

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
UNEMPLOYMENT COMPENSATION PROGRAM SERVICES
145 South Front Street
P.O. Box 182830
Columbus, Ohio 43218-2830
(614)752-8418

In The Matter Of A Labor Dispute
Between:

United Steelworkers	:	Docket No. LD-001-007
of America, AFL-CIO	:	
Local Union No. 4836	:	
(Local 4836)	:	
	:	
Union / Claimants	:	
	:	Hearing Officer:
and	:	Jim Bubutiev
	:	
Glacier Vandervell, Inc.	:	Date of Hearing:
Dana Glacier Vandervell	:	November 27, 2001
North America	:	
(Dana Glacier Vandervell)	:	
	:	Date of Issuance:
Employer	:	December 07, 2001

APPEARANCES

James P. Willis, Local 4836 President, represented and was a witness for Local 4836. Samuel M. Schafer, Local 4836 Negotiating Committee Member, also represented Local 4836.

Franck G. Wobst, Attorney at Law, represented Dana Glacier Vandervell. Curtis L. Tutak, Human Resources Manager, was a witness for Dana Glacier Vandervell.

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 Department of Job and Family Services has received 291 unemployment claims that relate to a labor dispute between Local 4836 and Dana Glacier Vandervell.

All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held November 27, 2001, in Cambridge, Ohio.

FINDINGS OF FACT:

Dana Glacier Vandervell is a manufacturer of certain products used in the automotive industry and has work facilities in Bellefontaine, Caldwell, and McConnelssville, Ohio. (Transcript Pages 10- 11).

The claimants in this matter are members of Local 4836 and are employed at Dana Glacier Vandervell's Caldwell, Ohio work facility (Transcript Page 11).

Dana Glacier Vandervell employs roughly 450 individuals at the Caldwell, Ohio facility and approximately 368 to 375 of them are also members of Local 4836 (Transcript Page 11,32).

Local 4836 had a collective bargaining labor agreement with Dana Glacier Vandervell that was effective from September 24, 1998, through October 07, 2001 (Transcript Pages 13-14 / Employer Exhibit A).

Initial negotiation sessions were held prior to the expiration of the then existing collective bargaining labor agreement. The sessions began August 06, 2001, and were planned to last for five (5) days. The sessions, in fact, ended after about three (3) days when Dana Glacier Vandervell decided an agreement was not going to be reached within the planned five (5) days. (Transcript Pages 17-19,33).

Negotiations, which now involved a federal mediator, resumed September 5, 2001, and continued through October 7, 2001, when an initial tentative agreement was reached (Transcript Pages 18,33).

There was a one (1) week extension made to the expiring agreement by the parties so that the initial tentative agreement that was reached October 7, 2001, could be voted on by the members of Local 4836. The members of Local 4836 worked under the exact terms and conditions of the expired agreement during the one (1) week extension period. The Local 4836 Negotiating Committee presented the tentative offer to all the members for a ratification vote without making a recommendation for or against it. The ratification vote was held October 14, 2001, and the tentative agreement was rejected by a substantial majority. The vote to reject the tentative offer was also a vote to conduct a work stoppage (Transcript Pages 14-16,34-37,42,50-51).

A work stoppage then began October 14, 2001, when no members of Local 4836 showed up to work the scheduled 10:30 p.m. shifts. (Transcript Pages 16,28,38).

Local 4836 put continuous picket lines in place at Dana Glacier Vandervell's Caldwell, Ohio facility during the course of the work stoppage beginning October 14, 2001 (Transcript Pages 23,39).

Dana Glacier Vandervell did not take a "no new agreement then no work" position during the entire negotiation process. In fact, Dana Glacier Vandervell was willing to let the members of Local 4836 continue working under the exact terms and conditions of the expired collective bargaining labor agreement while negotiations continued (Transcript Pages 21-22,24,28,41-42).

Dana Glacier Vandervell continued operating after the work stoppage began using nonunion management employees. Dana Glacier Vandervell did not hire any replacement workers (Transcript Pages 22-23,42).

The main issues between the parties concerned the claimants' health care benefits and pension plan (Transcript Pages 29-30).

Further negotiations, which involved a new federal mediator, occurred beginning November 1, 2001, and continued November 3, 2001, and November 4, 2001, at which time a second tentative agreement was reached. The second tentative agreement was recommended for approval by the Local 4836 Negotiating Committee (Transcript Pages 19-20,39-41).

None of the members of Local 4836 attempted to return to work during the course of the work stoppage (Transcript Pages 22,45).

A ratification vote was held November 6, 2001, and the members of Local 4836, by a sizeable majority, voted to accept the second tentative agreement. The members of Local 4836, all of whom had participated in the work stoppage starting October 14, 2001, all returned to work November 7, 2001 (Transcript Pages 21, 40-41,46).

The work stoppage began October 14, 2001, and continued through November 6, 2001 (Transcript Pages 21-22,45).

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 are:

1. What is the reason for the claimants' unemployment

from Dana Glacier Vandervell?

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 first issue to be resolved is whether the reason for the claimants' unemployment from Dana Glacier Vandervell 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 *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 testimony and evidence in this case indicate the claimants became unemployed following their vote not to ratify the tentative

agreement of October 14, 2001. The vote not to ratify that tentative agreement was also a vote for a work stoppage. The members of Local 4836 then began a work stoppage and put into place picket lines at Dana Glacier Vandervell's Caldwell, Ohio facility starting the night of October 14, 2001.

The testimony and evidence establish that Dana Glacier Vandervell did not withhold work from the members of Local 4836 in an effort to obtain more favorable terms. In fact, Dana Glacier Vandervell was willing to allow the members of Local 4836 to continue working under the terms and conditions of the collective bargaining labor agreement that had expired October 7, 2001. This was demonstrated when Dana Glacier Vandervell agreed to a one (1) week extension of the expired agreement through October 14, 2001.

Actually, Local 4836 and Dana Glacier Vandervell were involved in a labor dispute that ultimately led the members of Local 4836 to conduct a work stoppage in an effort to obtain more desirable terms in a new collective bargaining labor agreement with Dana Glacier Vandervell.

Therefore, by applying the holding of the *Zanesville* case, it is clear that Dana Glacier Vandervell did not lockout the members of Local 4836 on October 14, 2001.

Using the *Bays* case standard, this Hearing Officer finds, based upon the testimony and evidence, that the members of Local 4836 first changed the status quo, while negotiations were ongoing, when they decided not to report for work, beginning the night of October 14, 2001. Instead, they chose to form picket lines at Dana Glacier Vandervell's Caldwell, Ohio facility. Dana Glacier Vandervell's conduct did not indicate it was unwilling to maintain the status quo while the negotiations continued.

Therefore, the members of Local 4836 were unemployed due to a labor dispute other than a lockout which lasted from October 14, 2001, until November 07, 2001, when the labor dispute was settled and the members of Local 4836 returned to work under a new collective bargaining labor agreement.

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 Dana Glacier Vandervell's Caldwell, Ohio facility beginning October 14, 2001, through November 6, 2001. The claimants are disqualified from receiving unemployment compensation benefits for the week starting October 14, 2001, through the week which included November 6, 2001, pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

The labor dispute other than a lockout which resulted in the unemployment of the claimants ended November 07, 2001, when they returned to work.

* * * * *

THIS DECISION APPLIES TO 291 NAMED CLAIMANTS

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If you disagree with this decision you have the right to appeal. The paragraph on the following page 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) 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 07, 2001.

THE TWENTY-ONE (21) DAY APPEAL PERIOD ENDS DECEMBER 28, 2001.

Jim Bubutiev
Hearing Officer