were unemployed due to a lockout which began November 24, 2002, and is continuing as of the date of this decision.

DECISION:

It is the decision of this Hearing Officer that all of the claimants herein were unemployed due to a lockout which began November 24, 2002.

The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout beginning with the week which includes November 24, 2002.

It is also the decision of this Hearing Officer that the lockout between PMC and Local 661 which began on November 24, 2002, is continuing.

* * * THIS DECISION APPLIES TO 72 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 DECEMBER 27, 2002.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS JANUARY 17, 2003.

Jim Bubutiev
Hearing Officer